4-27-89
Vol. 54 No. 80

federal register

Thursday
April 27, 1989

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

SECOND CLASS NEWSPAPER

Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

4-27-89
Vol. 54 No. 80
Pages 18087-18266

Federal Register

Thursday
April 27, 1989

Briefings on How To Use the Federal Register—
For information on briefings in Washington, DC, and St. Louis, MO, see announcement on the inside cover of this issue.

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

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

The **Federal Register** will be furnished by mail to subscribers for $340 per year in paper form; $195 per year in microfiche form; or $37,500 per year for the magnetic tape. Six-month subscriptions are also available at one-half the annual rate. The charge for individual copies in paper or microfiche form is $1.50 for each issue, or $1.50 for each group of pages as actually bound, or $175.00 per magnetic tape. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or charge to your GPO Deposit Account or VISA or Mastercard.

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

How To Cite This Publication: Use the volume number and the page number. Example: 54 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

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

Single copies/back copies:

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

FEDERAL AGENCIES

Subscriptions:

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

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

THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

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

WASHINGTON, DC

WHEN: May 23; at 9:00 a.m.
WHERE: Office of the Federal Register,
First Floor Conference Room,
1100 L Street NW., Washington, DC
RESERVATIONS: 202–523–5240

ST. LOUIS, MO

WHEN: May 23; at 9:00 a.m.
WHERE: Room 1612,
Federal Building,
1520 Market Street,
St. Louis, MO
RESERVATIONS: Call the Federal Information Center,
St. Louis: 314–425–4106
Missouri (outside St. Louis): 1–800–392–7711
Kansas: 1–800–432–2934

Contents

Federal Register
Vol. 54, No. 80
Thursday, April 27, 1989

Separate Parts In This Issue

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

CFR PARTS AFFECTED IN THIS ISSUE

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

5 CFR
1204 18198
Proposed Rules:
531 18198

7 CFR
225 18200
246 18087
906 18093
916 18095
1910 18097
Proposed Rules:
1930 18116

17 CFR
140 18098
145 18098
200 18099

21 CFR
176 18102
Proposed Rules:
347 18197
348 18197
358 18197

26 CFR
Proposed Rules:
1 18117

28 CFR
64 18198
541 18198

32 CFR
Proposed Rules:
172 18117

33 CFR
Proposed Rules:
166 18258
167 18258

34 CFR
300 18248

39 CFR
Proposed Rules:
927 18125

40 CFR
52 18103

44 CFR
64 (2 documents) 18104, 18106

45 CFR
1626 18109

47 CFR
Proposed Rules:
Ch. I 18125

48 CFR
1825 18112
1852 18112

50 CFR
655 18114

Rules and Regulations

Federal Register
Vol. 54, No. 80
Thursday, April 27, 1989

DEPARTMENT OF AGRICULTURE

Food And Nutrition Service

7 CFR Part 246

Special Supplemental Food Program for Women, Infants and Children (WIC); Funds Use Flexibility for States Implementing Food-Cost-Cutting Systems

AGENCY: Food and Nutrition Service, USDA.

ACTION: Interim rule.

SUMMARY: This interim rule amends regulations governing the Special Supplemental Food Program for Women, Infants and Children (WIC) to comply with the mandates of Pub. L. 100–356, enacted June 28, 1988. First, the rulemaking allows State agencies entering the first fiscal year after implementing or significantly changing a competitive bidding, rebate, home delivery, or direct distribution system to carry forward into that fiscal year up to 5 percent of their food grants for the prior fiscal year, net of any food funds backspent or administrative and program services funds carried forward from that year. This authority incorporates, and is not in addition to, the previously established authority to carry forward a maximum of 1 percent of a State's total grant in any combination of food and administrative and program services funds. In the second fiscal year following the year of implementation or significant change to any of the specified food-cost-cutting systems, FNS may exercise discretion to permit a State agency to carry forward up to 5 percent of the State agency's food grant for the previous fiscal year, net of any funds carried forward or backspent under the 1-percent authority. Second, in addition to the authority to convert food funds to administrative and program services funds established by Pub. L. 100–237 and § 246.16(g) of the regulations, a State agency implementing or significantly changing any of the four specified food-cost-cutting systems may convert the amount of food funds necessary to limit to 2 percent any decrease in the State agency's administrative grant per person from one fiscal year to the next resulting from increased program participation due to the State agency's food-cost-cutting system. This additional conversion authority may be exercised beginning with the fiscal year immediately following the fiscal year in which the State last chose to exercise conversion authority established by § 246.16(g). Annual decreases are measured from the formulaic Administrative grant per person (AGP) for the fiscal year during which the State agency implemented or significantly changed its approved food-cost-cutting system. These funding assurances are intended to protect State agencies against the destablizing effects which may accompany implementation of a competitive bidding, rebate, home delivery, or direct distribution system.

DATES: This rulemaking is effective October 1, 1988. Eligible State agencies shall be able to exercise the expanded funds carry-over and conversion authority established by this rulemaking beginning with Fiscal Year 1989, based on the implementation of approved competitive bidding, rebate, home delivery, or direct distribution systems in Fiscal Years 1987 and 1988. Comments on this rulemaking must be received on or before June 26, 1989.

ADDRESS: Comments may be mailed to Ronald J. Vogel, Director, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 1017, Alexandria, Virginia 22302. All written submissions will be available for public inspection at this address during regular business hours (8:30 a.m. to 5:00 p.m.) Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Ronald J. Vogel at the above address or at (703) 756–3746.

SUPPLEMENTARY INFORMATION:

Classification

This interim rule has been reviewed under Executive Order 12291, and has been determined not to be major. The Department does not anticipate that this rule will have an impact on the economy of $100 million or more. This rule will not result in a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions. Nor will this rule have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). Pursuant to that review, the Administrator of the Food and Nutrition Service has certified that this interim rule does not have a significant economic impact on a substantial number of small entities. The reporting requirements established by this rulemaking are under review by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Pub. L. 100–356 became effective on June 28, 1988, the date of enactment. Both the funds carry-over mandate and the funds conversion mandate operate on a fiscal year basis, and both are funding mechanisms triggered by State agency behavior in the two immediately proceding fiscal years. Therefore, approved State food-cost-cutting efforts during Fiscal Years 1987 and 1988 must activate the new carry-over and conversion authorities beginning with Fiscal Year 1989. For this reason, the Administrator of FNS has certified that public comment on this rule and post-publication waiting period prior to implementation are impracticable and contrary to the public interest and that, therefore, good cause exists for making this rule effective immediately upon promulgation.

The provisions contained in this rule are all pursuant to legislative mandates and made effective in accordance with legislatively mandated effective dates. For these reasons, prior public comment and publication of this rulemaking not less than 30 days prior to the effective date is not required under 5 U.S.C. 553. However, the Department believes the administration of the rule may be improved by public comment. Therefore, comments are solicited on this rule for 60 days. All comments received will be

analyzed, and any appropriate changes in the rule will be promulgated in a subsequent final rule.

This program is listed in the Catalog of Federal Domestic Assistance Programs under No. 10.557 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR Part 3015, Subpart V, and final rule-related notice published June 24, 1983 (48 FR 29114)).

1. Carrying Funds Forward From One Fiscal Year to the Next (Section 246.16(b)(3))

a. Reason for Legislative Increase in Carry-over Authority.—Encouraged in part by Pub. L. 100–237, significant numbers of State agencies have recently begun to implement food-cost-cutting systems. This legislation authorized State agencies to convert from food funds to administrative and program services funds a portion of the savings resulting from approved competitive bidding, rebate, home delivery, and direct distribution systems. This conversion process takes place to the extent that such State agencies increase participation with the savings generated by their systems and incur additional administrative costs in serving more participants. Beginning immediately upon implementation, these food-cost-cutting systems can generate large amounts of savings to be transformed into participation increases. The process of program expansion, however, is a gradual one which must be preceded by adequate planning and staffing adjustments, and which must take place in a controlled manner consistent with sound program management. State agencies may not be able to utilize all of the savings resulting from their food-cost-cutting systems as fast as such savings accrue. Therefore, they may have to return unspent food funds for reallocation.

Past program regulations have provided some protection to State agencies unable to utilize their food grants fully. FNS may reduce the base to which the 95-percent funds utilization test of § 246.16(e)(2) is applied, thus increasing the amount of food funds a State agency can leave unspent in one fiscal year without having its food grant reduced for the following fiscal year. FNS routinely affords this advantage to State agencies in the first year of implementation of their food-cost-cutting systems. In addition to this protection, State agencies have been able to backspend up to 1 percent of their food grants and carry forward up to 1 percent of their total grants in any combination of food and administrative and program services funding. The total amount transferred from any fiscal year cannot exceed 1 percent of the State agency's total WIC grant for that year. However, given the large amounts of savings State agencies can achieve through food-cost-cutting systems listed in Pub. L. 100–237, especially infant formula rebate systems, and the administrative complexities of using these savings to increase participation, Congress determined that the existent protections were insufficient.

b. Nature of Increased Carry-over Authority.—Therefore, section 3(b) of Pub. L. 100–356 increases the amount of unspent *food* funds a State agency can carry forward from one fiscal year to the next. This provision applies only to State agencies which have implemented or significantly changed any of the food-cost-cutting systems specified in Pub. L. 100–237, and only to funds carried forward from the first and second fiscal years following the fiscal year of implementation or significant change to such systems. Food-cost-cutting initiatives not referenced in Pub. L. 100–237, for example, price-based vendor selection systems or breast-feeding promotions, are not covered by the expanded carry-over provision of Pub. L. 100–356. This legislation provides, first, that the State agency may carry forward into the *first* fiscal year following the fiscal year of implementation of its system up to 5 percent of its food grant for the year of implementation. Within this limit, each State agency independently determines how much food funding it will carry forward. Into the second fiscal year following the fiscal year of implementation of its system, the State agency may request the permission of FNS to carry forward food funds beyond the 1 percent of its total grant which it is entitled by Pub. L. 100–237 to carry forward. In response to such a request, FNS may, at its discretion, permit the State agency to carry forward up to an amount equal to 5 percent of its food grant for the first year following the year of implementation.

c. Relationships between Increased Carry-over Authority and Previously Established Funds Transfer Authority.—Before discussing how FNS will respond to such requests, several features of the new 5-percent provision must be stressed and explained. First, this 5-percent limit *incorporates, and is not in addition to,* the previously established 1-percent limit. Under that limit, the State agency could backspend up to 1 percent of its food grant and carry forward in any combination of food and administrative and program services funds up to 1 percent of its total grant, provided that not more than 1 percent of its total grant could be transferred from any fiscal year. The following example includes carryover of administrative funds in order to illustrate all possible combinations of carryover even though, for reasons explained in section 1.d. of this preamble, State agencies which have converted food cost savings to administrative funds will not be able to carry administrative funds forward. Of the State agencies which have implemented any of the specified food-cost-cutting systems, only those which have not converted any part of the resultant savings during a fiscal year will be allowed to carry forward administrative and program services funds from that fiscal year.

Consider the State agency which receives a total WIC grant—including funds allocated for food costs and for administrative and program services costs—of $100. Of this total, $80 is allocated for food and $20 for administration. Under previously established regulatory authority, the State agency can carry forward up to 1 percent, or $1, of its total grant in any combination of food and administrative funds. Since only this 1-percent provision, and not the 5-percent provision, covers administrative funding, the State agency can carry forward a maximum of $1 in administrative and program services funds. Under the newly established 5-percent authority, the State agency can carry forward a maximum of 5 percent of its food grant, or $4. This maximum carry-over of food funds is reduced by any administrative funding the State agency elects to carry over and any funds it elected to backspend. If a State agency carries forward the maximum of $1 in administrative funding, its food funds carry-over is reduced to $3 ($4.00−$1.00=$3.00). If it decides to bring $.50 of its administrative monies into the following fiscal year, it cannot carry forward more than $3.50 in food funds ($4.00−$.5=3.50). If the State backspent $.50 in food funds and opts to carry forward $.25 in administrative and program services funds, it can carry forward a maximum of $3.25 in food funds ($4.00−$.50−$.25=$3.25).

In referring to "not more than 5 percent of the funds allocated under this section to such a State agency for supplemental foods," Congress in Pub. L. 100–356 makes it unequivocally clear that the expanded carry-over authorized by the 5-percent provision applies only to funds allocated to the State agency

for food costs and does not increase the percentage of administrative and program services funds which can be carried over into the succeeding fiscal year. The maximum amount of administrative funds that can be carried forward remains unchanged, as previously established by the 1-percent provision of Pub. L. 99–500 and 99–591. As indicated in the above example, even though the State agency is covered by the new 5-percent provision, it still cannot carry forward more than 1 percent of its total grant, or $1, in administrative and program services funds.

d. Clarification of Authority to Carry Forward Administrative and Program Services Funds.—Pub. L. 100–237 established a restriction on the carry-over of administrative funding that is clarified in this interim rulemaking. In 1986, when Pub. L. 99–500 and 99–591 established the 1-percent carry-over authority, *all* State agencies could be expected from time to time to end a fiscal year with unspent administrative funds. Therefore, the 1-percent carry-over provision applied without restriction to any combination of administrative and program services and food funds. Subsequently, in January 1988, section 8(a) of Pub. L. 100–237 provided that State agencies instituting specified food-cost-cutting systems could convert part of the savings achieved through such systems to administrative funding "for the cost of the State and local agencies associated with increases in the number of persons served." Thus such funds conversion can take place only to the extent that, in the process of increasing participation, the State agency incurs administrative and program services costs in excess of its administrative grant and any administrative funds it may have carried forward into the fiscal year. (This limitation is stated in a new § 246.16(i), which is discussed later in the preamble.) A State agency which converts funds during a fiscal year could not possibly have unspent administrative and program services funds at the end of that fiscal year since funds can only be converted to cover actual costs incurred. Therefore, § 246.16(b)(3)(ii) of this interim rule clarifies that a State agency cannot carry forward administrative and program services funds from a fiscal year during which it engaged in funds conversion under the authority of Pub. L. 100–237 and § 246.16(g) of program regulations. (As will be explained later in this preamble, the same prohibition applies to carry-over of administrative funding from a fiscal year during which a State agency exercises conversion authority under Pub. L. 100–356 and § 246.16(h) of program regulations.)

e. Increased Carry-over Authority in the *Second* Year Following the Year of Food-cost-cutting System Implementation.—As indicated above, expanding the maximum amount of food funds that a State agency can carry forward into the *second* year following the year of implementation of a food-cost-cutting system is an option available to FNS under Pub. L. 100–356. At their own discretion, State agencies can carry forward up to 1 percent of their total program grants. Entering the second year after the year of implementation, FNS decides how much beyond this 1 percent the State agency can bring forward in food funds, the maximum possible carry-over being the difference between 5 percent of the State agency's food grant and any amount of food funds backspent and administrative funds to be carried over. In making this determination, FNS will consider the following four factors:

(1) The number of months the approved food-cost-cutting system operated prior to the fiscal year for which the conversion request is being made. A State agency which has had fewer total months of operation will be more susceptible to the effects of the lag between generation and utilization of food cost savings. Thus it may have greater need to carry forward unspent food funds.

(2) The combined level of penetration of WIC and the Commodity Supplemental Food Program (CSFP) into the State's WIC-eligible population during the fiscal year from which funds would be carried forward. State agencies with a lower penetration can be expected to expand participation faster, and thus to have less need to carry forward food funds than States with higher penetration levels.

(3) The cost reduction achieved by the State agency, net of any funds conversion, during the fiscal year from which the State requests to carry funds forward. A State agency achieving a net savings per can of infant formula of $.98, for example, will be more likely to need expanded carry-over authority than a State agency saving only $.60 per can.

(4) The combined net increase in the participation of women, infants and children in WIC and CSFP in the State during the fiscal year from which the State agency requests to carry funds forward. A State agency which achieved all, or almost all, of the potential for program expansion due to its food-cost-cutting system in the first year of implementation should have less need to carry forward extra food funds from the year following the year of implementation. Regarding States which operate CSFP as well as WIC, FNS will consider the combined net increase in the participation of women, infants and children in the two programs. States in which increased WIC participation has been offset by decreases in the number of women, infants and children participating in CSFP have not established a record of effort which would justify a request for expanded carry-over authority.

f. Timeframes for Increased Carry-over Authority in *Second* Year Following Year of Implementation of Food-cost-cutting System.—State agencies requesting this 5-percent carry-over authority must file written requests, including such information as FNS may require, by January 15 of the fiscal year into which funds would be carried forward. FNS will notify the State agency of its decision concerning the request within 30 days of receipt. These timeframes provide the State agency with adequate time and data upon which to assess its need to carry funds forward. FNS is also assured of adequate time to consider complete data for the previous fiscal year in making its determination. Once notified of this decision, the State agency will, in turn, be able to file its final expenditure report (FNS–269) by the March 1 deadline.

g. Timeframes for Increased Carry-Over Authority in *First* Year Following Implementation of Food-Cost-Cutting Systems, and for Previously Established Funds Transfer Authority.—State agencies which have elected to exercise their right to carry forward and backspend up to 1 percent of their total grants are required to inform FNS in writing of their decision not later than March 1 of the fiscal year following the fiscal year from which funds will be transferred. State agencies exercising their discretion to carry over up to 5 percent of their food grants from the year of implementation of their food-cost-cutting system are also required to inform FNS by this same date. Since these carry-over authorities are exercised unilaterally by State agencies, without FNS involvement, the time available to them to assess their needs should be bounded only by the deadline for submission of the final expenditure report (FNS–269) for the preceding fiscal year.

2. Conversion of Food Funds to Limit Reduction in Administrative Grant Per Participant (Section 246.16(h))

a. Reason for, and Nature of, Legislative Change.—As increasing numbers of State agencies implement food-cost-cutting systems, an unchanging percentage of the WIC appropriation allocated for administrative and program services costs will have to meet the administrative needs of a program in which food funds are spent more efficiently each year, resulting in the need to spread administrative resources over a continually expanding program participation. Thus the administrative grant per participant (AGP) provided after the administrative funding formula begins to account for participants added as a result of food-cost-cutting systems may be less than the conversion rate which had up to that time generated administrative funding for the new participants. For this reason, a State agency may experience significant reductions in its administrative grant per participant in the years after it ceases to exercise conversion authority under Pub. L. 100–237 and § 246.16(g) of regulations.

In order to compensate for this phenomenon, section 3(a) of Pub. L. 100–356 permits a State agency to convert whatever amount of food funds is necessary to limit to 2 percent any decrease in the State agency's AGP if a larger decrease would otherwise result from increased program participation due to implementation of, or significant change to, an approved competitive bidding, rebate, home delivery, or direct distribution system. This provision confers a second funds conversion authority in addition to that established in Pub. L. 100–237 and § 246.16(g), to be activated when it becomes more advantageous than the first authority in connection with a given system or significant change.

b. Activating 2-Percent Authority.—It is clear that the 2-percent conversion authority was not meant to operate concurrently with the previously established authority in response to a single State initiative or significant change to an initiative. The original conversion authority reduced the number of participants that can be added as the result of a food-cost-cutting system. Concurrent implementation of 2-percent conversion would cause an additional drain on the same source of food funds savings and a consequent further retardation of program expansion. Furthermore, the two conversion authorities would partially offset each other. Funds withdrawn from food savings to limit the reduction in AGP would reduce the State agency's program expansion potential and thus its conversion earnings under § 246.16(g).

If a State agency has not exercised 2-percent conversion authority in a previous fiscal year, the State agency's maximum conversion authority for the current fiscal year will be the greater of: (1) The amount generated through participation increases under § 246.16(g), and (2) the amount of 2-percent authority available under § 246.16(h).

As stated earlier, conversion authorities in §§ 246.16 (g) and (h) do not operate concurrently with respect to *the same* food-cost-cutting initiative or change to a food-cost-cutting initiative. However, the two types of conversion can take place in the same fiscal year, each in connection with *a different* initiative or change. Consider, for example, a State agency which implemented its infant formula rebate system in Fiscal Year 1987 and last exercised conversion authority under § 246.16(g) in Fiscal Year 1988. It begins to convert funds under the 2-percent protection provision of § 246.16(h) in Fiscal Year 1989, yet in that same fiscal year it also makes a significant change to its infant formula rebate system, thus triggering conversion privileges under § 246.16(g) again. In this situation, the two conversion authorities are additive rather than mutually exclusive. FNS will, for accounting purposes, consider the 2-percent authority to have been exhausted before attributing any funds conversion to § 246.16(g) activity.

It should also be noted that 2-percent authorities stemming from separate food-cost-cutting initiatives implemented in *different* fiscal years can be applicable in *the same* fiscal year. For example, consider the State agency which implemented an infant formula rebate system in Fiscal Year 1987 and significantly changed the system in Fiscal Year 1988. Fiscal Year 1989 could be its second year of 2-percent authority based on implementation of the rebate system and its first year of implementation based on system changes. In this event, FNS will apply whichever base year is most advantageous to the State agency in the comparsion of AGP's.

As with funds converted under Pub. L. 100–237, 2-percent conversions under Pub. L. 100–356 are permissible only to the extent that administrative costs are incurred in excess of the State agency's administrative grant and any administrative funds the State agency may have carried forward into the fiscal year. Therefore, there cannot be any unspent administrative funds available for carry-over from a fiscal year in which 2-percent authority has been exercised.

c. Computation of 2-Percent Conversion Authority.—Within 30 days of establishment of an eligible State agency's administrative grant under § 246.16(c)(3) (i)–(iii), if the State agency has experienced a decrease in its formulaic AGP of greater than 2 percent, FNS will provisionally notify the State agency of the maximum amount it can convert. This amount will be determined by comparing the State agency's formulaic AGP for the current fiscal year with its adjusted formulaic AGP for the year it implemented or significantly changed its food-cost-cutting system (i.e., the base year). The base year AGP has been selected as the reference for calculating the 2 percent authority because it represents an AGP unaffected by the significant participation increases that are realized subsequent to significant food cost savings. Selecting an AGP for any later period of time as a reference point allows very limited AGP protection because increases in participation would already have placed major downward pressure and a State's AGP. Therefore, this option was rejected.

AGP derives from the administrative funding formula and equals the quotient of the State agency's administrative grant, including any discretionary funding received under § 246.16(c)(3)(iii), divided by the FNS projection of the State agency's participation for the fiscal year under § 246.16(c)(3)(ii)(B). The same process will be repeated for each succeeding year after the State agency's grant is determined. Pub. L. 100–356 enables State agencies through this additional conversion authority to limit decreases in their formulaic AGP to 2 percent per year. The AGP level to be protected through conversions (i.e., protected AGP) is established by multiplying the formulaic AGP for the year in which the approved cost containment initiative was implemented or significantly changed (i.e., base AGP) by .98 for each fiscal year after this base fiscal year, ending with the fiscal year to which the conversion authority is being applied. The product of each such calculation is the *adjusted* base AGP for the following calculation. A 2-percent reduction in the base AGP is allowed *per year* prior to implementing the 2-percent authority for two reasons. First, as indicated above, Pub. L. 100–356 allows for this level of decline each year. Secondly, to measure the 2-percent protection without considering

intervening years would unduly protect States implementing any of the specified food-cost-cutting initiatives (i.e., competitive bidding, rebates, home delivery, and direct distribution) as compared with States operating other cost containment systems which also permit expanded participation.

The formula for computing the annual maximum that can be converted under this new authority during a fiscal year can be represented as follows:

(1) Formulaic AGP for the fiscal year in which the system was implemented or significantly changed *times* .98, repeating this calculation for each fiscal year thereafter, up to and including the fiscal year to which the new conversion authority is being applied;

(2) Product of step 1 *minus* formulaic AGP for the fiscal year to which conversion authority is being applied; and

(3) If remainder from Step 2 is positive, remainder from Step 2 *times* FNS average monthly participation projection per § 246.16(c)(3)(ii)(B) for the State for the year to which the conversion authority is being applied *times* 12 months *equals* maximum amount to be converted for the fiscal year.

Consider, for example, a State agency which implemented its infant formula rebate system in Fiscal Year 1987, when its formulaic AGP was $8.49. It completed its conversions based on added participants in Fiscal Year 1988 and becomes eligible for the new 2-percent conversion authority in Fiscal Year 1989, for which its formulaic AGP is $7.85. For Fiscal Year 1989, FNS projects an average monthly participation level of 60,000 for the State.

(1) To establish the protected AGP, first multiply the formulaic AGP for the base fiscal year, 1987, by .98, yielding an adjusted base AGP ($8.49×.98=$8.3202). Then repeat this calculation, using the adjusted Fiscal Year 1988 base AGP ($8.3202×.98=$8.1538). This yields the protected AGP for Fiscal Year 1989. The calculation is done twice because the fiscal year in which the new conversion authority is being applied follows the base fiscal year by two fiscal years.

(2) The protected AGP exceeds the AGP for the fiscal year in which conversion authority is being applied ($8.1538−$7.85=$.3038).

(3) Therefore, for Fiscal Year 1989, the State agency will be able to convert under Section 246.16(h) a maximum of $218,736 (i.e., .3038×60,000×12=$218,736).

Assuming for the second year of implementation of this new conversion authority a formulaic AGP of $7.35 and a participation projection of 63,000, the maximum conversion for the year would be calculated as follows:

(1) $8.49×.98=$8.3202×.98=$8.1538×.98=$7.991

(2)$7.991−$7.35=$.6407

(3)$.6407×63,000×12=$484,369.

Formulaic AGP for the current fiscal year will be recalculated and the 2-percent limit adjusted accordingly once during the fiscal year in response to reallocations which take place before the end of the third quarter, except that this adjustment will not be made when it would result in a reduction of the State's 2-percent conversion limit. FNS will notify the State agency of any such adjustment not later than July 31.

If a State agency has converted funds under § 246.16(h)(1)–(2) in a previous fiscal year, it must, within 30 days of being informed regarding its conversion limit, tell FNS whether it intends to exercise this conversion authority during the fiscal year. FNS will incorporate this information into its system for tracking States' program funds utilization.

3. Limit on Funds Conversion (Section 246.16(i))

Section 8(a) of Pub. L. 100–237 provided that State agencies can convert part of the savings resulting from specified food-cost-cutting systems to administrative funding "for the cost of the State and local agencies associated with increases in the number of persons served." Thus States can convert funds under this authority only to the extent that they have allowable administrative and program services costs in excess of their administrative grants and any administrative funding they may have carried forward from the preceding fiscal year. Pub. L. 100–356 provided for additional conversion authority to augment that authorized by Pub. L. 100–237. It follows that this authority should be exercised only to the extent that allowable administrative costs would not otherwise be covered. Whether the two conversion authorities are exercised sequentially pursuant to a single food-cost-cutting initiative or concurrently based on different initiatives, funds can be converted only to cover costs which remain unpaid after the State agency's administrative grant and any administrative carryover funds have been exhausted.

4. Conforming Amendments.

Section 246.16(g)(7) of the previous final rules addressed reconciliation of funds converted and maximum conversion authority. Section 246.16(g)(8) established that the funds conversion process would not affect food and administrative stability grants for the following fiscal year. These provisions were restricted to conversion authority based on participation increases. With the addition of 2-percent conversion authority in this interim rule, it has become necessary to make these provisions applicable to both types of conversion. In order to reflect established FNS procedures, the latter provision is also now applied to conversions under § 246.14(e). To effect these changes, §§ 246.16(g) (7) and (8) have been amended and moved to become Sections 246.16 (j) and (k).

List of Subjects in 7 CFR Part 246

Food assistance programs, Food donations, Grant programs—Social programs, Infants and children, Maternal and child health, Nutrition education, Public assistance programs, WIC, Women.

For reasons set forth in the preamble, 7 CFR Part 246 is amended as follows:

PART 246—SPECIAL SUPPLEMENTAL FOOD PROGRAM FOR WOMEN, INFANTS AND CHILDREN

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

Authority: Sec. 212 and 501, Pub. L. 100–435, 102 Stat. 1645 (42 U.S.C. 1786); sec. 3, Pub. L. 100–356, 102 Stat. 669 (42 U.S.C. 1786); sec. 8–12, Pub. L. 100–237, 101 Stat. 1733 (42 U.S.C. 1786); sec. 341–353, Pub. L. 99–500 and 99–591, 101 Stat. 1783 and 3341 (42 U.S.C. 1786); sec. 3, Pub. L. 95–627, 92 Stat. 3611 (42 U.S.C. 1786); sec. 203, Pub. L. 96–499, 94 Stat. 2599 (42 U.S.C. 1786); sec. 815, Pub. L. 97–35, 95 Stat. 521 (42 U.S.C. 1786).

2. In § 246.14, paragraph (a)(2) is revised to read as follows:

§ 246.14 Program costs.

(a) * * *

(2) Except as provided in paragraph (e) of this section and §§ 246.16(g) and 246.16(h) of this part, funds allocated by FNS for food purchases may not be used to pay administrative and program services costs. However, administrative and program services funds may be used to pay for food costs.

* * * * *

2. In § 246.16:

a. Paragraph (b)(2) is amended by removing all text after the first sentence.

b. Paragraph (b)(3) is redesignated as paragraph (b)(4);

c. A new paragraph (b)(3) is added;

d. The title of paragraph (g) is revised;

e. Paragraphs (g)(7) and (g)(8) are removed; and

f. New paragraphs (h), (i), (j), and (k) are added.

The revisions and addition read as follows:

§ 246.16 Distribution of funds.

* * * * *

(b) * * *

(3) A State agency may transfer funds allocated to it for one fiscal year to another fiscal year under the following conditions:

(i) Not more than 1 percent of the funds allocated to a State agency for food costs incurred in any fiscal year may be expended by the State agency for food costs incurred in the preceding fiscal year;

(ii) Not more than 1 percent of the total funds allocated to a State agency for food costs and for administrative and program services costs in any fiscal year may be carried forward and expended by the State agency for such costs incurred in the subsequent fiscal year, except that State agencies which converted food funds to administrative and program services funds under paragraphs (g) or (h) of this section during a fiscal year shall not carry administrative and program services funds forward into the following fiscal year.

(iii) The total amount of funds transferred from any fiscal year under paragraphs (b)(3)(i) and (b)(3)(ii) of this section shall not exceed 1 percent of the funds allocated to a State agency for the fiscal year.

(iv) A State agency which has implemented any of the food-cost-cutting systems specified in introductory paragraph (g) of this section may carry forward into the fiscal year following the fiscal year of implementation a maximum of 5 percent of the funds allocated to the State agency for food costs for the fiscal year of implementation of such system, less any food funds backspent under paragraph (b)(3)(i) of this section and any food and administrative and program services funds carried forward from the fiscal year under paragraph (b)(3)(ii) of this section.

(v) Upon request from a State agency entering the second fiscal year following the fiscal year of implementation of any food-cost-cutting system listed in introductory paragraph (g) of this section, FNS may, at its discretion, permit such State agency to carry forward from the first fiscal year following implementation up to 5 percent of the funds allocated to such State agency for food costs for such fiscal year. The maximum amount of food funds allowed to be carried forward shall be net of any food funds backspent under paragraph (b)(3)(i) of this section and any food and administrative and program services funds which such State agency has elected to carry forward from such fiscal year under authority of paragraph (b)(3)(ii) of this section. The State agency shall provide such justification for its request to carry forward funds under this paragraph as FNS may require. In determining how much, if any, funding the State agency may carry forward, FNS shall consider the following factors:

(A) The number of months the State agency operated and approved food-cost-cutting system prior to the fiscal year for which the request for carry-over authority under paragraph (b)(3)(v) of this section is being made;

(B) The combined level of penetration of WIC and CSFP during the fiscal year preceding the fiscal year for which the request is made into the population that FNS estimates is eligible for WIC in the State;

(C) The cost reduction achieved by the State agency through its approved system, less any funds converted under paragraphs (g) and (h) of this section, during the fiscal year preceding the fiscal year for which the request is made; and

(D) The combined net increase in the participation of women, infants and children in WIC and CSFP achieved by the State agency during the fiscal year preceding the fiscal year for which the request is made.

(iv) The State agency shall specify in writing to FNS the amount of funds it intends to backspend under paragraph (b)(3)(i) of this section and to carry forward under paragraphs (b)(3)(ii) and (b)(3)(iv) of this section not later than March 1 of the fiscal year following the fiscal year from which funds are to be transferred. The State agency shall specify in writing to FNS the amount of funds it requests permission to carry forward under paragraph (b)(3)(iv) of this section by January 15 of the fiscal year into which the funds are requested to be transferred. FNS will notify the State agency of its decision regarding a request filed under paragraph (b)(3)(iv) of this section within 30 days of receipt of such request.

(vii) Food funds transferred by the State agency from one fiscal year to another shall be used by the State agency only for food costs in the subsequent fiscal year and, in accordance with Section 246.14(a)(2) of this part, shall not be used to cover administrative and program services costs. Any funds carried forward by the State agency for expenditure in the subsequent fiscal year shall not affect the amount of funds allocated to such State agency for the subsequent fiscal year. FNS shall presume that any funds carried forward are the first funds expended by such State agency for costs incurred in the subsequent fiscal year.

* * * * *

(g) *Conversion of food funds needed to manage increased participa-*tion.* * *

(h) *Conversion of food funds needed to limit decreases in administrative grant per participant.* In addition to conversion authority established under paragraph (g) of this section, a State agency which has implemented or significantly changed an approved food-cost-cutting system listed in paragraph (g) of this section may convert from food funds to administrative and program services funds whatever amount FNS specifies is necessary to limit to 2 percent any reduction in the State agency's formulaic administrative grant per participant from one fiscal year to the next resulting from increased participation made possible by the State agency's approved system.

(1) The State agency may convert funds under this paragraph beginning with the fiscal year immediately following the fiscal year in which it last converted funds under authority of paragraph (g) of this section.

(2) FNS will determine the maximum amount the State agency can convert during a fiscal year through the following procedure, based on a comparison of the State agency's formulaic administrative grant per participant for the fiscal year in which it implemented or significantly changed its approved food-cost-cutting initiative, (that is, the quotient of the State agency's administrative and program services grant under paragraphs (c)(3)(i)–(iii) of this section, divided by FNS' projection of the State agency's average monthly participation under paragraph (c)(3)(ii)(B) of this section) with its administrative grant per participant for the current fiscal year.

(i) Formulaic administrative grant per participant for the fiscal year in which the State agency implemented or significantly changed its approved food-cost-cutting system times .98, repeating this calculation for each fiscal year thereafter, up to and including the current fiscal year. The product of each such multiplication shall be used in the succeeding multiplication;

(ii) Final product of paragraph (h)(2)(i) of this section minus formulaic administrative grant per participant for the current fiscal year;

(iii) Remainder from paragraph (h)(2)(ii) of this section times FNS' projection of average monthly participation for the current fiscal year

per paragraph (c)(3)(ii)(B) of this section times 12 equals the maximum amount the State agency may convert under this paragraph during such fiscal year.

(3) The following timeframes shall apply to the conversion process under this paragraph:

(i) FNS will notify the State agency of the maximum amount it can convert under paragraphs (h)(1)–(2) of this section within 30 days of announcing the State agency's administrative grant, including any discretionary administrative funding provided under paragraph (c)(3)(iii) of this section;

(ii) If a State agency has converted funds under paragraphs (h)(1)–(2) of this section in a previous fiscal year, it shall, within 30 days of the notification in paragraph (h)(3)(i) of this section, notify FNS if it intends to exercise such authority in the current fiscal year;

(iii) FNS will make one annual adjustment of the State agency's conversion limit under paragraphs (h)(1)–(2) of this section to reflect any reallocations under paragraphs (f) of this section which take place before the end of the third quarter, except that FNS will not reduce a State agency's limit in response to reallocations. FNS will notify the State agency of any increase in its conversion limit not later than July 31.

(4) If a State agency is eligible to convert funds under both paragraphs (h)(1)–(2) and (g) of this section during the same fiscal year based on different food-cost-cutting systems or significant changes to such systems, FNS will consider the maximum allowable amount to have been converted under this paragraph before attributing any funds conversion to the authority established by paragraph (g) of this section.

(5) If a State agency has not exercised conversion authority under paragraphs (h)(1)–(2) of this section in a previous fiscal year, the State agency's maximum conversion authority for the current fiscal year shall be the greater of:

(i) The amount of conversion authority generated through participation increases under paragraph (g) of this section; and

(ii) The amount of conversion authority available under paragraphs (h)(1)–(2) of this section.

(6) If a State agency is eligible in the same fiscal year to convert funds under paragraphs (h)(1)–(2) of this section based on food-cost-cutting systems implemented or significantly changed in different fiscal years, FNS will use in the comparison of administrative grants per participant the base fiscal year which yields the greater conversion authority for the State agency.

(i) The State agency may convert food funds to administrative and program services funds under paragraphs (g) and (h) of this section only to the extent necessary to cover allowable administrative and program services costs which exceed the State agency's administrative and program services grant for the fiscal year and any administrative and program services funds which the State agency has carried forward into the fiscal year.

(j) After the end of the fiscal year, FNS will determine the amount of food funds which the State agency is entitled to convert to administrative and program services funds under paragraphs (g) and (h) of this section. In the event that the State agency has converted more than the permitted amount of funds, FNS will recover from the State agency the amount of excess conversion.

(k) For purposes of establishing a State agency's stability food grant and stability administrative and program services grant under paragraphs (c)(2)(i) and (c)(3)(i) of this section, respectively, amounts converted from food funds to administrative and program services funds under paragraphs (g) and (h) of this section and § 246.14(e) of this part during the preceding fiscal year shall be treated as though no conversion had taken place.

G. Scott Dunn,

Acting Administrator.

Dated: April 20, 1989.

[FR Doc. 89–10145 Filed 4–26–89; 8:45 am]

BILLING CODE 3410-30-M

Agricultural Marketing Service

7 CFR Part 906

[Docket No. FV–89–017]

Oranges and Grapefruit Grown in the Lower Rio Grande Valley in Texas; Relaxation of the Requirements Governing the Shipment of Oranges and Grapefruit to Approved Citrus Processors

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule allows handlers to ship Texas oranges and grapefruit not meeting minimum grade and size requirements to approved processors for manufacturing into fresh sections and fresh juice without preservative treatment. This rule also adds new safeguards, which firms must meet to become approved processors under the order, so that lower quality fruit could be safely shipped for these purposes without being diverted to fresh markets. These changes are designed to expand markets for Texas oranges and grapefruit by permitting fruit to be shipped for use in fresh sections and fresh juice products.

EFFECTIVE DATE: April 27, 1989.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456; telephone: (202) 475–3918.

SUPPLEMENTARY INFORMATION: This final rule is issued under the Marketing Agreement and Marketing Order No. 906, as amended (7 CFR Part 906), regulating the handling of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

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

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

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

There are approximately 78 handlers of Texas oranges and grapefruit subject to regulation under the Texas citrus marketing order, and approximately 2,500 orange and grapefruit producers in Texas. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of these handlers and producers may be classified as small entities.

The Texas Valley Citrus Committee (committee), which administers the

order locally, unanimously recommended that §§ 906.120 and 906.123 of the rules and regulations be amended to relax the marketing order requirements for Texas oranges and grapefruit shipped to approved processors for manufacturing into fresh citrus sections and fresh juice. A proposed rule regarding this recommendation was issued March 2, 1989, and published in the **Federal Register** (54 FR 9455, March 7, 1989). The proposed rule provided that interested persons could file public comments through March 22, 1989. No comments were received.

Currently, Texas oranges and grapefruit shipped to approved processors for manufacturing into fresh citrus sections and fresh juice are exempt from handling requirements and assessment obligations under the order if such fruit is preserved by a recognized commercial process. This rule removes the required preservative treatment as a condition for exemption. This will enable handlers to ship fruit not meeting minimum grade and size requirements, such as packinghouse eliminations, to approved processors for conversion into sectioned fruit or fresh juice without preservative treatment. Unless exempted, fresh fruit shipped out of the production area must meet minimum grade, size, and container and pack requirements, and be inspected and certified as meeting the minimum grade and size requirements. In addition, handlers must pay assessments to the committee on such shipments.

This rule also includes safeguards, in addition to those currently specified, to help prevent such fruit from being diverted to fresh market outlets. These new safeguards require the processor, as a condition of approval, to agree to random facility inspections and to certify that the firm has no facilities, equipment, or outlet to repack or sell the fruit in fresh form. These safeguards will enable the committee to monitor approved processors and their facilities to help make sure that exempted fruit was not diverted to the fresh market. The new safeguards also require approved processors, when buying Texas oranges and grapefruit for processing, to hold a license issued under the Perishable Agricultural Commodities Act (PACA), 1930 (7 U.S.C. 499r), and regulations (other than rules of practice) issued under the PACA (7 CFR Part 46). The foregoing statute references have been modified from those in the proposal for clarification and accuracy. This requirement is designed to help make sure that the processor will comply with the requirements which must be met by approved processors under the order. The PACA requires that merchants, dealers and brokers involved in buying, selling, negotiating sales, purchasing or handling consignments of fruits and vegetables in interstate or foreign commerce must be licensed in accordance with the provisions of the PACA. Most of the firms which will apply to the committee to become approved processors under the marketing order will already have a PACA license because they will be performing activities covered under the PACA.

The committee believes that the removal of the current processing limitations for sections and juice will provide additional outlets for fruit not meeting minimum grade and size requirements and promote utilization of the crops. This action should also allow additional firms without pasteurizers and other capital intensive equipment to become approved processors. The committee also believes that with the additional safeguards, exempted fruit can be shipped for these purposes without being diverted to the fresh market.

The industry is gradually recovering from the devastating freezes of the early 1980's. The objective of this action is to expand markets for Texas oranges and grapefruit by permitting fruit not meeting marketing order grade and size requirements to be shipped to processors for the manufacture of fresh juice and sections without preservative treatment.

Section 906.120 of the regulations issued under the order defines the term "processing" and provides for exempting fruit for processing from the provisions of §§ 906.34 and 906.40 of the order, if the fruit is handled in accordance with the provisions of § 906.123. This action will redefine the term "processing" to include in that definition fruit converted into fresh sections and fresh juice. Section 906.123 of the regulations issued under the order defines the term "approved processor" and establishes safeguards which persons must meet to be recognized as approved processors by the committee. This action redefines the term "approved processor" and establishes the additional safeguards which processors must meet to be approved by the committee in order to handle exempted fruit.

Sections 906.120 and 906.123 were issued on a continuing basis subject to modification, suspension, or termination by the Secretary. The committee meets from time to time to consider recommendations for modification, suspension, or termination of the rules and regulatory requirements for Texas oranges and grapefruit. Committee meetings are open to the public and interested persons may express their views at these meetings. The Agricultural Marketing Service reviews recommendations and other information submitted by the committee as well as other available information, and determines whether modification, suspension, or termination of the regulatory requirements will tend to effectuate the declared policy of the Act.

Texas orange and grapefruit shipments to markets in the United States, Canada, and Mexico are regulated under this marketing order. Certain shipments are exempt from the handling requirements effective under the marketing order. Handlers may ship oranges and grapefruit within the production area (the counties of Cameron, Hidalgo, and Willacy) exempt from all marketing order requirements. Grapefruit shipped in gift packages of not more than 500 pounds which are individually addressed and not for resale are exempt from handling requirements. Also, oranges and grapefruit shipped under the minimum quantity exemption provisions, and for relief, charity, and home use are exempt under certain conditions. In addition, oranges and grapefruit shipped to approved processors for conversion into canned or frozen products are not subject to the handling requirements.

Therefore, the Department's view is that the impact of this action will be beneficial to producers and handlers because it will enable handlers to expand the markets for Texas oranges and grapefruit by shipping additional supplies of fruit to approved processors for conversion into fresh sections and fresh juice without preservatives.

Based on the above, the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

There would be no change in the reporting or recordkeeping requirements as the result of this action that will require submission of such requirements to the Office of Management and Budget (OMB) for approval. The information collection requirements contained in the regulations which are being amended have been approved previously by OMB under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Control Number 0581–0068.

Pursuant to 5 U.S.C. 553, it is found that good cause exists for not postponing the effective date of this

action until 30 days after publication in the **Federal Register** because: (1) Handlers of Texas oranges and grapefruit are aware of this action, which is based on a unanimous recommendation of the committee made at a public meeting, and they are prepared to operate in accordance with the requirements; (2) shipment of the 1988–89 season Texas orange and grapefruit crops is currently underway; (3) this action needs to become effective promptly so that it will apply to as much of the 1988–89 season crop as possible; (4) this rule relaxes current requirements by allowing handlers to ship Texas oranges and grapefruit not meeting minimum grade and size requirements to approved processors for manufacturing into fresh sections and fresh juice without preservative treatment; and (5) the proposed rule provided a 30-day comment period, and no comments were received.

List of Subjects in 7 CFR Part 906

Marketing agreements and orders, Texas, Grapefruit, Oranges.

For the reasons set forth in the preamble, 7 CFR Part 906 is amended as follows:

PART 906—ORANGES AND GRAPEFRUIT GROWN IN THE LOWER RIO GRANDE VALLEY IN TEXAS

1. The authority citation for 7 CFR Part 906 continues to read as follows:

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

2. Section 906.120 is amended by revising paragraph (b) to read as follows:

§ 906.120 Fruit exempt from regulations.

* * * * *

(b) *Processing.* The term "processing" as used in § 906.42(b) means the manufacture of any orange or grapefruit product which has been converted into sectioned fruit or into fresh juice, or preserved by any commercial process, including canning, freezing, dehydrating, drying, and the addition of chemical substances, or by fermentation. Fruit so processed, if handled in accordance with § 906.123, shall be exempt from the provisions of §§ 906.34 and 906.40.

* * * * *

3. Section 906.123 is amended by revising paragraph (b) to read as follows:

§ 906.123 Fruit for processing.

* * * * *

(b) *Approved processor.* Any person who desires to acquire, as an approved processor, fruit for processing, as set forth in § 906.120(b), shall, prior thereto, file an application with the committee on a form approved by it, which shall contain, but not be limited to, the following information:

(1) Name and address of applicant;

(2) Location of plant or plants where manufacturing is to take place;

(3) Approximate quantity of fruit used each month;

(4) A statement that the fruit obtained exempt from fresh fruit regulations will not be resold or transferred for resale, directly or indirectly, but will be used only for processing;

(5) A statement agreeing to hold a license issued under the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499r), and regulations issued thereunder (7 CFR Part 46) when buying Texas oranges and grapefruit for processing;

(6) A statement agreeing to undergo random inspection by the committee;

(7) A statement that the requesting processor has no facilities, equipment, or outlet to repack or sell fruit in fresh form;

(8) A statement agreeing to submit such reports as are required by the committee.

Such application shall be investigated by the committee staff. After such investigation, the staff shall report its findings to the committee at its next meeting or to its delegated subcommittee. Based upon the staff's report and other reliable information, the committee or delegated subcommittee shall approve or disapprove the application and notify the applicant accordingly. If the application is approved, the applicant's name shall be placed upon the list of approved processors.

* * * * *

Dated: April 21, 1989.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–10028 Filed 4–26–89; 8:45 am]

BILLING CODE 3410–02–M

---

7 CFR Part 916

[Docket No. FV–89–043]

Nectarines Grown in California; Modification of Size Requirements for Nectarines for the 1989 Season

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule relaxes variety-specific size requirements established for May Glo nectarines shipped through May 5, 1989, to the smallest size permitted under variety-specific size requirements. Shipments after May 5, 1989, will be subject to more restrictive requirements currently in effect.

The industry believes that larger sized nectarines provide greater consumer satisfaction than smaller sizes, and that larger sizes are more marketable. However, current information and a field examination of May Glo nectarines grown under desert conditions in the Coachella Valley indicate that such fruit will not develop to the normal size levels expected of that variety in other areas of the State. It was also evident that size development characteristics for desert-grown May Glo nectarines are virtually identical to those of other varieties produced in the valley, subject to less restrictive size requirements.

DATES: This interim final rule becomes effective April 25, 1989, and specifies less restrictive minimum size requirements for May Glo nectarines shipped through May 5, 1989. Comments which are received by May 30, 1989, will be considered prior to issuance of a final rule.

ADDRESS: Interested persons are invited to submit written comments concerning this interim final rule. Comments should be sent to: Docket Clerk, U.S. Department of Agriculture, Agricultural Marketing Service, Fruit and Vegetable Division, P.O. Box 96456, Room 2025–S, Washington, DC 20090–6456. Three copies of all material should be submitted and will be available for public inspection in the office of the Docket Clerk during regular business hours. The comments should reference the docket number and the date and page number of this issue of the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: George J. Kelhart, Marketing Order Administration Branch, F&V, AMS, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone (202) 475–3919.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Agreement and Marketing Order No. 916 (7 CFR Part 916) regulating the handling of nectarines grown in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This interim final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-

major" rule under criteria contained therein.

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

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

There are approximately 245 handlers of nectarines subject to regulation under the nectarine marketing order (7 CFR Part 916), and there are approximately 740 producers of nectarines in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having gross annual revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of California nectarines may be classified as small entities.

Shipments of California nectarines are regulated by grade, maturity, and size under Nectarine Regulation 14 (7 CFR 916.356) as amended and published in the **Federal Register** on March 27, 1989 (54 FR 12423). Because these regulations do not change substantially from season to season, they have been issued on a continuing basis subject to amendment, modification, or suspension as may be recommended by the Nectarine Administrative Committee (committee) and approved by the Secretary. Inspected shipments, in packages, of California nectarines for the 1988 season totaled 17,584,100, and were marketed primarily in the fresh market. In 1988, the production value of California nectarines was about $78,861,000. This interim final rule is based upon a unanimous recommendation of the committee and other available information.

Currently, as specified in paragraph (a)(3) of § 916.356, no handler is permitted to ship any package or container of May Glo variety nectarines unless the nectarines, when packed in molded forms (tray packs) in a No. 22D standard lug box, are of a size that will pack, in accordance with the requirements of a standard pack, not more than 96 nectarines in the lug box, and such nectarines, when packed in any container, are of a size that a 16-pound sample, representative of the nectarines in the package or container, contains not more than 87 nectarines. For the purposes of this document, these requirements are referred to as "96" size. Pursuant to paragraph (a)(2), for other specified varieties, no handler is permitted to ship any package or container of such nectarines unless the nectarines, when packed in molded forms (tray packs) in a No. 22D standard lug box, are of a size that will pack, in accordance with the requirements of a standard pack, not more than 108 nectarines in the lug box, and such nectarines, when packed in any container, are of a size that a 16-pound sample, representative of the nectarines in the package or container, contains not more than 92 nectarines. For the purposes of this document, these requirements are referred to as "108" size.

This interim final rule permits the shipment of "108" size and large May Glo nectarines through May 5, 1989. After May 5 the minimum size requirement for that variety will revert to "96" size as specified in the regulation first issued on May 27, 1988 (53 FR 19232).

In recognition that larger-sized nectarines provide greater consumer satisfaction than smaller sizes, the committee has recommended, and the Secretary has approved, minimum size limits for this fruit. However, reflecting both seasonal and varietal influences which affect average fruit sizes by variety, different minimum size regulations have been issued for different varieties. Because of these influences, smaller minimum sizes generally have been issued for earlier maturing varieties, while later maturing varieties, which tend to attain a larger size at maturity, have been required to meet larger minimum sizes.

The desert area of the Coachella Valley is the earliest growing area in California. The extreme heat in the desert results in a shorter growing season, and thus smaller fruit, than grown in the rest of the State. Nectarines have been grown commercially in the Coachella Valley for about three years.

The May Glo harvest in the Coachella Valley is expected to begin about May 1, 1989. The packing and shipping of May Glo nectarines from the valley is expected to be completed within a few days. May Glo nectarines from other parts of the State will continue to be shipped for another two to three weeks. May Glo nectarines from the Coachella Valley normally have a limited impact on the market conditions of other growing areas in the State.

During the 1988 season, nearly 24 percent of May Glo nectarines shipped from the Coachella Valley were "108" size and 14 percent were "96" size. This compares with industry-wide shipments of May Glo nectarines in 1988 of about 7 percent size "108's" and 19 percent size "96's." The remainder of the May Glo variety shipments were larger sizes. During the 1988 season, May Glo nectarines from the Coachella Valley were permitted to be packed and shipped at the minimum "108" size because the larger "96" size requirement was not effective until May 27, 1988. The action on "96" size was initially issued as an interim final rule on May 27, 1988, and finalized on March 27, 1989 (54 FR 12419).

Committee fieldmen recently visited May Glo and Maybelle nectarine orchards in the Coachella Valley and found that the May Glo orchards have been pruned and thinned more than usual in an attempt to reach the current minimum size for 1989. In addition, many trees were girdled, a practice of removing a layer of bark around the trunk of the tree to keep nutrients in the part of the tree where the fruit grows.

In the rule promulgated in May 1988, the committee recommended, and the Department approved, season long minimum size regulations for May Glo nectarines of "96" size. This determination was based on information available at that time. However, as a result of subsequent information and the field examination, it was determined that the 1989 Coachella Valley May Glo crop will not develop to normal size levels expected of the variety in other areas of the State. In fact, under the conditions observed, the May Glos were developing in a manner virtually identical to Maybelle variety nectarines being produced in the same area. Maybelle nectarines currently are subject to "108" size requirements.

Therefore, the committee unanimously recommended that for the 1989 season, shipments of nectarines through May 5 be subject to the less restrictive variety-specific size requirements specified in paragraph (a)(2) of § 916.356. Shipments after May 5 would be subject to variety-specific size requirements specified in paragraphs (a)(3) through (a)(5) of § 916.356, as applicable. Relaxation of the size requirements for shipments after May 5 would not be necessary because fruit shipped from the later growing areas is expected to reach the size levels contemplated earlier.

The committee recommended relaxation of the variety-specific

(named-variety) size requirements for all varieties of nectarines shipped through May 5, 1989. However, this rule revises the size requirements only for the May Glo variety because the May Glo variety is the only variety not regulated at the smallest 108 size requirement that is expected to be shipped from the Coachella Valley on or before May 5, 1989.

The committee indicated that the modification, as authorized in § 916.52 of the order, should assure fairness in the application of the variety-specific size requirements and should not be detrimental to the industry's goal of marketing better quality, larger-sized fruit. Last season, only 7 percent of May Glo nectarines were marketed as size "108." The committee will study the effects of the relaxation this season. Determination on whether to recommend continuation of the relaxation will be decided at next Fall's committee meeting.

It is the Department's view that this relaxation in size requirements for 1989, will provide additional marketing opportunities in the Coachella Valley by recognizing its unique growing conditions.

Based on available information, the Administrator of the AMS has determined that this interim final rule will not have a significant impact on a substantial number of small entities.

After consideration of all relevant information presented, including the committee's recommendation, and other information, it is found that the modification of the size requirements, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that, upon good cause, it is impracticable, unnecessary, and contrary to the public interest to give notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) Shipments of 1989 crop May Glo nectarines in the Coachella Valley are expected to start around May 1; (2) this action relaxes size requirements by allowing shipment of size "108" nectarines through May 5, 1980; and (3) no useful purpose would be served by delaying the effective date of the relaxed requirements.

The committee's recommendation, other information, and all written comments timely received in response to this publication will be considered prior to any finalization of this interim final rule.

List of Subjects in 7 CFR Part 916

Marketing agreements and orders, Nectarines, California

For the reasons set forth in the preamble, 7 CFR Part 916 is amended as follows:

PART 916—NECTARINES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 916 continues to read as follows:

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

2. Section 916.356 is amended by revising the introductory text of paragraphs (a)(2) and (a)(3) to read as follows:

Note: This action will appear in the Code of Federal Regulations.

§ 916.356 Nectarine Regulation 14.

(a) * * *

(2) Any package or container of May Glo nectarines through May 5, 1989, or Aurelio Grand, Maybelle, Mayfire, or Royal Delight variety nectarines, unless:

* * * * *

(3) Any package or container of May Glo variety nectarines on or after May 5, 1989, or Early Diamond, or Mayfair variety nectarines, unless:

* * * * *

Dated: April 25, 1989.

Charles R. Brader,

Director, Fruit and Vegetable Division.

[FR Doc. 89–10231 Filed 4–25–89; 11:50 am]

BILLING CODE 3410–02–M

Farmers Home Administration

7 CFR Part 1910

Credit Reports on Individuals

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations to eliminate reference to "contracting officer" since FmHA contracts credit report service from the General Services Administration (GSA), expand the definition of applicant as it relates to rural housing and farmer program loan applicants. Also, to clarify when and what type of credit reports will be ordered by the County Supervisor, clarify that there will be a one-time fee charged for each initial individual or joint credit report ordered, and to define what a joint credit report is. These actions are necessary due to number of inquiries received from FmHA field offices and an internal review of the proposed rule concerning the ordering of credit reports. This rule is intended to provide FmHA field offices guidance and clarification when ordering credit reports.

EFFECTIVE DATE: May 30, 1989.

FOR FURTHER INFORMATION CONTACT: Reginald J. Rountree, Loan Specialist, Single Family Housing Processing Division, Farmers Home Administration, USDA, Room 5346, South Agriculture Building, Washington, DC 20250. Telephone 202–475–4209.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1 which implements Executive Order 12291, and has been determined "non-major." It will not 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, or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance programs affected by this action are:

10.404 Emergency Loans.
10.405 Farm Labor Housing Loans and Grants.
10.406 Farm Operating Loans.
10.407 Farm Ownership Loans.
10.410 Low to Moderate Income Housing Loans.
10.416 Soil and Water Loans.
10.420 Rural Self-Help Housing Technical Assistance.

For the reasons set forth in final rule related to Notice 7 CFR 3015 Subpart V ((48 FR 2 9115), June 24, 1983) and FmHA Instruction 1940–J, "Intergovernmental Review of Farmers Home Administration Programs" are excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

10.405 Farm Labor Housing Loans and Grants; 10.416 Soil and Water Loans; 10.420 Rural Self-Help Housing Technical Assistance are subject to EO 12372

This document had been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the

quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

The Administrator, Farmers Home Administration, USDA, has determined that this action will not have a significant economic impact on a substantial number of small entities because it contains normal business recordkeeping requirements and minimal essential reporting requirements.

Background

At the present time there is no distinct guidance to field personnel on whether to order a joint or individual credit report on married applicants when there is only one income in the household. This lack of guidance has resulted in numerous inquiries to the National Office from field personnel as to which type of report to order. These amendments establish the type of report to be ordered by field personnel on married applicants regardless of the number of incomes in the household.

On August 4, 1988, FmHA published in the **Federal Register** (53 FR 29341) a proposed rule for amending its regulations regarding ordering credit reports on married applicants. The comment period ended October 3, 1988. No comments were received. However, in reviewing what had been published as a proposed rule, it was decided that further revisions could be made to better explain the intent of the proposed changes. These revisions have been incorporated in the final rule. They do not alter the substance of what appeared in the proposed rule but merely further clarify the intent of that rule.

List of Subject in 7 CFR Part 1910

Administrative practice and procedure, Credit, Government contracts, Reporting requirements.

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

PART 1910—GENERAL

1. The authority citation for Part 1910 is revised to read as follows:

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

Subpart B—Credit Reports (Individual)

2. Section 1910.52 is amended by revising paragraph (a) to read as follows:

§ 1910.52 General.

(a) FmHA obtains credit reports from credit reporting companies (Contractors) listed in Exhibit A of this subpart (available in any FmHA office) as authorized by the National Office, FmHA. Furthermore, special reports, supplemental employment reports, commercial credit reports, and special services are not authorized.

* * * * *

3. Section 1910.53 is amended by revising paragraphs (d) and (e) as follows:

§ 1910.53 Policy.

* * * * *

(d) The County Supervisor will determine when and what type of credit report will be ordered in accordance with the provisions of this subpart, except that credit reports will always be ordered when the incomes of both applicant and co-applicant are needed to show repayment ability.

(e) A nonrefundable credit report fee of the amount shown in Exhibit A, *General*, (b) of this subpart (available in any FmHA office) will be a one time charge for each initial credit report ordered.

* * * * *

4. Section 1910.54 is amended by revising paragraph (b) as follows:

§ 1910.54 Definitions.

* * * * *

(b) "Applicant," for other than Farmer Program loans, also includes co-applicant(s), co-signer(s), each individual in an association, and general partner(s) in a partnership. For Farmer Program loans, "applicant" also includes co-signer(s), member(s) of a cooperative, stockholder(s) in a corporation, partner(s) in a partnership, and joint operators of a joint operation.

* * * * *

5. Section 1910.59 is revised to read as follows:

§ 1959.59 Type of credit report to be ordered.

Pursuant to the Equal Credit Opportunity Act (ECOA), credit reporting companies maintain credit information in three different forms on a married couple; individual accounts on each spouse, a joint account covering both spouses, and undesignated accounts (not identified by a creditor as either individual or joint). The County Supervisor will order:

(a) A joint report when the applicant and co-applicant are married, regardless of whether there is only one source of income.

(b) An individual report when the applicant is married and applies as an individual.

(c) An individual report on each the applicant and co-applicant when they are not married.

(d) If credit information is needed on other persons to complete the credit investigation, a separate "individual" report request, which will be paid by the applicant, is prepared for each person as opposed to the more costly "special services" reports.

6. Section 1910.61 is amended by revising paragraph (a)(2)(ii) to read as follows:

§ 1910.61 Collecting fees, invoicing, and payments.

(a) * * *

(2) * * *

(ii) By entering the date and amount of the credit report fee collected in column 9 of Form FmHA 1905–4, "Application and Processing Card-Individual."

* * * * *

Date: March 31, 1989.

Neal Sox Johnson,

Acting Administrator, Farmers Home Administration.

[FR Doc. 89–10029 Filed 4–26–89; 8:45 am]

BILLING CODE 3410–07–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 140 and 145

Commission Western and Southwestern Regional Offices; Change of Address

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule amendments.

SUMMARY: The Commodity Futures Trading Commission is amending its regulations to include new addresses for its recently relocated Western and Southwestern regional offices. Both of these offices, while remaining in the same respective cities, have moved to new locations in Los Angeles, California, and Kansas City, Missouri.

EFFECTIVE DATE: April 27, 1989.

FOR FURTHER INFORMATION CONTACT: Gerry Smith, Office of the Executive Director, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, (202) 254–6090.

SUPPLEMENTARY INFORMATION: Commission regulation § 140.2 is being amended to reflect the fact that the Western and Southwestern Regional Offices of the Commission have been moved. The Western Regional Office of

the Commission has moved from 10850 Wilshire Boulevard, Suite 510, Los Angeles, California 90024 to 10880 Wilshire Boulevard, Suite 1005, Los Angeles, California 90024. The telephone number for general information is (213) 209–6783. The Southwestern Regional Office of the Commission has been moved from 4901 Main Street, Suite 400, Kansas City, Missouri 64112 to 4900 Main Street, Suite 721, Kansas City, Missouri 64112. The telephone number for general information is (816) 374–6602.

Certain other provisions of the Commission's regulations contain references to or addresses of the Commission's Western and Southwestern Regional offices. The appropriate changes have been made to reflect the new addresses in each of these provisions.

List of Subjects

17 CFR Part 140

Organization and functions (Government agencies).

17 CFR Part 145

Freedom of information.

Based upon the foregoing, pursuant to its authority contained in section 2(a)(11) of the Commodity Exchange Act, 7 U.S.C. 4a(j) (1976), the Commission hereby amends Parts 140 and 145 of the Code of Federal Regulations as follows:

PART 140—[AMENDED]

1. An authority citation for Part 140 is added, and the authority citations following individual sections are removed.

Authority: 17 U.S.C. 12a.

2. Section 140.2 is amended by revising paragraphs (c) and (d) to read as follows:

§ 140.2 Region Offices—Regional Directors.

* * * * *

(c) The Western Regional office is located at 10880 Wilshire Boulevard, Suite 1005, Los Angeles, California 90024 and is responsible for enforcement of the act and administration of programs of the Commission in the States of Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, Utah, Washington, and Wyoming.

(d) The Southwestern Regional office is located at 4900 Main Street, Suite 721, Kansas City, Missouri 64112, with a sub-office at Room 510, Grain Exchange Building, Fourth Street and Fourth Avenue, South, Minneapolis, Minnesota 55415, and is responsible for enforcement of the Act and administration of the programs of the Commission in the States of Arkansas, Colorado, Iowa, Kansas, Louisiana, Minnesota, Missouri, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, and Texas.

PART 145—[AMENDED]

3. The authority citation for Part 145 continues to read as follows:

Authority: Pub. L. 89–554, 80 Stat. 383, Pub. L. 90–23, 81 Stat. 54, Pub. L. 93–502, 88 Stat. 1561–1564 (5 U.S.C. 552); sec. 101(a), Pub. L. 93–463, 88 Stat. 1389 (5 U.S.C. 4a(j)); Pub. L. 99–570.

4. Section 145.6(a) is revised to read as follows:

§ 145.6 Commission offices to contact for assistance; registration records available.

(a) Whenever this part directs that a request be directed to the FOI, Privacy and Sunshine Acts compliance staff at the principal office of the Commission in Washington, DC, the request shall be made in writing and shall be addressed or otherwise directed to the Assistant Secretary for FOI, Privacy and Sunshine Acts Compliance, Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. The telephone number of the compliance staff is (202) 254–3382. Requests for public records directed to a regional office of the Commission pursuant to §§ 145.0(c) and 145.2 should be sent to: Division of Economic Analysis, Commodity Futures Trading Commission, One World Trade Center, Suite 4747, New York, New York 10048, Telephone: (212) 466–2061. Division of Trading and Markets, Commodity Futures Trading Commission, Sears Tower, Suite 4600, 233 South Wacker Drive, Chicago, Illinois 60606, Telephone: (312) 353–5990. Division of Trading and Markets, Commodity Futures Trading Commission, 510 Grain Exchange Building, Minneapolis, Minnesota 55415, Telephone: (612) 725–2025. Division of Trading and Markets, Commodity Futures Trading Commission, 4900 Main Street, Suite 721, Kansas City, Missouri 64112, Telephone: (816) 374–6602. Division of Enforcement, Commodity Futures Trading Commission, 10880 Wilshire Blvd., Suite 1005, Los Angeles, California 90024, Telephone: (213) 209–6783.

* * * * *

The foregoing rules shall be effective immediately. The Commission finds that the amendments relate solely to agency organization, practice and procedure and that the public procedures and publication prior to the effective date of the amendments, in accordance with the Administrative Procedure Act, as codified, 5 U.S.C. 553, are not required.

Issued in Washington, DC, on April 21, 1989, by the Commission.

Jean A. Webb,

Secretary to the Commission.

[FR Doc. 89–10010 Filed 4–26–89; 8:45 am]

BILLING CODE 6351–01–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Rel. No. 33–6833; 34–26747; 35–24868; 39–2213; IC–16931; IA–1163]

Rules Delegating Functions

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Securities and Exchange Commission is revising Subpart A, Part 200 of Title 17 with respect to the descriptions of and delegations of authority to the Commission's Director of the Office of Opinions and Review, General Counsel, and Executive Assistant to the Chairman. This action will effect the consolidation of the Office of Opinions and Review and the Office of the General Counsel, and will delegate to the General Counsel and, in certain cases, the Executive Assistant to the Chairman, the authority previously delegated to the Director of the Office of Opinions and Review. The purpose of consolidating the functions of the Office of Opinions and Review into the Office of the General Counsel is to increase the efficiency of the adjudicatory process and make available to that process the resources of the Office of the General Counsel.

EFFECTIVE DATE: April 27, 1989.

FOR FURTHER INFORMATION CONTACT: David C. Mahaffey, Assistant General Counsel, or Thomas M. Selman, Special Counsel, Office of the General Counsel, (202) 272–2428.

SUPPLEMENTARY INFORMATION: On February 9, 1989, Chairman Ruder announced the consolidation of the Commission's Office of Opinions and Review into the Office of the General Counsel, with the establishment of an Adjudication Group in OGC. The Chairman further announced that the preparation of opinions and orders in contested Rule 2(e) cases will be assigned to the Executive Assistant to the Chairman, and that drafting responsibilities in other cases may, as appropriate, be transferred from the General Counsel to the Chairman's staff.

The Commission finds that this action relates solely to rules of agency organization, procedure or practice, and therefore that prior publication under 5 U.S.C. 553 is not necessary and that the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, does not apply. Further, the Commission finds good cause under 5 U.S.C. 553(d)(3) for the action to become effective immediately upon publication in the Federal Register, since implementing the rule changes will increase the efficiency of the Commission's adjudicatory process and make available to that process the resources of the Office of the General Counsel. Accordingly, the foregoing action becomes effective immediately upon publication in the Federal Register.

List of Subjects in 17 CFR Part 200

Administrative practice and procedure, Freedom of information, Privacy, Securities.

Text of Amendments

Title 17, Chapter II of the Code of Federal Regulations is hereby amended as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

1. The authority citation for Part 200 appearing at the end of the table of contents is removed.

2. The authority citation for Part 200, Subpart A is revised to read as follows:

Authority: Secs. 19, 23, 48 Stat. 85, 901, as amended; sec. 20, 49 Stat. 833; sec. 319, 53 Stat. 1173; secs. 38, 211, 54 Stat. 841, 855; sec. 308, 101 Stat. 1254 (15 U.S.C. 77s, 78d–1, 78d–2, 78w, 79t, 77sss, 80a–37, 80b–11), unless otherwise noted.

§ 200.15 [Removed]

3. By removing § 200.15.

4. By revising § 200.16 to read as follows:

§ 200.16 Executive Assistant to the Chairman.

The Executive Assistant to the Chairman assists the Chairman in consideration of legal, financial, and economic problems encountered in the administration of the Commission's statutes. He or she arranges for and conducts conferences with officials of the Commission, members of the staff, and/or representatives of the public on matters arising with regard to general programs or specific matters. Acting for the Chairman, he or she furnishes the initiative, executive direction, and authority for staff studies and reports bearing on the Commission's administration of the laws and its relations with the public, industry, and the Congress. The Executive Assistant is also responsible for assisting members of the Commission in the preparation of the opinions of the Commission, and to the Commission for the preparation of opinions and decisions on motions and certifications of questions and rulings by administrative law judges in the course of administrative proceedings under Rule 2(e) of the Commission's Rules of Practice (§ 201.2(e) of this Chapter), and in other cases in which the Chairman or the General Counsel has determined that separation of functions requirements or other circumstances would make inappropriate the exercise of such functions by the General Counsel. In cases where, pursuant to a waiver by the parties of separation of function requirements, another Division or Office of the Commission's staff undertakes to prepare an opinion or decision, such Division or Office rather than the Executive Assistant will prepare such opinion or decision, although the Executive Assistant may assist in such preparation. The Executive Assistant is further responsible for the exercise of such review functions with respect to adjudicatory matters as are delegated to him or her by the Commission pursuant to 101 Stat. 1254 (15 U.S.C. 78d–1, 78d–2) or as may be otherwise delegated or assigned to him or her.

5. By amending § 200.21 by redesignating paragraph (b) as (c), revising paragraph (a), and adding new paragraph (b) as follows:

§ 200.21 The General Counsel.

(a) The General Counsel is the chief legal officer of the Commission. He or she is responsible for the representation of the Commission in judicial proceedings in which it is involved as a party or as amicus curiae, for directing and supervising all civil litigation involving the Commission in the United States District Courts, for directing and supervising the Commission's responsibilities under the Bankruptcy Code and all related litigation, and for representing the Commission in all cases in appellate courts. The General Counsel is responsible for the review of cases which the Division of Enforcement recommends be referred to the Department of Justice with a recommendation for criminal prosecution. Together with the Director of the Division of Enforcement, the General Counsel is responsible for granting of access, by delegated authority, to materials contained in Commission files concerning non-public investigatory proceedings in which formal orders of investigation have been entered at the request of domestic and foreign governmental authorities, self-regulatory organizations, receivers, special counsels, and other similar persons appointed in Commission litigation, the Securities Investor Protection Corporation, and trustees and counsel for trustees "appointed" pursuant to section 5(b) of the Securities Investor Protection Act. In addition, he or she is responsible for advising the Commission at its request or at the request of any division director or officer head, or on his or her own motion, with respect to interpretations involving questions of law; for the conduct of administrative proceedings relating to the disqualification of professional persons from practice before the Commission; for the preparation of the Commission comments to the Congress on pending legislation; and for the drafting, in conjunction with appropriate divisions and offices, of legislative proposals to be sponsored by the Commission. The General Counsel is also responsible for the review and clearance of the form and content of articles, treatises, and prepared speeches and addresses by members of the staff relating to the Commission or to the statutes and rules administered by the Commission and is responsible for investigating any claims of staff improprieties. He or she is responsible (with the Director of Personnel) for administering and interpreting the Commission's Conduct Regulation. He or she serves as Counselor to the Commission and its staff with regard to ethical and conflicts of interest questions and acts as the Commission's liaison on such matters with the Office of Personnel Management and the Department of Justice. The General Counsel also is responsible for coordinating and reviewing the interpretive positions of the various divisions and offices. In addition, he or she is responsible for appropriate disposition of all Freedom of Information Act and Privacy Act appeals pursuant to the authority delegated in § 200.30–14 of this Chapter, and is the Commission's advisor with respect to legal problems arising under the Freedom of Information Act, the Privacy Act, the Federal Reports Act, the Federal Advisory Committee Act, the Civil Service laws and regulations, the statutes and rules applicable to the Commission's procurement, contracting, fiscal and related administrative activities, and other statutes and regulations of a similar nature applicable to a number of Government agencies.

(b) The General Counsel is also responsible for assisting members of the

Commission in the preparation of the opinions of the Commission, and to the Commission for the preparation of opinions and decisions on motions and certifications of questions and rulings by administrative law judges in the course of administrative law proceedings, except (1) in cases where, pursuant to a waiver by the parties of separation of function requirements, another Division or Office of the Commission's staff undertakes to prepare an opinion or decision, in which cases the General Counsel may assist in such preparation, and (2) with respect to administrative proceedings under Rule 2(e) of the Commission's Rules of Practice (§ 201.2(e) of this Chapter) or other cases in which the Chairman or the General Counsel has determined that separation of function requirements or other circumstances would make inappropriate the exercise of such functions by the General Counsel. In the cases described in clause (2), the Executive Assistant to the Chairman exercises such functions. The General Counsel deals with general problems arising under the Administrative Procedure Act, including the revision or adoption of rules of practice. The General Counsel is also responsible for the exercise of such review functions with respect to adjudicatory matters as are delegated to him or her by the Commission pursuant to 101 Stat. 1254 (15 U.S.C. 78d–1, 78d–2) or as may be otherwise delegated or assigned to him or her.

* * * * *

§ 200.30–8 [Removed]

6. By removing § 200.30–8.

7. By revising the introductory paragraph and adding paragraphs (g), (h), and (i) to § 200.30–14 to read as follows:

§ 200.30–14 Delegation of Authority to the General Counsel.

Pursuant to the provisions of Pub. L. 101–181, 101 Stat. 1254, 101 Stat. 1255, 15 U.S.C. 78d–1, 15 U.S.C. 78d–2, and 5 U.S.C. 552a(d)(2)(B)(ii), the Securities and Exchange Commission hereby delegates, until the Commission orders otherwise, the following functions to the General Counsel of the Commission, to be performed by him or her or under his or her direction by such person or persons as may be designated from time to time by the Chairman of the Commission:

* * * * *

(g)(1) With respect to proceedings conducted pursuant to the Securities Act of 1933 (15 U.S.C. 77a, *et seq.*), the Securities Exchange Act of 1934 (15 U.S.C. 78a, *et seq.*), the Public Utility Holding Company Act of 1935 (15 U.S.C. 79a, *et seq.*), the Trust Indenture Act of 1939 (15 U.S.C. 77aaa, *et seq.*), the Investment Company Act of 1940 (15 U.S.C. 80a–1, *et seq.*), the Investment Advisers Act of 1940 (15 U.S.C. 80b–1, *et seq.*), and the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa, *et seq.*);

(i) To consider an application for review of an interlocutory ruling which an administrative law judge has refused to certify, and to deny such application upon determining that the administrative law judge did not err in refusing to certify the matter.

(ii) To consider an interlocutory ruling which an administrative judge has certified, and to affirm such ruling upon determining that such action is appropriate.

(iii) To issue any order pursuant to an initial decision as to any person who has not filed a petition for review within the time provided, or has withdrawn his appeal, where the Commission has not on its own motion ordered that the initial decision be reviewed.

(iv) Except where the Commission otherwise directs, to issue findings and orders pursuant to offers of settlement which the Commission has determined should be accepted.

(v) To grant petitions for review of initial decisions by a hearing officer.

(vi) To grant motions of staff counsel to discontinue administrative proceedings as to a particular respondent who has died or cannot be found, or because of a mistake in the identity of a respondent named in the order for proceedings.

(vii) To grant requests for the submission of late or additional briefs, or the acceptance of affidavits or other material for inclusion in the record or in support of motions or petitions addressed to the Commission.

(viii) To issue an order dismissing an application for review upon the request of the applicant that the application be withdrawn.

(ix) To issue an order dismissing an exemptive application upon the request of the applicant that the application be withdrawn.

(2) With respect to proceedings conducted pursuant to the Securities Act of 1933 (15 U.S.C. 77a, *et seq.*), the Securities Exchange Act of 1934 (15 U.S.C. 78a, *et seq.*), the Investment Company Act of 1940 (15 U.S.C. 80a–1, *et seq.*), the Investment Advisers Act of 1940 (15 U.S.C. 80b–1, *et seq.*), and the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa *et seq.*), to issue findings and orders taking the remedial action described in the order for proceedings where the respondents expressly consent to such action, fail to appear or default in the filing of answers required to be filed; or to grant a request, based upon a showing of good cause, to vacate an order of default, so as to permit presentation of a defense.

(3) With respect to proceedings conducted pursuant to the Securities Exchange Act of 1934 (15 U.S.C. 78a, *et seq.*), to issue an order dismissing an application for review of a denial by a self-regulatory organization of an application by a person subject to statutory disqualification to become associated with a member firm upon receipt of notice from the self-regulatory organization that the firm is no longer a member of the self-regulatory organization.

(4) With respect to proceedings under Sections 19 (d), (e) and (f) of the Securities Exchange Act of 1934 (15 U.S.C. 78s (d), (e) and (f)), to determine that an application for review under those sections has been abandoned under the provision of § 240.19d–3(c) of this Chapter or otherwise, and to issue an order dismissing the application in such event.

(5) With respect to proceedings conducted or reviewed pursuant to the provisions of the Securities Exchange Act of 1934 (15 U.S.C. 78(a), *et seq.*), the Investment Company Act of 1940 (15 U.S.C. 80a–1, *et seq.*), and the Investment Advisers Act of 1940 (15 U.S.C. 80b–1, *et seq.*) to determine applications to stay Commission orders pending appeal of those orders to the federal courts.

(6) With respect to review proceedings pursuant to Sections 19 (d), (e) and (f) of the Securities Exchange Act of 1934 (15 U.S.C. 78s (d), (e) and (f)), to determine applications for a stay of action taken by a self-regulatory organization pending Commission review of that action.

(7) In connection with Commission review of actions taken by self-regulatory organizations, pursuant to Sections 19 (d), (e) and (f) of the Securities Exchange Act of 1934 (15 U.S.C. 78s (d), (e) and (f)), to grant or deny requests for oral argument in accordance with the provisions of § 240.19d–3(f) of this Chapter.

(h) Notwithstanding anything in paragraph (g) of this section, the functions described in paragraph (g) of this section are not delegated to the General Counsel with respect to administrative proceedings under Rule 2(e) of the Commission's Rules of Practice (§ 201.2(e) of this Chapter), or with respect to other proceedings in which the Chairman or the General

Counsel determines that separation of functions requirements or other circumstances would make inappropriate the General Counsel's exercise of such delegated functions. With respect to such Rule 2(e) and other proceedings, such functions are delegated to the Executive Assistant to the Chairman pursuant to § 200.30–16 of this Chapter.

(i) Notwithstanding anything in paragraph (g) of this section, in any case described in paragraph (g) of this section in which the General Counsel believes it appropriate, he or she may submit the matter to the Commission.

8. By adding § 200.30–16 to read as follows:

§ 200.30–16 Delegation of Authority to Executive Assistant to the Chairman.

Pursuant to the provisions of Pub. L. 101–181, 101 Stat. 1254, 101 Stat. 1255, 15 U.S.C. 78d–1, and 15 U.S.C. 78d–2, the Securities and Exchange Commission hereby delegates, until the Commission orders otherwise, the following functions to the Executive Assistant to the Chairman (or to such other person or persons designated pursuant to paragraph (d) of this section), to be performed by such Executive Assistant or under the Executive Assistant's direction by such person or persons as may be designated from time to time by the Chairman of the Commission (or by such other person or persons designated pursuant to paragraph (d) of this section):

(a) The functions otherwise delegated to the General Counsel under § 200.30–14(g) of this Chapter, with respect to any proceeding in which the Chairman or the General Counsel has determined, pursuant to § 200.30–14(h) of this Chapter, that separation of functions requirements or other circumstances would make inappropriate the General Counsel's exercise of such delegated functions.

(b) With respect to proceedings conducted pursuant to the provisions of Rule 2(e) of the Commission's Rules of Practice (§ 201.2(e) of this Chapter):

(1) To consider an application for review of an interlocutory ruling which an administrative law judge has refused to certify, and to deny such application upon determining that the administrative law judge did not err in refusing to certify the matter.

(2) To consider an interlocutory ruling which an administrative judge has certified, and to affirm such ruling upon determining that such action is appropriate.

(3) To issue any order pursuant to an initial decision as to any person who has not filed a petition for review within the time provided, where the Commission has not on its own motion ordered that the initial decision be reviewed.

(4) Except where the Commission otherwise directs, to issue findings and orders pursuant to offers of settlement which the Commission has determined should be accepted.

(5) To grant petitions for full review of initial decisions by a hearing officer.

(6) To grant motions of staff counsel to discontinue administrative proceedings as to a particular respondent who has died or cannot be found, or because of a mistake in the identity of a respondent named in the order for proceedings.

(7) To grant requests for the submission of late or additional briefs, or the acceptance of affidavits or other material for inclusion in the record or in support of motions or petitions addressed to the Commission.

(8) To issue findings and orders taking the remedial action described in the order for proceedings where the respondents expressly consent to such action, fail to appear or default in the filing of answers required to be filed; or to grant a request, based upon a showing of good cause, to vacate an order of default, so as to permit presentation of a defense.

(9) To determine applications to stay Commission orders imposing, affirming, or modifying sanctions pending appeal of those orders to the Federal courts.

(c) Notwithstanding anything in the foregoing, in any case described in paragraphs (a) and (b) of this section in which the Executive Assistant believes it appropriate, he or she may submit the matter to the Commission.

(d) Notwithstanding anything in the foregoing, the functions otherwise delegated to the Executive Assistant are hereby delegated to such person or persons, not under the Executive Assistant's supervision, designated by the Chairman, with respect to any proceeding in which the Chairman or the Executive Assistant determines that the Executive Assistant's exercise of such delegated functions would be inappropriate.

By the Commission.

April 20, 1989.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 89–10031 Filed 4–26–89; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 176

[Docket No. 86F–0158]

Indirect Food Additives; Paper and Paperboard Components

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of 2-bromo-2-nitropropane-1,3-diol as a slimicide in the manufacture of paper and paperboard for food-contact use. This action responds to a petition filed by Betz Laboratories, Inc.

DATES: Effective April 27, 1989; written objections and requests for a hearing by May 30, 1989.

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

FOR FURTHER INFORMATION CONTACT: Marvin D. Mack, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of May 7, 1986 (51 FR 16896), FDA announced that a petition (FAP 6B3915) had been filed by Betz Laboratories, Inc., Somerton Rd., Trevose, PA 19047, proposing that § 176.300 *Slimicides* of the food additive regulations (21 CFR 176.300) be amended to provide for the safe use of 2-bromo-2-nitropropane-1,3-diol as a slimicide in the manufacture of paper and paperboard for food-contact use.

FDA has evaluated data in the petition and other relevant material. The agency concludes that these data and material establish safety of the level of use of the additive in the manufacture of paper and paperboard, and that the regulations should be amended in § 176.300(c) as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents

any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before May 30, 1989 file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 176

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, Part 176 is amended as follows:

PART 176—INDIRECT FOOD ADDITIVES: PAPER AND PAPERBOARD COMPONENTS

1. The authority citation for 21 CFR Part 176 continues to read as follows:

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

2. Section 176.300 is amended by revising the table in paragraph (c) by alphabetically adding a new entry to the headings "List of substances" and "Limitations" to read as follows:

§ 176.300 Slimicides.

* * * * *

(c) * * *

List of substances	Limitations
* * *	* *
2-Bromo-2-nitropropane-1,3-diol (CAS Reg. No. 52–51–7).	At a maximum level of 0.6 pound per ton of dry weight fiber.
* * *	* *

* * * * *

Dated: April 19, 1989.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89–10084 Filed 4–26–89; 8:45 am]

BILLING CODE 4160–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[KY–058; FRL–3557–9]

Approval and Promulgation of Implementation Plans; Kentucky: Revisions to the Jefferson County Portion of the SIP

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA today approves amendments to the Jefferson County portion of Kentucky's State Implementation Plan. These amendments include the deletion of the volatile organic compound (VOC) definition from the following regulations: 6.12 (Standard of Performance for Existing Asphalt Paving Operations), 6.19 (Standard of Performance for Existing Metal Furniture Surface Coating Operations), 6.22 (Standard of Performance for Existing Volatile Organic Materials Loading Facilities), 6.29 (Standard of Performance for Existing Graphic Arts Facilities Using Rotogravure and Flexography), 6.30 (Standard of Performance for Existing Factory Surface Coating Operations of Flatwood Paneling), 6.31 (Standard of Performance for Existing Miscellaneous Metal Parts and Products Surface Coating Operations), 6.32 (Standard of Performance for Leaks from Existing Petroleum Refinery Equipment), 6.33 (Standard of Performance for Existing Synthesized Pharmaceutical Product Manufacturing Operations), 6.34 (Standard of Performance for Existing Pneumatic Rubber Tire Manufacturing Plants) and, 6.35 (Standard of Performance for Existing Fabric, Vinyl and Paper Surface Coating Operations). The Jefferson County Air Pollution Control District revised Chapter 1—General Provisions, to include a Volatile Organic Compound (VOC) definition that is consistent with the EPA-approved VOC definition. Therefore, this revised EPA-approved definition will be applicable to all the aforementioned regulations. Thus, all the VOC definitions contained in these regulations could be deleted. Regulation 5.01—General Provisions, Section 2, is being revised to require that if any equivalent test method is necessary for emissions testing and monitoring, the District must obtain prior EPA approval of this method. Regulation 5.01 additionally is revised to include Section 4—Definitions.

DATES: This action will become effective on June 26, 1989, unless notice is received within 30 days that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register.**

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

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

Kentucky Natural Resources and Environmental, Protection Cabinet, Division for Air Quality, Frankfort Office Park, 18 Reilly Road, Frankfort, Kentucky 40601.

Jefferson County Air Pollution, Control District, 914 East Broadway, Louisville, Kentucky 40204.

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Diane Altsman, Air Programs Branch, EPA Region IV, at the above address and telephone number (404) 347–2864 or FTS 257–2864.

SUPPLEMENTARY INFORMATION: The Air Pollution Control District of Jefferson

County submitted revisions to the Jefferson County portion of Kentucky's State Implementation Plan (SIP). The regulations were approved by the Commonwealth of Kentucky's Natural Resources and Environmental Protection Cabinet and became effective on April 20, 1988. On January 19, 1989, the State of Kentucky's Division for Air Quality submitted to EPA the revisions to the Jefferson County portion of Kentucky's State Implementation Plan (SIP).

The revisions include the deletion of the volatile organic compound (VOC) definition from the following regulations: 6.12, 6.19, 6.22, 6.29, 6.30, 6.31, 6.32, 6.33, 6.34, and 6.35. The Jefferson County Air Pollution Control District revised Chapter 1, General Provisions, to reflect the VOC definition that is consistent with EPA's approved definition.

The Commonwealth of Kentucky, also submitted for EPA approval a revision to Regulation 5—Standards for Hazardous Air Pollutants. Regulation 5.01—General Provisions, section 2, is revised to require that if any equivalent test method is necessary for emissions testing and monitoring, the District must obtain prior EPA approval of this method. Regulation 5.01 was additionally revised to include Section 4—Definitions.

Due to the simplicity of these changes, no Technical Support Document has been prepared.

Final Action

EPA approves changes made in Regulation 5.01, 6.12, 6.19, 6.22, 6.29, 6.30, 6.31, 6.32, 6.33, 6.34 and 6.35 of the Jefferson County portion of Kentucky's State Implementation Plan (SIP). This action is being taken without prior proposal because the changes are noncontroversial and EPA anticipates no significant comments on them. The public should be advised that this action will be effective 60 days from date of this **Federal Register** notice. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

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

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

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 26, 1989. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone.

Note: Incorportion by reference of the State Implementation Plan for the Commonwealth of Kentucky was approved by the Director of the Federal Register on July 1, 1982.

Date: April 10, 1989.

Lee A. DeHihns, III,

Acting Regional Administrator.

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

PART 52—[AMENDED]

Subpart S—Kentucky

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

Authority: 42 U.S.C. 7401–7642

2. Section 52.920 is amended by adding paragraph (c)(61) to read as follows:

§ 52.920 Identification of plan.

* * * * *

(c) * * *

(61) Revisions in Regulations 5.01, 6.12, 6.19, 6.22, 6.29, 6.30, 6.31, 6.32, 6.33, 6.34, and 6.35 of the Jefferson County portion of Kentucky's SIP were submitted on January 19, 1989, by Kentucky's Natural Resources Division and Environmental Protection Cabinet.

(i) Incorporation by reference.

(A) Amendments to the Jefferson County Regulations 5.01, 6.12, 6.19, 6.22, 6.29, 6.30, 6.31, 6.32, 6.33, 6.34, and 6.35 adopted on April 20, 1988.

(B) Letter of January 19, 1989, from Kentucky's Natural Resources and Environmental Protection Cabinet.

(ii) Other materials-none.

[FR Doc. 89-9380 Filed 4-26-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6829]

Suspension of Community Eligibility, Maryland, et al.

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective date shown in this rule because of noncompliance with the revised floodplain management criteria of the NFIP. If FEMA receives documentation that the community has adopted the required revisions prior to the effective suspension date given in this rule, the community will not be suspended and the suspension will be withdrawn by publication in the **Federal Register.**

EFFECTIVE DATE: As shown in fifth column.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, Federal Center Plaza, 500 C Street SW., Room 416, Washington, DC 20472, (202) 646–2717.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022), prohibits flood insurance coverage as authorized under the NFIP (42 U.S.C. 4001–4128) unless an appropriate public body shall have adopted adequate floodplain management measures with effective enforcement measures.

On August 25, 1986, FEMA published a final rule in the **Federal Register** that revised the NFIP floodplain management criteria. The rule became effective on October 1, 1986. As a condition for continued eligibility in the NFIP, the criteria at 44 CFR 60.7 require communities to revise their floodplain management regulations to make them

consistent with any revised NFIP regulation within 6 months of the effective date of that revision or be subject to suspension from participation in the NFIP.

The communities listed in this notice have not amended or adopted floodplain management regulations that incorporate the rule revision. Accordingly, the communities are not compliant with NFIP criteria and will be suspended on the effective date shown in this final rule. However, some of these communities may adopt and submit the required documentation of legally enforceable revised floodplain management regulations after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register.** In the interim, if you wish to determine if a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

The Administrator finds that notice and public procedures under 5 U.S.C. 533(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified. Each community receives a 90- and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provision of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, FEMA, hereby certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As stated in section 2 of the Flood Disaster Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to adopt adequate floodplain management measures, thus placing itself in noncompliance with the Federal standards required for community participation.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of eligible communities.

State	Community name	County	Community number	Effective date
Maryland	Betterton, Town of	Kent	240095	May 4, 1989.
Do	Brunswick, Town of	Frederick	240028	Do.
Do	Unincorporated Areas	Caroline	240130	Do.
Do	Crisfield, City of	Somerset	240062	Do.
Do	Emmitsburg, Town of	Frederick	240029	Do.
Do	Unincorporated Areas	Harford	240040	Do.
Do	La Plata, Town of	Charles	240092	Do.
Do	Middletown, Town of	Frederick	240162	Do.
Do	Unincorporated Areas	Montgomery	240049	Do.
Do	Myersville, Town of	Frederick	240116	Do.
Do	Secretary, Town of	Dorchester	240123	Do.
Do	Unincorporated Areas	Somerset	240061	Do.
Do	Walkersville, Town of	Frederick	240032	Do.
Colorado	Unincorporated Areas	Adams	080001	May 17, 1989.
Do	Breckenridge, City of	Summit	080172	Do.
Do	Brighton, City of	Adams	080004	Do.
Do	Delta, City of	Delta	080043	Do.
Do	Eagle, Town of	Eagle	080238	Do.
Do	Evans, City of	Weld	080182	Do.
Kansas	Unincorporated Areas	Chase	200040	Do.
Do	Unincorporated Areas	Clay	200052	Do.
Do	Elmdale, City of	Chase	200042	Do.
Do	Eudora, City of	Douglas	200089	Do.
Do	Gypsum, City of	Saline	200317	Do.
Do	Harper, City of	Harper	200129	Do.
Do	Hunter, City of	Mitchell	200228	Do.
Do	La Crosse, City of	Rush	200308	Do.
Do	Rantoul, City of	Franklin	200107	Do.
Do	Virgil, City of	Greenwood	200122	Do.
Do	Walnut, City of	Crawford	200373	Do.
Do	Unincorporated Areas	Wyandotte	200562	Do.
Nebraska	Allen, Village of	Dixon	310244	Do.
Do	Amherst, Village of	Buffalo	310245	Do.
Do	Avoca, Village of	Cass	310247	Do.
Do	Barneston, Village of	Gage	310090	May 17, 1989.
Do	Bristow, Village of	Boyd	310012	Do.
Do	Ceresco, Village of	Sounders	310197	Do.
Do	Clearwater, Village of	Antelope	310262	Do.
Do	Crete, City of	Saline	310186	Do.
Do	Unincorporated Areas	Dakota	310429	Do.
Do	Unincorporated Areas	Deuel	310430	Do.
Do	Elk Creek, Village of	Johnson	310125	Do.
Do	Elkhorn, City of	Douglas	310075	Do.
Do	Franklin, City of	Franklin	310082	Do.
Do	Fullerton, City of	Nance	310152	Do.
North Dakota	Dodge, City of	Dunn	380027	Do.
South Dakota	Blunt, City of	Hughes	460039	Do.

State	Community name	County	Community number	Effective date
Do	Brookings, City of	Brookings	460004	Do.
Utah	Castle Dale, City of	Emery	490059	Do.
Do	Unincorporated Areas	Carbon	490032	Do.
Do	Cedar City, City of	Iron	490074	Do.

Issued: April 24, 1989.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 89-10130 Filed 4-26-89; 8:45 am]

BILLING CODE 6718-21-M

44 CFR Part 64

[Docket No. FEMA 6830]

Suspension of Community Eligibility; Minnesota, et al.

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If FEMA receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register.**

EFFECTIVE DATES: The third date ("Susp.") listed in the fourth column.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646-2717, Federal Center Plaza, 500 C Street SW., Room 416, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022), prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001-4128) unless an appropriate public body shall have adopted adequate floodplain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (44 CFR Part 59 et seq.). Accordingly, the communities will be suspended on the effective date in the fourth column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register.** In the interim, if you wish to determine if a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the fifth column of the table. No direct Federal financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas. (Section 202(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Administrator finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified. Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provision of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, FEMA, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. As stated in section 2 of the Flood Disaster Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to (adopt) (enforce) adequate floodplain management, thus placing itself in noncompliance of the Federal standards required for community participation. In each entry, a complete chronology of effective dates appears for each listed community.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of eligible communities.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date [1]
Region V—Minimal Conversions				
Minnesota:				
Koochiching County, unincorporated areas	270233	July 1, 1974, Emerg.; May 1, 1988, Reg.; May 1, 1989, Susp.	6-1-88	June 1, 1989.
Region VIII				
Colorado:				
Bent County, unincorporated areas	080271	June 26, 1975, Emerg.; June 1, 1988, Reg.; May 1, 1989, Susp.	5-1-89	Do.
Region I—Regular Conversions				
Maine: Rockport, town of, Knox County	230077	July 21, 1975, Emerg.; May 4, 1989, Reg.; May 4, 1989, Susp.	5-4-89	May 4, 1989.
New Hampshire:				
Northumberland, town of, Coos County	330036	July 7, 1975, May 4, Emergy.; May 4, 1989, Reg.; May 4, 1989, Susp.	5-4-89	Do.
Tuftonboro, town of, Carroll County	330234	June 15, 1976, Emerg.; May 4, 1989, Reg.; May 4, 1989, Susp.	5-4-89	Do.
Vermont:				
Brighton, town of, Essex County	500205	Mar. 27, 1975, Emerg.; Sept. 18, 1986, Reg.; May 4, 1989, Susp.	5-4-89	Do.
Reading, town of, Windsor County	500152	May 8, 1975, Emerg.; May 4, 1989, Reg.; May 4, 1989, Susp.	5-4-89	Do.
Region II				
New York: Western, town of, Oneida County	360564	Aug. 17, 1976, Emerg.; May 4, 1989, Reg.; May 4, 1989, Susp.	5-4-89	Do.
Region III				
Pennsylvania:				
Evans City, borough of, Butler County	420216	Dec. 3, 1974, Emerg.; May 4, 1989, Reg.; May 4, 1989, Susp.	5-4-89	Do.
Greenwood, township of, Columbia County	421551	July 28, 1975, Emerg.; Mar. 16, 1989, Reg.; May 4, 1989, Susp.	Mar. 16, 1989	5-4-89
Harmony, borough of, Butler County	420217	Apr. 21, 1975, Emerg.; May 4, 1989, Reg.; May 4, 1989, Susp.	5-4-89	Do.
Mars, borough of, Butler County	420220	June 10, 1975, Emerg.; May 4, 1989, Reg.; May 4, 1989, Susp.	5-4-89	Do.
South Manheim, township of, Schuylkill County	422022	Aug. 6, 1975, Emerg.; May 4, 1989, Reg.; May 4, 1989, Susp.	5-4-89	Do.
Valencia, borough of, Butler County	420223	July 11, 1975, Emerg.; May 4, 1989, Reg.; May 4, 1989, Susp.	5-4-89	Do.
Region V				
Illinois: Hanover, village of, Jo Daviess County	170755	July 21, 1975, Emerg.; May 4, 1989, Reg.; May 4, 1989, Susp.	5-4-89	Do.
Michigan:				
Allegan, city of, Allegan County	260003	Feb. 26, 1975, Emerg.; May 4, 1989, Reg.; May 4, 1989, Susp.	5-4-89	Do.
Garfield, township of, Newaygo County	260469	Mar. 9, 1976, Emerg.; Sept. 29, 1986, Reg.; May 4, 1989, Susp.	5-4-89	Do.
Bangor, city of, Van Buren County	260529	Oct. 27, 1976, Emerg.; May 4, 1989, Reg.; May 4, 1989, Susp.	5-4-89	Do.
Ashland, township of, Newaygo County	260694	July 6, 1976, Emerg.; Sept. 1, 1986, Reg.; May 4, 1989, Susp.	5-4-89	Do.
Wisconsin:				
Augusta, city of, Eau Claire County	550127	July 7, 1975, Emerg.; May 4, 1989, Reg.; May 4, 1989, Susp.	5-4-89	Do.
Ellsworth, village of, Pierce County	550325	Aug. 28, 1974, Emerg.; May 4, 1989, Reg.; May 4, 1989, Susp.	5-4-89	Do.
Knapp, village of, Dunn County	550122	Nov. 14, 1975, Emerg.; May 4, 1989, Reg.; May 4, 1989, Susp.	5-4-89	Do.
Woodville, village of, St. Croix County	550390	Aug. 15, 1975, Emerg.; May 4, 1989, Reg.; May 4, 1989, Susp.	5-4-89	Do.
Region VII				
Kansas: Ellsworth, city of, Ellsworth County	200098	July 21, 1975, Emerg.; May 4, 1989, Reg.; May 4, 1989, Susp.	5-4-89	Do.
Region VIII				
Colorado: Montezuma county, unicorporated areas	080285	Feb. 3, 1976, Emerg.; May 4, 1989, Reg.; May 4, 1989, Susp.	5-4-89	Do.
Wyoming:				
Jackson, town of, Teton County	560052	Aug. 8, 1975, Emerg.; May 4, 1989, Reg.; May 4, 1989, Susp.	5-4-89	Do.
Teton County, unincorporated areas	560094	Apr. 19, 1978, Emerg.; May 4, 1989, Reg.; May 4, 1989, Susp.	5-4-89	Do.
Region X				
Oregon: Fossil, city of, Wheeler County	410246	May 30, 1975, Emerg.; May 4, 1989, Reg.; May 4, 1989, Susp.	5-4-89	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date [1]
Region I				
Maine: South Thomaston, town of, Knox County	230078	July 23, 1975, Emerg.; May 17, 1989, May 17, 1989, Susp.	May 17, 1989	5-17-89.
New Hampshire:				
Colebrook, town of, Coos County	330031	July 18, 1975, Emerg.; May 17, 1989, Reg.; May 17, 1989, Susp.	5-17-89	Do.
Greenland, town of, Rockingham County	330210	May 19, 1976, Emerg.; May 17, 1989, Reg.; May 17, 1989, Susp.	5-17-89	Do.
Littleton, town of, Grafton County	330064	Sept. 2, 1975, Emerg.; May 17, 1989, Reg.; May 17, 1989, Susp.	5-17-89	Do.
Stratham, town of, Rockingham County	330197	Sept. 26, 1977, Emerg.; May 17, 1989, Reg.; May 17, 1989, Susp.	5-17-89	Do.
Wolfeboro, town of Carroll County	330239	Nov. 26, 1976, Emerg.; May 17, 1989, Reg.; May 17, 1989, Susp.	5-17-89	Do.
Region III				
Pennsylvania: Auburn, borough of, Schuylkill County	420766	July 29, 1975, Emerg.; May 17, 1989, Reg.; May 17, 1989, Susp.	5-17-89	Do.
Cass, township of, Schuylkill County	422000	Dec. 8, 1975, Emerg.; May 17, 1989, Reg.; May 17, 1989, Susp.	5-17-89	Do.
Hop Bottom, borough of, Susquehanna County	420812	Oct. 14, 1975, Emerg.; May 17, 1989, Reg.; May 17, 1989, Susp.	5-17-89	Do.
Jessup, township of, Susquehanna County	422084	Jan. 22, 1976, Emerg.; May 17, 1989, Reg.; May 17, 1989, Susp.	5-17-89	Do.
Liberty, township of, Susquehanna County	422087	Feb. 3, 1976, Emerg.; May 17, 1989, Reg.; May 17, 1989, Susp.	5-17-89	Do.
York, township of, York County	421032	Aug. 1, 1973, Emerg.; May 17, 1989, Reg.; May 17, 1989, Susp.	5-17-89	Do.
West Virginia:				
Ceredo, town of, Wayne County	540232	Sept. 25, 1976, Emerg.; May 17, 1989, Reg.; May 17, 1989, Susp.	5-17-89	Do.
Kenova, city of, Wayne County	540221	Apr. 9, 19785, Emerg.; May 17, 1989, Reg.; May 17, 1989, Susp.	5-17-89	Do.
Region IV				
Georgia:				
Dade County, unincorporated areas	130246	Aug. 6, 1974, Emerg.; May 17, 1989, Reg.; May 17, 1989, Susp.	5-17-89	Do.
Upson County, unincorporated areas	130407	Feb. 18, 1976, Emerg.; May 17, 1989, Reg.; May 17, 1989, Susp.	5-17-89	Do.
Knox County, unincorporated areas	210131	July 29, 1975, Emerg.; May 17, 1989, Reg.; May 17, 1989, Susp.	5-17-89	Do.
Thomaston, city of, Upson County	130408	Jan. 21, 1974, Emerg.; Mar. 1, 1976, Reg.; May 17, 1989, Susp.	5-17-89	Do.
Region V				
Michigan:				
Au Gres, city of, Arenac County	260012	July 26, 1973, Emerg.; May 17, 1989, Reg.; May 17, 1989, Susp.	5-17-89	Do.
Au Gres, township of, Arenac County	260013	May 15, 1973, Emerg.; May 17, 1989, Reg.; May 17, 1989, Susp.	5-17-89	Do.
Ohio:				
Apple Creek, village of, Wayne County	390642	Dec. 19, 1975, Emerg.; May 17, 1989, Reg.; May 17, 1989, Susp.	5-17-89	Do.
Wayne County, unincorporated areas	390574	June 23, 1976, Emerg.; May 17, 1989, Reg.; May 17, 1989, Susp.	5-17-89	Do.
Lancaster, city of, Fairfield County	390161	July 28, 1975, Emerg.; April 17, 1989, Reg.; May 17, 1989, Susp.	4-17-89	Apr. 17, 1989.
Region VII				
Iowa: Elliott, city of, Montgomery County	190209	Dec. 26, 1975, Emerg.; May 17, 1989, Reg.; May 17, 1989, Susp.	5-17-89	May 17, 1989.
Region V—Minimal Conversions				
Michigan: Ravenna, township of, Muskegon County	26731	Oct. 6, 1982, Emerg.; May 17, 1989, Reg.; May 17, 1989, Susp.	5-17-89	Do.
Minnesota: Waite Park, city of, Stearns County	270461	June 13, 1975 Emerg.; May 17, 1989, Reg.; May 17, 1989, Susp.	5-17-89	Do.

[1] Date certain Federal assistance no longer available in special flood hazard areas.
Code for reading fourth column: Emerg.—Emergency; Reg.—Regular; Susp.—suspension.

Harold T. Duryee,
Administrator, Federal Insurance Administration.
Issued: April 24, 1989.

[FR Doc. 89-10131 Filed 4-26-89; 8:45 am]
BILLING CODE 6718-21-M

LEGAL SERVICES CORPORATION

45 CFR Part 1626

Restrictions on Legal Assistance to Aliens

AGENCY: Legal Services Corporation.

ACTION: Final rule.

SUMMARY: Revisions to 45 CFR Part 1626 of the Legal Services Corporation's ("LSC" or "Corporation") regulations are intended to conform the rule to changes required by the Immigration Reform and Control Act of 1986 (IRCA), Pub. L. 99–603, 100 Stat. 3359 (1986), to LSC's appropriations act for fiscal year 1989, Pub. L. 100–459, 102 Stat. 2223 (1988).

EFFECTIVE DATE: May 30, 1989.

FOR FURTHER INFORMATION CONTACT: Timothy B. Shea, General Counsel, 400 Virginia Avenue SW., Washington, DC 20024–2751, (202) 863–1839.

SUPPLEMENTARY INFORMATION: Notice of proposed revisions to 45 CFR Part 1626 and request for comments was published in the **Federal Register** on October 19, 1988, 53 FR 40914. The revisions were proposed principally to conform the rule to changes required by IRCA and to LSC's appropriations act for fiscal year 1989. Approximately 100 comments from bar associations, LSC recipients, attorneys in private practice, and other interested parties were received and considered by the Corporation.

On November 18, 1988, the LSC Board of Director's Operations and Regulations Committee met to consider the proposed revisions and to hear public comment. After the Committee voted to recommend the proposed rule, with some amendments, to the Board, the LSC Board voted on January 27, 1989, to adopt as final, with one amendment, the Committee's recommendations. Notice of the Board action was furnished to the Appropriations Committees of the House and Senate by letter of February 8, 1989.

Background

Part 1626 was originally promulgated to implement the restrictions on the provision of legal assistance to certain aliens delineated in Pub. L. 97–377, the appropriations act for fiscal year 1983 funds. 48 FR 19750 (May 2, 1983). After comments were received and considered, the final regulation was promulgated on June 20, 1983, 48 FR 28089, and has been in effect since July 20, 1983.

Revisions To Conform to IRCA

A. *Five-Year Restriction.* In November 1986, IRCA was passed, amending the Immigration and Nationality Act (INA), 8 U.S.C. 1101 *et seq.*, for the purpose of "effectively control[ling] unauthorized immigration to the United States." H. Conf. Rep. 1000, 99th Cong., 2d Sess. 85 (1986). Section 201 of IRCA (Section 245A of INA) provides for the legalization of certain aliens who had been residing illegally in the United States prior to January 1, 1982. However, IRCA also provides in section 201(h) (Section 245A(h) of INA) that such aliens, commonly referred to as "amnesty" aliens, will be ineligible for a period of five years for "any program of financial assistance furnished under Federal law (whether through grant, loan, guarantee, or otherwise) on the basis of financial need, as such programs are identified by the Attorney General." On August 24, 1987, the Department of Justice's Immigration and Naturalization Service (INS) published a proposed rule listing LSC among those programs of financial assistance for which amnesty aliens would be ineligible. 52 FR 31784–31786 (Aug. 24, 1987). The rule, based on IRCA, disqualifies amnesty aliens who become permanent residents from being eligible for legal assistance for a period of five years from the date of grant of temporary resident alien status, unless the alien can qualify independently under another available exception.

Comments to LSC's proposed rule urged that LSC should not be considered a program of financial assistance furnished under Federal law, because LSC recipients do not provide financial assistance to eligible clients; instead, they provide free legal services.

The dispute centers on whether the phrase "program of financial assistance furnished under Federal law (whether through grant, loan, guarantee, or otherwise) on the basis of financial need" within the meaning of IRCA includes legal services. IRCA, by its terms, appears to answer the inquiry. LSC is not included in IRCA's list of federally funded programs that are excluded from the definition of programs of financial assistance. *See* section 201(h)(4) of IRCA (Section 245A(h)(4) of INA). In addition, section 301(d)(6) of IRCA (Section 210A(d)(6) of INA) specifically exempts LSC from being considered a program of financial assistance for the purposes of Replenishment Agricultural Workers (RAW), so that RAWs are made eligible for legal services. Thus, IRCA clearly indicates that LSC is considered to be a program of financial assistance under the general restriction in section 201(h) of IRCA; otherwise, the exception language for LSC would be wholly unnecessary and reduced to mere surplusage.

Though not an agency, instrumentality, or department of the Federal Government, 42 U.S.C. 2996d, LSC can be described as a program of financial assistance furnished under Federal law. Federal law gives LSC its authority to "provide financial assistance to qualified programs," 42 U.S.C. 2996e(a)(1)(A), and LSC distributes Federal funds to programs to provide services to clients based on financial need. *See* 42 U.S.C. 2996a(3) and 2996f(a)(2).

The fact that LSC recipients provide services rather than cash benefits does not mean that such programs are not programs of financial assistance. Again this construction would render unnecessary the specific exception in section 301(d)(6) making legal services available to RAWs.

Comments urged that only the Attorney General has authority to define which federally funded entities are to be considered programs of financial assistance and that, absent publication of the final rule by INS, LSC has no authority to interpret IRCA as including LSC as such a program. IRCA provides that amnesty aliens are not eligible for any program of financial assistance "as such programs are identified by the Attorney General in consultation with other appropriate heads of the various departments and agencies of Government." *See* section 201(h)(1)(A)(i) of IRCA (section 245(h)(1)(A)(i) of INA). A final INS rule will constitute a determination by the Attorney General specifying which programs are subject to the rule. However, INS has not yet published its final rule, and LSC recipients need immediate direction as to whether they may represent amnesty aliens who are now eligible to be granted permanent resident alien status. In the event that the Attorney General reaches a conclusion inconsistent with this rule, the Board will revisit the matter.

Comments also suggested that the proposed rule establishing the five-year disqualification period contravenes the spirit of IRCA, because Congress, it was asserted, must have intended to provide free legal assistance to amnesty aliens once they achieve permanent resident

status. Comments cited IRCA's grant to amnesty aliens of the right to participate in several Federal programs and its general aim that the Attorney General "safeguard the constitutional rights, personal safety, and human dignity of United States citizens and aliens." Pub. L. 99–603, 100 Stat. 3384 (1986) (sec. 115 of IRCA). Without legal services, the comments reasoned, amnesty aliens would be unable to enforce the rights Congress provided them in IRCA.

The disqualification rule, however, is mandated by the terms of IRCA. LSC cannot "elevate the rhetoric of purpose above the specifics of text," and, therefore, ignore the subtleties and complexities of crafting legislation. *See Common Cause* v. *Federal Election Com'n.*, 842 F.2d 436, 445 (D.C. Cir. 1988).

Finally, setting aside the characterization of LSC as a program of financial assistance, comments insisted that LSC is authorized under its appropriations act to provide legal assistance to amnesty aliens when they receive permanent resident status, regardless of the five-year restriction. Under this view, LSC's appropriations act would provide independent and superior authority for LSC recipients to represent any permanent resident alien, and this authority should not be affected or limited by the IRCA restriction.

The LSC appropriations act does not, by its terms, mandate provision of legal assistance to any class of aliens; it merely forbids legal assistance to certain aliens, principally temporary aliens. The five-year restriction is applicable whether or not amnesty aliens gain permanent status, in part, because IRCA specifically states that its restriction controls "notwithstanding any other provision of law." Section 245A(h)(1) of IRCA, 8 U.S.C. 1255a(h)(1) of INA. Moreover, the rule interprets the five-year restriction in IRCA as being applicable only to the new category of permanent resident amnesty aliens created by IRCA. As noted above, LSC recipients may continue to represent all other categories of permanent resident aliens, as they have in the past.

B. *SAWS, RAWS, and H–2 Agricultural Workers.* IRCA also created three new categories of aliens—Special Agricultural Workers (SAWS), Replenishment Agricultural Workers (RAWS), and H–2 Workers—who are eligible for services from LSC-funded programs. The final rule provides LSC recipients the authority to represent such aliens.

IRCA provides for the adjustment or admittance of special agricultural workers and replenishment agricultural workers. Pursuant to sections 302 and 303 of IRCA, SAWS and RAWS are considered to be permanent resident aliens for all purposes except immigration. *See* 8 U.S.C. 1160(a)(5) and 8 U.S.C. 1161(d)(4). As permanent resident aliens, these agricultural workers are eligible for legal assistance from LSC recipients once their status has been adjusted to that of a SAW or RAW, but not for purposes of attaining such status.

IRCA also created a new non-immigrant sub-category of H–2 workers. These workers are to be considered permanent resident aliens for purposes of receiving assistance from legal services programs with regard to housing, wages, transportation and other conditions of employment under their H–2 contract, but for no other purposes. A new § 1626.11 is included in the revisions to Part 1626 to implement the H–2 worker provisions of IRCA.

Revisions Implementing LSC's Appropriations Act

LSC has adopted a revision to the definition of "on behalf of" in § 1626.3(c) to prevent representation not authorized by LSC's appropriations act. The change will reinforce the prohibition on representation of an ineligible client under the pretense of representing an eligible client. The comments confirmed that there was little disagreement about what the statutory language and the regulation intended; rather, the disagreement focused on the concern that the revision as published in the proposed rule would have added more uncertainty to the rule. Accordingly, the definition was revised to satisfy these concerns by providing that:

> To provide legal assistance "on behalf of" an ineligible alien is to render legal assistance to an eligible client which benefits an ineligible alien and does not affect a specific legal right or interest of the eligible client.

This definition focuses on the identity of the client rather than on whether a benefit flows to either an ineligible or eligible client. Legal assistance that benefits an ineligible alien will be allowed only when an eligible person is in fact the client whose legal interests or rights are advanced by the representation.

Miscellaneous Revisions

A. *Section 1626.4.* The language of § 1626.4(a) has been changed to conform to the language of the appropriations act, which requires an alien to be present in the United States in order to be eligible for legal assistance. Pub. L. 100–459, 102 Stat. 2225 (1988).

The listing of categories of ineligible aliens in § 1626.4(b) has been deleted as unnecessary. An alien who does not fit into one of the categories defined in § 1626.4(a) is not eligible for legal services that are financed by funds appropriated under the relevant appropriations act.

B. *Section 1626.5.* Section 1626.5 has been changed to delete as unnecessary the listing of documents which do not provide evidence of eligible alien status. To be eligible for legal services, an alien must present one of the documents stated in § 1626.5(b).

The new paragraph (c) of § 1626.5 states that a Special Agricultural Worker who presents an INS Form I–688 is eligible for legal services.

Section 1626.5(f), which permits brief advice by telephone, has been revised to clarify that "brief advice" is limited to advice provided by telephone and does not include continuous representation of a client.

C. *Section 1626.10(a).* Paragraph (a) has been revised because the term "Micronesia" is a geographic rather than a political term. This change makes the language of § 1626.10(a) more precise and, in addition, restates congressional intent that residents of these political entities are eligible to be clients of a legal services program.

Technical Corrections

The authority section of Part 1626 has been revised to include LSC's current appropriations act. In addition, all references in Part 1626 to Pub. L. 93–355 have been changed to LSC's fiscal year 1989 appropriations act, Pub. L. 100–459, and "any succeeding act which contains the same restrictions." This revision is necessary to eliminate the necessity of amending the regulation annually.

Reprogramming

Pursuant to Pub. L. 100–459, 102 Stat. 2226 (1988), the Corporation is required to give 15 days notice to the appropriations committees of both Houses of Congress prior to publishing as final revisions to its regulations. Reprogramming letters were duly sent to the appropriate committees, and responses were received from both the House and Senate Subcommittees of the Departments of Commerce, Justice, and State, the Judiciary and related agencies. The Senate committee expressed disagreement with the LSC Board's interpretation of IRCA, and stated that it preferred to withhold consideration of approval until the Attorney General makes a final decision as to whether LSC is a program of financial assistance for the purposes of IRCA. The House committee, also concerned about the statutory authority of the Attorney General to issue a rule on the issue,

stated that it could not, at this time, approve the regulations.

After careful analysis, as set out above, the Corporation believes that its recipients need immediate direction as to whether they may represent amnesty aliens who are now eligible to be granted permanent resident alien status. An expression of committee disapproval, while respectfully considered, does not affect the authority of LSC to publish its revisions as final, as only notice, and not approval, is statutorily required. Pub. L. 100–459, 102 Stat. 2226 (1988); 130 CONG. REC. S8588–8589 (daily ed. June 28, 1984); and *Principles of Federal Appropriations Law* 2–29 (GAO ed. 1982).

List of Subjects in 45 CFR Part 1626

Aliens, Legal services, Privacy, Reporting and recordkeeping requirements.

For the reasons set out above, 45 CFR Part 1626 is amended as follows:

PART 1626—RESTRICTIONS ON LEGAL ASSISTANCE TO ALIENS

1. The authority citation for Part 1626 is revised to read as follows:

Authority: Sec. 1008(e); Pub. L. 93–355, 88 Stat. 378 (42 U.S.C. 2996g(e)); Pub. L. 99–603, 100 Stat. 3417; Pub. L. 100–459, 102 Stat. 2186.

2. Section 1626.1 is revised to read as follows:

§ 1626.1 Purpose.

This part is designed to assist recipients in determing the eligibility and immigration status of persons who seek legal assistance, to provide guidelines for referral of ineligible persons, and to protect the confidentiality of information obtained from clients and prospective clients. This part does not apply to any case or matter in which assistance is not being provided with funds appropriated under Pub. L. 100–459 or any succeeding act which contains the same restrictions.

3. Section 1626.2 paragraph (b) is revised to read as follows:

§ 1626.2 Definitions.

* * * * *

(b) "Ineligible alien" means an alien who does not meet the requirements of §1626.4(a) and who is consequently determined not to be eligible to receive legal assistance under Pub. L. 100–459 or any succeeding act which contains the same restrictions.

* * * * *

4. Section 1626.3 is revised to read as follows:

§ 1626.3 Prohibition of legal assistance "for or on behalf of" an ineligible alien.

(a) *General.* No funds made available to a recipient by the Corporation under the authority of Pub. L. 100–459 or any succeeding act which contains the same restrictions shall be used to provide legal services for or on behalf of any person unless that person is a citizen of the United States or an eligible alien.

(b) *Prohibited Legal Assistance "for" an Ineligible Alien.* (1) To provide legal assistance "for" an ineligible alien is equivalent to furnishing legal assistance to a client and it shall be deemed to be coextensive with accepting an ineligible alien as a client. Consequently, all recipients are prohibited from using Corporation funds to pay any costs connected with furnishing legal assistance to clients who are ineligible aliens.

(2) Normal intake procedures and referral of ineligible alien clients by the same procedures used to refer other classes of ineligible clients are excepted from this prohibition. If a referral is not possible, an ineligible alien client may not be represented with Corporation funds that contain the same restrictions on such representation. If such an ineligible alien client is referred, a recipient may not participate further in the case using Corporation funds.

(3) The provisions of section 1010(c) of the Legal Services Corporation Act, 42 U.S.C. 2996i(c), do not apply to the expenditure of funds to represent ineligible aliens. Such aliens may be represented if all costs of such representation, including staff time, are funded from non-Corporation sources.

(c) *Prohibited legal assistance "on behalf of" an ineligible alien.* To provide legal assistance "on behalf of" an ineligible alien is to render legal assistance to an eligible client which benefits an ineligible alien and does not affect a specific legal right or interest of the eligible client.

5. Section 1626.4 paragraphs (a) introductory text, (a)(1), and (b) are revised to read as follows:

§ 1626.4 Alien status and eligibility.

(a) Subject to all other eligibility requirements of the Act, an alien who is present in the United States and who is within one of the following categories shall be eligible for legal services:

(1) An alien lawfully admitted for permanent residence as an immigrant as defined by section 1101(a)(20) of the Immigration and Nationality Act (INA) (8 U.S.C. 1101 (a)(20)) except that an alien who has adjusted his status to that of temporary resident alien under the provisions of section 245A of INA (section 201 of IRCA, 100 Stat. 3394, 8 U.S.C. 1255a) shall not be eligible for legal assistance pursuant to the provisions of section 245A(h) of INA (8 U.S.C. 1255a(h)) for a period of five years, which commences on the date the alien is granted temporary resident alien status as determined by INS, whether or not such alien acquires the status of permanent resident alien during the five-year period, unless the alien can qualify independently under another exception to the general restrictions as stated in § 1626.4(a)(2), (3), or (4).

* * * * *

(b) An alien who is not within one of the eligibility categories defined in § 1626.4(a) shall not be eligible for legal services.

6. Section 1626.5 paragraphs (a)(5), (b)(1), (c) and (f) are revised, paragraph (b)(5) is added, and paragraph (a)(6) is removed to read as follows:

§ 1626.5 Verification of citizenship and eligible alien status.

(a) * * *

(5) Baptismal certificate showing place of birth within the United States and date of baptism within two months after birth.

(b) * * *

(1) An alien in the category specified in § 1626.4(a)(1) shall present an Alien Registration Receipt Card (INS Forms I–151 or I–551), a Temporary Evidence of Lawful Admission for Permanent Residence form (INS Form I–181B), or a valid passport and immigration visa.

* * * * *

(5) A recipient may also accept any other authoritative document issued by INS that provides evidence of alien status for the categories of aliens listed in paragraph (b) of this section.

(c) A Temporary Resident Card (INS Form I–688) shall be considered evidence of eligible alien status in the case of a Special Agricultural Worker. *See* § 1626.10(c). This form shall not be considered evidence of eligible alien status in the case of an alien who has obtained an adjustment in status under the General Amnesty provisions of Immigration Reform and Control Act (IRCA), 8 U.S.C. 1255a, unless the alien can qualify independently under another exception to the general restriction as stated in § 1626.4(a) (2), (3), or (4).

* * * * *

(f) No written verification is required when the only service provided for an eligible alien or citizen is brief advice and consultation by telephone. The term "brief advice" is limited to advice provided by telephone and does not include a continuous representation of a client.

7. Section 1626.6 paragraphs (a) introductory text, (a)(3), and (b)(1) are revised to read as follows:

§ 1626.6 Disposition of cases involving ongoing representation of ineligible aliens.

(a) A recipient may not use funds available to it under the authority of Pub. L. 100–459 or any succeeding act which contains the same restrictions to provide legal assistance to ineligible aliens; other alternatives must be used to dispose of pending cases in which the client is an ineligible alien. Generally three alternatives are available:

* * * * *

(3) Continuance of representation supported by funds available to the recipient either from non-Corporation sources or from unexpended carryover balances of pre-1983 Corporation funds. As such other funds will normally be limited, referral or discontinuance of representation should be chosen wherever not inconsistent with an attorney's professional responsibilities.

(b)(1) Where referral or discontinuance of representation is not possible and no other funds are available, the recipient may permit a staff attorney to complete the case (or bring it to a stage where referral or discontinuance is possible) on an uncompensated basis. In such instances, the attorney may use the necessary minimum of recipient overhead support, but direct expenditures of funds appropriated by Pub. L. 100–459 or any succeeding act which contains the same restrictions will not be permitted.

* * * * *

8. Section 1626.7 paragraphs (a) introductory text and (b) are revised to read as follows:

§ 1626.7 Change in circumstances.

(a) A recipient shall not use funds made available to it under the authority of Pub. L. 100–459 or any succeeding act which contains the same restrictions to provide legal assistance for or on behalf of an alien if:

* * * * *

(b) A recipient shall discontinue representation supported by Corporation funds under the circumstances described in § 1626.7(a), provided discontinuance is not inconsistent with the attorney's professional responsibilities. In discontinuing representation, a recipient shall follow the procedures set out in § 1626.6. In the event of discovery of false information relating to eligibility as set forth in § 1626.7(a)(3), steps to discontinue representation shall be taken immediately.

9. Section 1626.10 paragraph (a) is revised and paragraph (c) is added to read as follows:

§ 1626.10 Special eligiblity questions.

(a) *Micronesia.* The alien restriction stated in the appropriations acts is not applicable to the legal services program in the following Pacific Island entitites:

(1) Commonwealth of the Northern Marianas;

(2) Republic of Palau;

(3) Federated States of Micronesia;

(4) Republic of the Marshall Islands.

All citizens of these entities are eligible to receive legal assistance, provided they are otherwise eligible under the Act.

* * * * *

(c) *Special agricultural workers.* An alien who qualified as a special agricultural worker and whose status is adjusted to that of temporary resident alien under the provisions of IRCA is considered a permanent resident alien for all purposes except immigration under the provisions of section 302 of Pub. L. 99–603, 100 Stat. 3422, 8 U.S.C. 1160(g). Since the status of these aliens is that of permanent resident alien under section 1101(a)(20) of Title 8, these workers are eligible for legal assistance. These workers are ineligible for legal assistance in order to obtain the adjustment of status of temporary resident under IRCA, but are eligible for legal assistance after the application for adjustment of status to that of temporary resident has been filed, as long as such application has not been rejected and the applicant is eligible for services under § 1626.4(a)(2).

10. Section 1616.11 is added to read as follows:

§ 1626.11 H–2 Agricultural workers.

(a) Nonimmigrant agricultural workers admitted under the provisions of 8 U.S.C. 1101(a)(15)(H)(ii), commonly called H–2 workers, are considered to be aliens described in 8 U.S.C. 1101(a)(20) and, as such, are eligible for legal assistance regarding the matters specified in section 305 of the Immigration Reform and Control Act of 1986. Pub. L. 99–603, 100 Stat. 3434, 8 U.S.C. 1101 note.

(b) The following matters which arise under the provisions of the worker's specific employment contract may be the subject of legal assistance by an LSC-funded program:

(1) Wages;

(2) Housing;

(3) Transportation; and

(4) Other employment rights as provided in the worker's specific contract under which the nonimmigrant worker was admitted.

11. Section 1626.12 is added to read as follows:

§ 1626.12 Replenishment agricultural workers.

Aliens who acquire the status of aliens lawfully admitted for temporary residence as replenishment agricultural workers under section 210A(c) of the Immigration and Nationality Act, such status not having changed, are considered to be aliens described in 8 U.S.C. 1101(a)(20) and, as such, are eligible for legal assistance.

Timothy B. Shea,

General Counsel.

April 21, 1989.

[FR Doc. 89–10061 Filed 4–26–89; 8:45 am]

BILLING CODE 7050–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1825 and 1852

Interim Changes to the NASA FAR Supplement on Domestic Preference

AGENCY: Office of Procurement, Procurement Policy Division, National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comments.

SUMMARY: This notice establishes interim amendments to the NASA Federal Acquisition Regulation Supplement, Chapter 18 of the Federal Acquisition Regulations System and invites written comments on these interim amendments. The rule implements section 209 of Pub. L. 100–685, the FY 89 NASA Authorization Act which contains a special domestic preference ("Buy American") provision.

EFFECTIVE DATE: April 30, 1989.

ADDRESS: Comments should be addressed to W.A. Greene, Chief, Regulations Development Branch, Office of Procurement, Procurement Policy Division, NASA Headquarters, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: W.A. Greene, Telephone: (202) 453–8923.

SUPPLEMENTARY INFORMATION:

Background

NASA is issuing interim changes to the NASA FAR Supplement to implement section 209 of Pub. L. 100–685, the FY 89 NASA Authorization Act. For the second time in two years, Congress has placed a domestic preference ("Buy American") provision in the NASA Authorization Act. The

provision differs from the Buy American Act in several aspects. The NASA provision applies only to manufactured supplies, while the Buy American Act applies to manufactured and unmanufactured supplies. The NASA provision provides a preference for domestic firms offering domestic products, unlike the Buy American Act which applies only to domestic products. Offers from foreign firms must be evaluated by adding a six percent differential in accordance with this new provision, whereas the Buy American Act also prescribes a twelve percent differential to be applied to the foreign offer when offers from small business or labor surplus area concerns are received.

The NASA domestic preference is to be applied after application of other international acquisition laws. It requires that award be made to a domestic firm if, after the use of competitive procedures, award to a foreign firm is indicated but the following three criteria are met: (1) the final manufactured end product of the domestic firm will be completely assembled in the United States; (2) not less than 50 percent of the final product will be domestically produced; and (3) the domestic offer does not exceed the foreign offer by more than 6 percent.

There are three exceptions. The law need not be applied when (1) application would not be in the public interest; (2) compelling national security considerations require otherwise; or (3) the United States Trade Representative determines that an award would be in violation of the General Agreement on Tariffs and Trade or an international agreement to which the United States is a party. With respect to the third exception, NASA has obtained from the United States Trade Representative a blanket determination that the NASA domestic preference is not to be applied when competitive procedures result in an apparent award to a foreign firm for an end product from a country that has signed the Agreement on Government Procurement ("Code country") or from certain other countries.

Crafting appropriate regulatory implementation of the law has been a lengthy process. NASA considers avoidance of any further delay in complying with the statute to constitute urgent and compelling circumstances. Therefore, the changes are being issued as an interim rule without public comment prior to their effectivity.

Impact

E.O. 12291. The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. This regulation falls within the exemption.

Regulatory Flexibility Act. These revisions will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Moreover, the proposed coverage merely implements a section of Pub. L. 100–685 which is expected to apply to very few, if any, potential contractors during any particular year. Therefore, the Regulatory Flexibility Act does not apply.

Paperwork Reduction Act. This interim rule does not impose any reporting or recordkeeping requirements subject to the Paperwork Reduction Act of 1980.

List of Subjects in 48 CFR Parts 1825 and 1852

Government procurement.

L.E. Hopkins,

Deputy Assistant Administrator for Procurement.

1. The authority citation for 48 CFR Parts 1825 and 1852 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1825—FOREIGN ACQUISITION

2. Part 1825 is amended by adding Subpart 1825.71 to read as follows:

Subpart 1825.71—NASA Domestic Preference

Subpart 1825.71—NASA Domestic Preference

1825.7100 Scope of subpart.

This subpart implements section 209 of Pub. L. 100–685, the National Aeronautics and Space Administration Authorization Act of 1989.

1825.7101 Definitions.

"Code country," as used in this subpart, means a country that is a signatory to the Agreement on Government Procurement (the "Procurement Code"). The Code countries are Austria, Belgium, Canada, Denmark, Federal Republic of Germany, Finland, France, Hong Kong, Ireland, Israel, Italy, Japan, Luxenbourg, Netherlands, Norway, Singapore, Sweden, Switzerland, and United Kingdom.

"Code country end product," as used in this subpart, means an article that (a) is wholly the growth, product, or manufacture of the Code country, or (b) in the case of an article which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed. The term includes services (except transportation services) incidental to its supply; provided, that the value of those incidental services does not exceed that of the product itself. It does not include service contracts as such (see FAR 25.401).

"Components," as used in this subpart, means those articles, materials, and supplies incorporated directly into the end products.

"Domestic firm," as used in this subpart, means a business entity that is organized under the laws of the United States and that conducts business operations in the United States.

"Domestic product," as used in this subpart, means the final manufactured end product of a domestic firm that will be completely assembled in the United States and of which, when completely assembled, not less than 50 percent of the cost of all the components will be domestically incurred.

"Foreign firm," as used in this subpart, means a business entity other than a domestic firm.

"Procurement code," as used in this subpart, means the Agreement on Government Procurement (see FAR 25.400).

1825.7102 Policy.

(a) When the use of competitive procedures to buy an end product (see FAR 6.1 and 6.2) results in an apparent award of a contract to a foreign firm, the contracting officer shall award the contract to a domestic firm offering a domestic product if the domestic offer does not exceed the foreign offer by more than six percent.

(b) Paragraph (a), above, does not apply if—

(1) Such applicability would not be in the public interest;

(2) Compelling national security considerations require otherwise; or

(3) The United States Trade Representative determines that such an award would be in violation of the General Agreement on Tariffs and Trade or an international agreement to which the United States is a party. Examples of such international agreements are the Procurement Code,

the U.S.-Canada Free Trade Agreement, and the U.S.-Israel Free Trade Agreement.

1825.7103 Procedures.

(a) The NASA domestic preference procedure is to be applied when the use of competitive procedures, including any other domestic preference program or exception thereto, indicates award is to be made to a foreign firm.

(b) The contracting officer shall award the contract to that domestic firm offering a domestic product whose price does not exceed the price of the low foreign firm by more than six percent, unless the contracting officer has documented the file to indicate that one or more of the conditions at 1825.7102(b) applies.

1825.7104 Determination by United States Trade Representative.

The United States Trade Representative has determined that when NASA is procuring supply-type products, application of the domestic preference established by section 209 of the National Aeronautics and Space Administration Authorization Act of 1989 would violate the General Agreement on Tariffs and Trade, and certain international agreements to which the United States is a party, when the following conditions exist:

(a) NASA is using competitive procurement procedures; and

(b) NASA receives one or more offers from foreign firms to supply—

(1) A Code country end product at a price above the Trade Agreement Act threshold;

(2) A Canadian end product (see FAR 25.401) at a price above $35,000 and below the Trade Agreements Act threshold; or

(3) An Israeli end product at a price above $35,000.

1825.7105 Solicitation provisions and contract clause.

The contracting officer shall insert the provision at 1852.225–74, NASA Domestic Preference Certificate, and the clause at 1852.225–75, NASA Domestic Preference, in all competitive solicitations and contracts for supplies for which amounts are made available under the NASA Authorization Act, Fiscal Year 1989.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Part 1852 is amended by adding 1852.225–74 and 1852.225–75 to read as follows:

1852.225–74 NASA Domestic Preference Certificate

As prescribed in 1825.7105, insert the following provision:

NASA Domestic Preference Certificate (April 1989)

(a) For purposes of this provision, the following definitions apply:

"Code country," as used in this subpart, means a country that is a signatory to the Agreement on Government Procurement (the "Procurement Code"). The Code countries are Austria, Belgium, Canada, Denmark, Federal Republic of Germany, Finland, France, Hong Kong, Ireland, Israel, Italy, Japan, Luxenbourg, Netherlands, Norway, Singapore, Sweden, Switzerland, and United Kingdom.

"Code country end product," as used in this subpart, means an article that (a) is wholly the growth, product, or manufacture of the Code country, or (b) in the case of an article which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that to the article or articles from which it was so transformed. The term includes services (except transportation services) incidental to its supply; provided, that the value of those incidental services does not exceed that of the product itself. If does not include service contracts as such (see FAR 25.401).

"Components," as used in this provision, means those articles, materials, and supplies incorporated directly into the end products.

"Domestic firm," as used in this provision, means a business entity that is organized under the laws of the United States and that conducts business operations in the United States.

"Domestic product" means the final product of a domestic firm that will be completely assembled in the United States and of which, when completely assembled, not less than 50 percent of the cost of all the components will be domestically incurred.

"Foreign firm," as used in this provision, means a business entity other than a domestic firm.

"Foreign product," as used in this provision, means a product other than a domestic product.

(b) The offeror certifies that it is [ ] is not [ ] a domestic firm.

(c) The offeror certifies that (1) each final product, except those listed below, will be completely assembled in the United States and (2) when completely assembled, not less than 50 percent of the cost of all the components of the final product will be domestically incurred.

Foreign products (also specify if a product is a Code-country, Canadian, or Israeli end product): (End of provision)

1852.225–75 NASA domestic preference.

As prescribed in 1825.7105, insert the following clause:

NASA Domestic Preference (April 1989)

(a) The NASA domestic preference (Pub. L. 100–147, 101 Stat. 866) provides that NASA give preference to domestically produced and assembled final products of domestic firms.

"Components," as used in this clause, means those articles, materials, and supplies incorporated directly into the end products.

"Domestic firm" means a business entity that is organized under the laws of the United States and that conducts business operations in the United States.

"Foreign firm" means a business entity that is not a domestic firm.

(b) The contractor, if certified as a domestic firm, shall deliver only the final product of a domestic firm that will be completely assembled in the United States and of which, when completely assembled, not less than 50 percent of the cost of all the components will be domestically incurred. (End of clause)

[FR Doc. 89–10191 Filed 4–26–89; 8:45 am]

BILLING CODE 7510–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 655

[Docket No. 81020–9009]

Atlantic Mackerel, Squid, and Butterfish Fisheries

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

ACTION: Specification increase; correction.

SUMMARY: NOAA issues this notice to correct omissions in the previous notices of Atlantic mackerel specification increases which were published on February 23, 1989 (54 FR 7777) and on March 14, 1989 (54 FR 10549). The regulations contained at § 655.21(b)(1)(iv) provide for incidental catch levels of *Loligo* squid and butterfish in relation to the TALFF for Atlantic mackerel. Therefore, IOYs for *Loligo* squid and butterfish are adjusted consistent with § 655.21(b)(1)(v) and the increase in the IOY of Atlantic mackerel. These increases support TALFF fisheries which are conducted in association with joint ventures involving U.S. mackerel fishermen, and are made to produce maximum net benefits to the United States. The following table lists the corrected specifications including the appropriate bycatch amounts for *Loligo* squid and butterfish, which were omitted in the previous notices and reflects the Atlantic mackerel specification increases accomplished pursuant to the previous notices identified above. Specification increases are made for the initial optimum yield (IOY) and total allowable level of foreign fishing (TALFF) for mackerel.

Loligo squid and butterfish, and the domestic annual harvest (DAH) and joint venture processing (JVP) for mackerel.

EFFECTIVE DATE: April 21, 1989.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, (508) 281–9273.

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

Dated: April 21, 1989.

Richard H. Schaefer,

Director of Office of Fisheries Conservation and Management, National Marine Fisheries Service.

TABLE.—SPECIFICATIONS FOR ATLANTIC MACKEREL, SQUID, AND BUTTERFISH FOR THE FISHING YEAR JANUARY 1 THROUGH DECEMBER 31, 1989

	Loligo squid		Atlantic mackerel		Butterfish	
	Specification	Increase to	Specification	Increase to	Specification	Increase to
Max OY [a]	44,000		[b] N/A		16,000	
ABC [c]	37,000		330,000		16,000	
IOY	22,012	[d] 22,020	74,000	101,000	10,024	[d] 10,041
DAH	22,000		[e] 44,000	[d] 50,000	10,000	
DAP	22,000		20,000		10,000	
JVP	0		10,000	16,000	0	
TALFF	12	[d] 20	[f] 30,000	51,000	24	[d] 41

[a] Maximum OYs as stated in the Fishery Management Plan for the Atlantic Mackerel, Squid, and Butterfish Fisheries (FMP).
[b] Not applicable; see the FMP.
[c] IOY can rise to this amount.
[d] Corrections.
[e] Includes 14,000 mt projected recreational catch.
[f] For every 9 mt TALFF, foreign partner is required to purchase 3 mt JVP and 1 mt U.S. processed product.

[FR Doc. 89–10041 Filed 4–21–89; 5:09 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 54, No. 80
Thursday, April 27, 1989

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

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Part 1930

Stewart B. McKinney Homeless Assistance Amendment of 1988; Removal of Rent Increase Condition

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed Rule.

SUMMARY: The Farmers Home Administration (FmHA) proposes to amend its Multiple Family Housing Management and Supervision regulations to comply with recent legislation enacted by Congress which removes the requirement of incurring operating cost before qualifying for a rent increase. The intended effect is to make it easier and more feasible for the borrower to request a needed rent charge.

DATE: Comments must be received on or before June 26, 1989.

ADDRESSES: Submit written comments in duplicate to the Office of the Chief, Directives and Management Branch, FmHA, Room 6348, South Agriculture Building, Washington, DC 20250. All written comments made pursuant to this notice will be available for public inspection during regular work hours at the above address.

FOR FURTHER INFORMATION CONTACT: Carolyn B. Cooksie, Loan Specialist, Multiple Family Housing Servicing and Property Management Division, Room 5321–S, Farmers Home Administration, USDA, 14th and Independence Avenue, SW., Washington, DC 20250, Telephone (202) 382–1599.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291, and has been determined "nonmajor." It will not 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, innovations, or on the ability of United States based enterprises to compete with foreign based enterprises in domestic or export markets.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Pub. L. 92–90, an Environmental Impact Statement is not required.

Intergovernmental Review

The programs listed in the Catalog of Federal Domestic Assistance under number 10.405 Farm Labor Housing Loans, 10.415 Rural Rental Housing Loans, and 10.427 Rural Rental Assistance Payments are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR Part 3015, Subpart V, 48 FR 29112, June 24, 1983.)

General Information

Background and Statutory Authority

The Stewart B. McKinney Homeless Assistance Amendments of 1988 rescinded paragraph (h) of (42 U.S.C. 1485) section 515 of the Housing Act of 1949. This removes the requirement that loans approved after November 30, 1983, must incur operating cost before qualifying for a rent increase.

Exhibit C, paragraph III A, and paragraph VI C provides that FmHA 515 Multi-Family Housing borrowers who have loans approved after November 30, 1983, must incur operating cost before qualifying for a rent increase. This revision removes that requirement.

The undersigned has determined that this action will not have a significant economic impact on a substantial number of small entities such as governmental units or special districts with a population of less than 50,000.

List of Subjects in 7 CFR Part 1930

Accounting, Administrative practice and procedure, Grant programs—Housing and community development, Loan program—Housing and community development, Low and moderate-income housing—Rental, Reporting and recordkeeping requirements.

Accordingly FmHA proposes to amend Part 1930, Subpart C, Title 7, Code of Federal Regulations as follows:

PART 1930—GENERAL

1. The authority citation for Part 1930 continues to read as follows:

Authority: 42 USC 1480: 7 CFR 2.33; 7 CFR 2.70.

Subpart C—Management and Supervision of Multiple Family Housing Borrowers and Grant Recipients

2. Exhibit C is amended by removing paragraph VI C and redesignating paragraph VI D as paragraph VI C and by revising paragraphs III A and IV A 1 to read as follows:

Exhibit C—Rent Changes

* * * * *

III * * *

A. All RRH and LH applicants will be informed at the application stage of the agency's rent change procedure. All borrowers will be advised that all proposed rent changes must comply with this Exhibit. This Exhibit will also apply to rent changes resulting from Housing and Urban Development's (HUD) Automatic Annual Adjustment Factors for units receiving section 8, assistance. Requests for a rental change will be based on a realistic projected budget for the interim year or the ensuing full year.

IV * * *

A * * *

1. Facts demonstrating the need and justification for a rent change in accordance with paragraph III A of this Exhibit.

* * * * *

Dated: March 27, 1989.

Neal Sox Johnson,

Acting Administrator, Farmers Home Administration.

[FR Doc. 89–10030 Filed 4–26–89; 8:45 am]

BILLING CODE 3410–07–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[IA-111-86]

Taxable Years Beginning After December 31, 1986; Changes With Respect to Prizes and Awards and Employee Achievement Awards; Public Hearing on Proposed Regulations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations relating to prizes and awards and employee achievement awards. These amendments are proposed to conform the regulations to section 122 of the Tax Reform Act of 1986 (Pub. L. 99-514).

DATES: The public hearing will be held on Friday, June 2, 1989, beginning at 10:00 a.m. Request to speak and outlines of oral comments must be delivered on or mailed by Friday, May 19, 1989.

ADDRESS: The public hearing will be held in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC. The requests to speak and outlines of oral comments should be submitted to the Commissioner of Internal Revenue, P.O. Box 7604, Ben Franklin Station, Attention: CC:CORP:T:R (IA-111-86), Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Carol Savage, telephone (202) 343-0232 (not a toll-free call).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations appearing in the **Federal Register** for Monday, January 9, 1989, (54 FR 627).

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR Part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on proposed regulations should submit, not later than Friday, May 19, 1989, an outline of the oral comments to be presented at the hearing and the time they wish to devote to each subject.

Each speaker will be limited 10 minutes for an oral presentation exclusive of the time consumed by questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the speakers.

Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

Dale D. Goode,

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

[FR Doc. 89-10021 Filed 4-26-89; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 172

[DoD Instruction 7310.1]

Disposition of Proceeds From Sales of DoD Excess and Surplus Personal Property

AGENCY: Office of the Secretary, DoD.

ACTION: Proposed Rule.

SUMMARY: The part proposes revised and expanded instructions on the collection and disposition of payments received in connection with DoD sales of excess and surplus property made under authority of the Federal Property and Administrative Service Act of 1949. The issuances include new guidance on term bids, use of credit cards and expedited return of negotiable instruments to losing bidders. It also contains expanded guidance on the form of payment required in support of bids and final settlement.

DATES: Comments should be received by May 30, 1989.

ADDRESSES: Office of the Comptroller, DoD, Rm. 3A882, Pentagon, Washington, DC 20301-1100.

FOR FURTHER INFORMATION CONTACT: Mr. Melburn, Telephone (202) 697-6837

SUPPLEMENTARY INFORMATION:

List of Subjects 32 CFR Part 172

Defense contracts, Government property management.

Accordingly, Title 32, Subchapter E, is proposed to be amended to add Part 172 to read as follows:

PART 172—DISPOSITION OF PROCEEDS FROM SALES OF DOD EXCESS AND SURPLUS PERSONAL PROPERTY

Sec.

Authority: 40 U.S.C. 484 and 485, 10 U.S.C. 2577.

§ 172.1 Purpose.

This part provides revised and expanded instructions on the collection and disposition of cash and cash equivalents received by the DoD Components in connection with the sale of DoD excess and surplus personal property.

§ 172.2 Applicability and scope.

(a) This part applies to the Office of the Secretary of Defense, the Military Departments, the Organization of the Joint Chiefs of Staff, and the Defense Agencies (hereafter referred to as "DoD Components").

(b) This part is applicable to the proceeds resulting from sales made under authority of the Federal Property and Administrative Services Act of 1949. It applies to the following:

(1) Personal property governed by the Defense Disposal Manual, DoD 4160.21-M.[1]

(2) Surplus Government-owned personal property in the possession of contractors as described in 48 CFR Subpart 45.6 of the Federal Acquisition Regulation.

(3) Recyclable material governed by 10 U.S.C. 2577. Such materials would otherwise be sold as scrap or discarded as waste but are capable of being reused after undergoing some type of physical or chemical processing. The recycling of hazardous materials shall be accomplished with due recognition of the types of materials being processed and any applicable regulation governing the handling and disposal of such materials. Qualified recyclable materials do not include the following:

(i) Precious metal-bearing scrap and those items that may be used again for their original purposes or functions without any special processing, for example, used vehicles, vehicle or machine parts, bottles (not scrap glass),

[1] Defense Logistics Agency, Attn. DLA—XPD Alexandria, VA 22304.

electrical components, and unopened containers of oil or solvents.

(ii) Ships, planes, or weapons that must undergo demilitarization or mutilation prior to sale.

(iii) Scrap generated from DoD industrial fund operations that has been routinely sold with the proceeds being used to offset customer costs.

(iv) Bones, fats and meat trimmings generated by a commissary store or exchange.

§172.3 Policy.

(a) Cash or cash equivalents in the prescribed amounts shall accompany bid deposits for a bid to be considered responsive. Similarly cash or cash equivalents for the total sales price shall be received by the DoD Components or, in authorized cases, by contractors prior to the transfer of physical possession to the successful bidder.

(b) Amounts collected by the DoD Components in connection with the sale of excess and surplus property shall be deposited promptly to the U.S. Treasury accounts prescribed in this Instruction. The use of suspense accounts shall be held to a minimum. If the account ultimately to be credited with the proceeds of a sale can be determined reasonably at the time funds are collected, the deposit shall be made immediately to that account.

(c) The Secretary of each Military Department shall establish qualified recycling programs. The effort associated with the collection, processing and sale of recyclable material is set forth in Appendix A to this part.

(1) Proceeds from the sale of recyclable material shall be used to reimburse installation level costs incurred in operation of the recyclable program.

(2) After reimbursement of the cost incurred by the installation to operate the recycling program, Installation Commanders may use up to 50 percent of remaining sale proceeds for pollution abatement, energy conservation, and occupational safety and heatlh activities. A project may not be carried out for an amount greater than 50 percent of the amount established by law as the maximum amount for a minor construction project.

(3) Any sale proceeds remaining after paragraph (c) (1) and (2) of this section, may be transferred to installation morale of welfare activities. If a nonappropriated funded activity can operate a recycling program for certain material without support from DoD funded activities, an installation commander may transfer applicable material to that activity to dispose of. Applicable collections shall be retained by the nonappropriated fund activity for distribution to morale and welfare activities.

§172.4 Procedures.

(a) *Required bid deposits.* When a sale conducted by a DoD Component provides for bid deposit with subsequent removal, the following procedures shall apply:

(1) *Term bid.* This type of bid deposit is applicable when the sale involves the purchase of scrap or disposable material that will be generated over time with periodic removal by the successful bidder. The amount of the bid deposit required to accompany such bids is the average estimated quantity of such material to be generated during a three-month period multiplied by 20 percent of the bid price. The calculation is illustrated as follows:

Estimated quantity of material to be generated each quarter.	3,000	pounds.
Bid price—$1.00 per pound.	× $1.00	
Subtotal	$3,000	
20 percent of bid price	20	percent.
Amount to accompany bid.	$600	

(2) *Other than term bid.* With the exception of term bids, payment in the amount of 20 percent of the bid shall accompany the bid.

(b) *Payment terms.* When a sale conducted by a DoD Component provides for immediate pickup the entire amount of the sales price shall be collected from the buyer at the conclusion of the sale. If the sale provides for a bid deposit, the balance of the bid price shall be paid prior to the delivery of the purchased material to the purchaser:

(c) *Form of payment*—(1) *Cash and certified checks.* When a sale is conducted by a DoD Component cash or its equivalent shall be collected for bid deposits and for remaining amounts due. Guaranteed negotiable instruments, such as cashiers checks, certified checks, travelers checks, bond drafts, postal money orders are acceptable as a cash equivalent.

(2) *Personal checks.* Personal checks may be accepted by a DoD Component only when a bond or a bank letter of credit is on hand that will cover the amount due. If the check is dishonored, amounts due shall be collected from the issuer of the bond or letter of credit.

(i) If a bidder intends to use a bond or letter of credit without an accompanying personal check, the claim against the bond or letter of credit shall be made for any amounts due.

(ii) If personal checks are used, the bond or letter of credit shall be returned intact after the applicable personal checks are honored unless other instructions have been received from the bidder.

(3) *Credit cards.* Approved credit cards may be accepted by a DoD Component for payment.

(i) Prior to intiating any credit card transactions, the selling DoD Component shall enter into an agreement with a network commercial bank. Currently, the Treasury has approved the use of "Master Card" and "Visa" charge cards. Changes or additions to approved credit cards will be announced in DoD Comptroller memoranda or in changes to the Treasury Financial Manual. Except for equipment and communication costs, the Treasury pays any fees normally charged to sellers. If the Treasury policy of paying such charges is changed, any charges for the processing of approved credit card transactions shall be assessed to the buyer.

(ii) If a credit card is used for the bid deposit and authorization is declined, the bid shall be rejected as nonresponsive and other bidders considered.

(iii) Approval for charges against credit cards shall be processed as follows:

(A) The credit card presented shall be passed through the DoD installation's credit card swiper. The swiper is connected electronically with the network commercial bank selected by the DoD Component, and keys are provided to enter the proposed charge amount. If the charge is approved, the swiper will provide an approval number that shall be recorded on the charge slip.

Note: A swiper is an electronic device that is used to capture the magnetic information contained on a credit card and transmit it to the network commercial bank for validation and authorization of a sale. The information captured normally includes the account number, issuing bank, date of expiration of the card, and any credit restrictions that may apply.

(B) The bidder shall sign a standard credit card charge form. The installation shall return a copy of the signed form to the card holder. A copy of the charge slip shall be retained by the selling DoD activity as a record of the sale. On the following business day, the installation Finance and Accounting Officer or the activity providing accounting support shall submit the signed credit card forms with a supporting cover sheet showing the total charges to the network

commercial bank. Accounting control must be maintained over such in-transit deposits.

(C) Upon receipt of the credit card charge forms, the network commercial bank will charge the bidder's credit card account and deposit the funds to the Treasury general account. The network commercial bank also is required to forward a copy of the deposit slip to the DoD installation making the sale within one business day. Upon receipt of the deposit slip the in-transit account will be cleared and appropriate accounts credited following the procedures set forth in paragraph (d) of this section.

(iv) If a contractor's bid is provided by message, mail or telephone to the U.S. Government using a credit card in lieu of other forms of payment, the following information is required: account number, bidders name as it appears on the credit card, date of expiration of the card, issuing bank, and the type of card. Any additional cost incurred by the Department of Defense in connection with the use of the charge card, such as telephone calls to obtain approval from the network bank, shall be billed to the purchaser as an additive charge.

(d) *Disposition of proceeds.* (1) Proceeds from the sale of disposable excess and surplus personal property shall be deposited by the collecting DoD Component promptly to the U.S. Treasury accounts prescribed in Appendix B of this part. The use of suspense accounts shall be held to a minimum. If the account ultimately to be credited with the proceeds of a sale can be determined reasonably at the time the funds are collected, the deposit shall be made immediately to that account.

(2) See paragraph (f) of this section for special instructions on the processing of proceeds resulting from the sale of recyclable material.

(e) *Return of bid deposits to unsuccessful bidders.* (1) Cash collected from unsuccessful bidders by a DoD Component shall be deposited to account X6875, "Suspense," and a check shall be drawn on that account to reimburse unsuccessful bidders.

(2) Normally, noncash bid deposits shall be returned to unsuccessful bidders by DoD Components through the mail. However, when a bidder has requested expedited return and has provided the name of a carrier and a charge account number, the designated carrier shall be called to pick up the deposit with applicable delivery costs to bill to the bidder.

(f) *Sales of recyclable material.* The effort associated with collection and processing of Recyclable Material are reflected in Appendix A to this part. When the recycling program is operated by a DoD Component the following Transactions For Others (TFO) procedures apply:

(1) Proceeds from the sale of recyclable material shall be deposited in F3875, "Budget Clearing Account (Suspense)." The deposit to F3875 shall identify the fiscal station and the name of the installation (in clear) that is to receive the proceeds. Deposits that do not provide the necessary information shall be returned formally to the property disposal cashier for provision of the required information.

(2) The Military Department's finance and accounting office receiving the sales proceeds shall mail a copy of the cash collection voucher to the fiscal station shown on the collection voucher. This advance copy shall be used by the fiscal station to record the collection of proceeds to its account and shall be used for follow up purposes as necessary. The copy received through the financial network shall be used to clear the undistributed collection. These vouchers will be mailed in the weekly TFO cycle.

(3) The Military Department's finance and accounting office shall:

(i) Report weekly transactions to the responsible fiscal station cited on the collection voucher, and

(ii) Report the collections within the same month in the Statement of Transactions to the Treasury.

(g) *Contractor retained proceeds.* (1) 48 CFR 245.610 of the DoD FAR Supplement (DFARS) states that a contracting officer may allow a contractor to sell Government Furnished Property and retain the proceeds from the sale. The following procedures shall be used to assure proper accounting for such retained proceeds.

(2) The contractor making the sale may follow normal company policy with respect to bid deposits and form of payment. However, any loss associated with dishonored payment shall be the contractor's responsibility.

(3) The Administrative Contracting Officer (ACO) is responsible for notifying the appropriate accounting office of the amounts collected by the contractor. The ACO also shall notify the accounting office whether such collection shall:

(i) Represent an increase in the dollar value of the applicable contract(s); or

(ii) Be made in lieu of disbursements on the applicable contract(s).

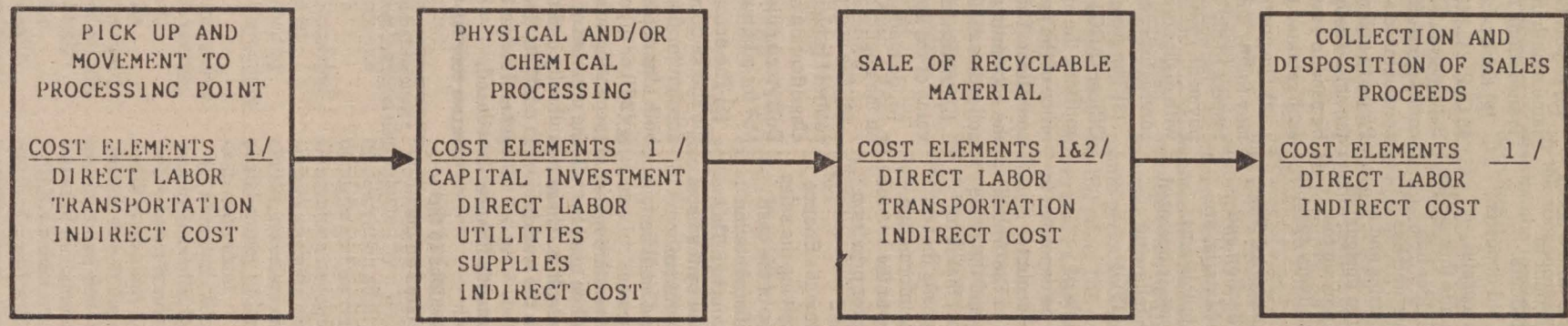
(4) The accounting office for the contract is idenified in the accounting classification code. See chapter 17 of the DoD Accounting Manual, DoD 7220.9–M,[2] for additional information.

(5) The accounting office shall prepare the source documents necessary to account for the transaction properly. In both alternatives (see paragraphs (g)(2)(i) or (ii) of this section), an accounting entry shall be made to reflect the creation of reimbursable obligational authority and the use of such authority. In addition, the value of GFM or GFE general ledger asset accounts shall be reduced.

BILLING CODE 3810-01-M

[2] National Technical Information Service, 5285 Port Royal Rd., Springfield, Va. 22161.

APPENDIX A-EFFORT ASSOCIATED WITH THE DISPOSAL OF RECYCLABLE MATERIAL



FOOTNOTE:

1/ The proceeds of sales of DoD purchased materials, labor and assets shall be recouped on the basis of a sale to "Another Federal Agency" as prescribed in chapter 26, DoD Accounting Manual, DoD 7220.9-M (reference (h)). This procedure excludes capital investment costs. However, such costs may be paid from recyclable material sales proceeds in their entirety and, therefore, amortization of capital items is not applicable.
2/ When Defense Logistics Agency (DLA) acts as the disposal agent, the cost of coordinating sales incurred by DLA are not charged to the recycling program.

APPENDIX B-DISPOSITION OF AMOUNTS COLLECTED FROM SUCCESSFUL BIDDERS

Type of Property	Disposition of:	
	(20%) Bid Deposit	(80%) Remaining Balance
1. Scrap turned in by industrial fund (IF) activities	IF	IF
2. Usable personal property purchased by and turned in by IF activities	IF	IF
3. Property purchased with funds from trust fund _X8420, "Surcharge Collections, Sales of Commissary Stores"	__X8420	__X8420
4. Automatic data processing equipment owned by the General Services Administration (GSA) and leased to DoD	__F3875, Budget Clearing Account (Suspense)	__F3875. Upon receipt of the entire amount due from the bidder, a check shall be drawn on the suspense account and forwarded to GSA at the following address: General Services Administration Office of Finance (WBCRC) Collections and Securities 7th and I Streets, NW, Washington, D.C. 20407
5. Property issued under the Military Assistance Program (MAP) and returned as no longer needed, and MAP funded administrative property belonging to Military Assistance Advisory Groups	11__1080, "Military Assistance, Funds Appropriated to the President"	11__1080

APPENDIX B-DISPOSITION OF AMOUNTS COLLECTED FROM SUCCESSFUL BIDDERS (Con't)

Type of Property	Disposition of:	
	(20%) Bid Deposit	(80%) Remaining Balance
6. Coast Guard property under the physical control of the Coast Guard at the time of sale.	__F3875	__F3875. Upon receipt of the entire amount due from the bidder, a check shall be drawn on the suspense account and forwarded to the Coast Guard at the following address: Commandant U.S. Coast Guard (GFAC) Washington, D.C. 20593
7. Property owned by nonappropriated fund instrumentalities, excluding garbage suitable for animal consumption that is disposed of under a multiple-pickup contract	__X6875, "Suspense"	__X6875. Upon receipt of the entire amount due from the bidder, a check shall be drawn on the suspense account and forwarded to the applicable instrumentality

APPENDIX B-DISPOSITION OF AMOUNTS COLLECTED FROM SUCCESSFUL BIDDERS (Con't)

Type of Property	Disposition of:	
	(20%) Bid Deposit	(80%) Remaining Balance
8. Recyclable material NOTE 1/ 10 USC 2577 limits the amounts which can be held in F3875 at the end of any fiscal year resulting from the program to $2 million. Amounts in excess of $2 million are to be transferred to Miscellaneous Receipts of the Treasury. This instruction provides for immediate distribution of all sales proceeds received from the recyclable program. Therefore no amounts should be transferred to Miscellaneous Receipts.	F3875 1/	F3875. 1/ Upon receipt of the entire amount due from the bidder, deposit total proceeds to the accounts designated by the DoD Military Installation that gave the material up for disposal.

APPENDIX B-DISPOSITION OF AMOUNTS COLLECTED FROM SUCCESSFUL BIDDERS (Con't)

Type of Property	Disposition of:	
	(20%) Bid Deposit	(80%) Remaining Balance
9. Lost, abandoned, or unclaimed privately owned personal property	972651, "Sale of Scrap and Salvage Materials, Defense"	__X6001, Proceeds of Sales of Lost, Abandoned or Unclaimed Personal Property." The owner(s) of lost, abandoned, or unclaimed property may claim net of the proceeds from sale of that property within 5 years of the date of the sale by providing proof of ownership to the government. After 5 years from the date of the sale, any unclaimed net proceeds shall be transferred from __X6001 to general fund miscellaneous receipt account __1060, "Forfeitures of Unclaimed Money and Property."
10. Property owned by a country or international organization	Operation and maintenance appropriation of the DoD Component that sells the property. (This is reimbursement for selling expenses.)	__X6875. Upon receipt of the entire amount due from the bidder, a check for 80% of the sales price shall be drawn on the suspense account and forwarded to the applicable foreign country or international organization.
11. Bones, fats, and meat trimmings generated by a commissary store	Stock Fund	Stock Fund
12. All other property.	972651	972651

BILLING CODE 3819-01-C

APPENDIX B-DISPOSITION OF AMOUNTS COLLECTED FROM SUCCESSFUL BIDDERS (Con't)

Type of Property	Disposition of:	
	(20%) Bid Deposit	(80%) Remaining Balance
13. Government furnished property sold by contractors NOTE 1/ See subsection D.7. of the basic Instruction.	1/	1/

April 21, 1989.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89-10047 Filed 4-26-89; 8:45 am]

BILLING CODE 3819-01-M

POSTAL SERVICE

39 CFR Part 927

Rules of Procedure Relating to Fines, Deductions and Damages

AGENCY: Postal Service.

ACTION: Withdrawal of proposed rule.

SUMMARY: In light of comments received, which are summarized in the Supplementary Information, the Postal Service is withdrawing the proposed rule to increase the civil fines for mail handling irregularities on air routes extending beyond the borders of the United States.

FOR FURTHER INFORMATION CONTACT: H. L. Buckley (202) 268-4361.

SUPPLEMENTARY INFORMATION: On September 27, 1988, the Postal Service published a proposed rule, which would have increased the civil fines levied against air carriers for mail handling irregularities on air routes extending beyond the borders of the United States.

Four comments were received in response to the proposed rule. The commenters stated, among other things, that they felt the increases were not justified since they were far in excess of the current rates of inflation. Others said that the proposal assumed that airlines were capable of performing at one hundred percent of proficiency, which is impossible. They also said that the increases could drive mail business to foreign flag carriers, and possibly upset the current economics for the transportation of certain lower rated military mail.

In view of these comments, the Postal Service has decided to withdraw the proposed rule. The Postal Service will, however, convene a group composed of industry and postal representatives, to continue to study the current procedures pertaining to fines, deductions, and damages in order to determine whether any other adjustments may be appropriate.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 89-10045 Filed 4-26-89; 8:45 am]

BILLING CODE 7710-12-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. I

[General Docket No. 89-78; FCC 89-104]

Inquiry Into the Need for a Universal Encryption Standard for Satellite Cable Programming

AGENCY: Federal Communications Commission.

ACTION: Notice of Inquiry.

SUMMARY: The Federal Communications Commission is initiating this inquiry pursuant to Congressional instructions in the Satellite Home Viewer Act of 1988. The Act directs the Commission to initiate an inquiry concerning "the need for a universal encryption standard that permits decryption of satellite cable programming intended for private viewing." The Act provides that, if the Commission finds that such a standard is necessary and in the public interest, then "it shall initiate a rulemaking to establish such a standard."

DATES: Comments must be submitted on or before June 5, 1989, comments on or before June 20, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Jonathan D. Levy, Office of Plans and Policy, (202) 653-5940.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Inquiry* in General Docket No. 89-78, FCC 89-104, Adopted March 30, 1989 and released April 14, 1989.

The full text of this Commission document is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC 20554. The complete text may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Notice of Inquiry

The Satellite Home Viewer Act of 1988 directs the Federal Communications Commission to initiate an inquiry concerning "the need for a universal encryption standard that permits decryption of satellite cable programming intended for private viewing." The Act provides that, if the Commission finds that such a standard is necessary and in the public interest, then "it shall initiate a rulemaking to

establish such a standard. *See* Pub. L. No. 100–667, 102 Stat. 3949, 3958–59 (1988).

Congress directed the Commission to take six factors into account in its standards inquiry. They are—

(1) Consumer costs and benefits of any such standard, including consumer investment in equipment in operation;

(2) Incorporation of technological enhancements, including advanced television formats;

(3) Whether any such standard would effectively prevent present and future unauthorized decryption of satellite cable programming;

(4) The costs and benefits of any such standard on other authorized users of encrypted satellite cable programming, including cable television systems and satellite master antenna television systems;

(5) The effect of any such standard on competition in the manufacture of decryption equipment; and

(6) The impact of the time delay associated with the Commission procedures necessary for establishment of such standards.

Although the Commission concluded in an earlier proceeding that imposition of a government-mandated encryption standard would not serve the public interest, in this inquiry it will undertake a thorough re-examination of the issue of encryption standards. As part of the inquiry, the Commission invites comment on and critique of its earlier analysis. Commenters in this proceeding are also requested to provide any additional information relevant to a public interest determination regarding encryption standards for satellite cable programming.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89–10142 Filed 4–26–89; 8:45 am]

BILLING CODE 6712–01–M

Notices

Federal Register
Vol. 54, No. 80
Thursday, April 27, 1989

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

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

April 21, 1989.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who wil be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg. Washington, DC 20250, (202) 447–2118.

Revision

• Animal and Plant Health Inspection Service.

• Black Stem Rust Inspector's Report
PPQ 543.
Annually.
State or local governments; Farms; Businesses or other for-profit; Federal agencies or employees Small businesses or organizations; 1,819 response; 635 hours; not applicable under 3504(h).
Andrea M. Elston (301) 436–5100.

Extension

• For and Nutrition Service
Form FNS–155, Receipt and Distribution of Donated Commodities.
FNS Form 155.
Monthly.
State or local governments; 1,008 responses; 2,016 hours; not applicable under 3504(h).
Diane Berger (703) 756–3660.

• Agricultural Stabilization and Conservation Service.
Financial Statement.
ASCS–398.
On occasion
Farms; 8,000 responses; 8,000 hours; not applicable under 3504(h).
Beverly Pritts (202) 447–8374.

Animal and Plant Health Inspection Service.
Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There is Reason to Believe are Plant Pests.
APHIS 2000.
On occasion.
State or local governments; Businesses or other for-profit; Federal agencies or employees; Non-profit institutions; Small businesses or organizations; 1,076 responses; 2,579 hours; not applicable under 3504(h).
Arnold Foudin (301) 436–7612.

• Agricultural Stabilization and Conservation Service.
ASCS–325, Application For Payment of Amounts Due Persons Who Have Died, Disappeared, or Who Have Been Declared Incompetent.
ASCS–325.
On Occasion.
Individuals or households; 3,000 responses; 1,500 hours; not applicable under 3504(h).
Edna I. Samons (202) 475–5700.

Animal and Plant Health Inspection Service.
Importation of Aminal & Poultry, Animal/Poultry Products, Certain Animal Embryos, Semen and Zoological Animals.
VS 17–8, 17–11, 17–12, 17–20, 17–23, 17–29, 17–32, 17–65A, 17–65B, 17–65C, 17–129, 17–130, 17–135A.
Recordkeeping; Annually
Businesses or other for-profit; 20,841 responses; 5,696 hours; not applicable under 3504(h).
Samuel Richeson (301) 436–8144.

New Collection

• Economic Research Service.
Honey Producers, Importers and Brokers Survey.
None.
On occasion.
Individuals or households; Farms; Businesses or other for-profit; Small businesses or organizations; 2,131 responses; 2,131 hours; not applicable under 3504(h).
Frederic L. Hoff (202) 786–1883.

Reinstatement

• Agricultural Stabilization and Conservation Service.
Contract to Participate in Production Adjustment Programs and Price Support Programs.
CCC–477, 477A, 477B, and ASCS–503.
Annually.
Farms; 1,672,500 responses; 334,500 hours; not applicable under 3504(h).
Martin Smith (202) 382–8757.

Donald E. Hulcher,
Acting Departmental Clearance Officer.
[FR Doc. 10027 Filed 4–26–89; 8:45 am]
BILLING CODE 3410-01-M

Forest Service

Suitability Studies on the Upper Portions of the White Salmon and Klickitat Rivers, Washington

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) for recommending to Congress the suitability or non-suitability of the upper White Salmon and Klickitat Rivers for inclusion into the National Wild and Scenic Rivers System. Both rivers flow into the Columbia River and are located in the State of Washington. The Forest Service invites written comments and suggestions on management of these rivers and the scope of this analysis. The agency gives notice of the full environmental analysis and decision-making process that will occur on these studies so that interested and affected people are aware of how they may participate and contribute to the final recommendation to Congress.

DATE: Comments concerning the management of these rivers should be received by May 15, 1989.

ADDRESS: Submit written comments and suggestions concerning the management of these rivers to Arthur W. DuFault, Manager, Columbia River Gorge National Scenic Area, 902 Wasco Avenue, Hood River, Oregon 97031.

FOR FURTHER INFORMATION CONTACT: Please direct questions about the proposed action and EIS to Stephen Mellor, Columbia River Gorge National Scenic Area, 902 Wasco Ave., Hood River, Oregon 97031, telephone (503) 386–2333.

SUPPLEMENTARY INFORMATION: The Columbia River Gorge National Scenic Area Act (Pub. L. 99–663), November 17, 1986, instantly designated the lower portions of the Klickitat and White Salmon Rivers into the National Wild and Scenic River System as well as requiring suitablity studies on upper segments of both these rivers. Based on comments on the Draft Gifford Pinchot National Forest Plan, the Forest Service will now be considering the suitability of the White Salmon River to its headwaters, including lands both within and outside the forest boundary. The studies will consider, at a minimum, lands within ¼ mile from each stream bank.

The Secretary of Agriculture is the Responsible Official.

Public participation will be especially important at several points during the management plan process. The first point is the scoping process (40 CFR 1501.7). The Forest Service is seeking information, comments, and assistance from Federal, State and local agencies, the Yakima Indian Nation, individuals and organizations who may be interested in or affected by the proposed action. This input will be used in the preparation of the draft EIS.

Public meetings will be held during April 1989, to inform the public of the planning process and to provide for public participation and involvement. Federal, State, and local agencies as well as the Yakima Indian Nation, user groups, and other organizations who may be interested in the plan will be invited to participate in scoping the issues that should be considered. In addition, a 20-person Task Force representing these interests has been formed to help develop recommendations for future management of these rivers.

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA), and available for public review by April 1990. At that time the EPA will publish a notice of availability of the draft EIS in the **Federal Register.**

The comment period on the draft EIS will be 90 days from the date the EPA's notice of availability appears in the **Federal Register.** It is very important that those interested in the management of these rivers participate at that time. To be the most helpful, comments on the draft EIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act of 40 CFR 1503.3). In addition, Federal court decisions have established that reviewers of draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions, *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978),* and that environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final 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, comments will be analyzed and considered by the Forest Service in preparing the final EIS. In the final, the Forest Service is required to respond to comments received (40 CFR 1503.4). The final EIS is scheduled to be completed by the end of October 1990. The Secretary will consider the comments, responses, and consequences discussed in the EIS, applicable laws, regulations, and policies in making a recommendation to the President regarding the suitability of these rivers for inclusion into the National Wild and Scenic Rivers System. The final decision on inclusion of a river in the National Wild and Scenic Rivers System rests with the United States Congress.

Date: April 14, 1989

David E. Ketcham,

Acting Deputy Chief, Programs and Legislation.

[FR Doc. 89–10057 Filed 4–26–89; 8:45 am]

BILLING CODE 3410–11–M

Nez Perce National Historic Trail Advisory Council; Public Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of public meeting.

SUMMARY: The Nez Perce National Historic Trail Advisory Council will host a 3-day meeting. The purpose of the meeting is to discuss matters relating to the Nez Perce National Historic Trail. Agenda items are; review and identification of the historic route, discussion of state/federal/private landowner coordination needs, preparation of a Comprehensive Plan, and historic intepretation. The council was established in accordance with the provisions of the National Trails Systems Act. The public is invited to attend.

DATE: The meeting will be held on May 9, through May 11, 1989, from 9:00 a.m. to 4:00 p.m.

ADDRESS: The meeting will he held at the Village Red Lion Inn, 100 Madison, Missoula, Montana 59801.

FOR FURTHER INFORMATION CONTACT: Jim Dolan, Project Coordinator, by telephone (406) 329–3582 or by mail USDA, Forest Service, Northern Region, P.O. Box 7669, Missoula, MT 59807.

Date: April 21, 1989.

Christopher Risbrudt,

Deputy Regional Forester.

[FR Doc. 89–10129 Filed 4–26–89; 8:45 am]

BILLING CODE 3410–11–M

Soil Conservation Service

Waimea-Paauilo Watershed, Hawaii

AGENCY: Soil Conservation Service.

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 U.S. Department of Agriculture, Soil Conservation Service, gives notice that an environmental impact statement is not being prepared for the Waimea-Paauilo Watershed, Hawaii County, Hawaii.

FOR FURTHER INFORMATION CONTACT: Warren M. Lee, State Conservationist, Soil Conservation Service, 300 Ala Moana Boulevard, Room 4316, Honolulu, Hawaii, 96850, telephone (808) 541–2600.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Warren M. Lee, State Conservationist, has determined that the preparation and review of an

environmental impact statement are not needed for this project.

The project concerns a plan for agricultural water management (irrigation and livestock water). The planned works of improvement include the installation of 8,000 feet of collection system by-pass pipelines; 3,100 feet of reservoir supply pipeline; a 133 million gallon storage reservoir; 21,800 feet of irrigation pipeline, and 184,400 feet of livestock water pipelines with pumping stations.

The Notice of a Finding of No Signification 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 Warren M. Lee.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(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)

Date: April 17, 1989.

Warren M. Lee,

State Conservationist.

[FR Doc. 89-10128 Filed 4-26-89; 8:45 am]

BILLING CODE 3410-16-M

COMMISSION ON CIVIL RIGHTS

Utah Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that the Utah Advisory Committee to the Commission will convene at 9:00 a.m. and adjourn at 4:45 p.m., on May 18, 1989, at the State Office Building Auditorium, State Capitol, Salt Lake City, Utah 84114. The meeting, which will involve a community forum, is intended to gather information on the impact in Utah of implementation of the Immigration Reform and Control Act of 1986.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Robert E. Riggs or Philip Montez, Director of the Western Regional Division (213) 894-3437, (TDD 213/894-0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, April 21, 1989.

Melvin L. Jenkins,

Acting Staff Director.

[FR Doc. 89-10127 Filed 4-26-89; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

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

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

Agency: Bureau of the Census
Title: Survey of Plant Capacity Utilization
Form Number: MQ-C1
Agency Approval Number: 0607-0175
Type of Request: New
Burden: 13,500 hours
Number of Respondents: 9,000
Avg Hours Per Response: 1.5 hours
Needs and Uses: This survey provides information on use of industrial capacity by Standard Industrial Classification (SIC) for manufactured products and is the only statistical series that provides 4-digit SIC data for use in other Government economic series. Government agencies, business firms, trade associations, and research organizations use this data to measure inflationary pressures, capital flows, understand productivity determinants, and analyze and forecast economic and industrial trends.
Affected Public: Business or other for-profit organizations
Frequency: Annual
Respondent's Obligation: Mandatory
OMB Desk Officer: Don Arbuckle, 395-7340

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

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, Room 3208, New Executive Officer Building, Washington, DC 20503.

Dated: April 21, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Mangagement and Organization.

[FR Doc. 89-10107 Filed 4-26-89; 8:45 am]

BILLING CODE 3510-07-M

International Trade Administration

[A-570-506]

Porcelain-on-Steel Cooking Ware From the People's Republic of China; 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 two importers, the Department of Commerce has conducted an administrative review of the antidumping duty order on porcelain-on-steel cooking ware from the People's Republic of China. The review covers one manufacturer and one third-country reseller in Hong Kong of this merchandise to the United States and the period May 20, 1986 through November 30, 1987. The review indicates the existence of dumping margins during the period.

We determined that we were unable to verify adequately the manufacturer's total sales to the United States; and we were unable to verify records of payment for the merchandise exported to the United States by Amerport H.K., the third-country reseller. As a result, we used the best information available for cash deposit and appraisement purposes.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: April 27, 1989.

FOR FURTHER INFORMATION CONTACT: Linda L. Pasden or Robert J. Marenick, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5255.

SUPPLEMENTARY INFORMATION:

Background

On December 2, 1986, the Department of Commerce ("the Department") published in the **Federal Register** (51 FR 43414) an antidumping duty order on porcelain-on-steel cooking ware ("POS cooking ware") from the People's

Republic of China ("PRC"). Two importers 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 27, 1988 (53 FR 2262). 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. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule ("HTS"), as provided for in section 1201 et seq. of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS item number(s).

Imports covered by the review are shipments of POS cooking ware including tea kettles, which do not have self-contained electric heating elements. All of the foregoing are constructed of steel and are enameled or glazed with vitreous glasses. During the review period, such merchandise was classifiable under item 654.0815, 654.0824, and 654.0827 of the Tariff Schedules of the United States Annotated. The merchandise is currently classifiable under HTS item 7323.94.00. HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the shipments of one manufacturer in the PRC, China National Light Import and Export Corporation, Shanghai Branch ("CSLI"), and one third-country reseller in Hong Kong, Amerport H.K., who exported the POS cooking ware to the United States and the period May 20, 1986 through November 30, 1987. Verification was conducted at Amerport H.K. from September 28 through September 30, 1988, at CSLI from October 5 through October 9, 1988, and at Amerport U.S. from February 23 through 24, 1989.

CSLI does not maintain journals or ledgers that are product specific. However, to verify total sales to the United States, CSLI provided copies of certain handwritten accounting statements that purportedly represented the total sales of enamelware products, which included POS cooking ware. Upon testing the accuracy of these accounting statements, we found that they did not contain a complete listing of U.S. sales. Based on our findings, we determined that we could not verify CSLI's total sales to the United States.

During the verification in Hong Kong, the Department attempted to verify the records of payment for the POS cooking ware exported by Amerport H.K. to the United States. Amerport H.K. claimed that these documents were maintained by Amerport U.S. and not by Amerport H.K. As a result, the Department conducted a verification at Amerport U.S. At this verification Amerport U.S. claimed that there was a misunderstanding because the records of payment were located at Amerport H.K. Prior to verification in Hong Kong and the United States, we sent verification outlines to both firms. These outlines stated that they were required to provide documentation such as records of payment, accounts receivable ledgers, cash receipts journals, etc. Because Amerport did not provide the data, we were unable to verify the records of payment for sales and we were unable to complete the document traces normally employed for verifying these payments.

As a result, the Department used the best information available for both CSLI and Amerport H.K., which was the rate published in the antidumping duty order (51 FR 43414, December 2, 1986).

Preliminary Results of the Review

As a result of our review, we preliminarily determine that the following margins exist for the period May 20, 1986 through November 30, 1987:

Manufacturer/Third-Country Reseller	Margin (Percent)
China National Light Import and Export Corp., Shanghai Branch	66.65
China National Light Import and Export Corp., Shanghai Branch/Amerport H.K.	66.65

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. Prehearing 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.

The Department has indications that there may be an agreement of reimbursement of antidumping duties between certain parties. Any reimbursement of duties to the importer is to result in an equivalent decrease in United States price pursuant to 353.55 of the Commerce Regulations, and a consequent increase in dumping duties. The Department, in its assessment instructions, will advise the U.S. Customs Service to investigate the *bona fides* of any certificate of non-reimbursement of duming duties which may be filed by the importer. Id no such certificate is filed prior to the liquidation of each customs entry where dumping duties are finally assessed, Customs will be instructed to double the amount of dumping duties on each such entry, to account for reimbursement. The Department will issue appraisement instruction directly to the Customs Services.

Further, as provided by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margins shall be required. For any further entries of this merchandise from a new exporter, not covered in this administrative review, whose first shipments occurred after November 30, 1987, and who is unrelated to any reviewed firm, a cash deposit of 66.65 percent shall be required.

These deposit requirements are effective for all shipments of porcelain-on-steel cookware from the People's Republic of China 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 §353.53a(a) of the Commerce Regulations (19 CFR 353.53a).

Date: April 19, 1989.

Timothy N. Bergan,

Acting Assistant Secretary for Import Administration.

[FR Doc. 89–10024 Filed 4–26–89; 8:45 am]

BILLING CODE 3510-DS-M

[C-307-802]

Initiation of Countervailing Duty Investigation; Aluminum Sulfate From Venezuela

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Venezuela of aluminum sulfate, as described in the "Scope of Investigation" section of this notice, receive benefits which constitute subsidies within the meaning of the countervailing duty law. We are notifying the U.S. International Trade Commission (ITC) of this action, so that it may determine whether imports of aluminum sulfate from Venezuela materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, we will make our preliminary determination on or before June 22, 1989.

EFFECTIVE DATE: April 27, 1989.

FOR FURTHER INFORMATION CONTACT: Roy A. Malmrose, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-5414.

SUPPLEMENTARY INFORMATION:

The Petition

On March 29, 1989, we received a petition in proper form from General Chemical de Puerto Rico, Inc., filed on behalf of a U.S. industry producing aluminum sulfate. In compliance with the filing requirements of § 355.12 of the Commerce Regulations (19 CFR 355.12), petitioner alleges that manufacturers, producers and exporters of aluminum sulfate in Venezuela receive subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act).

Since Venezuela is a "country under the Agreement" within the meaning of section 701(b) of the Act, Title VII of the Act applies to this investigation, and the ITC is required to determine whether imports of the subject merchandise from Venezuela materially injure, or threaten material injury to, a U.S. industry.

Petitioner has alleged it has standing to file the petition. Specifically, petitioner has alleged that it is an interested party as defined under section 771(9)(C) of the Act and that it has filed the petition on behalf of a U.S. industry producing the product that is subject to this investigation. If any interested party as described under paragraphs (C), (D), (E), (F) or (G) of section 771(d) of the Act wishes to register support of or opposition to this petition, please file written notification with the Commerce official cited in the **"FOR FURTHER INFORMATION CONTACT"** section of this notice.

Initiation of Investigation

Under section 702(c) of the Act, we must make the determination on whether to initiate a countervailing duty proceeding within 20 days after a petition is filed. Section 702(b) of the Act requires the Department to initiate a countervailing duty proceeding whenever an interested party files a petition, on behalf of an industry, that (1) alleges the elements necessary for the imposition of a duty under section 701(a), and (2) is accompanied by information reasonably available to the petitioner supporting the allegations. We have examined the petition on aluminum sulfate from Venezuela and have found that most of the programs alleged in the petition meet these requirements. Therefore, we are initiating a countervailing duty investigation to determine whether Venezuelan manufacturers, producers, or exporters of aluminum sulfate, as described in the "Scope of Investigation" section of this notice, receive subsidies. However, we are not initiating an investigation on certain programs because they were determined not countervailable in *Final Affirmative Countervailing Duty Determination: Certain Electrical Conductor Aluminum Redraw Rod from Venezuela* (53 FR 24763, June 30, 1988) (*Redraw Rod*) and new facts or information on changed circumstances has not been provided. If our investigation proceeds normally, we will make our preliminary determination on or before June 22, 1989.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fully converted to the Harmonized Tariff Schedule (HTS), as provided for in section 1201 et seq. of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse for consumption on or after this date will be classified solely according to the appropriate HTS item number(s).

The product covered by this investigation is aluminum sulfate from Venezuela, which is used in water purification, in waste water treatment, and for other industrial applications. Prior to January 1, 1989, such merchandise was classifiable under item 417.1600 of the *Tariff Schedules of the United States Annotated (TSUSA)*. This merchandise is currently classifiable under HTS item 2833.22.00. The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive.

Allegations of Subsidies

Petitioner lists a number of practices by the Government of Venezuela which allegedly confer subsidies on manufacturers, producers, or exporters of aluminum sulfate in Venezuela. We are initiating an investigation of the following programs:

1. Export Bond Program
2. Short-Term FINEXPO Financing
3. Other FINEXPO Programs
4. Preferential Tax Incentives
5. Financing Company of Venezuela Loans
6. Sales Tax Exemptions
7. Other Government Loans and Loan Guarantees
8. Preferential Pricing of Inputs

We are not initiating an investigation of the programs listed below. Section 702(b) of the Act requires the Department to initiate a countervailing duty proceeding whenever an interested party files a petition on behalf of an industry that (1) alleges the elements necessary for the imposition of a duty under sections 701(a) and (2) is accompanied by information reasonably available to the petitioner supporting the allegations. For the programs listed below, the requirements of section 702(b) of the Act were not met.

1. Exchange of Export Earnings Under Multiple Exchange Rate System

Petitioner alleges that in allocating foreign exchange at preferential rates, the Venezuelan government favors companies that produce for export, produce to displace imports, or are otherwise engaged in activities assigned a priority status. Additionally, petitioner alleges that there is no assurance that the government requires SULFORCA to convert all of its foreign exchange earnings at a 14.50 Bolivares to the dollar exchange rate. This program was found not countervailable in *Redraw Rod*. We are not initiating on this program because petitioner has not alleged new facts or provided information on changed circumstances.

2. The Industrial Credit Fund (FONCREI)

Petitioner alleges that FONCREI provides long-term loans to industrial companies through commercial banks and financial societies. These loans are based on a

company's projected rate of return. This program was found not countervailable in *Redraw Rod*. We are not initiating on this program because petitioner has not alleged new facts or provided information on changed circumstances.

Notification of ITC

Section 702(d) of the Act requires us to notify the ITC of this action, and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will also allow the ITC access to all privileged and business proprietary information in our files, provided it confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by May 15, 1989, whether there is a reasonable indication that imports of aluminum sulfate from Venezuela materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, this investigation will be terminated; otherwise, this investigation will continue according to the statutory procedures.

This notice is published pursuant to section 702(c)(2) of the Act.

Timothy N. Bergan,

Acting Assistant Secretary for Import Administration.

April 18, 1989.

[FR Doc. 89-10025 Filed 4-26-89; 8:45 am]

BILLING CODE 3510-DS-M

Short-Supply Review on Certain Steel Plate; 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 Paragraph 8 of the U.S.-Japan steel arrangement, Article 8 of the U.S.-Austria, U.S.-Brazil, U.S.-EC, U.S.-Korea, and U.S.-Spain steel arrangements, and Article 8 of the U.S.-Finland steel understanding, with respect to certain steel plate used to manufacture large diameter pipe.

DATE: Comments must be submitted on or before May 8, 1989.

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: Paragraph 8 of the U.S.-Japan Arrangement Concerning Trade in Certain Steel Products, Article 8 of the U.S.-Austria Arrangement Concerning Trade in Certain Steel Products, the U.S.-Brazil Arrangement Concerning Trade in Certain Steel Products, the U.S.-EC Arrangement Concerning Trade in Certain Steel Products, the U.S.-Korea Arrangement Concerning Trade in Certain Steel Products, the U.S.-Spain Arrangement Concerning Trade in Certain Steel Products, and the U.S.-Finland Understanding Concerning Trade in Certain Steel Products, provide 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 various structural and API 5LX line pipe grades of steel plate, 0.25 to 1.50 inches in thickness, and 72 to 226 inches in width, for use in producing large diameter pipe.

Any party interested in commenting on this request should send written comments as soon as possible, and no later than May 8, 1989. 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.

Dated: April 21, 1989.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 89-10026 Filed 4-26-89; 8:45 am]

BILLING CODE 3510-DS-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Negotiated Limit, Guaranteed Access Levels, and Amended Restraint Period for Certain Man-Made Fiber Textile Products Produced or Manufactured in the Dominican Republic

April 22, 1989.

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

ACTION: Issuing a directive to the Commissioner of Customs amending a limit and restraint period.

EFFECTIVE: May 1, 1989.

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 the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority. Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); President's February 20, 1986 announcement of a Special Access Program; Memorandum of Understanding dated March 22, 1989.

During recent negotiations between the Governments of the United States and the Dominican Republic, agreement was reached to establish specific limits for man-made fiber textile products in Category 633, produced or manufactured in the Dominican Republic and exported during the four consecutive agreement periods beginning on June 1, 1988 and extending through May 31, 1992. A formal exchange of notes will follow.

Under the terms of the Memorandum of Understanding dated March 22, 1989 between the Governments of the United States and the Dominican Republic, the United States Government is establishing a limit for Category 633 for the twelve-month period which began on June 1, 1988 and extends through May 31, 1989.

The agreement also establishes Guaranteed Access Levels for Category 633 for three consecutive years beginning on June 1, 1989 and extending through May 31, 1992.

Beginning on May 1, 1989 for goods to be exported from the Dominican Republic on and after June 1, 1989, U.S. Customs will start signing the first section of the form ITA/370P for

shipments of U.S. formed and cut parts in Category 633 that are destined for the Dominican Republic and subject to the Guaranteed Access Level established for Category 633. These products, which are assembled in the Dominican Republic from parts cut in the United States from fabric formed in the United States, are governed by Harmonized Tariff item number 9802.00.8010 and Chapter 62 Statistical Note 3 of the Harmonized Tariff Schedule.

Interested parties should be aware that shipments of cut parts in Category 633 must be accompanied by a form ITA-370P, signed by a U.S. Customs officer, prior to export from the United States for assembly in the Dominican Republic in order to qualify for entry under the Guaranteed Access Level.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988). Also see 53 FR 50070, published on December 13, 1988.

Requirements for participation in the Special Access Program are available in **Federal Register** notices 51 FR 21208, published on June 11, 1986; 52 FR 6595, published on March 4, 1987; and 52 FR 26057, published on July 10, 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 Memorandum of Understanding, but are desinged to assist only in the implementation of certain of its provisions.

Donald R. Foote,

Acting Chairman, Committee for the Implementation of Textile Agreements.

April 21, 1989.

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

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 8, 1988, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports into the United States of man-made fiber textile products in Category 633, produced or manufactured in the Dominican Republic and exported during the twelve-month period which began on June 30, 1988 and extends through June 29, 1989.

Under the terms of the Memorandum of Understanding dated March 22, 1989, you are directed, effective on May 1, 1989, to amend the level for Category 633 to 84,000 dozen [1] for the new restraint period beginning on June 1, 1988 and extending through May 31, 1989.

You are directed to deduct 1,814 dozen from the changes already made to Category 633. Import charges for textile products in Category 633 which were exported during the period June 1, 1988 through June 29, 1988 have been taken into account.

Beginning on May 1, 1989, U.S. Customs is directed to start signing the first section of the form ITA–370P for shipments of U.S. formed and cut parts in Category 633 that are destined for the Dominican Republic and re-exported to the United States on and after June 1, 1989.

Teh 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. 89–10105 Filed 4–26–89; 8:45 am]

BILLING CODE 3510-DR-M

[1] The limit has not been adjusted to account for any imports exported after May 31, 1988.

Announcement of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Peru

April 24, 1989.

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

ACTION: Issuing a directive to the Commissioner of Customs establishing import limits for the new agreement period.

EFFECTIVE DATE: May 1, 1989.

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 the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

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

During negotiations held between the Governments of the United States and Peru, agreement was reached, effected by a Memorandum of Understanding (MOU) dated March 3, 1989, to amend and extend the current bilateral textile agreement. A formal exchange of diplomatic notes will follow.

The MOU establishes limits for certain cotton, wool and man-made fiber textile products for three consecutive agreement periods—May 1, 1989 through December 31, 1989; January 1, 1990 through December 31, 1990; January 1, 1991 through December 31, 1991. The levels for the first period are effective May 1, 1989, based on the agreement reached in the MOU.

A description of the textile and apparel categories in terms of HTS numbers is available in the *Correlation:* Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988).

The letter to the Commissioner of Customs and the actions taken pursuant to it are designed to implement only the levels of the first agreement period of the Memorandum of Understanding dated March 3, 1989.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

April 24, 1989.

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

Dear 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 Memorandum of Understanding dated March 3, 1989 between the Governments of the United States and Peru; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on May 1, 1989, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Peru and exported during the eight-month period beginning on May 1, 1989 and extending through December 31, 1989, in excess of the following restraint limits:

Category	Eight-Month Restraint Limit
Limits Not in a Group	
219	9,533,419 square meters.
220	5,910,945 square meters.
226/313	11,146,747 square meters of which not more than 2,102,362 square meters shall be Category 226.
300/607–K [1]	1,209,580 kilograms.
301	755,987 kilograms.
315	2,787,091 square meters.
317/326	11,761,525 square meters of which not more than 4,738,055 square meters shall be in Category 326.
338/339	440,260 dozen of which not more than 314,465 dozen shall be in Categories 338–S/339–S.[2]
410	891,869 square meters.

Category	Eight-Month Restraint Limit
Cotton Apparel Group 237, 239, 330–336 and 340–359, as a group.	9,754,819 square meters equivalent.
Wool Group 400 and 414–469, as a group.	2,508,382 square meters equivalent.

[1] Category 300 and, in Category 607–K, all HTS numbers except 5509.52.000, 5509.61.0000, 5509.91.0000 and 5510.20.0000.

[2] In Categories 338–S/339–S, only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.3010, 6109.10.0035, 6110.20.1025, 6110.20.2040, 6110.20.2065, 6110.90.0068, 6112.11.0030 and 6114.20.0005 in Category 338–S; and 6104.22.0060, 6104.29.2046, 6106.10.0010, 6106.10.0030, 6106.90.2010, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.0070, 6112.11.0040, 6114.20.0010 and 6117.90.0022 in Category 339–S.

Imports charged to these category limits, except Categories 237, 239, 439 and 607–K, for the period May 1, 1988 through April 30, 1989 shall be charged against those levels of restraint to the extent of any unfilled balances. 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.

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. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89–10146 Filed 4–26–89; 8:45 am]

BILLING CODE 3510–DR–M

Negotiated Settlement on an Import Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Turkey

April 21, 1989.

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

ACTION: Issuing a directive to the Commission of Customs establishing a limit.

EFFECTIVE DATE: May 1, 1989.

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 this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343–6582. For information on embargoes and quota re-openings, call (202) 377–3715. For information on categories on which consultations have been requested, call (202) 377–3740.

SUPPLEMENTARY INFORMATION:

Authority. Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Memorandum of Understanding dated March 21, 1989.

During consultations held between the Governments of the United States and the Republic of Turkey, agreement was reached, effected by a Memorandum of Understanding dated March 21, 1989, to amend the current bilateral textile agreement. A formal exchange of diplomatic notes will follow.

Under the terms of the Memorandum of Understanding, specific limits were established for Categories 336/636 for three consecutive agreement periods beginning September 30, 1988 and extending through June 30, 1991. The United States Government has decided to control imports in Categories 336/636 for the first agreement period which began on September 30, 1988 and extends through June 30, 1989. The remaining agreement periods will begin on July 1, 1989 and July 1, 1990.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (See **Federal Register** notice 53 FR 44937, published on November 7, 1988). Also see 53 FR 43468, published on October 27, 1988.

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 Memorandum of Understanding dated March 21, 1989, 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.

Committee for the Implementation of Textile Agreements

April 21, 1989.

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 amended on July 31, 1986; pursuant to the Memorandum of Understanding dated March 21, 1989, between the Governments of the United States and the Republic of Turkey; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on May 1, 1989, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 336/636, produced or manufactured in Turkey and exported during the period which began on September 30, 1988, and extends through June 30, 1989, in excess of 153,000 dozen.[1]

Textile products in Categories 336/636 which have been exported to the United States prior to September 30, 1988, shall not be subject to this directive.

Textile products in Categories 336/636 which have been released from the custody 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.

You are directed to charge 39,659 dozen to Category 336 and 2,733 dozen to Category 636 to the limit established in this directive. These charges are for goods imported during the period September 30, 1988, through February 28, 1989. Further charges will be submitted as data become available.

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. 553(a)(1).

Sincerely,

Donald R. Foote,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89–10106 Filed 4–26–89; 8:45 am]

BILLING CODE 3510–DR–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Education Benefits Board of Actuary; Meeting

AGENCY: Department of Defense.

ACTION: Notice of meeting.

SUMMARY: A meeting of the Board has been scheduled to execute the provisions of Chapter 101, title 10, United States Code (10 U.S.C. 2006(e) et. seq.) The Board shall review DoD actuarial methods and assumptions to be used in the valuation of the GI Bill and determine per capita normal costs to be implemented by DoD and amortization of unfunded liability. Persons desiring to attend the DoD Education Benefits Board of Actuaries meeting must notify Ms. Dorothy Hemby at 696–6336 by May 22, 1989. Notice of

[1] The limit has not been adjusted to account for any imports exported after September 29, 1988.

this meeting is required under the Federal Advisory Committee Act.

DATE: May 25, 1989, 9:00 a.m. to 1:00 p.m.

ADDRESS: Room 1E801 #7, the Pentagon.

FOR FURTHER INFORMATION CONTACT: Benjamin Gottlieb, Acting Executive Secretary, DoD Office of the Actuary, 4th Floor, 1600 Wilson Boulevard, Arlington, Virginia 22209-2593, (202) 696-5869.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

April 21, 1989.

[FR Doc. 89-10048 Filed 4-26-89; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

April 23, 1989.

The USAF Scientific Advisory Board Ad Hoc Committee Summer Study on Electronic Combat will meet on 15-20 May 89 from 8:00 a.m. to 5:00 p.m. at the ANSER Corp., 1215 Jefferson Davis Hwy, Arlington, VA.

The purpose of this meeting will be to review the requirements for and the status of Air Force Electronic Combat programs. This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 89-10137 Filed 4-26-89; 8:45 am]

BILLING CODE 3910-01-M

Defense Logistics Agency

Privacy Act of 1974; Notice of a New Continuing Computer Matching Program Between the Department of Defense and the Department of the Interior

AGENCY: Defense Manpower Data Center (DMDC), Defense Logistics Agency (DLA), Department of Defense (DoD).

ACTION: Notice for any public comment on a proposed new ongoing computer matching program between the Department of Defense (DoD) and the Department of the Interior (DoI) for debt collection purposes under the Debt Collection Act of 1982 (Pub. L. 97-365). The purpose of the match is to locate individuals affiliated with the DoD who are indebted to the U.S. Government under various programs administered by the DoI.

SUMMARY: On October 7, 1987 at 52 FR 37492, the Department of Defense provided public notice of a plan under an interagency agreement to assist Federal creditor agencies in locating delinquent debtors affiliated with the U.S. Government in their debt collection efforts to collect outstanding debts owed by individuals receiving salary or similar compensation from the Federal government. The DMDC (DLA), has assisted a number of Federal agencies in locating individual delinquent debtors via computer matching and now proposes to assist the DoI in its collection effort under a written agreement.

EFFECTIVE DATE: This proposed action is effective on April 27, 1989 and the computer matching will proceed accordingly without further notice, unless comments are received which would result in a contrary determination.

ADDRESS: Any interested party may submit written comments to Mr. Robert J. Brandewie, Deputy Director, Defense Manpower Data Center, Suite 155A, 99 Pacific Street, Monterey, CA 93940-2453. Telephone: (408) 655-4000; Autovon: 878-2951.

FOR FURTHER INFORMATION CONTACT: Mr. Aurelio Nepa, Jr., Staff Director, Defense Privacy Office, Room 205, 400 Army Navy Drive, Arlington, VA 22202-2803. Telephone: (202) 694-3027; Autovon: 224-3027.

SUPPLEMENTARY INFORMATION: This proposed computer matching program is being conducted by the Defense Manpower Data Center in order to locate by address those individuals, Federally employed or retired, that are indebted and delinquent in their repayment to the U.S. Government under certain programs administered by the Department of Interior.

The Office of Management and Budget (OMB) designated the Financial Management Service of the Department of Treasury, as the Lead Agency to coordinate and monitor the implementation of the U.S. Government's Federal Salary Offset Program. An interagency agreement, restricted exclusively to the implementation of the Debt Collection Act of 1982 (Pub. L. 97-365), established an Interagency Working Group to facilitate computer matching and subsequent salary offset procedures throughout the Federal government under the auspices and oversight of the OMB. This Interagency Working Group consists of the Department of the Treasury, Office of Personnel Management and the Department of Defense. An Interagency Agreement for implementing the Federal Salary Offset Initiative and assigning specific roles and agency responsibilities was signed and published in the **Federal Register** at 52 FR 37492 on October 7, 1987. As a result, a centralized computer data base for computer matching was established from extracted Department of Defense and Office of Personnel Management records for debt collection purposes in order to have a data bank record of active and retired military members, including the Reserve and Guard, and further including OPM government-wide active and retired civilian personnel that are receiving Federal salaries or other Federal benefit payments. The data bank is located in Monterey, CA and maintained by the Defense Manpower Data Center of the Department of Defense. It is available for matching purposes by any Federal creditor agency to locate individual debtors in enforcing the Debt Collection Act of 1982 to collect outstanding debts provided the creditor agency follows the published Interagency Agreement guidelines.

Set forth below is the information required by paragraph 5.f.(1) of the "Revised Supplemental Guidance for Conducting Computerized Matching Programs," issued by the Office of Management and Budget on May 11, 1982 (47 FR 21656, May 19, 1982). An advanced copy of this **Federal Register** notice has been provided to the U.S. House Committee on Government Operations, the U.S. Senate Committee on Governmental Affairs, and to the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on April 18, 1989, pursuant to the above cited OMB Matching Guidelines; paragraph 4b of Appendix I to OMB Circular No. A-130, dated December 12, 1985 (50 FR 52738, December 24, 1985); and subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a) as amended.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

April 21, 1989.

Report of a New Continuing Computer Matching Program Between the Department of Defense (DoD) and the Department of Interior (DoI)

a. *Authority:* The legal authority under which this computer matching will be conducted is 5 U.S.C. 522a (b)(3), the "routine use" provision under the

Privacy Act of 1974; 5 U.S.C. 5514, Installment deduction of indebtedness; 10 U.S.C. 136, Assistant Secretaries of Defense, appointment, powers and duties; Federal Claims Collection Act of 1966 (Pub. L. 89–508) 31 U.S.C. 952(d); the Debt Collection Act of 1982 (Pub. L. 97–365) 5 U.S.C. 5514, 31 U.S.C. 3711 and 3716–4718; Section 206 of Executive Order 11222; 4 CFR Chapter II, Federal Claims Collection Standards (General Accounting Office—Department of Justice); 5 CFR 550.1101–550.1108, Collection by Offset from Indebted Governmemt Employees—(OPM); Office of Management and Budget, "Revised Supplemental Guidance for Conducting Matching Programs," dated May 11, 1982 (47 FR 21656, May 19, 1982) and "Guidelines on Relationship Between the Privacy Act of 1974 and the Debt Collection Act of 1982," March 30, 1983 (48 FR 15556, April 11, 1983); the Interagency Agreement for Federal Salary Offset Initiative (Office of Management and Budget, Department of the Treasury, Office of Personnel Management and the Department of Defense) signed April 1987 (52 FR 37492, October 7, 1987).

b. *Program Description:* The purpose of this computer matching program is to identify and locate those individuals who are indebted and delinquent in their repayment of debts to the U.S. Government under certain programs administered by the Department of Interior in order that the Department can collect the debts by voluntary repayment or, in the alternative, by administrative or salary offset procedures under the provisions of the Debt Collection Act of 1982. An Interagency Memorandum of Understanding (MOU) has been accomplished and signed between the Department of the Interior and the Department of Defense as to the applicable procedures. Interior will furnish approximately 1,000 indebtedness/accounts receivable records and these records will be matched against 3 million benefit records and 7 million personnel/employment records of the data base.

The Department of Interior, as the source agency, will provide the Defense Manpower Data Center (DMDC) of the DoD, the matching agency, at Monterey, CA, a computer tape containing the names, social security numbers, and amount owed of all the individual delinquent debtors. Upon receipt of the file of debtor accounts, the DMDC will perform a computer match using all nine digits of social security numbers of delinquents against a DMDC computer data base. The DMDC computer data base, established under the interagency agreement, consists of records of active duty and retired military members, including the Reserve, and all the OPM Government-wide employed civilian and retired civilian records.

Note.—The "Reserve" refers collectively to the Army National Guard, Army Reserve, Naval Reserve, Marine Corps Reserve, Air National Guard and Air Force Reserve.

Matching records, based on "hits" of the social security number, will be furnished to the DoI consisting of the member's name, service or agency, category of employee, salary or benefit amounts, and current work or home address from DMDC's data base records. The "hits" or matching information from DMDC will be referred to the DoI for action to contact the debtors so as to recover the outstanding debt(s) by salary or administrative offset when other collection action, such as voluntary repayment, has been pursued with unsatisfactory results.

The DoI will be responsible for reviewing the "hit" data to assure that each individual is positively identified in the match as the debtor; to assure that the debtor is afforded proper due process under GAO regulation (4 CFR Chapter II) "Federal Claims Collection Standards" and that a proper accounting of any further disclosures outside the DoI shall be maintained in accordance with 5 U.S.C. 552a (c) of the Privacy Act. The DoI is responsible for insuring that the debt is valid and the information is accurate, complete, timely and relevant. Hard copy match records will be used by the DoI to determine any further continued contact or inquiry concerning the debtors. The notification to the debtor shall include information concerning the amount to be collected, and may include the amount of the proposed monthly deductions if offset procedures are contemplated. The debtor shall be given an opportunity to enter into voluntary agreement to repay the debt before any administrative or salary offset measures are initiated. The debtor shall further be given an opportunity to inspect and copy records related to the debt and for review of the decision related to the debt. If no collection action is needed, the DoD record provided by DMDC will not be used by the DoI for any other purpose.

c. *Records to be Matched:* The following systems of records, subject to the Privacy Act of 1974 (5 U.S.C. 552a), containing an appropriate routine use permitting records to be used for computer matching, are as follows:

Department of Interior (Source Agency)

(1) *Interior component:* Office of the Secretary
System identification: Interior/OS–85
System name: Payroll, Attendance, Retirement and Leave Records—Interior, Office of the Secretary–85
Federal Register citation: 51 FR 39918, November 3, 1986
Amended: 53 FR 51324, December 21, 1988

Department of Defense (Matching Agency)

(1) *DoD component:* Defense Logistics Agency (DLA)
System identification: S322.10 DLA–LZ
System name: Defense Manpower Data Center Data Base
Federal Register citation: 53 FR 44937, November 7, 1988
(2) *DoD Component:* Defense Logistics Agency (DLA)
System identification: S322.11 DLA–LZ
System name: Federal Creditor Agency Debt Collection Data Base
Federal Register citation: 52 FR 37495, October 7, 1987
(3) *Agency:* Office of Personnel Management (OPM)
System identification: OPM/GOVT–1
System name: General Personnel Records
Federal Register citation: 49 FR 36954, September 20, 1984
(4) *Agency:* Office of Personnel Management (OPM)
System identification: OPM/CENTRAL–1
System name: Civil Service Retirement and Insurance Records
Federal Register citation: 49 FR 36950, September 20, 1984

d. *Period of the Match:* The initial match will begin as soon as possible after this public notice is published in the **Federal Register** and then conducted no more often than semiannually thereafter.

e. *Security Safeguards:* Automated records at DMDC are stored in limited access computer facilities and accessible only by password. Access to the computer center is by key or picture identification. Hard copy records are maintained in Federal office buildings in lockable file cabinets and accessed only by authorized Federal employees on a need-to-know basis.

f. *Retention and Disposition of Records:* Under a written Memorandum of Understanding (MOU) agreement between the DoD/DMDC and the DoI, it is agreed that any diskette/tapes provided by the DoI for matches shall be destroyed or returned to the DoI upon successful completion of each match

and shall be used only for debt collection purposes. Non-hit records will not be used for any purposes. Hard copy matched records (hits) will be used by the DoI to conduct individual reviews and may be used to contact the debtor for payment pursuant to the Debt Collection Act of 1982. Records relating to "hits" will be retained by the DoI until completion of any necessary collection efforts and then be disposed of in accordance with approved records control schedules and/or approved disposition authority. The DoI will maintain a disclosure accounting record, as required by 5 U.S.C. 552a (c) of the Privacy Act, as a result of the match information received from DMDC when contacting other agencies pursuing individual debtors. If no collection action is needed, no DoD record will be used for any other purpose. The DoI tape file will be used and accessed only for the match agreed to. It will not be used to extract information concerning "non-hit" data for any purpose and will not be duplicated or disseminated within or outside the DoD.

[FR Doc. 89-10049 Filed 4-26-89; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before May 30, 1989.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 732-3915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: April 21, 1989.

Carlos U. Rice,

Director, for Office of Information Resources Management.

Office of Educational Research and Improvement

Type of Review: New Collection.

Title: Field Test of Dropout Statistics Collection and Reporting Procedures.

Frequency: Non-recurring.

Affected Public: States and local governments.

Reporting Burden:

Responses: 264.

Burden Hours: 1,320.

Recordkeeping Burden:

Recordkeepers: 31.

Burden Hours: 1.5.

Abstract: A field test will be conducted to determine which data collection procedures are the least burdensome and most efficient and technically accurate procedures for collecting national dropout statistics. The Department will make decisions impacting the final data collection methodology and survey instruments based on the result of this field test.

[FR Doc. 89-10039 Filed 4-26-89; 8:45 am]

BILLING CODE 4000-01-M

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATE: Interested persons are invited to submit comments on or before May 30, 1989.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 5624, Reginal Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 732-3915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provides interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the rquests are available from Margaret

Webster at the address specified above.
Dated: April 20, 1989.

Carlos U. Rice,

Director, for Office of Information Resources Management.

Office of Special Education and Rehabilitative Services

Type of Review: Revision
Title: Report of Federal, State and Local Funds Expended for Special Education and Related Services
Frequency: Annually
Affected Public: State and local government
Reporting Burden:
Responses: 58
Burden Hours: 58,174
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: This form provides instructions for States to submit the amount of Federal, State, and local funds expended for special education and related services. The Department uses the information collected for program management.

Office of Postsecondary Education

Type of Review: New.
Title: Performance Report for the Grants to Institutions to Encourage Minority partcipation in Graduate Eduation.
Frequency: Annually.
Affected Public: Non-profit institutions.
Reporting Burden:
Responses: 50.
Burden Hours: 100.
Recordkeeping Burden:
Recordkeepers: 50.
Burden Hours: 5.
Abstract: This report is used by State agencies to provide caseload data. The Department uses the information collected to assess the accomplishments and for program management.

Office of Educational Research and Improvement

Type of Review: Revision.
Title: Teacher Followup Survey-Amendment.
Frequency: On Occasion.
Affected Public: Individuals or households.
Reporting Burden:
Responses: 7,192.
Burden Hours: 2,800.
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0.
Abstract: The Teacher Followup Survey is the fifth portion of the Schools and Stafing Survey, to be conducted one year after the base year data collection. The amendment to this survey describes the data collection to be undertaken during the reinterview process for survey evaluation purposes.

[FR Doc. 89-10040 Filed 4-26-89; 8:45 am]
BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

Final Consent Order With Howell Corp.

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Final Action on Proposed Consent Order.

SUMMARY: The Department of Energy (DOE) hereby gives the notice required by 10 CFR 205.199J that it has adopted as final the Consent Order with Howell Corporation (Howell), executed on February 23, 1989, and published for comment in 54 FR 11036 (March 16, 1989).

As required by 10 CFR 205.199J, DOE provided a period of thirty days following publication of the Notice of Proposed Consent Order for the submission of comments. The Economic Regulatory Administration (ERA) received no comments in response to this notice. Accordingly, ERA has determined that the Consent Order should be made final without modification. The Consent Order becomes effective as a Final Order of the DOE on the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: Dorothy Hamid, Office of Enforcement Litigation, Economic Regulatory Administration, U.S. Department of Energy, Room 3H-017, RG-32, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-1699.

Copies of the Consent Order may be obtained free of charge by written request to "Howell Consent Order Request" at the above address or by calling Dorothy Hamid at the above telephone number. Copies may also be obtained in person at the same address or at the Freedom of Information Reading Room, Room 1E-190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585.

SUPPLEMENTARY INFORMATION: On March 16, 1989, DOE published notice in the **Federal Register,** Vol. 54 at Page 11036, announcing the execution of a Proposed Consent Order between Howell and DOE. That Notice summarized the proposed Consent Order and the Relevant facts, as well as contained the proposed Consent Order in its entirety.

As a result of an audit of Howell's compliance with the Federal petroleum price and allocation regulations, the Economic Regulatory Administration (ERA) raised certain issues with respect to Howell's application of the Federal petroleum price and allocation regulations. A Proposed Remedial Order was issued on June 24, 1988, to Howell, Howell Hydrocarbons, Inc. (which operated a refinery in San Antonio, Texas) Howell Industries, Inc., and the Quintana-Howell Joint Venture (hereinafter Joint Venture), a Texas joint venture composed of Quintana Refinery Company and Howell Corporation, which operated a refinery in Corpus Christi, Texas. As consideration for resolution of the Proposed Remedial Order, Howell shall pay a total principal amount of $19,375,000, plus interest. Within thirty (30) days after the effective date of this Consent Order, Howell will pay an initial principal amount of $2,000,000, and the remaining principal sum of $17,375,000, plus interest at the rate of 9.38 percent per annum compounded on the unpaid balance of each scheduled payment interval, will be paid to DOE in eight installments of principal and interest. ERA will petition DOE's Office of Hearings and Appeals to implement Special Refund Procedures pursuant to 10 CFR Part 205, Subpart V, to distribute all amounts paid by Howell pursuant to the Consent Order.

As noted, no comments were received in response to the Notice of Proposed Consent Order. Accordingly, ERA has determined to adopt the Proposed Consent Order, without modification, as a final Order of the DOE, pursuant to 10 CFR 205.199J. The Consent Order becomes effective upon publication of this Notice.

Issued in Washington, DC, on April 18, 1989.

Milton C. Lorenz,

Chief Counsel for Enforcement Litigation, Economic Regulatory Administration.

[FR Doc. 89-10013 Filed 4-26-89; 8:45 am]
BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER89-352-000 et al.]

Portland General Electric Co. et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

April 21, 1989.

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

1. Portland General Electric Company

[Docket No. ER89-352-000]

Take notice that Portland General Electric Company (PGE) on April 17, 1987 tendered for filing an Agreement for a transmission capability exchange with the Bonneville Power Administration (BPA), which provides for the use by PGE of 100 MW of transmission capability on BPA's DC Intertie rated transfer capability in return for the use by BPA of 100 MW of transmission capability on PGE's AC Intertie rated transfer capability plus an additional payment by PGE of $250,000, from July 1, 1987 to July 29, 2013.

PGE states the reason for the proposed exchange is to allow a mutually beneficial transaction between the parties.

PGE requests an effective date of July 1, 1987 and therefore requests waiver of the Commission's notice requirements.

Copies of the filing have been served upon the Bonneville Power Administration and the Oregon Public Utility Commission.

Comment date: May 8, 1989, in accordance with Standard Paragraph E at the end of this notice.

2. Portland General Electric Company

[Docket No. ER89-351-000]

Take notice that Portland General Electric Company (PGE) tendered for filing on April 17, 1989 an Agreement for a Seasonal Power-for-power Exchange with the Bonneville Power Administration which provides for the delivery by BPA of 20 MW of power to PGE from July 2, 1987 to September 30, 1987, with return by PGE from October 1, 1987 to December 31, 1987 and the delivery by BPA of 40 MW of power to PGE from June 1, 1988 to September 15, 1988 and the return by PGE from October 15, 1988 to January 15, 1988.

PGE states that the reason for the proposed seasonal exchange is to allow a mutually beneficial transaction between the parties.

PGE requests an effective date of July 2, 1987 and therefore requests waiver of the Commission's notice requirements.

Copies of the filing have been served upon the Bonneville Power Administration and the Oregon Public Utility Commission.

Comment date: May 8, 1989, in accordance with Standard Paragraph E at the end of this notice.

3. New York Electric & Gas Corporation

[Docket No. ER89-344-000]

Take notice that New York State Electric & Gas Corporation (NYSEG) on April 13, 1989, tendered for filing pursuant to Section 35.12 of the regulations under the Federal Power Act, as a rate schedule, an agreement with Long Island Lighting Company (LILCO). The agreement provides that NYSEG shall sell excess energy to LILCO. Service under this agreement commenced on March 6, 1989 and shall continue until terminated by either party.

NYSEG requests that the 60-day filing requirement be waived and that March 6, 1989 be allowed as the effective date of the filing.

NYSEG has filed a copy of this filing with Long Island Lighting Company and with the Public Service Commission of the State of New York.

Comment date: May 8, 1989, in accordance with Standard Paragraph E at the end of this notice.

4. Pacific Gas and Electric Company

[Docket No. ER89-342-000]

Take notice that on April 12, 1989, Pacific Gas and Electric Company (PG&E) tendered for filing changes to Rate Schedule FERC No. 79, between PG&E and the Western Area Power Administration (Western).

The rate schedule change proposes estimated rates for withdrawals of energy previously banked into Energy Account No. 2 (EA2) with PG&E by Western pursuant to Contract No. 14-06-200-2948A. When recorded costs become available the rates will be recalculated and the sales will be adjusted to reflect the recorded cost based rates.

PG&E requests waiver of the Commission's notice requirements to permit an effective date of December 1, 1988, when unbanking from EA2 commenced.

Copies of this filing have been served upon Western and the California Public Utilities Commission. In addition, copies of this filing are available at PG&E's General Office in San Francisco and at PG&E's Sacramento Valley Regional Office in Sacramento.

Comment date: May 8, 1989, in accordance with Standard Paragraph E at the end of this notice.

5. Wisconsin Public Service Corporation

[Docket No. ER89-350-000]

Take notice that Public Service Corporation (WPSC) on April 17, 1989, tendered for filing a New, executed Service Agreement for partial requirements service to the Manitowoc Public Utilities (MPU), City of Manitowoc, Manitowoc County, Wisconsin. The new Service Agreement revises the initial term of service, and provides for a change of delivery points. The delivery point change results from the company's leasing certain electric facilities from MPU. The company, with the support of MPU, has requested an effective date of March 1, 1989, for the new Service Agreement.

The filing also includes an executed Limited Term Capacity Agreement for the period June 1, 1990, through May 31, 1991, with an option to extend service through May 31, 1992. The company requests that this agreement become effective on June 1, 1990.

WPSC states that copies of the executed Service Agreement and Limited Term Capacity Agreement were sent to MPU, the two other purchases of service under the same or similar tariff as MPU and to the Public Service Commission of Wisconsin.

Comment date: May 8, 1989, in accordance with Standard Paragraph E at the end of this notice.

6. Wisconsin Power & Light Company

[Docket No. ER89-349-000]

Take notice that on April 14, 1989, Wisconsin Power & Light Company (WPL) tendered for filing a Wholesale Power Contract dated June 26, 1986 and Amendment No. 1 dated March 22, 1989, both between the City of Elkhorn and WPL. Elkhorn is currently taking service from Wisconsin Electric Power Company (WEP).

The purpose of the Contract and Amendment is to define the terms and condition of service. Service under this Contract will be in accordance with WPL's standard W-3 rate schedule. WPL requests an effective date of June 16, 1989, concurrent with the termination date of Elkhorn's wholesale power agreement with WEP.

WPL states that copies of the agreement and filing have been provided to Elkhorn, WEP and the Wisconsin Public Service Commission.

Comment date: May 8, 1989, in accordance with Standard Paragraph E at the end of this notice.

7. New York State Electric & Gas Corporation

[Docket No. ER89-348-000]

Take notice that New York State Electric & Gas Corporation (NYSEG) on April 14, 1989, tendered for filing pursuant to § 35.13 of the regulations under the Federal Power Act, as a rate schedule, an agreement with New England Power Company (NEP). The short term agreement provides that NYSEG shall sell surplus capability and associated energy to NEP. Service under this agreement will commence on May 1, 1989 and shall terminate on October 31,

1989 unless extended in writing by mutual agreement.

NYSEG requests that the 60-day filing requirement be waived and that May 1, 1989 be allowed as the effective date of the filing.

NYSEG filed a copy of this filing with New England Power Company, with the Massachusetts Department of Public Utilities, and with the Public Service Commission of the State of New York.

Comment date: May 8, 1989, in accordance with Standard Paragraph E at the end of this notice.

8. New York State Electric & Gas Corporation

[Docket No. ER89-347-000]

Take notice that New York Electric & Gas Corporation (NYSEG) on April 14, 1989, tendered for filing pursuant to § 35.12 of the regulations under the Federal Power Act, as a rate schedule, an agreement with Boston Edison (BECo.). The short term agreement provides that NYSEG shall sell surplus capability and associated energy to BECo. Service under this agreement will commence on May 1, 1989 and shall terminate on October 31, 1989 unless extended in writing by mutual agreement.

NYSEG requests that the 60-day filing requirement be waived and that May 1, 1989 be allowed as the effective date of the filing.

NYSEG has filed a copy of this filing with BECo, with the Massachusetts Department of Public Utilities, and with the Public Service Commission of the State of New York.

Comment date: May 8, 1989, in accordance with Standard Paragraph E at the end of this notice.

9. New York State Electric & Gas Corporation

[Docket No. ER89-346-000]

Take notice that on April 14, 1989, New York Electric & Gas Corporation (NYSEG) tendered for filing pursuant to § 35.13 of the regulations under the Federal Power Act, as a rate schedule, an agreement with Long Island Lighting Company (LILCO). The agreement provides that NYSEG shall sell to LILCO firm capacity and energy in the amounts of 125 megawatts, 100 megawatts, and an additional 100 megawatts. Service under this agreement shall begin and terminate as follows: 125 megawatts, April 30, 1989 to October 30, 1989; 100 megawatts, March 27, 1989 to April 29, 1989; the additional 100 megawatts, June 1, 1989 to August 31, 1989. These durations may be extended in writing by both parties.

NYSEG requests that the 60-day filing requirement be waived and that March 27, 1989 be allowed as the effective date of the filing.

NYSEG has filed a copy of this filing with Long Island Lighting Company and the Public Service Commission of the State of New York.

Comment date: May 8, 1989, in accordance with Standard Paragraph E at the end of this notice.

10. New York State Electric & Gas Corporation

[Docket No. ER89-345-000]

Take notice that New York State Electric & Gas Corporation (NYSEG) on April 14, 1989, tendered for filing pursuant to § 35.12 of the regulations under the Federal Power Act, an agreement with Rochester Gas and Electric Corporation (RG&E). The short term agreement provides that NYSEG shall sell surplus capability and associated energy to RG&E. Service under this agreement commenced on March 20, 1989 and shall terminate on April 2, 1989 unless extended in writing by mutual agreement.

NYSEG requests that the 60-day filing requirement be waived and that March 20, 1989 be allowed as the effective date of the filing.

NYSEG has filed a copy of this filing with RG&E and with the Public Service Commission of the State of New York.

Comment date: May 8, 1989, in accordance with Standard Paragraph E at the end of this notice.

11. Nantahala Power and Light Company

[Docket No. ER89-335-000]

Take notice that on April 3, 1989, Nantahala Power and Light Company (Nantahala) tendered for filing the 1988 revised "PL" (COSAC) rate tariff. Included in the filing is a report showing the development of these charges, the capitalization data, and the appropriate data for the year ended December 31, 1988.

Nantahala states that these rates are effective on and after April 1, 1989.

Comment date: May 8, 1989, in accordance with Standard Paragraph E at the end of this notice.

12. Arizona Public Service Company

[Docket No. ER89-281-000]

Take notice that on April 3, 1989 Arizona Public Service Company (Arizona) tendered for filing a Notice of Termination applicable to the Firm Transmission Service Agreement (Agreement) between Arizona and Tucson Electric Power Company (APS FERC Rate Schedule No. 91). Service will terminate on May 31, 1989 as provided pursuant to the terms of the Agreement.

Comment date: May 8, 1989, in accordance with Stardard Paragraph E at the end of this notice.

13. Louisiana Power & Light Company

[Docket No. EL89-24-000]

Take notice that on March 15, 1989 Louisiana Power & Light Company (LP&L) filed a Petition for an Order Relating to Disposition of Proceeds of Judgment Against Gas supplier. LP&L states that it has recovered $193,669,000 on a judgement against a fuel supplier and that the Louisiana Public Service Commission has issued an order addressing the disposition of the proceeds of said judgement with respect to its retail customers. LP&L further requests an order addressing the appropriate treatment of the proceeds. LP&L further states that notice thereof was given to the Louisiana Public Service Commission, the Council of the City of New Orleans, and those entities that are, from time to time, wholesale customers of LP&L, including Cajun Electric Power Cooperative, and the Towns of Winnfield, Vidalia, Jonesville, and Minden, Louisiana.

Comment date: May 22, 1989, in accordance with Stardard Paragraph E at the end of this notice.

14. Southern California Edison Company v. Arizona Public Service Company

[Docket No. EL89-26-000]

Take notice that on March 30, 1989 Southern California Edison Company (SCE) tendered for filing a complaint against Arizona Public Service Company (APS). SCE submits that APS has improperly charged SCE under the Arizona-Edison Cholla No. 4 Layoff Agreement since December, 1984 and that such improper charges should be refunded with interest. SCE also requests prospective relief under section 206 of the Act as amended by the Regulatory Fairness Act.

Comment date: May 22, 1989, in accordance with Stardard Paragraph E at the end of this notice.

15. City of Watertown, New York v. Niagara Mohawk Power Corp.

[Docket No. EL89-27-000]

Take notice that on April 4, 1989 the City of Watertown, New York (Watertown) filed a request for an order, pursuant to sections 206, 306 and 309 of the Federal Power Act, directing Niagara Mohawk Power Corporation (Niagara Mohawk) to transmit to Watertown its 880 kW allocation of electricity from the New York Power

Authority's (NYPA) Niagara Project, as required by the Niagara Mohawk tariff on file, Rate Schedule Nos. 18 and 19, and by Niagara Mohawk's 1981 contract with NYPA. Watertown also requests Niagara Mohawk to make it whole for injury caused to Watertown by Niagara Mohawk's refusal to transmit, which is a plain violation of Niagara Mohawk's contract under the "filed rate" doctrine.

Comment date: May 22, 1989, in accordance with Stardard Paragraph E at the end of this notice.

Standard Paragraphs

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

Lois D. Cashell,

Secretary.

[FR Doc. 89-10096 Filed 4-26-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP87-432-008 et al.]

K N Energy, Inc. and Northern Gas Co., et al.; Natural Gas Certificate Filings

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

1. K N Energy, Inc. and Northern Gas Company

[Docket No. CP87-432-008]

April 20, 1989.

Take notice that on February 27, 1989, K N Energy, Inc. (K N) and Northern Gas Company (NGC),[1] successor-in-interest to Northern Utilities, Inc., P.O. Box 15265, Lakewood, Colorado 80215, filed a petition in Docket No. CP87-432-008, pursuant to section 7(c) of the Natural Gas Act, to further amend the order issued October 30, 1987, in Docket No. CP87-432-000, so as to amend the terms of its existing authorization to provide an additional exchange delivery point, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

K N and NGC state that the order issued October 30, 1987, authorizes them to engage in the exchange of natural gas between two gas supply areas in the State of Wyoming, Beaver Creek and Sand Draw. It is further stated that the order issued October 5, 1988, amended the original certificates to provide for a term of unlimited duration.

K N and NGC state that they are requesting that their existing certificates be amended to authorize an additional exchange delivery point from K N to NGC at an existing point of interconnection between K N and NGC's facilities near Casper, Wyoming. Petitioners are proposing herein to exchange gas at the outlet of K N's Casper Plant in Natorna County, Wyoming. The petitioners state the proposed alternative point would permit NGC to receive gas from K N at a location where NGC can best utilize the exchange gas to meet its customers' requirements in Wyoming in the most efficient and cost effective manner.

Comment date: May 11, 1989, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

2. Kentucky West Virginia Gas Company

[Docket No. CP89-1179-000]

April 21, 1989.

Take notice that on April 10, 1989, Kentucky West Virginia Gas Company, (Kentucky West),[2] 340 Seventeenth Street, Ashland, Kentucky 41101, filed in Docket No. CP89-1179-000 an application pursuant to Sections 7(b) and 7(c) of the Natural Gas Act for: (1) Blanket certificate authority with pregranted abandonment authority for the interruptible sale for resale of natural gas supplies, which are in excess of the current and projected needs of Kentucky West's on-system customers, to off-system and on-system purchasers, including interstate and Hinshaw pipelines, local distribution customers, natural gas marketers and direct sale customers pursuant to a proposed new rate schedule, Interruptible Sales Service (ISS), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Kentucky West states that it proposes to charge a negotiated rate for sales under the proposed Rate Schedule ISS ranging between a maximum rate equal to Kentucky West's 100 percent load factor rate found in its Rate Schedule PLS-1 rate and the minimum rate equal to Kentucky West's actual weighted average cost of gas for the month in which the gas is delivered together with a representative amount of out-of-period adjustments, plus all variable costs incurred to provide the service, as well as GRI and Annual Charge Adjustments (ACA) as applicable. Kentucky West states that sales would be made through existing facilities.

Comment date: May 12, 1989, in accordance with Standard Paragraph F at the end of this notice.

3. Tennessee Gas Pipeline Company

[Docket No. CP89-1204-000]

April 21, 1989.

Take notice that on April 13, 1989, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed an application pursuant to section 7(b) of the Natural Gas Act, for authorization to abandon service to Berkshire Gas Company (Berkshire), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

By Commission order issued December 15, 1978, in Docket No. CP78-499 (5 FERC ¶ 61,234), Tennessee was authorized, inter alia, to transport natural gas for Berkshire. Tennessee was authorized to transport and deliver up to 21,190 Mcf of gas per day to Berkshire at Tennessee's North Adams sales meter station, Berkshire County, Massachusetts.

The authorized transportation service enabled Berkshire to receive volumes of natural gas equivalent to liquefied natural gas (LNG) purchased by Berkshire from Distrigas of Massachusetts Corporation (DOMAC). In order to effect receipt by Berkshire of equivalent volumes of natural gas, Boston Gas Company (Boston Gas), a customer of Tennessee, receives daily volumes of LNG from DOMAC and releases equivalent volumes of natural gas to Tennessee for Berkshire's account at Tennessee's Arlington sales meter station delivery point to Boston Gas in Middlesex County, Massachusetts. Volumes so made available by Boston Gas to Tennessee at the receipt point are volumes designated by Boston Gas from its contracted demand purchases from Tennessee under Tennessee's Rate Schedule CD-6.

The authorized transportation service is presently rendered under the terms of an Interruptible Transportation Contract (the Contract) made as of December 15, 1978 by and among Tennessee, Boston

[1] NGC is a Hinshaw pipeline, regulated by the Wyoming Public Service Commission.

[2] This notice was previously issued March 13, 1989, but inadvertently was not published in the **Federal Register**.

Gas and Berkshire. The Contract has been filed by Tennessee as its FERC Rate Schedule T–80, a copy of which is submitted herewith as part of Exhibit U.

Article XI of Tennessee's Rate Schedule T–80 provides that the Contract shall extend for a primary term ending November 1, 1983 and year to year thereafter unless terminated by any party upon twelve months prior written notice to the other parties.

By this application Tennessee seeks authorization to abandon the transportation service for Berkshire authorized by the Commission's order issued on December 15, 1978, in Docket No. CP78–499. By letter of February 23, 1989, Berkshire and Tennessee have agreed to such termination effective February 1, 1989. Tennessee requests that the authorization to abandon such service be made effective February 1, 1989.

Tennessee has a rate case before the Commission at Docket No. RP88–228–000. It will be Tennessee's position that the abandonment of the transportation service as proposed herein should be considered by the Commission and reflected in the decision of RP88–228–000.

Comment date: May 12, 1989, in accordance with Standard Paragraph F at the end of this notice.

4. Columbia Gas Transmission Corporation

[Docket No. CP89–1205–000]

April 21, 1989.

Take notice that on April 13, 1989, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP89–1205–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to partially abandon service and for pre-granted abandonment authority to Baltimore Gas and Electric Company (BG&E), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Columbia requests permission and approval to abandon: (i) 34,358 dekatherms per day (Dt/d) of contract demand effective November, 1988 [1]; (ii) 20,000 Dt/d of contract demand effective January 1, 1988; and (iii) 45,642 Dt/d of contract demand effective November 1, 1989 under Columbia's CDS Rate Schedule for BG&E [2], together with the abandonment of related Seasonal Entitlements. Additionally, Columbia requests permission and approval for pre-granted abandonment authority for the further abandonment of: (i) Contract demand under Columbia's Rate Schedule CDS by BG&E from time to time but not below 140,000 Dt/d at any time during the first five contract years commencing November 1, 1988, or not below 120,000 Dt/d at any time during the last ten (10) year period the service agreement dated March 10, 1989, between BG&E and Columbia, and (ii) seasonal entitlement of 5 percent per contract year, commencing November 1, 1990 at BG&E's use of reduction and/or conversion rights pursuant to the provisions of section 6 and Appendix A of the March 10, 1989, service agreement.

The abandonment authorization requested would result in the following levels of sales service for BG&E:

Entitlements, effective date	Contract demand (Dt/d) summar season	Seasonal (Dt/year) winter season
Nov. 1, 1988, 39,516,000 ...	283,642	11,206,000
Jan. 1, 1989, 35,760,000	263,642	7,664,000
Apr. 1, 1989, 35,760,000	239,467	7,774,000
Nov. 1, 1989, 30,150,000 ...	[3]193,825	2,380,000
Nov. 1, 1990, 30,150,000 [4] and thereafter.....	[4]193,825	[4]2,380,000

[3] Under the Service Agreement, BG&E will reduce its contract demand to 215,000 Dt/d or 193,825 Dt/d as of November 1, 1989. BG&E must advise Columbia of the quantity it desires as its contract demand by June 3, 1989.

[4] Subject to Buyer's further reduction or conversion rights reflected in Section 6 of the March 10, 1989, service agreement.

Further, Columbia requests pre-granted authorization to implement the reductions and conversion rights of BG&E as set forth in Section 6 and Appendix of said Service Agreement.

Comment date: May 12, 1989, in accordance with Standard Paragraph F at the end of this notice.

5. Tennessee Gas Pipeline Company

[Docket No. CP89–1210–000]

April 21, 1989.

Take notice that on April 14, 1989, Tennessee Gas Pipeline Company (Tennessee), Post Office Box 2511, Houston, Texas 77252, filed in Docket No. CP89–1210–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Capitol District Energy Center Cogeneration Associates (Capitol District), an end-user, under its blanket authorization issued in Docket No. CP87–115–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Tennessee would perform the proposed interruptible transportation service for Capitol District, pursuant to an interruptible transportation service agreement dated December 19, 1988. The transportation agreement is effective for a term of two years and thereafter until firm transportation is made available to Capitol District pursuant to its Precedent Agreement filed with Tennessee and dated December 17, 1987; however, that either party may terminate the agreement at any time upon at least 30 days written notice to the other party. Tennessee proposes to transport 13,900 dekatherms (dth) of natural gas on a peak and average day; and on an annual basis 5,073,500 dth of natural gas for Capitol District. Tennessee proposes to receive the subject gas at various existing points of receipt located offshore Louisiana and in the states of Louisiana, Mississippi and Pennsylvania. The points of delivery and ultimate points of delivery are located in the state of Connecticut. Tennesses avers that no new facilities are required to provide the proposed service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's Regulations. Tennessee commenced such self-implementing service on April 1, 1989, as reported in Docket No. ST89–3011–000.

Comment date: June 5, 1989, in accordance with Standard Paragraph G at the end of this notice.

6. Southern Natural Gas Company

[Docket No. CP89–1221–000]

April 21, 1989.

Take notice that on April 17, 1989, Southern Natural Gas Company (Southern), Post Office Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP89–1221–000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to transport natural gas on behalf of Texarkoma Transportation Company (Texarkoma), a marketer of natural gas, under Southern's blanket

[1] The abandonment of the 34,358 Dt/d of contract demand results from BG&E's conversion from service under Rate Schedule CDS to Rate Schedule FTS under Order No. 436 and, as a result, BG&E's contract demand effective November 1, 1988 would be reduced from 318,000 Dt/d to 283,642 Dt/d.

[2] The Commission's "Order Approving Abandonment" in Docket No. CP89–514–000 issued March 21, 1989, authorized Columbia to abandon 24,175 Dt/d of Contract Demand under Columbia's Rate Schedule CDS with BG&E, which reduced BG&E's contract demand from 318,000 Dt/d to 293,825 Dt/d effective April 1, 1989.

certificate issued in Docket No. CP88–316–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Southern proposes to transport, on an interruptible basis, up to 2,500 MMBtu equivalent of natural gas on a peak day, 2,000 MMBtu equivalent on an average day, and 730,000 MMBtu equivalent on an annual basis for Texarkoma. It is stated that Southern would receive the gas at existing points on Southern's system in Louisiana, offshore Louisiana, Texas, offshore Texas, Mississippi, and Alabama. It is stated that Southern would deliver equivalent volumes at existing points on Southern's system in Georgia. It is asserted that Southern would utilize existing facilities and that no construction of additional facilities would be required. It is explained that the transportation service commenced March 2, 1989, under the automatic authorization provisions of Section 284.223 of the Commission's Regulations, as reported in Docket No. ST89–2694.

Comment date: June 5, 1989, in accordance with Standard Paragraph G at the end of this notice.

7. Panhandle Eastern Pipe Line Company

[Docket No. CP89–1166–000]

April 21, 1989.

Take notice that on April 7, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP89–1166–000 a request pursuant to §§ 157.205 and 284.223(2)(b) of the Commission's Regulations under the Natural Gas Act for authorization to provide transportation for Amgas, Inc. (Amgas), a shipper and marketer of natural gas, under Panhandle's blanket certificate issued in Docket No. CP86–585–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Panhandle specifically requests authorization to transport up to 1,000 dt equivalent of natural gas per day on an interruptible basis on behalf of Amgas pursuant to a transportation agreement dated January 12, 1989, between Panhandle and Amgas. It is stated that the agreement provides for Panhandle to receive gas from various existing points of receipt on its system in Texas, Oklahoma, Kansas, Colorado, Wyoming, and Illinois. Panhandle would then transport and redeliver subject gas, less fuel used and unaccounted for line loss to Central Illinois Light Company in Tazewell County, Illinois, it is stated. Panhandle states that the estimated daily and annual quantities would be 500 dt and 182,500 dt, respectively. It is further stated that service under § 284.223(a) commenced on March 1, 1989, as reported in Docket No. ST89–2836–000.

Comment date: June 5, 1989, in accordance with Standard Paragraph G at the end of this notice.

8. Northern Natural Gas Company, Division of Enron Corp.

[Docket No. CP89–1134–000]

April 21, 1989.

Take notice that on April 3, 1989, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP89–1134–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Northern to increase the currently authorized firm entitlement it provides to three of its utility customers, and to realign the currently authorized firm entitlement sold to one of the three utility customers, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northern is proposing to increase firm sales entitlements to St. Croix Valley Natural Gas Company, Inc. (St. Croix) and Municipal Utilities Department, Watertown, South Dakota (Watertown) and to increase and realign firm sales entitlements to Wisconsin Gas Company (Wisconsin Gas). It is stated that the total increase in firm entitlement sought by Northern is 5,032 Mcf per day (Mcfd); 3,213 Mcfd is to be served under Rate Schedule SS–1 and 1,819 Mcfd under Rate Schedule WPS–1, of its FERC Gas Tariff, Third Revised Volume No. 1. Northern states that the proposed changes are to be effective for the 1989–1990 winter heating season. Northern requests that the SS–1 firm sales service for St. Croix, Watertown and Wisconsin Gas become effective on November 1, 1989, and the WPS–1 firm sales service for Watertown and Wisconsin Gas become effective on December 15, 1989, pursuant to their executed service agreements.

Each utility has requested Northern to increase their firm entitlement in the manner and amount set forth below.

[Volumes in Mcfd]

	Existing authority	Proposed authority	Proposed increase
SS–1 Service:			
St. Croix	1,398	2,188	790
Watertown	1,230	1,920	690
Wisconsin Gas	12,496	14,229	1,733
WPS–1 Service:			
Watertown	240	550	310
Wisconsin Gas	2,291	3,800	1,509
Total	17,655	22,687	5,032

Wisconsin Gas is currently realigning the volumes it serves to twenty-one communities, in the manner set forth below.

Wisconsin Gas/ Community	Volumes in Mcfd		
	Existing authority	Proposed authority SS–1	Proposed increase (decrease), SS–1
Almena	90	115	25
Amery	450	420	(30)
Balsam Lake	120	150	30
Barron	370	380	10
Bloomer	345	330	(15)
Cameron	180	250	70
Chetek	240	280	40
Clayton	70	75	5
Clear Lake	230	200	(30)
Frederic	210	200	(10)
Ladysmith	660	750	90
Luck	190	200	10
Milltown	80	110	30
New Auburn	60	55	(5)
Osceola	240	230	(10)
Rice Lake	546	1,842	1,296
St. Croix Falls	250	255	5
Star Prairie	20	30	10
Tomah	747	989	242
Turtle Lake	170	150	(20)
Weyerhauser	75	65	(10)
Total	5,343	7,076	1,733

Northern states that such realignment and/or increase in firm entitlement will more effectively serve the natural gas needs of Northern's utility customers and of their individual customers, and is clearly in the public convenience and necessity. It is further stated that Northern's Form 15, filed with the Commission on April 1, 1988, reflects that Northern has gas supply in excess of its current market requirements to enable it to serve the increased loads proposed herein.

According to Northern, no additional facilities are required to be constructed to accommodate the realigned and increased deliveries of natural gas to the utility customers as proposed herein.

Finally, Northern states that it will utilize its currently effective WPS–1 and SS–1 Rate Schedules for the increased

level of service proposed, and upon receipt of the authorizations requested herein, Northern will file with the Commission the necessary revised Tariff Sheets reflecting the proposed volume increases.

Comment date: May 12, 1989, 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 jursidiction 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 not motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89-10022 Filed 4-26-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6481-001 Oregon]

Roy M. Beyer; Surrender of Exemption

April 21, 1989.

Take notice that Roy M. Beyer, exemptee for the proposed Beyer Hydropower Project, has requested that his exemption from licensing be surrendered. The exemption was issued on August 3, 1982. The project would have had an installed capacity of 24 kilowatts and would have been located on Beaver Creek, at Beyer Pond Dam, in Clackamas County, Oregon. No construction or ground disturbing activities have been initiated at the proposed project location.

The exemptee filed the request on May 8, 1984, and the exemption for Project No. 6481 shall remain in effect through the thirtieth day after issuance of this notice unless that day is Saturday, Sunday, or holiday as described in 18 CFR 385.2007, in which case the exemption shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 89-10023 Filed 4-26-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-86-001]

Chandeleur Pipe Line Co.; Filing

April 21, 1989.

Take notice that on April 17, 1989, Chandeleur Pipe Line Company (Chandeleur) filed Substitute Original Sheet Nos. 18, 23, 26, 110, and 111, and Original Sheet No. 110-A to its FERC Gas Tariff, First Revised Volume No. 1, to be effective April 1, 1989.

Chandeleur states that these tariff sheets are filed in compliance with the Commission's order of March 31, 1989. Chandeleur states that Substitute Original Sheet No. 18 deletes the language that outlines conditions under which a firm transportation request will be held invalid. Chandeleur states that Substitute Original Sheet No. 23 corrects some typographical errors. Chandeleur states that Substitute Original Sheet No. 26 now states that it will allow any gas to be delivered to satisfy the delivery requirement, that it will apply the extension period in a non-discriminatory manner, and that Chandeleur will excuse gas that is not delivered due to delays in construction or force majeure from the delivery requirements. Chandeleur states it has added language in Substitute Original Sheet Nos. 110 and 110-A which describe the method of scheduling firm transportation when it is unable to accommodate all requested firm transportation service. Substitute Original Sheet No. 111 states that firm transportation will be curtailed on a pro rata basis.

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, NW., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 385.211 (1988)). All such motions or protests should be filed on or before April 28, 1989. 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,

Secretary.

[FR Doc. 89-10097 Filed 4-26-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP85-122-020 and RP87-30-025]

Colorado Interstate Gas Co.; Compliance Filing

April 21, 1989.

Take note that on April 14, 1989, Colorado Interstate Gas Company ("CIG") submitted a revised compliance filing in Docket Nos. RP85-122 and RP87-30.

CIG states this filing reflects compliance with ordering paragraph C of the Commission's March 15, 1989 order which accepted CIG's February 13, 1989 filing in the above dockets subject to refund and conditions. The tariff sheets listed below reflect the following: (1) Deletion of D-2 overrun charge

reference in Rate Schedule SG–1; (2) Reclassification of the return on equity and related taxes related to preferred stock from demand to the commodity component of CIG's rates; and (3) Revision to Substitute Third Revised Sheet No. 10 of CIG's Volume No. 1 Tariff to reflect the elimination of the inconsistency related to CIG's standby service as pointed out in the Commission's March 15, 1989 order. CIG continued to reflect the elimination of the PR–1 Rate Schedule on Second Substitute Third Revised Sheet No. 10 effective November 1, 1986, but eliminated the reference to the standby service on this sheet. The standby service reference has been reflected on Third Substitute Third Revised Sheet No. 10 effective July 14, 1987 which is the effective date of CIG's standby service.

CIG included workpapers supporting base rates effective March 1, 1989, and base rates to be effective May 1, 1989. The March 1, 1989 base rates are based on CIG's February 13, 1989 filing and reflect the above changes before the reclassification of costs related to "certificated" facilities as required by the Commission's February 13, 1987 and February 27, 1989 orders.

The May 1, 1989 base rates reflects the reclassification of "certificated" gathering costs to commodity pursuant to the Commission's February 13, 1987 and February 27, 1989 orders as reflected in CIG's March 23, 1989 compliance filing as revised by the adjustments stated above.

In addition, because other aspects of Opinion Nos. 290 and 290–A are pending judicial review, CIG states that it reserves the right to modify the instant filing based upon the ultimate outcome of such pending judicial review or final Commission action.

Copies of this filing are being served on all jurisdiction customers and interest 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 § § 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before Apr. 28, 1989. 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 in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89–10098 Filed 4–26–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP89–98–002]

Colorado Interstate Gas Co.; Compliance Filing

April 21, 1989.

Take Notice that Colorado Interstate Gas Company ("CIG"), on April 17, 1989, tendered for filing the following tariff sheets to revise its FERC Gas Tariff, Original Volume No. 1:

Substitute Original Sheet No. 61G5
Substitute Original Sheet No. 61G6
Substitute First Revised Sheet No. 61G7
Original Sheet No. 61G7–A
Substitute First Revised Sheet No. 61G8
Substitute Original Sheet No. 61G9
Substitute Original Sheet No. 61G11

CIG states that the above-referenced tariff sheets are being filed in compliance with the Commission's Order issued March 31, 1989 in this docket. CIG also submitted a description of the interest calculations contained in CIG's March 2, 1982 filing as well as support for the Base and Deficiency Periods utilized in that filing.

CIG states that copies of the filing were served upon all of the parties to this proceeding and affected state commissions as well as all of CIG's firm sales customers.

Copies of this filing are being served on all 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 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 Rules and Regulations. All such motions or protests should be filed on or before April 28, 1989. 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 in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89–10099 Filed 4–26–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ89–2–32–001]

Colorado Interstate Gas Co.; Compliance Filing

April 21, 1989.

Take notice that on April 14, 1989, Colorado Interstate Gas Company (CIG) filed certain tariff sheets to its FERC Gas Tariff, Original Volume No. 1, to be effective March 1, 1989. CIG states that this filing is made pursuant to the Commission's March 31, 1989 letter order in Docket Nos. TQ89–2–32–000 and the directive of the Commission in its order of March 15, 1989 in Docket Nos. RP85–122–018 and RP87–30–022.

CIG states that these tariff sheets reflects, for the appropriate subsections of its PGA clause, modified language that clarifies how the current adjustments for the D–1 and D–2 demand charges are computed consistent with the implementation of the Modified Fixed Variable method of rate design.

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 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1988)). All such motions or protests should be filed on or before April 28, 1989. 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,

Secretary.

[FR Doc. 89–10100 Filed 4–26–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP89–92–002]

El Paso Natural Gas Co.; Compliance Tariff Filing

April 21, 1989.

Take notice that El Paso Natural Gas Company ("El Paso"), on April 18, 1989, tendered for filing pursuant to Part 154

of the Federal Energy Regulatory Commission's ("Commission") Regulations Under the Natural Gas Act, and in compliance with the Commission's letter order dated March 31, 1989, at Docket No. RP89–92–000, Substitute Third Revised Sheet No. 232 and Original Sheet No. 232–A to its FERC Gas Tariff, Original Volume No. 1–A.

El Paso states that on March 3, 1989 at Docket No. RP89–92–000, El Paso tendered for filing and acceptance certain tariff sheets in compliance with Order No. 509, *et seq.*, setting forth the method by which firm transportation capacity will be reallocated under § 284.304(c) of the Commission's Regulations in the evident that two or more shippers seek to obtain the firm capacity that one or more shippers offer to relinquish on or across the Outer Continental Shelf.

El Paso states that by letter order of March 31, 1989 in Docket No. RP89–92–000, the Commission accepted and suspended those tariff sheets, subject to refund, effective April 1, 1989, and subject to modification. El Paso was directed to refile its tariff sheets within thirty (30) days of the date of said order so as to include langauge in its tariff which specifically addresses § 284.304(c) of the Commission's Regulations.

El Paso states this filing tenders Substitute Third Revised Sheet No. 232 and Original Sheet No. 232–A contained in El Paso's FERC Gas Tariff, Original Volume No. 1–A to specifically set forth language incorporating El Paso's compliance with the voluntary reallocation of firm capacity, as defined by § 284.304(c) of the Commission's Regulations.

El Paso requested, pursuant to § 154.51 of the Commission's Regulations, that waiver of the notice requirements of § 154.22 of the Commission's Regulations be granted so as to permit the tendered sheets to become effective April 1, 1989.

Copies of the filing were served upon all shippers utilizing the El Paso system and all interested state regulatory 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 §§ 385.214 and 351.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before April 28, 1989. 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 in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 10104 Filed 4–26–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP88–94–020]

Natural Gas Pipeline Company of America; Tariff Filing

April 21, 1989.

Take notice that on April 14, 1989, Natural Gas Pipeline Company of America (Natural) filed Substitute Fourth Revised Sheet Nos. 169 and 170 in its FERC Gas Tariff, Third Revised Volume No. 1, to be effective May 1, 1989, in lieu of the tariff sheets filed on March 31, 1989.

Natural states that this proceeding involves its filing to recover transition costs. On March 23, 1989, the Commission issued an order in which it directed Natural to revise its comparison period used in its transition cost recovery scheme by adopting one of two methods recommended by the Commission. One method involved the use of full calendar years only and the other involved making a separate deficiency calculation for the partial year.

Natural states that it made a filing on March 31, 1989, in which, *inter alia*, it adopted the method involving full calendar years in the calculation of the deficiency as recommended by the Commission. Natural states that since making the March 31 filing, it has been contacted by some of its customers complaining about the adverse effects of its revision to the comparison period. Natural states that in order to apportion its transition costs among its customers most fairly, it should split the difference between the two allocation methods recommended by the Commission, and the tariff sheets it has tendered reflects averages of the results of both methods.

Natural requests that the Commission grant it such waivers as are necessary to implement the tariff sheets in accordance with the March 31 filing.

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 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1988)). All such motions or protests should be filed on or before April 28, 1989. 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,

Secretary.

[FR Doc. 89–10102 Filed 4–26–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA89–1–37–001]

Northwest Pipeline Corp.; Change in FERC Gas Tariff

April 21, 1989.

Take notice that on April 17, 1989, Northwest Pipeline Corporation ("Northwest"), in compliance with the Federal Energy Regulation Commission's ("Commission") order issued March 31, 1989 in the above-captioned docket, submitted the following tariff sheet to be a part of its FERC Gas Tariff:

First Revised Volume No. 1

First Amended Forty-Ninth Revised Sheet No. 10

Northwest states First Amended Forty-Ninth Revised Sheet No. 10 was filed to adjust the "Estimated average cost of gas in last scheduled PGA-Commodity" as found on the bottom of Rate Sheet No. 10. The subject tariff sheet amends Forty-Ninth Revised Sheet No. 10, which has been accepted by the Commission for filing and suspended to become effective April 1, 1989, subject to refund. First Amended Forty-Ninth Revised Sheet No. 10 was also filed to be effective April 1, 1989. Northwest also filed additional information in support of its annual PGA filing as required by the Commission's March 31, 1989 order.

A copy of this filing has been served on Northwest's jurisdictional sales customers and affected state commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulation Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with § § 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before April 28, 1989. 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 in the Public Reference Room.

Lois D. Cashell,

Secretary,

[FR Doc. 89-10103 Filed 4-26-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-66-001]

Pacific Interstate Offshore Co.; Compliance Filing of Proposed Change in FERC Gas Tariff Rate

April 21, 1989

Take notice that Pacific Interstate Offshore Company ("PIOC") on April 14, 1989, tendered for filing the following proposed change to its FERC Gas Tariff, Original Volume No. 1, to be effective April 22, 1989:

Ninth Revised Sheet No. 4

PIOC states that the tariff sheet has been filed in compliance with Ordering Paragraph Two (2) of the Commission's Letter Order dated March 23, 1989 in Docket No. RP88-66-000. PIOC is filing for a reduction in its rate charged to its sole customer, Southern California Gas Company, under Rate Schedule G-10.

Copy of this filing were served on PIOC's suppliers, customers, and the interested State Commission.

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 April 28, 1989. 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,

Secretary,

[FR Doc. 89-10104 Filed 4-26-89; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearing and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the procedures for disbursement of $8.5 million, plus accrued interest, in alleged crude oil violation amounts obtained from Hood Goldsberry d/b/a Goldsberry Operating Company (Case No. KEF-0118), Meeker and Company (Case No. KEF-0122), Calumet Industries, Inc. (Case No. KEF-0122) and Christmann and Welborn (Case No. KEF-0123). The OHA has determined that the funds will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986).

DATE AND ADDRESS: Applications for refund must be filed by October 31, 1989, and should be addressed to: Subpart V Crude Oil Overcharge Refunds, Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director; Roger Klurfeld, Assistant Director; Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-2094 (Mann); 586-2383 (Klurfeld).

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision sets forth the final procedures that the DOE has formulated to distribute crude oil overcharge funds obtained from the four firms listed above. The funds are being held in an interest-bearing escrow account pending distribution by the DOE.

The OHA has decided to distribute these funds in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986) (the MSRP). Under the MSRP, crude oil overcharge monies are divided among the states, the federal government, and injured purchasers of refined products. Refunds to the states will be distributed in proportion to each state's consumption of petroleum products during the period of price controls. Refunds to eligible purchasers will be based on the number of gallons of petroleum products which they purchased and the extent to which they can demonstrate injury.

Applications for refund must be filed by October 31, 1989, and should be sent to the address set forth at the beginning of this notice. The information which claimants should include in their applications is explained in the Decision, which immediately follows. Any claimant that has already filed a crude oil refund application need not file again.

Dated: April 19, 1989.

George B. Breznay,

Director, Office of Hearings and Appeals.

April 19, 1989.

DECISION AND ORDER

Implementation of Special Refund Procedures

Names of Firms:
Hood Goldsberry
Meeker and Company
Calumet Industries, Inc.
Christmann and Welborn

Dates of Filing:
September 19, 1988
October 25, 1988
October 31, 1988
January 18, 1989

Case Numbers:
KEF-0118
KEF-0121
KEF-0122
KEF-0123

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special refund procedures. 10 CFR 205.281. These procedures are used to refund monies to those injured by actual or alleged violations of the DOE price regulations.

The ERA has filed four Petitions for the Implementation of Special Refund Procedures for crude oil overcharge funds obtained from Hood Goldsberry d/b/a Goldsberry Operating Company, Inc. (Goldsberry), Meeker and Company (Meeker), Calumet Industries, Inc. (Calumet) and Christmann and Welborn (Christmann). These four firms remitted a total of $8.5 million to the DOE.[1] An additional $1.8 million in interest has accrued on that amount as of March 31, 1989. This Decision and Order establishes procedures for distributing these funds.

The general guidelines which the OHA may use to formulate and implement a plan to distribute refunds are set forth in 10 CFR Part 205, Subpart V. The Subpart V process may

[1] Goldsberry remitted $433,562.81 to the DOE pursuant to Consent Order 641C00428, Meeker paid $305,926.41 in accordance with Consent Order 6A0C00070, and Calumet paid $859,289.68 in accordance with Consent Order N00S90139. Christmann remitted a total of $6,944,288.49 to the DOE pursuant to (1) a July 10, 1985 Judgement of the United States District Court for the Northern District of Texas, Lubbock Division, *Christmann & Welborn v. DOE*, No. CA-5-79-7; and (2) a Settlement Agreement between Christmann and the DOE in that same litigation, DOE Case Number 676C00102.

be used in situations where the DOE cannot readily identify the persons who may have been injured as a result of actual or alleged violations of the regulations or ascertain the amount of the refund each person should receive. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds, see *Office of Enforcement*, 9 DOE ¶ 82,508 (1981), and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981). We have considered the ERA's requests to implement Subpart V procedures with respect to the monies received from the four firms listed above, and have determined that such procedures are appropriate.

I. Background

On July 28, 1986, the DOE issued a Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 Fed. Reg. 27899 (August 4, 1986) ("the MSRP"). The MSRP, issued as a result of a court-approved Settlement Agreement in *In Re: The Department of Energy Stripper Well Exemption Litigation*, M.D.L. No. 378 (D. Kan.), provides that crude oil overcharge funds will be divided among the states, the federal government, and injured purchasers of refined petroleum products. Under the MSRP, up to 20 percent of these crude oil overcharge funds will be reserved initially to satisfy valid claims by injured purchasers of petroleum products. Eighty percent of the funds, and any monies remaining after all valid claims are paid, are to be disbursed equally to the states and federal government for indirect restitution.

Shortly after the issuance of the MSRP, the OHA announced its intention to apply the Modified Policy in all Subpart V proceedings involving alleged crude oil violations. *See* Order Implementing the MSRP, 51 Fed. Reg. 29689 (August 20, 1986). In that Order, the OHA solicited comments concerning the appropriate procedures to follow in processing refund applications in crude oil refund proceedings.

On April 10, 1987, the OHA issued a Notice analyzing the numerous comments it received in response to the August 1986 Order. 52 Fed. Reg. 11737. The Notice set forth generalized procedures and provided guidance to assist claimants that wish to file refund applications for crude oil monies under the Subpart V regulations. In that Notice, the OHA stated that all applicants for crude oil refunds would be required to document their purchase volumes of petroleum products during the period of price controls and prove that they were injured by the alleged overcharges. The Notice indicated that end-users of petroleum products whose businesses are unrelated to the petroleum industry will be presumed to have absorbed the crude oil overcharges, and need not submit any further proof of injury to receive a refund. Finally, the OHA stated that refunds would be calculated on the basis of a per gallon refund amount derived by dividing crude oil violation amounts by the total consumption of petroleum products in the United States during the period of price controls. The numerator would include the crude oil overcharge monies that were in the DOE's escrow account at the tie of the settlement and a portion of the funds in the M.D.L. 378 escrow at the time of the settlement.

These procedures, which the OHA has applied in numerous cases since the April 1987 Notice, *see, e.g., New York Petroleum, Inc.*, 18 DOE ¶ 85,435 (1988); *Shell Oil Co.*, 17 DOE ¶ 85,204 (1988); *Ernest A. Allerkamp*, 17 DOE ¶ 85,079 (1988), have been approved by the United States District Court for the District of Kansas as well as the Temporary Emergency Court of Appeals. Various states had filed a Motion with the Kansas District Court, claiming that the OHA violated the Settlement Agreement by employing presumptions of injury for end-users and by improperly calculating the refund amount to be used in those proceedings. On August 17, 1987, Judge Theis issued an Opinion and Order denying the states' Motion in its entirety. The court concluded that the Settlement Agreement "does not bar OHA from permitting claimants to employ reasonable presumptions in affirmatively demonstrating injury entitling them to a refund." *In Re: The Department of Energy Stripper Well Exemption Litigation*, 671 F. Supp. 1318 at 1323 (D. Kan. 1987). The court also ruled that, as specified in the April 1987 Notice, the OHA could calculate refunds based on a portion of the M.D.L. 378 overcharges. *Id.* at 1323–24. The states appealed the latter ruling, and the Temporary Emergency Court of Appeals affirmed Judge Theis' decision. *In Re: The Department of Energy Stripper Well Exemption Litigation*, 857 F.2d 1481 (Temp. Emer. Ct. App. 1988).

II. The Proposed Decision and Order

On February 16, 1989, the OHA issued a Proposed Decision and Order (PD&O) establishing tentative procedures to distribute the alleged crude oil violation amounts obtained from Goldsberry, Meeker, Calumet and Christmann. The OHA tentatively concluded that the funds in those cases should be distributed in accordance with the MSRP and the April 10, 1987 Notice. Pursuant to the MSRP, the OHA proposed to reserve initially 20 percent of the crude oil violation amounts for direct restitution to applicants who claim that they were injured by the alleged crude oil violations. The remaining 80 percent of the funds would be distributed to the states and the federal government for indirect restitution. After all valid claims are paid, any remaining funds in the claims reserve also would be divided between the states and the federal government. The federal government's share ultimately would be deposited into the general fund of the Treasury of the United States.

In the PD&O, the OHA proposed to require applicants for refund to document their purchase volumes of petroleum products during the period of price controls and to prove that they were injured by crude oil overcharges. The PD&O stated that end-users of petroleum products whose businesses are unrelated to the petroleum industry could use a presumption that they absorbed the crude oil overcharges, and need not submit any further proof of injury to receive a refund. The OHA also proposed to calculate refunds on the basis of a volumetric refund amount, as described in the April 10, 1987 Notice. Comments were solicited regarding the tentative distribution process set forth in the PD&O.

In response to the PD&O, the OHA received comments from Philip P. Kalodner as counsel for six electric utilities, 14 foreign-flag shipping companies, and four pulp and paper manufacturers. Kalodner's clients are all potential recipients of crude oil refunds. In his comments, Kalodner advances once again his contention that the 20 percent reserve for claimants will be insufficient to satisfy all of the legitimate claims that have been or will be filed in these proceedings. Kalodner maintains that the OHA should not distribute any of the crude oil violation amounts covered by this Decision to the states and federal government. Instead, Kalodner asks the OHA to retain all of the funds for claimants in order to rectify the alleged deficiency.

The OHA has addressed various incarnations of Kalodner's comments on numerous previous occasions, and has rejected them at each juncture. As we have prepeatedly indicated, the Stripper Well Settlement Agreement permits the OHA to reserve no more than 20 percent of alleged crude oil violation amounts for direct refunds to injured claimants. *See, e.g., Wickett Refining Co.*, 18 DOE ¶ 85,659 at 88,079–80 (1989); *New York Petroleum*, 18 DOE at 88,701; *A. Tarricone, Inc.*, 15 DOE ¶ 85,495 at 88,893 (1987). Moreover, we have noted that "there is absolutely no evidence to support Kalodner's assertion that the 20 percent reserve will be insufficient to pay claimants." *Amorient Petroleum Co.*, 18 DOE ¶ 85,595 at 88,977 (1989). In the current permutation of his comments, Kalodner has presented no new facts or arguments to justify a reconsideration of those issues in this determination. Accordingly, we will adopt the refund procedures as proposed.

III. The Refund Procedures

A. Refund Claims

After considering the comments received, we have concluded that the $8.5 million in alleged crude oil violation amounts covered by this Decision, plus the $1.8 million in interest which has accrued on that amount as of March 31, 1989, should be distributed in accordance with the crude oil refund procedures previously discussed. As noted above, we will reserve initially the full 20 percent of the alleged crude oil violation amounts, or $2.06 million including interest, for direct refunds to claimants. The amount of the reserve may be adjusted downward later if circumstances warrant such action.

The process which the OHA will use to evaluate claims based on alleged crude oil violations will be modeled after the process the OHA has used in Subpart V proceedings to evaluate claims based upon alleged overcharges involving refined products. *MAPCO, Inc.*, DOE ¶ 85,097 (1986); *Mountain Fuel Supply Co.*, 14 DOE ¶ 85,475 (1986). As in non-crude oil cases, applicants will be required to document their purchase volumes and to prove that they were injured as a result of the alleged violations. Following Subpart V precedent, reasonable estimates of purchase volumes may be submitted. *Greater*

Richmond Transit Co., 15 DOE ¶ 85,028 at 88,050 (1986). Generally, it is not necessary for applicants to identify their suppliers of petroleum products in order to receive a refund.

Applicants who were end-users or ultimate consumers of petroleum products, whose businesses are unrelated to the petroleum industry, and who were not subject to the DOE price regulations are presumed to have been injured by any alleged crude oil overcharges. In order to receive a refund, end-users need not submit any further evidence of injury beyond volumes of product purchased during the period of price controls. *See Tarricone*, 15 DOE at 88,893–96. The end-user presumption of injury is rebuttable, however, *Berry Holding Co.*, 16 DOE ¶ 85,405 at 88,797 (1987). If an interested party submits evidence which is of sufficient weight to cast serious doubt on the end-user presumption, the applicant will be required to produce further evidence of injury. *See New York Petroleum*, 18 DOE at 88,701–03.

Reseller and retailer claimants must submit detailed evidence of injury, and may not rely on the presumptions of injury utilized in refund cases involving refined petroleum products. They can, however, use econometric evidence of the type employed in the OHA Report to the district court in the Stripper Well Litigation, 6 Fed. Energy Guidelines ¶ 90,507 (June 19, 1985). Applicants who executed and submitted a valid waiver pursuant to one of the escrows established in the Stripper Well Agreement have waived their rights to apply for crude oil refunds under Subpart V. *Boise Cascade Corp.*, 16 DOE ¶ 85,214 at 88,411. *reconsideration denied*, 16 DOE ¶ 85,495, *aff'd sub nom. In Re: The Department of Energy Stripper Well Exemption Litigation*, 3 Fed. Energy Guidelines ¶ 26,613 (D. Kan. 1987).

Refunds to eligible claimants who purchased refined petroleum products will be calculated on the basis of a volumetric refund amount derived by dividing the alleged crude oil violation amounts involved in this determination ($8.5 million) by the total consumption of petroleum products in the United States during the period of price controls (2,020,997,335,000 gallons). *Mountain Fuel*, 14 DOE at 88,868 n.4. This yields a volumetric refund amount of $0.000004227 per gallon.[2]

Refund applications submitted pursuant to this Decision must be postmarked no later than October 31, 1989, the deadline established in *World Oil Co.*, 17 DOE ¶ 85,568 (1988). As we stated in previous Decisions, a crude oil refund applicant will be required to submit only one application for crude oil overcharge funds. *See Allerkamp*, 17 DOE at 88,176. Any party that has previously submitted a refund application in crude oil refund proceedings need not file another application; that application will be deemed to be filed in all crude oil proceedings finalized to date.

To apply for a crude oil refund, a claimant should submit an application for refund. That application should contain all of the following information:

(1) Identifying information including the applicant's name, address, and social security number or employer identification number, an indication whether the applicant is a corporation, the name and telephone number of a person to contact for any additional information, and the name and address of the person who should receive the refund check;

(2) A short description of the applicant's business and how it used petroleum products. If the applicant did business under more than one name, or a different name during the period of price controls, the applicant should list these names;

(3) If the applicant's firm is owned by another company, or owns other companies, a list of those other companies' names and their relationships to the applicant's firm;

(4) A statement identifying the petroleum products which the applicant purchased during the period August 19, 1973 through January 27, 1981, the number of gallons of each product purchased, and the total number of gallons for all products purchased on which the applicant bases its claim;

(5) An explanation of how the applicant obtained the volume figures above, and an explanation of its method of estimation if the applicant used estimates to determine its purchase volumes;

(6) A statement that neither the applicant, its parent firm, affiliates, subsidiaries, successors nor assigns has waived any right it may have to receive a refund in these cases (i.e. by having executed and submitted a valid waiver pursuant to any one of the escrow accounts established pursuant to the Stripper Well Agreement);

(7) If the applicant is not an end-user whose business is unrelated to the petroleum industry, a showing that the applicant was injured by the alleged overcharges (i.e. that the applicant did not pass through the overcharges to its own customers); and

(8) If the applicant is a regulated utility, a certification that it will notify the state utility commission of any refunds received, and that it will pass on the entirety of its refunds to its customers.

All applications should be typed or printed and clearly labelled "Application for Crude Oil Refund." Each applicant must submit an original and one copy of the application, which should be mailed to the following address:

Subpart V Crude Oil Overcharge Refunds, Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Although an applicant need not use any special application form to apply for a crude oil refund, a suggested form has been prepared by the OHA and may be obtained by sending a written request to the address listed above.

B. Payments to the States and Federal Government

Under the terms of the MSRP, the remaining 80 percent of the $8.5 million in principal, plus $1.8 million in interest, in alleged crude oil violation amounts subject to this Decision, or $8.24 million, should be disbursed in equal shares to the states and federal government for indirect restitution. Accordingly, we will direct the DOE's Office of the Controller to segregate $8.24 million and transfer one-half of that amount, or $4.12 million, into an interest-bearing subaccount for the states, and one-half into an interest-bearing subaccount for the federal government. In accordance with previous practice, when the amount available for distribution to the States reaches $10 million, we will issue a Decision and Order directing the DOE's Office of the Controller to make the appropriate disbursements to the individual states from their respective subaccount. This future Order is necessary to improve our ability to track the various disbursements to the states. Refunds to the states will be in proportion to the consumption of petroleum products in each state during the period of price controls. The share or ratio of the funds which each state will receive is contained in Exhibit H of the Stripper Well Agreement. When disbursed, these funds will be subject to the same limitations and reporting requirements as all other crude oil monies received by the states under the Stripper Well Agreement.

It Is Therefore Ordered That:

(1) Applications for Refund from the alleged crude oil overcharge funds remitted by Hood Goldsberry d/b/a Goldsberry Operating Company, Inc., Meeker and Company, Calumet Industries, Inc. and Christmann and Welborn may now be filed.

(2) All applications submitted pursuant to paragraph (1) above must be filed no later than October 31, 1989.

(3) The Director of Special Accounts and Payroll, Office of Departmental Accounting and Financial Systems Development, Office of the Controller, Department of Energy, shall take all steps necessary to transfer, pursuant to Paragraphs (4), (5) and (6) below, all of the funds from the following subaccounts:

Hood Goldsberry, Account No. 641C00428Z
Meeker and Company, Account No. 6A0C00070Z
Calumet Industries, Inc., Account No. N00S90139Z
Christmann and Welborn, Account No. 67C00102Z

(4) The Director of Special Accounts and Payroll shall transfer $4,124,142.39 of the funds obtained pursuant to paragraph (3) above, plus interest which accrues on that amount from March 31, 1989 to the date of the transfer, into the subaccount denominated "Crude Tracking-States," Number 999DOE003W.

(5) The Director of Special Accounts and Payroll shall transfer the same amount of funds as that indicated in paragraph (4) above into the subaccount denominated "Crude Tracking-Federal," Number 999DOE002W.

(6) The Director of Special Accounts and Payroll shall transfer $2,062,071.20 of the

[2] Based on the crude oil violations monies previously received by the DOE, the OHA recently announced that it was increasing the refund rate at which meritorious applicants in these proceedings are paid to $0.0008 per gallon. *Crude Oil Supplemental Refund Distribution*, 18 DOE ¶ 2, No. RA272–2 (April 11, 1989). This refund rate will be increased, when administratively expedient, to reflect any additional crude oil violation amounts received by the DOE. The total volumetric refund amount approved to date is $0.0009835267.

funds obtained pursuant to paragraph (3) above, plus interest which accrues on that amount from March 31, 1989 to the date of transfer, into the subaccount denominated "Crude Tracking-Claimants 2," Number 999DOE008Z.

Dated: April 19, 1989.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 89-10014 Filed 4-26-89; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL 3562-7]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202 382-2740).

DATE: Comments must be submitted on or before May 30, 1989.

SUPPLEMENTARY INFORMATION:

Office of Water

Title: National User Charge Rate Survey (EPA ICR #1499). This is a new collection.

Abstract: Municipalities with wastewater treatment facilities that have received Construction Grant Program support will be asked to complete a short questionnaire to assess the adequacy of user fees to meet costs and ensure permit compliance and the burden these fees impose on residential users. Response is voluntary.

Burden Statement: The estimated public reporting burden for this collection of information is 1 hour and 20 minutes per respondent, per year. This estimate includes the time for completing the questionnaire.

Respondents: Municipalities.

Estimated No. of Respondents: 600.

Estimated Total Annual Burden on Respondents: 800 hours.

Frequency of Collection: One-time only.

Send comments regarding the burden estimate, or any other aspect of these information collections, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223), 401 M Street SW., Washington, DC 20460

and

Tim Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place, NW., Washington, DC 20530.

OMB Responses to Agency PRA Clearance Requests

EPA ICR #1489; Monitoring and Recordkeeping Requirements Under the Sewage Sludge Technical Regulations; was disapproved 3/31/89.

Date: April 21, 1989.

Odelia Funke,

Acting Director, Information and Regulatory Systems Division.

[FR Doc. 89-10065 Filed 4-26-89; 8:45 am]

BILLING CODE 6560-50-M

[FRL 3562-6]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202 382-2740).

DATE: Comments must be submitted on or before May 30, 1989.

SUPPLEMENTARY INFORMATION:

Office of Pesticides and Toxic Substances

Title: Recordkeeping and Reporting Requirements for Pesticide Dealers and Commercial Applicators in Nebraska and Colorado (EPA ICR # 0154.03); OMB # 2070-0025. This is an extension of a currently approved collection.

Abstract: Under this ICR, EPA requires restricted-use pesticide applicators and dealers in Nebraska and Colorado to maintain records on pesticide use and disposition. In addition, dealers must report their identity to the Agency within sixty days of entering into business. The records help EPA ensure that only trained and certified persons handle restricted-use pesticides.

Burden Statement: The public reporting burden for this collection is estimated to average 1 and a half hours per response. This estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Respondents: Applicator/Dealers of Restricted-Use Pesticides.

Estimated No. of Respondents: 4,000.

Estimated Total Annual Burden on Respondents: 6,400 hours.

Send comments regarding the burden estimate, or any other aspect of these information collections, including suggestions for reducing the burden to both of the following addresses:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223), 401 M Street SW., Washington, DC 20460.

Tim Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place NW., Washington, DC 20503, (Telephone (202) 395-3084).

Date: April 20, 1989.

Odelia Funke,

Acting Director, Information and Regulatory Systems Division.

[FR Doc. 89-10066 Filed 4-26-89; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3562-3]

Science Advisory Board, Environmental Health Committee, Halogenated Organics Subcommittee; Open Meeting

Under Pub. L. 92-463, notice is hereby given that a two-day meeting of the Halogenated Organics Subcommittee, of the Environmental Health Committee, of the Science Advisory Board will be held on May 17th-18th, 1989, at the Howard Johnson's Crystal City Hotel, 2650 Jefferson Davis Highway, Arlington, Virginia. The meeting will be held from 9:00 a.m. to 5:00 p.m. on May 17th and from 9:00 a.m. to 12:00 p.m. on May 18th.

The purpose of this meeting is to review criteria documents for Hexachlorocychlopentadiene and 1,1,2-Trichloroethane.

The meeting will be open to the public. Any member of the public wishing to make a presentation at the meeting should forward a written statement to Dr. C. Richard Cothern, Executive Secretary, Science Advisory

Board (A–101F)), U.S. Environmental Protection Agency, Washington, DC 20460, or contact him on (202) 382–2552 by May 4, 1989. The Science Advisory Board expects that the public statements presented at its meetings will not be repetitive of previously submitted written statements. In general, each individual or group making an oral presentation will be limited to a total time of ten minutes.

Dated: April 20, 1989.

Donald G. Barnes,

Director, Science Advisory Board.

[FR Doc. 89–10067 Filed 4–26–89; 8:45 am]

BILLING CODE 6560–50–M

[OPP–50684A; FRL–3563–3]

Receipt of Notification of Intent To Conduct Small-Scale Field Testing; Genetically Engineered Microbial Pesticide; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This document corrects a notice published in the **Federal Register** of February 22, 1989.

FOR FURTHER INFORMATION CONTACT: By mail: Phillip Hutton, Product Manager (PM) 17, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 207, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703–557–2690).

SUPPLEMENTARY INFORMATION: In the Federal Register of February 22, 1989 (54 FR 7594), EPA issued a receipt of notification of intent to conduct small-scale field testing of a genetically engineered microbial pesticide. This document corrects a sentence in the preamble that was incorrectly stated. On page 7594, column two, the third sentence of the **"SUPPLEMENTARY INFORMATION"** is corrected to read as follows: "A grant proposal supporting this research has been submitted to the EPA Office of Research and Development Terrestrial Biotechnology and Microbial Ecology Program; approval is pending."

Dated: April 21, 1989.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticides Programs.

[FR Doc. 89–10243 Filed 4–26–89; 8:45 am]

BILLING CODE 6560–50–M

[OPP–30298; FRL–3563–1]

Ecogen, Inc.; Applications To Register Pesticide Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATE: Comment by May 30, 1989.

ADDRESS: By mail submit comments identified by the document control number [OPP–30298] and the registration/file numbers to: Phil Hutton, Product Manager (PM 17), Public Docket and Freedom of Information Section, Field Operations Programs (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Environmental Protection Agency, Rm. 246, CM#2, Attn: PM 17, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Phil Hutton, PM 17, Rm. 207, CM#2, (703–557–2690).

SUPPLEMENTARY INFORMATION: EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

I. Products Containing Active Ingredients Not Included in Any Previously Registered Product

1. *File Symbol:* 55638–I. *Applicant:* Ecogen, Inc., 2005 Cabot Blvd West, Langhorne, PA 19047–1810. *Product name:* Cutlass ™ WP. Insecticide. *Active ingredient: Bacillus thuringiensis* var. *kurstaki* strain 2371 protein toxic 10.0% *Proposed classification/Use:* General. For the control of lepidopteran pests on a variety of crops. (PM 17)

2. *File Symbol:* 55638–O. *Applicant:* Ecogen, Inc. *Product name:* Cutlass ™ OF. Insecticide. *Active ingredient: Bacillus thuringiensis* var. *kurstaki* strain 2371 protein toxic 7.5%. *Proposed classification/Use:* General. For the control of lepidopteran pests on a variety of crops. (PM 17)

3. *File Symbol:* 55638–RN. *Applicant:* Ecogen, Inc. *Product name:* Foil ™ OF. Insecticide. *Active ingredient: Bacillus thuringiensis* var. *kurstaki* strain EG2424 protein toxin 7.5%. *Proposed classification/Use:* General. For use against coleopteran and lepidopteran insects on potatoes. (PM 17)

4. *File Symbol:* 55638–T. *Applicant:* Ecogen, Inc. *Product name:* Condor ™ OF. Insecticide. *Active ingredient: Bacillus thuringiensis* var. *kurstaki* protein toxin 7.5%. *Proposed classification/Use:* General. To control the Gypsy moth and Spruce budworm on forests, shade trees, and shrubs. (PM 17)

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register.** The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

Written comments filed pursuant to this notice, will be available in the Program Management and Support Division (PMSD) office at the address provided from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. It is suggested that persons interested in reviewing the application file, telephone the PMSD office (703–557–3262), to ensure that the file is available on the date of intended visit.

Authority: 7 U.S.C. 136.

Dated: April 21, 1989.

Anne L. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 89–10244 Filed 4–26–89; 8:45 am]

BILLING CODE 6560–50–M

[OPTS-59268A; FRL-35624]

Certain Chemicals; Approval of a Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for test marketing exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA has designated this application as TME-89-7. The test marketing conditions are described below.

EFFECTIVE DATE: April 18, 1989.

FOR FURTHER INFORMATION CONTACT: Heidi A. Siegelbaum, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Room E-613, 401 M Street SW., Washington, DC 20460, (202) 475-8262.

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present any unreasonable risk of injury.

EPA hereby approves TME-89-7. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and for the time period and restrictions specified below, will not present any unreasonable risk of injury to health or the environment. Production volume, use, and the number of customers must not exceed that specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

The following additional restrictions apply to TME-89-7:

A bill of lading accompanying each shipment must state that the use of the substance is restricted to that approved in the TME. In addition, the applicant shall maintain the following records until 5 years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. Records of the quantity of the TME substance produced and the date of manufacture.

2. Records of dates of the shipments to each customer and the quantities supplied in each shipment.

3. Copies of the bill of lading that accompanies each shipment of the TME substance.

TME-89-7

Date of Receipt: January 19, 1989.

Notice of Receipt: February 15, 1989 (54 FR 6958).

Applicant: Synthetic Products Company.

Chemical: Melamine amyl phosphate.

Use: Flame retardant.

Production Volume: 1,000 kg.

Number of Customers: 10.

Test Marketing Period: 180 days, commencing on first day of manufacture.

Risk Assessment: A determination could not be made by EPA concerning any adverse human health effects which would arise in conjunction with use of the TME substance. In addition, EPA does not believe there will be any significant human exposure to the TME substance because it will be manufactured and processed in a closed system, and individuals who come into contact with the TME substance will be required to use protective equipment to mitigate any associated risk. EPA identified no significant environmental concerns for the test market substance. Based on the foregoing, the test market substance will not present any unreasonable risk of injury to health or the environment.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to health or the environment.

Dated: April 18, 1989.

John W. Melone,

Director, Chemical Control Divison, Office of Toxic Substances.

[FR Doc. 89-10069 Filed 4-26-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 1777]

Petitions for Reconsideration and Clarification of Actions in Rule Making Proceedings

April 21, 1989.

Petitions for reconsideration and clarification have been filed in the Commission rule making proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, NW., Washington, DC, or may be purchased from the Commission's copy contractor International Transcription Service (202-857-3800). Oppositions to these petitions must be filed May 15, 1989. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of § 73.202(b) Table of Allotments, FM Broadcast Stations. (Holiday, Beverly Hills, Chiefland and Micanopy, Florida). Number of petitions received: 1.

Subject: Amendment of § 73.3555 of the Commission's Rules, the Broadcast Multiple Ownership Rules. (MM Docket No. 87-7). Number of petitions received: 2.

Subject: Amendment of § 73.202(b) Table of Allotments, FM Broadcast Stations. (Anchorage, Alaska) (MM Docket No. 88-29, RM-5798). Number of petitions received: 1.

Subject: Amendment of Part 73 of the Commission's Rules to permit short-spaced FM station assignments by using Directional Antennas. (MM Docket No. 87-121, RM-6015). Number of petitions received: 6.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89-10143 Filed 4-26-89; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Board of Visitors for the Emergency Management Institute; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following committee meeting:

Name: Board of Visitors (BOV) for the Emergency Management Institute (EMI).

Dates of Meeting: May 1–4, 1989.

Place: Federal Emergency Management Agency, National Emergency Training Center, Emergency Management Institute, Conference Room, Building N, Emmitsburg, Maryland 21727.

Time: May 1—7:00 p.m. to 9:00 p.m.; May 2—2:00 p.m. to 4:00 p.m.; May 3—7:00 p.m. to 9:00 p.m.; May 4—8:30 a.m. to 12:00 noon.

Proposed Agenda: Participation in the Region/State T&E Program Managers Conference being held at EMI May 2–5 which will provide the BOV with an opportunity to interact with, and obtain input from, Region and State training staff. BOV meeting sessions will be held in addition to their above stated participation which will include status reports from the BOV task forces on Core Curriculum and Evaluation System Procedures, Response to BOV 1988 Annual Report, and Working Sessions.

The meeting will be open to the public with approximately ten seats available on a first-come, first serve basis. Members of the general public who plan to attend the meeting should contact the Office of the Superintendent, Emergency Management Institute, Office of Training, 16825 South Seton Avenue, Emmitsburg, Maryland 21727 (telephone number, 301–447–1251) on or before April 26, 1989. Minutes of the meeting will be prepared by the Board and will be available for public viewing in the Director's Office, Office of Training, Federal Emergency Management Agency, Building N, National Emergency Training Center, Emmitsburg, Maryland 21727. Copies of the minutes will be available upon request 30 days after the meeting.

Dated: April 14, 1989.

Dave McLoughlin,

Director, Office of Training.

[FR Doc. 89–10132 Filed 4–26–89; 8:45 am]

BILLING CODE 6718–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Revocations

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR 510.

License Number: 3155.

Name: Intercontinental Freight Service Corporation.

Address: 55 Shoreline Drive, Ware, MA 01082.

Date Revoked: April 1, 1989.

Reason: Failed to maintain a valid surety bond.

License Number: 1542.

Name: CF Air Freight, Inc.

Address: 3350 West Bayshore Rd., Palo Alto, CA 94303.

Date Revoked: April 4, 1989.

Reason: Surrendered license voluntarily.

License Number: 2855.

Name: Cunningham & Murray, Inc.

Address: 132 West Bay Street, Savannah, GA 31412.

Date Revoked: April 9, 1989.

Reason: Failed to maintain a valid surety bond.

Robert G. Drew,

Director, Bureau of Domestic Regulation.

[FR Doc. 89–10015 Filed 4–21–89; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Barclays PLC et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughtout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competiton, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 10, 1989.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Barclays PLC*, London, England, Barclays Bank PLC, London, England, and Barclays USA Inc., New York, New York; to engage *de novo* through their subsidiary, Barclays De Zoete Wedd Government Securities, Inc. in securities brokerage activities pursuant to § 225.25(b)(15) of the Board's Regulation Y.

B. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198.

1. *Chickasha Bancshares, Inc.*, Chickasha, Oklahoma; to engage *de novo* in credit insurance activities pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, April 21, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89–10073 Filed 4–26–89; 8:45 am]

BILLING CODE 6210–01–M

Fifth Third Bancorp et al.; Formation of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing

must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than May 17, 1989.

A. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Fifth Third Bancorp,* Cincinnati, Ohio; to merge with C.S. Bancshares, Inc., Connersville, Indiana, and thereby indirectly acquire Central State Bank, Connersville, Indiana.

B. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Romney Bankshares, Inc.,* Romney, West Virginia; to become a bank holding company by acquiring 100 percent of the voting shares of The Bank of Romney, Romney, West Virginia.

C. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Easton Bancshares, Inc.,* Easton, Illinois; to become a bank holding company by acquiring 80 percent of the voting shares of Community Bank of Easton, Easton, Illinois.

D. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Orono Financial Inc.,* Navarre, Minnesota; to acquire 100 percent of the voting shares of Wayzata Bank of the Lakes, N.A., Wayzata, Minnesota, a *de novo* bank.

E. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Chalybeate Springs Corporation,* Hughes Springs, Texas; to become a bank holding company by acquiring 80 percent of the voting shares of The 1st National Bank of Hughes Springs, Texas.

2. *Harvey Bancorporation, Inc.,* Dallas, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Preston Forum National Bank of Dallas, Dallas, Texas.

F. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Moore Financial Group Incorporated,* Boise, Idaho; to acquire 100 percent of the voting shares of First Security Bancorp, Tacoma, Washington, and thereby indirectly acquire First Security Bank, Tacoma, Washington.

Board of Governors of the Federal Reserve System, April 21, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-10074 Filed 4-26-89; 8:45 am]

BILLING CODE 6210-01-M

Greatbanc, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 10, 1989.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Greatbanc, Inc.,* Itasca, Illinois; to acquire Plansmith Corporation, Palatine, Illinois, and thereby engage in the business of marketing and selling personal computer based software to financial institutions pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, April 21, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-10075 Filed 4-26-89; 8:45 am]

BILLING CODE 6210-01-M

National Westminster Bank PLC et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies, and Acquisitions of Nonbanking Companies

The companies listed in this notice have applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed companies have also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The applications are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 12, 1989.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *National Westminster Bank PLC,* London, England; NatWest Holdings, Inc., Wilmington, Delaware; National Westminster Bancorp, New York, New York; and National Westminster Bancorp NJ, Jersey City, New Jersey; to merge with Ultra Bancorporation, Bridgewater Township, New Jersey, and thereby indirectly acquire First National Bank of Central Jersey, Bridgewater Township, New Jersey.

In connection with this application, Applicants also propose to acquire one-third of the interest of Bancorps' International Trading Corporation, Bridgewater Township, New Jersey, and thereby engage in export trading company activities pursuant to § 211.34 of the Board's Regulation K.

B. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Stearns Financial Services, Inc.,* Albany, Minnesota; to become a bank holding company by acquiring 80 percent of the voting shares of Stearns Agency, Inc., Albany, Minnesota, and thereby indirectly acquire 86.87 percent of Stearns County National Bank of Albany, Albany, Minnesota; 100 percent of the voting shares of Financial Services of Evansville, Inc., Evansville, Minnesota, and thereby indirectly acquire 94.67 percent of Farmers State Bank of Evansville, Evansville, Minnesota; 84.13 percent of Security State Bank of Holdingford, Holdingford, Minnesota; and 94.56 percent of Farmers State Bank of Upsala, Upsala, Minnesota.

In connection with this application, Applicant also proposes to engage through these companies in general insurance sales pursuant to § 225.25(b)(8) (iii)(A) and (vi) of the Board's Regulation Y. These activities will be conducted in the communities of Albany, Evansville, and Holdingford, Minnesota.

Board of Governors of the Federal Reserve System, April 21, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-10076 Filed 4-26-89; 8:45 am]

BILLING CODE 6210-01-M

New Hampton Bancshares, Inc.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a previous **Federal Register** notice (FR Doc. 89-8132) published at page 13950 of the issue for Thursday, April 6, 1989.

Under the Federal Reserve Bank of Kansas City, the entry for New Hampton Bancshares, Inc., is amended to read as follows:

2. *New Hampton Bancshares, Inc.,* Albany, Missouri; to merge with Security Bancshares, Inc., Albany, Missouri, and thereby indirectly acquire Bank of Gallatin, Gallatin, Missouri, which engages in general lines of insurance in a town with a population of less than 5,000.

Comments on this application must be received by May 10, 1989.

Board of Governors of the Federal Reserve System, April 21, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-10077 Filed 4-26-89; 8:45 am]

BILLING CODE 6210-01-M

Alvin J. Siteman; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 10, 1989.

A. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Alvin J. Siteman,* St. Louis, Missouri, to acquire an additional 5.5 percent of the common voting shares of Mark Twain Bancshares, Inc., St. Louis, Missouri, for a total of 18.0 percent, and an additional 17.9 percent of the preferred voting shares for a total of 32.0 percent.

B. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *John F. Kane,* Bartlesville, Oklahoma; to acquire up to an additional 84.03 percent of the voting shares of CSB Bancorp, Inc., Coffeyville, Kansas, for a total of 84.33 percent, and thereby indirectly acquire Coffeyville State Bank, Coffeyville, Kansas. Comments on this application must be received by May 4, 1989.

2. *J.C. Robinson Seed Co.,* Waterloo, Nebraska; to acquire an additional 11.10 percent, and Edward T. Robinson, Jr., Waterloo, Nebraska, to acquire an additional 11.19 percent of the voting shares of First Kansas Bancorp, Kansas City, Missouri, and thereby indirectly acquire First National Bank and Trust Co., Leavenworth, Kansas.

C. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *David A. Hartman,* El Paso, Texas; to acquire an additional 0.44 percent of the voting shares of Valley Bancorp, Inc., El Paso, Texas, for a total of 11.96 percent and thereby indirectly acquire Montwood National Bank, El Paso, Texas, and The Valley Bank of El Paso, El Paso, Texas.

2. *Lowell M. Irby,* Artesia, New Mexico; to acquire an additional 4.74 percent of the voting shares of Western Bankshares of New Mexico, Inc., Artesia, New Mexico, for a total of 15.05 percent and thereby indirectly acquire Western Bank, Artesia, New Mexico.

Board of Governors of the Federal Reserve System, April 21, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-10078 Filed 4-26-89; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

Material Safety Data Sheets

AGENCY: Federal Supply Service, GSA.

ACTION: Requirement for including Material Safety Data Sheets (MSDS) in each shipment.

SUMMARY: The Occupational Safety and Health Administration (OSHA) Hazard Communication Rule 29 CFR 1910.1200 requires that certain information be provided on the Material Safety Data Sheets (MSDS) and that distributors of hazardous material provide their customers with an MSDS for each item. In order to assure that the Federal Supply Service, as a provider of

hazardous material, complies with that rule. I–FSS–22, Material Safety Data Sheets (MSDS) is being revised to: (1) Require the contractor to include one copy of the MSDS for each unit of issue in the shipment in or on the shipping container and, (2) to provide a contact point for Material Safety Data Sheets. The following clause will be included in all new solicitations. In addition, solicitations issued but not yet awarded will be amended, and existing contracts will be modified to incorporate the following clause:

I–FSS–22, Material Safety Data Sheets (MSDS)

(a) The contractor must prepare an MSDS for each hazardous item as prescribed in Federal Standard No. 313, the edition in effect on the date of solicitation, or for which an MSDS is required by the contract. The contractor must ensure that the contract number, part number/trade name, National Stock Number (NSN), or Local Stock Number (LSN)/Temporary Stock Number (TSN)/Activity Control Number (ACN), and complete specification reference including Type, Grade, and Class are included on the MSDS. This MSDS shall be distributed as specified in Federal Standard No. 313.

(b) For each shipment containing items which are classified as hazardous under the OSHA Hazard Communication Rules—29 CFR 1910.1200, and which are shipped to GSA Distribution Facilities and/or to GSA Customer Supply Centers, the contractor must provide, either in or on each shipping container, one copy of the MSDS for each unit of issue in that shipping container. When affixed to the outside of a shipping container, the MSDS must be placed in a weather resistant envelope.

(c) For items which are classified as hazardous under the Hazard Communication Rule—29 CFR 1910.1200 and which are shipped direct to another Government agency, the contractor must provide one copy of the MSDS in or on each shipping container. When affixed to the outside of a shipping container, the MSDS must be placed in a weather resistant envelope.

(d) For paragraphs B and C above, the contractor may use the MSDS prepared in accordance with Federal Standard No. 313 in paragraph A above, or a copy of the contractor's MSDS prepared in accordance with the Hazard Communication Rule—29 CFR 1910.1200 with the National Stock Number and GSA Contract Number clearly and legibly marked on the MSDS.

(e) For the purpose of this clause, a shipping container is defined as any container or package upon which paragraph S5.2.2.3 of Federal Standard No. 123 requires the name and address of the consignee to be marked.

(f) Offerors are required to designate a person to be their MSDS contact point.

Name _____
Title _____
Address _____
_____
Zip Code _____
Area Code _____
Telephone No. _____
Telex No. _____
TWX _____

End of Clause

DATES: Comments must be received by May 30, 1989. The revised clause is scheduled to become effective on June 7, 1989.

ADDRESS: General Services Administration, Federal Supply Service, Office of Commodity Management (FC), Operations Management Division (FCO), 1941 Jefferson Davis Highway, Crystal Mall Building #4, Room 522, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: Claude Cassady, Engineering and Supply Management Branch on (703) 557–1930.

Nicholas M. Economou, CPPO,
Director, Operations Management Division.
April 18, 1989.

[FR Doc. 89–10058 Filed 4–26–89; 8:45 am]
BILLING CODE 6820–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Advisory Council; Meeting

Alcohol, Drug Abuse, and Mental Health Administration

Agency: Alcohol, Drug Abuse, and Mental Health Administration.

Action: Notice of meeting.

Summary: This notice sets forth the schedule and proposed agenda of the forthcoming meeting of a national advisory council in the month of May 1989. The council will be performing review of applications for Federal assistance. Therefore, portions of the meeting will be closed to the public as determined by the Administrator, ADAMHA, in accordance with 5 U.S.C. 552(b) (6) and 5 U.S.C. app. 2 10(d). Notice of this meeting is required under the Federal Advisory Committee Act, Pub. L. 92–463.

Committee Name: National Advisory Council on Alcohol Abuse and Alcoholism.

Date and Time: May 25–26: 10:15 a.m.

Place: National Institutes of Health, Building #1, 3rd Floor, Wilson Hall, 9000 Rockville Pike, Bethesda, MD 20892.

Status of Meeting:

Open—May 25: 10:15 a.m.–5:00 p.m.
May 26: 9:00–9:45 a.m.
Closed—Otherwise

Contact: James Vaughan, Room 16C–20, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–4375.

Purpose: The Council advises the Secretary, Department of Health and Human Services regarding policy direction and program issues of national significance in the area of alcohol abuse and alcoholism. Reviews all grant applications submitted, evaluates these applications in terms of scientific merit and adherence to Department policies, and makes recommendations to the Secretary with respect to approval and amount of award.

* * * * *

Substantive program information may be obtained from the contact person listed above. The NIAAA Committee Management Officer will furnish upon request summaries of the meeting and a roster of Committee members. Contact Ms. Diana Widner, Committee Management Officer, NIAAA, Room 16C–20, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

Date: April 21, 1989.

Peggy W. Cockrill,
Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 89–10083 Filed 4–26–89; 8:45 am]
BILLING CODE 4160–20–M

Food and Drug Administration

Availability of Grants for Clinical Studies of Safety and Effectiveness of Orphan Products; Amendment of Request for Applications

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is amending the notice that announced the anticipated availability of funds for fiscal year 1989 for awarding grants to support clinical trials of safety and effectiveness of orphan products (November 7, 1988; 53 FR 44951). The notice is being amended to notify applicants that the awards will be made as either grants or cooperative agreements and to allow additional time for submission of applications.

FOR FURTHER INFORMATION CONTACT: Carol A. Wetmore, Office of Orphan Products Development (HF–35), Food and Drug Administration, 5600 Fishers Lane, Rm. 15–61, Rockville, MD 20857, 301–443–4903.

SUPPLEMENTARY INFORMATION: FDA is amending FR Doc. 88–25663, appearing on page 44951 in the **Federal Register** of Monday, November 7, 1988, as follows:

1. On page 44951, in the first column, under "Summary" and continuing into the second column, the first sentence is revised to read, "The Food and Drug Administration (FDA) is announcing the

availability of funds for fiscal year 1989 for awarding grants and cooperative agreements to support clinical trials on the safety and effectiveness of orphan products. * * *"

2. On page 44951, in the second column, under "Dates," the first sentence is removed, and the second sentence is revised to read, "Applications must be received by May 15, 1989. * * *"

3. On page 44953, in the first column, under "V. Mechanism of Support A. *Award Instrument*", the first sentence is revised to read, "Support will be in the form of grant or cooperative agreement awards, which will be subject to all policies and requirements that govern the research grant programs of the Public Health Service, including the provisions of 42 CFR Part 52 and 45 CFR Parts 74 and 92. * * *"

4. On page 44954, in the first column, after the paragraph under the heading "C. *Legend*", the following new section is added:

IX. Delineation of Substantive Involvement

Inherent in the cooperative agreement award is substantive involvement by the awarding agency. Accordingly, FDA will have a substantive involvement in the programmatic activities of all projects funded as cooperative agreements udner this request for application. FDA's involvement may be modified to fit the unique characteristics of each application. The agency's substantive involvement will include, but is not limited to, the following:

1. FDA will appoint a project officer, who will actively monitor the FDA-supported program under each award and assist the principal investigator in communicating with the appropriate FDA reviewing division.

2. In some cases, FDA scientists will collaborate with grantees in determining the methodological approaches to be used in order for the study to comply with requirements for investigations and marketing approval under the act and the Public Health Service Act. As a condition of FDA's funding, FDA may require that changes be made in the study protocol.

Dated: April 20, 1989

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-10011 Filed 4-26-89; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 82N-0058; DESI 11300]

Withdrawal of Approval of Chlorzoxazone in Combination With Acetaminophen; Announcement of Marketing Conditions for Chlorzoxazone 500 Milligrams

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of portions of the new drug application (NDA) that provides for Parafon Forte Tablets containing chlorzoxazone and acetaminophen because the combination product lacks substantial evidence of effectiveness. FDA also announces the conditions for marketing the reformulated product, containing chlorzoxazone 500 milligrams (mg) and no other active ingredient, which has been found to be effective.

EFFECTIVE DATE: May 30, 1989.

ADDRESS: Requests for an opinion of the applicability of this notice to a specific product should be identified with DESI number 11300 and directed to the Division of Drug Labeling Compliance (HFD-310), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

Original abbreviated new drug applications and supplements thereto (identify as such): Division of Generic Drugs (HFD-230), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Herbert Gerstenzang, Center for Drug Evaluation and Research (HFD-366), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8041.

SUPPLEMENTARY INFORMATION:

A. Withdrawal of Old Formulation

As part of the agency's drug efficacy program, in the **Federal Register** of October 15, 1984 (49 FR 40212, amended December 3, 1984 (49 FR 47336)), the Commission of Food and Drugs granted an evidentiary hearing before an administrative law judge on the proposal to withdraw approval of McNeil Pharmaceutical's new drug application (NDA 11-529) containing chlorzoxazone 250 mg and acetaminophen 300 mg. Notices of participation were filed by the following companies:

1. NcNeil Pharmaceutical, Spring House, PA 19477.

2. Lemmon Co., 850 Cathill Rd., Sellersville, PA 18960.

3. Cord Laboratories, Inc., 2555 West Midway Blvd., Broomfield, CO 80020.

Subsequently, FDA entered into agreements with the three aforementioned companies and with two other firms (Ferndale Laboratories and Barr Laboratories) marketing generic versions of Parafon Forte to terminate the hearing and resolve the issue of the drug's effectiveness by other means. Pursuant to those agreements, the hearing requests were withdrawn and applications for a reformulation of the drugs to chlorzoxazone 500 mg were submitted to the agency. The applications have now been approved.

Accordingly, as all hearing participants have withdrawn their requests for a hearing, FDA is announcing the termination of the administrative hearing and withdrawn approval of portions of NDA 11-539 that provide for Parafon Forte Tablets containing chlorzoxazone and acetaminophen.

Any drug product that is identical, related, or similar to this product and is not the subject of an approved new drug application is covered by NDA 11-529 and is subject to this notice (21 CFR 310.6). Any person who wishes to determine whether a specific product is covered by this notice should write to the Division of Drug Labeling Compliance at the address given above.

The Director of the Center for Drug Evaluation and Research, under the Federal Food, Drug, and Cosmetic Act (sec. 505, 52 Stat. 1052-1053 as amended (21 U.S.C. 355)) and under the authority delegated to him (21 CFR 5.82, finds that, on the basis of new information before him with respect to the product, evaluated together with the evidence available to him when the application was approved, there is a lack of substantial evidence that the product will have the effect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in its labeling.

Therefore, pursuant to the foregoing finding, approval of those parts of NDA 11-529 pertaining to the original formulation of Parafon Forte described above and all the amendments and supplements that provide for that product is withdrawn effective May 30, 1989. Shipment in interstate commerce of the product above or any identical, related, or similar product that is not the

subject of an approved new drug application will then be unlawful.

B. Conditions for Approval and Marketing of New Formulation

FDA has reviewed all available evidence and concludes that chlorzoxazone 500 mg tablets is effective for the indication in the labeling conditions below.

This drug product is regarded as a new drug (21 U.S.C. 321(p)). An approved abbreviated new drug application (21 CFR 314.55) is a requirement for marketing the drug product. The conditions of approval are as follows:

1. *Form of drug.* This drug product is in tablet form suitable for oral administration.

2. *Labeling conditions.* (a) The label bears the statement, "Caution: Federal law prohibits dispensing without prescription."

(b) The drug is labeled to comply with all requirements of the act and regulations and the labeling bears adequate information for safe and effective use of the drug. The indication is as follows:

As an adjunct to rest, physical therapy, and other measures for the relief of discomfort associated with acute, painful musculoskeletal conditions. The mode of action of this drug has not been clearly identified, but may be related to its sedative properties. Chlorzoxazone does not directly relax tense skeletal muscles in man.

3. *Dissolution test.* The product shall conform to a dissolution test that demonstrates that not less then 75 percent of the drug is dissolved in sixty (60) minutes, employing a medium of 1,800 milliliters (mL) pH 8 Phosphate Buffer at 37 °C and USP apparatus 2 (Paddle) at 75 RPM.

Marketing the drug product before approval of a new drug application will subject those products, and those persons who caused the products to be marketed, to regulatory action.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 502, 505, 52 Stat. 1050–1053 as amended (21 U.S.C. 352, 355)) and under the authority delegated to the Director of the Center for Drug Evaluation and Research (21 CFR 5.70).

Dated: April 17, 1989.

Carl C. Peck,

Director, Center for Drug Evaluatioin and Research.

[FR Doc. 89–10082 Filed 4–26–89; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 86E–0278]

Determination of Regulatory Review Period for Purposes of Patent Extension; Marinol®

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Marinol® (dronabinol) and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESS: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Nancy E. Pirt, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product Marinol®. Marinol® is indicated for the treatment of the nausea and vomiting associated with cancer chemotherapy in patients who have failed to respond adequately to conventional antiemetic treatments. However, as of the date of the new drug application (NDA) approval letter, Marinol® was classified as a Schedule I drug by the Drug Enforcement Agency (DEA), a classification which prohibits commercial marketing. FDA's approval letter, therefore, indicated that the drug could not be marketed until it had been rescheduled by DEA. DEA later rescheduled Marinol® as a Schedule II drug, which allowed Marinol® to be marketed. Subsequent to this rescheduling, the Patent and Trademark Office (PTO) received a patent term restoration application for Marinol® (U.S. Patent No. 3,668,224) from Theodor Petrzilka, and PTO requested FDA's assistance in determining the eligibility of this patent for patent term restoration. FDA, in a letter dated August 22, 1986, advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period. The PTO issued a decision denying the application on the ground that the application was not timely. The applicant filed an action in the United States District Court for the District of Columbia challenging the PTO's decision. The District Court ruled that the application had been timely filed. Shortly thereafter, the PTO requested that FDA determine the product's regulatory review period. This is the first permitted commercial marketing or use of the active ingredient, dronabinol.

FDA Has determined that the applicable regulatory review period for Marinol® is 2,417 days. Of this time, 980 days occurred during the testing phase of the regulatory review period, while 1,437 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective:* October 20, 1978. The applicant claims October 20, 1973, as the date of first exemption granted under 21 U.S.C. 355(i) with respect to the subject product. However, a search of FDA records failed to uncover an investigational new drug (IND) application submitted by the applicant prior to the NDA receipt date. Since the IND number was not included

in the application, FDA telephoned the applicant regarding this matter and the applicant advised FDA that the supporting IND was IND No. 14,754. FDA records indicate that IND No. 14,754 was submitted by the National Cancer Institute on September 20, 1978, and became effective 30 days later on October 20, 1978.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act:* June 25, 1981. The applicant claims September 23, 1982, as the date that the NDA (NDA 18–651) was initially submitted. However, FDA records indicate that the NDA was received on June 25, 1981. The date given by the applicant, September 23, 1982, is the date of resubmission of NDA 18–651, following the applicant's withdrawal of the NDA after its initial submission.

3. *The date the application was approved:* May 31, 1985. The applicant claims May 13, 1986, as the NDA approval date. However, FDA records indicate that NDA 18–651 was approved on May 31, 1985. The date given by the applicant, May 13, 1986, is the date that DEA rescheduled Marinol® (dronabinol) from Schedule I to Schedule II. In identifying the date of approval of the application, FDA looked to the language of the Drug Price Competition and Patent Term Restoration Act of 1984 (hereinafter referred to as "the statute"), which defines "approval phase" of a regulatory review period for a human drug product as "the period beginning on the date an application was initially submitted for the approved human drug product under section 351, subsection (b) of section 505, or section 507 and ending on the date such application was approved under such section." (35 U.S.C. 156(g)(1)(B)(ii).) Moreover, in the preamble to the final rule on patent term restoration regulations (53 FR 7298; March 7, 1988), FDA specifically addressed the question of whether drugs which are regulated by DEA as controlled substances should be considered to be approved when the NDA is approved or when these drugs are scheduled domestically under the Controlled Substances Act. In responding to comments on this very question, FDA concluded that the NDA approval date is the relevant date. The reason for FDA's conclusion was that the statute referred only to section 351 of the Public Health Service Act and to sections 505(b) and 507 of the Federal Food, Drug, and Cosmetic Act in the statute's definition of regulatory review period. The statute made no such reference to the Controlled Substances Act. The Court of Appeals for the District of Columbia Circuit has upheld FDA's interpretation of when a drug is deemed approved under this statute. *Mead Johnson Pharmaceutical Group* v. *Bowen, 838 F.2d 1332, 1333 (D.C. Cir. 1988).*

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, the applicant requests 1,826 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before June 26, 1989, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before October 24, 1989, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, Part 1, 98th Cong., 2d Sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 19, 1989.

Stuart L. Nightingale,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 89–10085 Filed 4–26–89; 8:45 am]

BILLING CODE 4160–01–M

Health Resources and Services Administration

Advisory Council; 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 June 1989:

Name: Maternal and Child Health Research Grants Review Committee.

Date and Time: June 21–23, 1989, 9:00 a.m.

Place: Maryland Room, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Open on June 21, 1989, 9:00 a.m.–10:00 a.m.; Closed for remainder of meeting.

Purpose: To review research grant applications in the program area of maternal and child health administered by the Bureau of Health Care Delivery and Assistance.

Agenda: The open portion of the meeting will cover opening remarks by the Director, Division of Maternal and Child Health Program Coordination and Systems Development, who will report on program issues, congressional activities and other topics of interest to the field of maternal and child health. The meeting will be closed to the public on June 21, at 10:00 a.m. for the remainder of the meeting for the review of grant 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 Pub.L. 92–463.

Anyone requiring information regarding the subject Council should contact Gontran Lamberty, Dr. Ph.H., Executive Secretary, Maternal and Child Health Research Grants Review Committee, Room 9A–08, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–2190.

Agenda Items are subject to change as priorities dictate.

Date: April 21, 1989.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 89–10012 Filed 4–26–89; 8:45 am]

BILLING CODE 4160–15–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–060–09; CACA 13781]

California; Realty Action; Partial Termination of Classification for Recreation and Public Purposes

AGENCY: Bureau of Land Management, Interior.

SUMMARY: This action partially terminates a Notice which classified 2,172.75 acres of public domain lands as suitable for recreation and public purposes. Due to comments from the public, the City of San Diego and the BLM determined 80 acres of the land is

unsuitable for recreation and public purposes.

FOR FURTHER INFORMATION CONTACT: Mike Selman, Palm Springs—South Coast Area Office, Bureau of Land Management, 1900 Tahquitz—McCallum Way, Suite B–1, Palm Springs, CA 92262.

1. The Notice of Realty Action, published May 7, 1984, in FR Vol 49 No. 89, pages 19418–19419, which classified certain public domain lands as suitable for recreation and public purposes is hereby terminated as to the following lands:

San Bernardino Meridian

T. 12 S., R. 1 W.,
Sec. 24, E½¼NW¼.

The area contains 80 acres in San Diego County.

2. At 10:00 a.m. on May 12, 1989, the lands described in paragraph 1 will be opened to operation of the public land laws subject to valid existing rights and the provisions of applicable law.

Ed Hastey,

State Director.

[FR Doc. 89–10115 Filed 4–26–89; 8:45 am]

BILLING CODE 4310–40–M

[OR–096–08–6332–02: GP8–144]

Temporary Closure of Public Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Temporary closure of public lands in Lane County, Oregon.

SUMMARY: Notice is hereby given that certain public lands in Lane County, Oregon are temporarily closed to all public use, including recreation camping, shooting, hiking and sightseeing, from May 15, 1989 through October 31, 1989. The closure is made under the authority of 43 CFR 8364.1.

The public lands affected by this emergency closure are specifically identified as follows:

Willamette Meridian, Oregon

T. 16 S., R. 7 W.
Sec. 19: SE¼SE¼, excluding the right-of-way of Oregon State Highway 36

Containing approximately 36 acres.

The following persons, operating within the scope of their official duties, are exempt from the provisions of this closure order: Bureau employees; state, local and federal law enforcement and fire protection personnel; the holders of BLM road use permits that include roads within the closure area; the contractor authorized to construct the Lake Creek Falls Fish Ladder project and their subcontractors. Access by additional parties may be allowed, but must be approved in advance in writing by the Authorized Officer.

Any person who fails to comply with the provisions of this closure order may be subject to the penalties provided in 43 CFR 8360.0–7, which include a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months.

The public lands temporarily closed to public use under this order will be posted with signs at points of public access.

The purpose of this temporary closure is to provide for public safety and the protection of property and equipment during the mobilization, construction and de-mobilization phase of the Lake Creek Falls Fish Ladder project.

EFFECTIVE DATES: May 15, 1989 through October 31, 1989.

ADDRESSES: Copies of the closure order and maps showing the location of the closed lands are available from the Eugene District Office, P.O. Box 10226 (1255 Pearl Street), Eugene, Oregon 97440, or the Coast Range Resource Area Office, 1144 Gateway Loop, Springfield, Oregon 97477.

FOR FURTHER INFORMATION CONTACT: Wayne E. Elliott, Coast Range Area Manage, Eugene District Office, at (503) 683–6989.

Date: April 14, 1989.

Wayne E. Elliott,

Area Manager.

[FR Doc. 89–10123 Filed 4–26–89; 8:45 am]

BILLING CODE 4310–33–M

[NM–060–4351–90]

Roswell District Grazing Advisory Board Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Roswell District Grazing Advisory Board Meeting.

SUMMARY: This notice sets forth the schedule and agenda of a forthcoming meeting of the Roswell District Grazing Advisory Board.

DATE: Wednesday, May 31, 1989, beginning at 10 a.m. A public comment period will be held following conclusion of the agenda.

Location: BLM Roswell District Office, 1717 West Second St., Roswell, NM 88201.

FOR FURTHER INFORMATION CONTACT: David L. Mari, Associate District Manager, or Terry Keim, Public Affairs Specialist, Bureau of Land Management, P.O. Box 1397, Roswell, NM 88201, (505) 622–9042.

SUPPLEMENTARY INFORMATION: Agenda items include Monitoring Systems, Polycorders, Prescribed Burning, Ft. Stanton, Carlsbad/Roswell RMP, 8100 Funding, and updates on the Productivity Pilot and the Brush Control EIS/EA. The meeting is open to the public. Interested persons may make oral statements to the Board during the public comment period or may file written statements. Anyone wishing to make an oral statement should notify the Associate District Manager by May 24, 1989. Summary minutes will be maintained in the District Office and will be available for public inspection during regular business hours within 30 days following the meeting. Copies will be available for the cost of duplication.

David L. Mari,

Associate District Manager.

[FR Doc. 89–10124 Filed 4–26–89; 8:45 am]

BILLING CODE 4310–FB–M

[OR–030–09–4320–02: GP9–185]

Vale District Grazing Advisory Board; Meeting

AGENCY: Vale District, Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is given in accordance with Pub. L. 92–463 that a meeting of the Vale District Grazing Advisory Board will be held May 25, 1989.

The agenda for the meeting will include: election of officers, White Horse Butte Allotment Management Plan—alternatives, Riparian management initiatives—Trout Creek area, District road maintenance programs—report and recommendations, District noxious weed control program, Report on new billing and collection procedures, Report on litigation affecting livestock grazing on public lands, Holistic Range Management program, the Governor's Watershed Enhancement Board proposal, and Resource area reports on rangeland management activities.

The meeting is open to the public. Interested persons may make oral statements to the Board or may file written statements for the Board's consideration. Anyone wishing to make oral statements may do so at 1:30 p.m. the day of the meeting.

Summary minutes of the Board's meeting will be maintained in the district office and will be available

during regular business hours for public inspection, or personal copies may be purchased for the cost of duplication, within 30 days following the meeting.

DATES: The meeting will begin at 10:00 a.m. May 25, 1989.

ADDRESSES: The meeting will be held in the conference room of the District Office, 100 Oregon Street, Vale, OR 97918.

FOR FURTHER INFORMATION CONTACT: Gerard Hubbard, Bureau of Land Management, Vale District, P.O. Box 700, Vale, OR 97918. (Telephone 503 473-3144)

William C. Calkins,

District Manager.

[FR Doc. 89-10125 Filed 4-26-89; 8:45 am]

BILLING CODE 4310-33-M

[CO-920-89-4111-15; COC30493]

Colorado; Proposed Reinstatement

April 17, 1989.

Notice is hereby given that a petition for reinstatement of oil and gas lease COC30493 for lands in Mesa County, Colorado, was timely filed and was accompanied by all the required rentals and royalties accruing from September 1, 1988, the date of termination.

The lessee has agreed to new lease terms for rentals and royalties at rates of $5.00 and 16⅔ percent, respectively.

The lessee had paid the required $500 administrative fee for the lease and has reimbursed the Bureau of Land Management for the estimated cost of this **Federal Register** notice.

Having met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral lands Leasing Act of 1920, as amended, (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease effective September 1, 1988, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Questions concerning this notice may be directed to Joan Gilbert of the Colorado State Office at (303) 236-1772.

Linda L. Huff,

Acting Chief, Fluid Minerals Adjudication Section.

[FR Doc. 89-10059 Filed 4-26-89; 8:45 am]

BILLING CODE 4310-JB-M

[AZ-920-09-4212-12; A-22435]

Arizona; Opening Order; Correction

April 20, 1989.

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction notice.

SUMMARY: This notice provides a correction regarding an opening order of reconveyed land to the United States for the State of Arizona. A portion of the land opened was previously found suitable for disposal through exchange under section 206 of the Federal Land Policy and Management Act of 1976.

FOR FURTHER INFORMATION CONTACT: Lisa Schaalman, Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011, (602) 241-5534.

SUPPLEMENTARY INFORMATION: In **Federal Register** document 89-8269 on pages 14169 and 14170 in the issue of Friday, April 7, 1989, the following reconveyed land was erroneously opened to entry:

Gila and Salt River Meridian

T. 14 S., R. 27 E.,
Sec. 16, SE¼NE¼.
T. 14 S., R. 31 E.,
Sec. 2, lots 3 and 4, S½NW¼, SW¼.
T. 14 S., R. 32 E.,
Sec. 19, N½NE¼;
Sec. 20, N½.

The areas described comprise 760.20 acres in Cochise County.

The land is currently under an exchange application, serial number A-23606, and shall remain closed to the operation of all other public land laws, including the mining laws, in accordance with the realty action notice published in the **Federal Register** on Thursday, November 10, 1988, on pages 45599 and 45600.

Marsha L. Luke,

Acting Chief, Branch of Lands Operations.

[FR Doc. 89-10122 Filed 4-26-89; 8:45 am]

BILLING CODE 4310-32-M

[CA-060-09; CACA 19159]

California; Amendment of Realty Action

Realty Action: Exchange of public and private lands in San Bernardino County.

Agency: Bureau of Land Management, Interior.

The Notice of Realty Action (CACA 19159) publiahed in the Federal Register November 6, 1986, in Vol. 51, No. 215, page 40359, correctd December 23, 1986, in Vol. 51, No. 246, page 45986, amended July 23, 1987, in Vol. 52, No. 141, page 27732, is hereby amended by deleting the following legal description:

San Bernardino Meridian

T. 1 S., R. 1 W.,
Sec. 35, SW¼
T. 12 S., R. 1 W.,
Sec. 14, SW¼NE¼, E½SE¼, SE¼SE¼;
Sec. 23, N½NE¼.
T. 13 S., R. 1 W.,
Sec. 20, W¼,SW¼SE¼.
T. 10 S., R. 2 W.,
Sec. 19, NW¼NE¼.
Containing 445 acres, more or less.

The segregative effect of the classification terminates at 10:00 a.m. on May 12, 1989.

For further information contact District Manager, California Desert District, 1695 Spruce Street, Riverside, California 92507.

Ed Hastey,

State Director.

[FR Doc. 89-10116 Filed 4-26-89; 8:45 am]

BILLING CODE 4310-40-M

[CA-060-09-4212-14; CA-17912]

California Desert District, Realty Action, Noncompetitive Sale of Public Lands, San Bernardino County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Noncompetitive (Direct) Sale of Public Lands, CA-17912.

SUMMARY: The public land described below has been examined and found suitable for disposal under sections 203 and 209 of the Federal Land Policy and Management Act of October 21, 1976, 43 U.S.C. 1713 and 1719:

San Bernardino Meridian, California

T. 10 N., R. 1 W.,
Sec. 8: NE ¼;
Containing 160.00 acres.

The parcel will be offered by direct sale to the Atchison Topeka and Santa Fe Railway Company. Santa Fe has operated and maintained an authorized waste oil disposal site on the parcel since 1964.

The sale will be made on or about July 1, 1989. The appraised fair market value of the parcel is $48,000.00. All mineral interests will be conveyed with the surface estate. The United States mineral interests offered for conveyance have no known value. At the time of the sale, Santa Fe will be required to deposit a $50.00 nonrefundable application fee for conveyance of the mineral estate.

The parcel is difficult and uneconomic to manage as part of the public lands,

and is not suitable for transfer to another Federal, State or local agency.

Existing development and current use of the parcel are an integral part of the overall Santa Fe operation in Barstow, California. Speculative bidding could jeopardize future economic viability and control of the waste oil disposal operation. There is a need to recognize the established use which would be threatened if the parcel were purchased by other than the existing authorized user.

Sale of the parcel is consistent with land use planning decisions and current policy. There is no conflict with local plans and zoning. The public interest would be served by completing the sale.

The public land to be conveyed will be subject to the following terms and conditions:

A. Reservation to the United States of a right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890, 43 U.S.C. 945.

B. *Third Party Rights.* Public land conveyed will be subject to all valid existing rights including the following:

1. Those rights granted to the County of San Bernardino for Irwin Road, a public highway established under Revised Statute 2477, formerly 43 U.S.C. 932.

2. Those rights for a 33kC electric distribution line granted to Southern California Edison Company by Right-of-Way LA–054906 under the Act of March 4, 1911, as amended, 43 U.S.C. 961.

3. Those rights for a 220kV electric transmission line and a 115kV electric transmission line granted by Rights-of-Way LA–0159695 and R–4879 under the Act of March 4, 1911, as amended.

As provided in 43 CFR 2711.1–2, the publication of this notice in the **Federal Register** shall segregate, subject to valid existing rights, the public land described herein from all other forms of appropriation under the public land laws, including the mining laws and the mineral leasing laws. The segregative effect will terminate upon issuance of patent, upon publication in the **Federal Register** of a termination of the segregation, or 270 days from the date of this publication, whichever occurs first.

Additional information about this sale is available at the Barstow Resource Area Office, 150 Coolwater Lane, Barstow, CA 92311 (619–256–3591) and the California Desert District Office, 1695 Spruce Street, Riverside, CA 92507.

For a period of 45 days from the date of publication of this notice in the **Federal Register,** interested parties may submit comments to the District Manager at the above address. In the absence of any objections, this realty action will become the final determination of the Department of the Interior, and the required payments requested from the Atchison Topeka and Santa Fe Railway Company. Payment of the purchase price in full shall be in accordance with 43 CFR 1822.1–2 and 2711.3–3(b).

The land will not be offered for sale for at least 60 days after the date of this notice.

Date: April 18, 1989.

James L. Williams,

Acting, District Manager.

[FR Doc. 89–10110 Filed 4–26–89; 8:45 am]

BILLING CODE 4310–40–M

[CA–940–09–4212–13; CACA 22587]

California Realty Action; Exchange of Public and Private Lands in Riverside County and Order Providing for Opening of Public Land

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of issuance of land exchange conveyance document and opening order.

SUMMARY: The purpose of this exchange was to acquire the non-Federal lands located within the Coachella Valley Preserve, a habitat of the Coachella Valley Fringe-Toed Lizard. The exchange will enhance the management capabilities for the Preserve. The lizard is federally listed as threatened and State listed as endangered. The lands acquired do not constitute habitat for the lizard, but provide a sand source required for the continuing production of active sand dune areas that are critical habitat for the lizard.

ADDRESS: Inquiries concerning the land should be addressed to: Chief, Branch of Adjudication and Records, Bureau of Land Management, California State Office, 2800 Cottage Way (Room E–2841), Sacramento, California 95825.

FOR FURTHER INFORMATION CONTACT: Mike Selman, Palm Springs—South Coast, Resource Area, Bureau of Land Management, 1900 Tahquiz-McCallum Way, Suite B–1, Palm Springs, CA 92262, Telephone (619) 323–4421.

1. The United States issued land exchange conveyance documents to The Nature Conservancy on September 9, 1988, September 30, 1988, March 27, 1989 and March 29, 1989 pursuant to the authority of Sec. 206 of the Act of October 21, 1976 (43 U.S.C. 1716) for the following described lands:

San Bernardino Meridian

T. 5 N., R. 2 W.,
Sec. 20, SW¼NW¼, NW¼SW¼.
T. 4 S., R. 6 E.,
Sec. 30, lot 11, S½NE¼NE¼SW¼, SW¼SE¼NE¼, N½SE¼SE¼NE¼.
T. 8 S., R. 8 E.,
Sec. 14, lots 1, 2, 3, 4.
T. 5 N., R. 13 W.,
Sec. 7, lots 1, 2, 5, 8, 9.
T. 5 N., R. 14 W.,
Sec. 20, NE¼SE¼;
Sec. 21, S½NE¼, SW¼NW¼, NW¼SW¼;
Sec. 22, SW¼NW¼.

The areas described contain 526.75 acres in Los Angeles and Riverside Counties. Additional lands will also be conveyed and published at a later date.

2. In exchange for the lands described in paragraph 1, on January 17, 1989, the United States accepted title to the following described private lands from The Nature Conservancy.

San Bernardino Meridian, California

T. 4 S., R. 6 e.,
Sec. 1 lot 2 of the NE¼ and lot 2 of the NW¼.
Sec. 13, NE¼, W½, and SE¼.
Sec. 14, NW¼, SW¼, SE¼, SW¼NE¼, W½NW¼NE¼, and SE¼NE¼NE¼.
T. 4 S., R. 7 E.,
Sec. 6, lot 2 of the NE¼, E½ of lot 2 of the NW¼, S½ of lot 2 of the SW¼, E½NE¼SE¼, SW¼NE¼SE¼, W½NE¼NW¼SE¼, NW¼NW¼SE¼, E½SW¼NW¼SE¼, SE¼NW¼SE¼, and SW¼SE¼.
Sec. 7, E½SE¼SE¼.
Sec. 8, E½, NW¼, and N½SW¼.
Sec. 9, SE¼, W¼NW¼NW¼, SE¼NW¼NW¼, SW¼NE¼NW¼, and S½NW¼.
Sec. 15, All.
Sec. 16, E½, NW¼.
Sec. 17, NW¼NW¼NE¼, SW¼NW½NE¼, SE¼NW¼NE¼, and W½NE¼NW¼NE¼.

3. The above land descriptions contain exceptions too numerous to list here. A precise description of the exceptions is available in the case file CACA 22587 in the California State Office.

4. The non-Federal land is greater in value than the public land, and the excess non-Federal lands are donated to the United States.

5. At 10 a.m. on May 20, 1989, the lands acquired in the exchange shall be open to location under the United States mining laws and to the provisions of the mineral leasing laws, subject to valid existing rights and applicable law. All mineral locators assume the responsibility for assuring that the minerals being located were actually acquired by the United States.

Robert C. Nauert,

Chief, Branch of Adjudication and Records.

[FR Doc. 89–10117 Filed 4–26–89; 8:45 am]

BILLING CODE 4310–40–M

[CA-060-09-4212-13; CA-23937]

California Desert District Realty Action; Exchange of Public and Private Lands in San Bernardino and Inyo Counties, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action CA-23937, exchange of public and private lands.

SUMMARY: The following described public lands in San Bernardino County have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

San Bernardino Meridian, California

T. 3N., R. 4W.,
Sec. 16: NE¼NE¼, S½NE¼, N½SE¼, SW¼SE¼;
Sec. 19: lot 3, NE¼NE¼, S½NE¼, S½ lot 1 of NW¼, lots 1 and 2 of SW¼, N½SE¼;
Sec. 20: S½NE¼, NW¼, NE¼SW¼;
Sec. 21: S½NW¼;
Sec. 30: SE¼NE¼, lot 1 of NW¼, E½W½NW¼, E½NE¼SW¼, E½W½NE¼SW¼, NW¼SE¼;
T. 3N., R. 5W.,
Sec. 24: SE¼NE¼, NE¼SE¼, S½SE¼;
Sec. 25: E½NE¼, NW¼NE¼SE¼, N½SW¼NE¼SE¼, E½NE¼NW¼SE¼, NE¼SE¼NW¼SE¼;
Containing 1529.60 acres, more or less.

In exchange for these lands, the ARC-Las Flores Limited Partnership has offered the following non-Federal lands in San Bernardino and Inyo Counties:

San Bernardino Meridian, California

T. 3N., R. 2W.,
Sec. 5: S½NE¼;
T. 3N., R. 3W.,
Sec. 2: lots 5, 6, 11 and 12;
Sec. 3: lots 7, 8, 9 and 10;
Sec. 11: NE¼SE¼;
T. 5N., R. 3E.,
Sec. 16: N½, SE¼;
T. 5N., R. 4E.,
Sec. 13: San Bernardino County Assessors Parcel No. 527-201-05;
Sec. 16: lots 1 through 4, E½W½, E½;
Sec. 36: All;
T. 11N., R. 5E.,
Sec. 1: San Bernardino County Parcel Map 11970, Parcel No. 1;
Sec. 36: All;
T. 20N., R. 7E.,
Sec. 4: lot 4, W½SW¼;
Sec. 5: lots 1 and 2, S½NE¼, SE¼;
Sec. 8: NE¼NE¼;
Sec. 9: N½NE¼, N½S½NE¼, N½N½SE¼SE¼NE¼ (Inyo County Parcel Map 269, Parcel No. 1);
Sec. 10: NW¼NW¼, N½SW¼NW¼, N½N½S½SW¼NW¼ (Inyo County Parcel Map 269, Parcel No. 1);
T. 21N., R. 7E.,
Sec. 32: SE¼SE¼;
Sec. 33: SE¼SW¼;
Containing 4,212.90 acres, more or less.

The purpose of this exchange is to acquire significant natural resources and recreation lands, and to create more manageable public land units in the following areas of the California Desert District: Afton Canyon Natural Area, Grimshaw Lake Natural Area, Johnson Valley Off-Highway Vehicle Area, Juniper Flats Cultural Area.

Disposal of the fragmented and isolated public lands selected by the ARC-Las Flores Limited Partnership is consistent with the land tenure adjustment objectives of the California Desert Plan. The exchange would benefit the general public and the private sector. The public interest would be well served by completing the exchange.

The public land to be conveyed will be subject to the following terms and conditions:

A. Reservations to the United States

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890, 43 U.S.C. 945.

If Powersite Classification 100 (May 9, 1925) which currently affects the lands described below is not revoked by the time this exchange is completed, the following additional reservation to the United States will apply:

2. The right to itself, its permittees or licensees to enter upon, occupy and use any part or all of the E½NE¼ and NE¼SE¼, section 19 and the SW¼NE¼, Section 20, T. 3N., R. 4W., SBM lying within 50 feet of the centerline of the transmission line right-of-way of the Southern California Edison Company, Serial No. CA-21596, for the purposes set forth in and subject to the conditions and limitations of Section 24 of the Federal Power Act of June 10, 1920, as amended (16 U.S.C. 818).

B. Third Party Rights—Public Lands Conveyed Will Be Subject to the Following

1. Those rights for water pipelines and ditch granted to Mojave Water Agency, Desert Water Agency and Coachella Valley County Water District by Right-of-Way No. R-618 under the Act of February 15, 1901, as amended, formerly 43 U.S.C. 959.

2. Those rights for a 12kV electric distribution line granted to Southern California Edison Company by Right-of-Way No. R-4646 under the Act of March 4, 1911, as amended, 43 U.S.C. 961.

3. Those rights for a 115kV electric transmission line granted to Southern California Edison Company by Right-of-Way No. R-01725 under the Act of December 21, 1928, 43 U.S.C. 617d.

4. Those rights for an aqueduct, access roads, pumps and drainage areas granted to the State of California by Right-of-Way No. CA-3050 under the Act of October 21, 1976, 43 U.S.C. 1761.

5. Those rights for a double-circuit 115kV electric transmission line granted to Southern California Edison Company by Right-of-Way No. CA-21596 under the Act of October 21, 1976.

Lands to be conveyed to the United States will be subject to the following:

1. All mineral rights were previously reserved by the State of California on:

T. 3N., R. 2W., SBM,
Sec. 5: S½NE¼.
T. 5N., R. 3E., SBM,
Sec. 16: N½, SE¼.
T. 5N., R. 4E., SBM,
Sec. 16: lots 1 through 4, E½W½, E½;
Sec. 36: All.
T. 11N., R. 5E., SBM,
Sec. 36: All.

2. A one-sixteenth mineral interest was previously reserved by the State of California on:

T. 20N., R. 7E., SBM,
Sec. 4: lot 4, W½SW¼;
Sec. 5: lots 1 and 2, S½NE¼, SE¼;
Sec. 8: NE¼NE¼.

3. All mineral rights were previously reserved by a private third party on:

T. 11N., R. 5E., SBM,
Sec. 1: San Bernardino County Parcel Map 11970, Parcel No. 1.

4. All geothermal resources were previously reserved by a private third party on:

T. 20N., R. 7E., SBM,
Sec. 9: N½NE¼, N½S½NE¼; N½N½SE¼NE¼;
Sec. 10: NW¼NW¼, N½SW¼NW¼, N½N½S½SW¼NW¼.
T. 21N., R. 7E., SBM,
Sec. 32: SE¼SE¼;
Sec. 33: SW¼SW¼.

5. A fifteen-sixteenths geothermal resources interest was previously reserved by a private third party on:

T. 20N., R. 7E., SBM,
Sec. 4: lot 4, W½SW¼;
Sec. 5: lots 1 and 2, S½NE¼, SE¼;
Sec. 8: NE¼NE¼.

6. Various easements and rights-of-way to third parties.

As provided in 43 CFR 2201.1(b), the publication of this notice in the **Federal Register** shall segregate, subject to existing valid rights, the public lands described herein from all other forms of appropriation under the public land laws, including the mining laws and the mineral leasing laws. The segregative effect will terminate upon issuance of a conveyance document, upon publication in the **Federal Register** of a termination of the segregation, or two years from the

date of this publication, whichever occurs first.

The values of the lands to be exchanged are in approximate balance. Equalization of values will be achieved by acreage adjustment or a payment to the United States by ARC–Las Flores Limited Partnership of funds in an amount not to exceed 25 percent of the value of the public lands to be conveyed.

Additional information about this exchange is available at the Barstow Resource Area Office, 150 Coolwater Lane, Barstow, CA 92311 (619–256–3591) and the California Desert District Office, 1695 Spruce Street, Riverside, CA 92507.

For a period of forty-five (45) days from the date of publication of this notice in the **Federal Register** interested parties may submit comments to the District Manager, California Desert District at the above address. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Dated: April 18, 1989.

James L. Williams,

Acting District Manager.

[FR Doc. 89–10118 Filed 4–26–89; 8:45 am]

BILLING CODE 4310–40–M

[ID–943–09–4212–13; I–25616]

Issuance of Land Exchange Conveyance Document; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Exchange of public and private lands.

SUMMARY: The United States has issued an exchange conveyance document to Keith Meyers and Sons, LTD, Limited Partnership, Rexburg, Idaho 83440, for the following-described lands under section 206 of the Federal Land Policy and Management Act of 1976:

Boise Meridian

T. 6 N., R. 38 E.,
Sec. 14, S½SW¼NE¼, N½NW¼SE¼.
Comprising 40.00 acres of public land.

In exchange for these lands, the United States acquired the following-described lands:

Boise Meridian

T. 7 N., R. 38 E.,
Sec. 16, NE¼NW¼.
Comprising 40.00 acres of private land.

The purpose of the exchange was to acquire the non-federal lands which have high public value for elk winter range. The public interest was well served through completion of this exchange.

The values of the federal public land and the non-federal land in the exchange were both appraised at $4,000.

Dated: April 20, 1989.

John Davis,

Deputy State Director for Operations.

[FR Doc. 89–10113 Filed 4–26–89; 8:45 am]

BILLING CODE 4310–gg–M

[WY–060–09–4212–14]

Realty Action; Competitive, Direct, and Modified Competitive Sales of Public Lands in Nebraska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action, sale of public lands in Grant, Hooker, and Thomas Counties.

SUMMARY: The Bureau of Land Management (BLM) has determined that the lands described below are suitable for public sale. Section 203 of the Federal Land Policy and Management Act (FLPMA) of 1976 (90 Stat. 2750; 43 U.S.C. 1713) requires the BLM to receive fair market value for the land sold and any bid for less than fair market value will be rejected. The BLM may accept or reject any and all offers, or withdraw any land or interest on the land for sale if the sale would not be consistent with FLPMA or other applicable law.

The fair market values, planning document, environmental assessment/land report, and memorandums and letters of Federal, state, and local contacts concerning the sale are available for review at the Bureau of Land Management, Newcastle Resource Area Office. All bids and requests for information should be sent to BLM, Newcastle Resource Area, 1501 Highway 16 Bypass, Newcastle, Wyoming 82701, (phone (307) 746–4453).

Parcels

Serial No.	Legal Description	Acreage
	Sixth Principal Meridian	
Grant County		
NEW86265	T. 22 N., R. 29 W., Sec. 4: lots 1, 2	81.61
NEW86266	T. 22 N., R. 29 W., Sec. 31: NW¼SE¼	40.00
NEW86267	T. 21 N., R. 30 W., Sec. 6: E½SW¼	80.00
NEW86268	T. 22 N., R. 30 W., Sec. 28: SW¼NW½	40.00
NEW86269	T. 23 N., R. 29 W., Sec. 34: SE¼SW¼	40.00
NEW86274	T. 23 N., R. 31 W., Sec. 13: lots 5, 6	28.18
NEW86275	T. 23 N., R. 31 W., Sec. 24: lots 5, 6	39.61
NEW86276	T. 23 N., R. 31 W., Sec. 25: lots 5, 6	52.10
NEW86277	T. 24 N., R. 31 W., Sec. 23: lot 1	13.73
NEW86278	T. 24 N., R. 32 W., Sec. 6: lot 11; Sec. 7: lot 1	24.76
NEW86279	T. 24 N., R. 32 W., Sec. 13: lot 7	6.24
NEW86280	T. 24 N., R. 32 W., Sec. 32: lot 7; Sec. 33: lot 5	1.30
NEW86281	T. 22 N., R. 33 W., Sec. 2: lots 3, 4	73.64
NEW86282	T. 23 N., R. 33 W., Sec. 34: SW¼NE¼	40.00
NEW86283	T. 21 N., R. 34 W., Sec. 18: lot 1	38.06
Thomas County		
NEW86285	T. 24 N., R. 36 W., Sec. 8: W½NW¼	80.00
NEW86287	T. 24 N., R. 39 W., Sec. 3: lot 8	7.70
Hooker County		
NEW86271	T. 21 N., R. 31 W., Sec. 1: lots 5, 6	7.81
NEW86272	T. 23 N., R. 31 W., Sec. 1: lots 7, 8	5.32
NEW86273	T. 23 N., R. 31 W., Sec. 12: lots 5, 6	16.83

The publication of this Notice of Realty Action in the **Federal Register** shall segregate the above public lands from appropriation under the public land laws, including the mining laws. Any subsequent application shall not be accepted, shall not be considered as filed and shall be returned to the applicant if the Notice segregates the land from the use applied for in the application. The segregation effect of this Notice will terminate upon issuance of a conveyance document, 270 days, or when a cancellation Notice is published, whichever occurs first.

Sale Procedures

1. The following sale will be conducted by competitive bidding: NEW86273. This parcel is provided legal access by Hooker County Road No. 2302, which crosses the parcel.

2. The following parcels will be offered by direct sale to the adjoining landowner: NEW86265, NEW86269, NEW86279. The adjoining landowner will be required to submit proof of adjoining landownership before a bid can be accepted.

3. The following parcels will be offered by modified competitive sale to the adjoining landowners: NEW86266, NEW86267, NEW86268, NEW86271, NEW86272, NEW86274, NEW86275, NEW86276, NEW86277, NEW86278,

NEW86280, NEW86281, NEW86282, NEW86283, NEW86285, NEW86287. The apparent high bidder will be required to submit proof of adjoining landownership before the high bid can be accepted.

4. All bidders must be U.S. Citizens, 18 years of age or older, corporations authorized to own real estate in the state of Nebraska, a state, state instrumentality or political subdivision authorized to hold property, or an entity legally capable of conveying and holding land or interests in Nebraska.

5. Sealed bidding is the only acceptable method of bidding. All bids must be received in the Newcastle Resource Area Office by 11:00 a.m., July 26, 1989 at which time the sealed bid envelopes will be opened and the high bid announced. The high bidder will be notified in writing within 30 days whether or not the BLM can accept the bid. The sealed bid envelope must be marked in the front lower left-hand corner with the words "Public Land Sale, (identify serial number), Sale held July 26, 1989."

6. All sealed bids must be accompanied by a payment of not less than ten (10) percent of the total bid. Each bid and final payment must be accompanied by certified check, money order, bank draft, or cashier's check made payable to: Department of the Interior-BLM.

7. Failure to pay the remainder of the full bid price within 180 days of the sale will disqualify the apparent high bidder and the deposit shall be forfeited and disposed of as other receipts of the sale. If the apparent high bidder is disqualified, the next highest qualified bid will be honored or the land will be reoffered under competitive procedures. If two (2) or more envelopes containing valid bids of the same amount are received, supplemental sealed bidding will be used to determine the high bid. Additional sealed bids will be submitted to resolve all ties.

8. If any parcels fail to sell, they will be reoffered for sale under competitive procedures. For reoffered land, bids must be received in the Newcastle Resource Area Office by 11:00 a.m. on the fourth (4th) Wednesday of each month beginning August 23, 1989. Reoffered land will remain available for sale until sold or until the sale action is cancelled or terminated. Reappraisals of the parcels will be made periodically to reflect the current fair market value. If the fair market value of a parcel changes, the land will remain open for competitive bidding according to the procedures and conditions of this notice.

Patent Terms and Conditions

Any patents issued will be subject to all valid existing rights. Specific patent reservations include:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals 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 into the patent document, is available for review at the BLM Newcastle Resource Area Office.

3. Parcels NEW86281, NEW86282: If Benjamin and Bernadette French do not purchase parcel NEW86281 or NEW86282, the conveyance will be subject to the existing grazing use of Benjamin and Bernadette French, holders of grazing authorization No. GR-8104. The rights of Benjamin and Bernadette French to graze domestic livestock on the real estate according to the conditions and terms of grazing authorization No. GR-8104 shall cease on February 28, 1990. The successful bidder is entitled to receive annual grazing fees from Benjamin and Bernadette French in an amount not to exceed that which would be authorized under the Federal grazing fee published in the **Federal Register.**

Compensation for Loss of Range Improvement

Parcels NEW86281, NEW86282: Benjamin and Bernadette French are the grazing lessees (GR-8104) and owners (100 percent interest) of the following authorized permanent range improvements: Project No. 667, a fence. If any persons other than Benjamin or Bernadette French are the successful bidders on the land being offered for sale, those persons shall be required to reimburse Benjamin and Bernadette French for the adjusted value of the range improvement and furnish proof to the Authorized Officer, Bureau of Land Management, Newcastle Resource Area, before conveyance can be made. If the bidder and grazing lessee are unable to agree on compensation for the range improvement, the authorized officer shall determine the adjusted value.

For a period of 45 days from the date of this notice published in the **Federal Register,** interested parties may submit comments to the District Manager, Casper District Office, 1701 East E, Casper Wyoming 82601. 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 action by the State Director, this realty action will become final.

Dated: April 18, 1989.

Mike Karbs,

District Manager (Acting).

[FR Doc. 89-10126 Filed 4-26-89; 8:45 am]

BILLING CODE 4310-22-M

[CA-940-09-4520-12 and C-11-19]

Filing of Plat of Survey

April 20, 1989.

1. This supplemental plat of the following described land will be officially filed in the California State Office, Sacramento, California, immediately:

Humboldt Meridian, Humboldt County

T. 6 N., R. 5 E.

2. This supplemental plat of the southwest quarter of Section 13, Township 6 North, Range 5 East, Humboldt Meridian, California, was accepted April 14, 1989.

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 Shasta Trinity National Forest.

5. All inquires relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2811, Sacramento, California, 95825.

Herman J. Lyttge,

Public Information Section.

[FR Doc. 89-10119 Filed 4-26-89; 8:45 am]

BILLING CODE 4310-40-M

[MT-940-08-4520-11]

Land Resource Management

AGENCY: Bureau of Land Management, Montana State Office.

ACTION: Notice of filing of plats of survey.

SUMMARY: Plats of survey for the following described land accepted March 28 and March 29, 1989, respectively, will be officially filed in the Montana State Office, Billings, Montana, effective 45 days after publication.

Principal Meridian, Montana

T. 15 N., R. 55 E.

The plat (in 3 sheets) representing the dependent resurvey of portions of the east and north boundaries, the subdivisional lines, and the adjusted original right and left bank meanders of a channel of the Yellowstone River in section 22, and the survey of the subdivision of sections 2, 10, 22, 26, and 27, the survey of a portion of the present right and left bank meanders of a channel of the Yellowstone River in section 22, and the survey of certain division of reliction lines in section 22, Township 15 North, Range 55 East, Principal Meridian Montana.

Principal Meridian, Montana

T. 11 N., R. 10 W.

The plat representing the dependent survey of portions of the west and north boundaries, and subdivisional lines and the survey of the subdivision of sections 6, 7, 8, and 18, Township 11 North, Range 10 West, Principal Meridian, Montana.

The triplicate original of the above described plats will be immediately placed in the open files and will be available to the public as a matter of information.

If protest(s) against any of these surveys are received prior to the date of official filing, the filing will be stayed pending consideration of the protest(s). These particular plats will not be officially filed until the day after all protests have been accepted or dismissed and become final or appeals from the dismissal affirmed.

These surveys were executed at the request of the Miles City and Butte Districts, respectively.

EFFECTIVE DATE: April 18, 1989.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 222 North 32nd Street, P.O. Box 36800, Billings, Montana 59107.

Dated: April 20, 1989.

Marvin LeNoue,

State Director.

[FR Doc. 89-10120 Filed 4-26-89; 8:45 am]

BILLING CODE 4310-DN-M

[OR-942-09-4730-12; GP9-187]

Filing of Plats of Survey; Oregon

AGENCY: Bureau of Land Management.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Oregon State Office, Portland, Oregon, thirty (30) calendar days from the date of this publication.

Willamette Meridian

Oregon

T. 15 S., R. 1 W., accepted April 7, 1989
T. 20 S., R. 3 W., accepted March 3, 1989
T. 19 S., R. 4 W., accepted April 7, 1989
T. 30 S., R. 5 W., accepted March 3, 1989
T. 3 S., R. 8 W., accepted April 7, 1989
T. 12 S., R. 8 W., accepted March 17, 1989
T. 15 S., R. 8 W., accepted March 3, 1989
T. 30 S., R. 9 W., accepted April 7, 1989
T. 25 S., R. 13 W., accepted March 17, 1989
T. 25 S., R. 14 W., accepted March 17, 1989
T. 40 S., R. 7 E., accepted April 7, 1989

If protests against a survey, as shown on any of the above plat(s), are received prior to the date of official filing, the filing will be stayed pending consideration of the protest(s). A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

The plat(s) will be placed in the open files of the Oregon State Office, Bureau of Land Management, 825 NE Multnomah, Portland, Oregon 97208, and will be available to the public as a matter of information only. Copies of the plat(s) may be obtained from the above office upon required payment. A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, Portland, Oregon, a notice that they wish to protest prior to the proposed official filing date given above. A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the proposed official filing date.

The above-listed plats represent dependent resurveys, survey and subdivision.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 825 N.E. Multnomah Street, P.O. Box 2965, Portland, Oregon 97208.

Dated: April 18, 1989.

B. LaVelle Black,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 89-10121 Filed 4-26-89; 8:45 am]

BILLING CODE 4310-33-M

[AK-932-09-4214-10; AA-12812]

Notice of Termination of Proposed Withdrawal and Reservation of Lands; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice terminates the segregative effect of a proposed withdrawal and reservation of lands requested by the U.S. Army Corps of Engineers for use as a radio relay site.

EFFECTIVE DATE: April 27, 1989.

FOR FURTHER INFORMATION CONTACT: Sandra C. Thomas, BLM Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513-7599, 907-271-3342.

SUPPLEMENTARY INFORMATION: Notice of a proposed withdrawal and reservation of lands for the U.S. Army Corps of Engineers, was published in the Federal Register on July 7, 1977 (42 FR 34935). The purpose of the application, serial number AA-12812, was for use as a radio relay site. The Corps of Engineers has cancelled its application involving the following described lands:

Copper River Meridian

A tract of land in protracted T. 7 N., R. 2 E., more specifically described as follows:

Commencing at a point identical with latitude 62°24'17"N., longitude 145°07'45"W.; thence east 165 feet to the true point of beginning for this description; thence south 165 feet; thence west 330 feet; thence north 330 feet; thence east 330 feet; thence south 165 feet to the point of beginning.

The area described contains approximately 2.50 acres.

At 8:00 a.m. Alaska Daylight Time, on the date of this publication, such lands will be relieved of the segregative effect of the proposed withdrawal.

Sue A. Wolf,

Chief, Branch of Land Resources.

[FR Doc. 89-10114 Filed 4-26-89; 8:45 am]

BILLING CODE 4310-JA-M

Minerals Management Service

Development Operations Coordination Document; Stone Petroleum Corp.; Receipt of Outer Continental Shelf

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that The Stone Petroleum Corporation has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 5218, Block 17, Vermilion 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 Intracoastal City, Louisiana.

DATE: The subject DOCD was deemed submitted on April 14, 1989. Comments must be received within 15 days of the publication date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: 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). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m, Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

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. Additionally, this Notice is to inform the public, pursuant to Section 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

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 May 31, 1988 (53 FR 10595).

Those practices and procedures are set out in revised Section 250.34 of Title 30 of the CFR.

Dated: April 17, 1989.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 89–10060 Filed 4–26–89; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

National Capital Memorial Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the National Capital Memorial Commission will be held on Tuesday, May 2, at 1:30 p.m., in the Executive Conference Room at the National Capital Planning Commission, 1325 G Street, NW., Washington, DC.

The Commission was established by Pub. L. 99–652, for the purpose of advising the Secretary of the Interior or the Administrator of the General Services Administration, depending on which agency has jurisdiction over the lands involved in the matter, on policy and procedures for establishment of (and proposals to establish) commemorative works in the District of Columbia or its environs, as well as such other matters concerning commemorative works in the Nation's Capital as it may deem appropriate. The Commission evaluates each memorial proposal and makes recommendations to the Secretary or the Administrator with respect to appropriateness, site location and design, and serves as an information focal point for those seeking to erect memorials on Federal land in Washington, DC, or its environs.

The members of the Commission are as follows:

James Ridenour, Chairman, Director, National Park Service, Washington, DC.
George M. White, Architect of the Capital, Washington, DC.
Honorable Andrew J. Goodpaster, Chairman, American Battle Monuments Commission, Washington, DC.
J. Carter Brown, Chairman, Commission of Fine Arts, Washington, DC.
Glen Urquhart, Chairman, National Capitol Planning Commission, Washington, DC.
Honorable Marion S. Barry, Jr., Mayor of the District of Columbia, Washington, DC.
John Alderson, Administrator, General Services Administration, Washington, DC.
Honorable Frank Carlucci, Secretary of Defense, Washington, DC.

The purpose of the meeting will be to review and take action on the following:

I. Review of new memorial proposals introduced into the Congress:

S. 618—A bill to authorize a memorial to Mahatma Gandhi
S. 160—A bill to require the construction of a memorial to honor members of the Armed Forces who served in World War II
H.R. 537—Memorial and museum to honor members of the Armed Forces who served in World War II, and to commemorate that conflict
S. 619 and H.R. 937—Monument to honor Martin Luther King, Jr., by the Alpha Phi Alpha Fraternity
S.J. Res 18 and H.J. Res. 156—Monument to General Draza Mihailovich
H.R. Res. 21—Memorial to members of the American press killed while covering a war or other armed conflict
H.R. 810—Monument in honor of the American Flag, and to display the world's largest American flag at Oxon Cove Park
H.R. 441—A bill to establish a mechanism to provide for nonprofit organizations for merchant marine memorials
H.R. 1310—A bill to redesignate a certain portion of the George Washington Memorial Parkway as the "Clara Barton Parkway"
H.R. 850—To direct the Secretary of the Interior to display the flag of the United States of America at the apex of the Vietnam Veterans Memorial

II. Consideration of a policy governing delegation of responsibilities below those participating members of the National Capital Memorial Commission.

Date: April 19, 1989.

Robert Stanton,

Regional Director, National Capital Region.

[FR Doc. 89–10037 Filed 4–26–89; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–275]

Competitive Position of the U.S. Gear Industry in U.S. and Global Markets

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and scheduling of public hearing.

SUMMARY: At the request of the U.S. Trade Representative (USTR), the Commissison instituted investigation No. 332–275 under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)), for the purpose of assessing the competitive position of the U.S. gear industry in U.S. and global markets. The USTR asked that the commission provide its completed report no later than 12 months from receipt of the request.

EFFECTIVE DATE: April 14, 1989.

FOR FURTHER INFORMATION CONTACT: Dennis Fravel (telephone 202–252–1404) or Sylvia McDonough (202–252–1393), Machinery and Equipment Division, Office of Industries, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810. Persons with mobility impairments who need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–252–1000.

Background and Scope of Investigation: On March 27, 1989, the Commission recieved a request from the USTR to "conduct an investigation and prepare a report on the competitive position of the U.S. gear industry in U.S. and global markets". As requested by the USTR, the Commission's report will provide, to the extent possible, the following:

—Profiles of the U.S. industry and major foreign industries;

—A descriptive assessment of the global market for gears, to the extent possible, using categories of gear products most useful to the industry;

—A comparison of U.S. and foreign producers' strengths and weaknesses in such areas as: (1) Raw material, labor, and capital availability; (2) technological capabilities; (3) extent of plant and equipment modernization; (4) end-product quality, pricing, and service support; and government involvement.

—U.S. and foreign industry and U.S. consuming industry views on market direction and potential for the U.S. industry.

Public Hearing: The Commission will hold a public hearing in connection with this investigation beginning at 9:30 a.m. on November 1, 1989, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. All persons will have the opportunity to appear by counsel or in person, to present information, and to be heard.

Requests to appear at the public hearing should be filed with the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC, 20436, not later than the close of business (5:15 p.m.) on October 18, 1989. To be assured of consideration by the Commission, a prehearing statement should be submitted not later than the close of business on October 25, 1989. Posthearing statements must be submitted not later than the close of business on November 15, 1989.

If the number of persons requesting an opportunity to appear by counsel or in person is large, limitation of time for presentation of oral testimony is in the public interest to ensure that all viewpoints are aired. Accordingly, in scheduling appearances at the hearing, the time to be allotted to witnesses for the presentation of oral testimony may be limited. The Commission will determine appropriate allocations of time based on the number of persons requesting an opportunity to appear. Questioning of witnesses will be limited to members of the Commission and its staff and witnesses should be prepared to provide additional information in response to such questioning.

Any written materials containing confidential business information presented at the hearing must be submitted in accordance with the requirements of § 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6).

Written Submissions: Interested persons are invited to submit written statements concerning the investigation, in lieu of, or in addition to, appearances at the public hearing. To be assured of consideration by the Commission, such submissions must be received in the Office of the Secretary to the Commission not later than the close of business (5:15 p.m.) on November 15, 1989. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6).

A signed original and fourteen (14) copies of each written statement must be submitted to the Commission in accordance with § 201.8(d) of the Commission's rules (19 CFR 201.8(d)). All written submissions, except for confidential business information, will be made available for inspection by the public during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: April 18, 1989.

[FR Doc. 89–10051 Filed 4–26–89; 8:45 am]

BILLING CODE 7020–02–M

[Investigations Nos. 701–TA–297 (Final) and 731–TA–422 (Final)]

New Steel Rails From Canada

AGENCY: United States International Trade Commission.

ACTION: Institution of final countervailing duty and antidumping investigations and scheduling of a hearing to be held in connection with the investigations.

SUMMARY: The Commission hereby gives notice of the institution of final countervailing duty investigation No. 701–TA–297 (Final) under section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)) (the Act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Canada of new steel rails,[1] that have been found by the Department of Commerce, in a preliminary determination, to be subsidized by the Government of Canada. Commerce will make its final subsidy determination in this investigation on or before July 26, 1989.

The Commission hereby gives notice of the institution of final antidumping investigation No. 731–TA–422 (Final) under section 735(b) of the Act (19 U.S.C. 1673d(b)) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Canada of new steel rails, that have been found by the Department of Commerce, in a preliminary determination, to be sold in the United States at less than fair value (LTFV). Commerce will make its final LTFV detemination on or before July 26, 1989.

As provided in sections 705(b) and 735(b) of the Act, the Commission must complete final countervailing duty and antidumping investigations before the later of 120 days after the date of Commerce's affirmative preliminary

[1] For the purposes of these investigations, "new steel rails" include rails, whether or not of alloy steel, provided for in subheadings 7302.10.10, 7302.10.50, and 8548.00.00 of the Harmonized Tariff Schedule of the United States (previously classified in items 610.20, 610.21, and 688.42 of the Tariff Schedules of the United States). Specifically excluded from the scope of these investigations are imports of "light rails," which are 60 pounds or less per yard, such as are used in amusement park rides. "Relay rails," which are used rails that have been taken up from a primary railroad track and are suitable to be reused as rails (such as on a secondary rail line or in a rail yard), are also excluded.

determination, or 45 days after its final determination, if affirmative.

For further information concerning the conduct of these investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and C (19 CFR Part 207, as amended by Commission interim rules published in 53 FR 33041–43 (August 29, 1988)), and part 201, subparts A through E (19 CFR Part 201)

EFFECTIVE DATE: April 18, 1989.

FOR FURTHER INFORMATION CONTACT: Fred Rogoff (202–252–1179), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–252–1000.

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted as a result of affirmative preliminary determinations by the Department of Commerce that certain benefits which constitute subsidies within the meaning of section 701 of the Act (19 U.S.C. 1671) are being provided to manufacturers, producers, or exporters in Canada of new steel rails and that exports of such merchandise to the United States are being sold at less than fair value within the meaning of section 731 of the Act (19 U.S.C. 1673). The investigations were requested in a petition filed on September 26, 1988, by counsel on behalf of the Bethlehem Steel Corporation, Bethlehem, PA. In response to that petition the Commission conducted preliminary countervailing duty and antidumping investigations and, on the basis of information developed during the course of those investigations, determined that there was a reasonable indication that an industry in the United States was materially injured by reason of imports of the subject merchandise (53 FR 47588, November 23, 1988).

Participation in the investigations.—Persons wishing to participate in these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the Federal Register. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list.—Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 2073.3, as amended), each document filed by a party to the investigation must be served on all other parties to the investigations (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Limited disclosure of business proprietary information under a protective order.—Pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a), as amended), the Secretary will make available business proprietary information gathered in these final investigations to authorized applicants under a protective order, provided that the application be made not later than twenty-one (21) days after the publication of this notice in the Federal Register. A separate service list will be maintained by the Secretary for those parties authorized to receive business proprietary information under a protective order. The Secretary will not accept any submission by parties containing business proprietary information without a certificate of service indicating that it has been served on all the parties that are authorized to receive such information under a protective order.

Staff report.—The prehearing staff report in these investigations will be placed in the nonpublic record on July 10, 1989, and a public version will be issued thereafter, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing.—The Commission will hold a hearing in connection with these investigations beginning at 9:30 a.m. on July 27, 1989, at the U.S. International Trade Commission Building, 500 E Street, SW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary of the Commission not later than the close of business (5:15 p.m.) on July 17, 1989. All persons desiring to appear at the hearing and make oral presentations may file prehearing briefs and attend a prehearing conference to be held at 9:30 a.m. on July 20, 1989, at the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is July 20, 1989.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonbusiness proprietary summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any business proprietary materials must be submitted at least three (3) working days prior to the hearing (see 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2))).

Written submissions.—All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR 207.22). Posthearing briefs must conform with the provisions of section 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on August 3, 1989. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations on or before August 3, 1989.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with§ 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for business proprietary data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary of the Commission.

Any information for which business proprietary treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Business Proprietary Information." Business proprietary submissions and requests for business proprietary treatment must conform with the requirements of §§ 201.6 and 207.7 of the Commission's rules (19 CFR 201.6 and 207.7, as amended).

Parties which obtain disclosure of business information pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)) may comment on such information in their prehearing and posthearing briefs, and may also file additional written comments on such information no later than August 8, 1989. Such additional comments must be limited to comments on business proprietary information received in or after the posthearing briefs.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR § 207.20).

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: April 20, 1989.

[FR Doc. 89-10052 Filed 4-26-89; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-295]

Certain Novelty Teleidescopes; Change of Commission Investigative Attorney

Notice is hereby given that, as of this date, Juan S. Cockburn, Esq., of the Office of Unfair Import Investigations will be the Commission investigative attorney in the above-cited investigation instead of Deborah D. Sorkin, Esq.

The Secretary is requested to publish this notice in the **Federal Register.**

Respectfully submitted,

Lynn I. Levine,

Director, Office of Unfair Import Investigations, 500 E Street, SW., Washington, DC 20436.

Dated: April 18, 1989.

[FR Doc. 89-10053 Filed 4-26-89; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-296]

Certain Phenylene Sulfide Polymers and Polymer Compounds, and Products Containing Same; Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on March 20, 1989, under section 337 of the Tariff Act of 1930, as amended, (19 U.S.C. 1337), on behalf of Phillips Petroleum Company, Bartlesville, Oklahoma 74004. Supplemental exhibits to the complaint were filed on April 5 and April 6, 1989. The complaint alleges violations of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain phenylene sulfide polymers and polymer compounds, and products containing same, by reason of alleged direct and induced infringement of claims 33 through 36 of U.S. Letters Patent 3,919,177; and that there exists an industry in the United States as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after a full investigation, issue a permanent exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Room 112, Washington, DC 20436, telephone 202-252-1802. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

FOR FURTHER INFORMATION CONTACT: George C. Summerfield, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202-252-1582.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.12 of the Commission's Interim Rules of Practice and Procedure, 53 FR 33034, 33057 (Aug. 29, 1988).

Scope of Investigation

Having considered the complaint, the U.S. International Trade Commission, on April 19, 1989, Ordered That—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain phenylene sulfide polymers and polymer compounds, and products containing same, by reason of alleged direct or induced infringement of claims 33, 34, 35, or 36 of U.S. Letters Patent 3,919,177, and whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—

Phillips Petroleum Company
Bartlesville, Oklahoma 74004

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Kureha Chemical Industry Co., Ltd.
1-9-11 Nihonbashi Horidome-Cho
Chuo-Ku, Tokyo, 103 Japan

Hoechst Celanese Corporation
Route 202-206 North Bridgewater,
New Jersey 08807

(c) George C. Summerfield, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW., Room 401F, Washington, DC 20436, shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.21 of the Commission's Interim Rules of Practice and Procedure, 53 FR 33034, 33057 (Aug. 29, 1988). Pursuant to §§ 201.16(d) and 210.21(a) of the Commission's Rules (19 CFR 201.16(d) and 53 FR 33034, 33057 (Aug. 29, 1988)), such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: April 21, 1989.

[FR Doc. 89-10054 Filed 4-26-89; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[No. MC-F-19369]

The Arrow Line, Inc.; Proposed Purchase Exemption

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed exemption.

SUMMARY: The Arrow Line, Inc. (Arrow) (MC–1934) seeks an exemption under 49 U.S.C. 11343(e) from the requirement of prior regulatory approval for its purchase of the assets and operating rights of Savin Bus Lines, Inc. (Savin) (MC–1193).[1]

DATE: Comments must be received by April 30, 1989.

ADDRESSES: Send comments (an original and 10 copies), referring to Docket No. MC–F–19369, to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

and

(2) Petitioner's representative: Charles A. Webb, 606 London House, 1001 Wilson Boulevard, Arlington, VA 22209.

FOR FURTHER INFORMATION CONTACT: Richard L. Gagnon, (202) 275–7711. [TDD for hearing impaired: (202) 275–1721.]

SUPPLEMENTARY INFORMATION: Petitioner seeks an exemption under 49 U.S.C. 11343(e) and the Commission's regulations in *Procedures—Handling Exemptions Filed by Motor Carriers*, 367 I.C.C. 113 (1982).

Raynald R. Dupuis is president and 51 percent shareholder of Arrow; the remainder of Arrow's stock is held by his mother, Bertha T. Dupuis. Mr. Dupuis is also president and principal shareholder of Arrow Leasing, Inc. (Leasing) (MC–209730), and sole proprietor of R and D Leasing (R and D) (MC–196275). Mr Dupuis' continuance in control of Arrow, Leasing, and R and D was approved in Nos. MC–F–18664 and MC–F–19157.

Arrow, Savin, Leasing, and R and D hold nationwide charter and special operations authority. Arrow is also authorized to transport: (1) Passengers over regular routes in Massachusetts, Connecticut, and New York; and (2) automobiles, in secondary movements, in truckaway service, between named Connecticut, Massachusetts, New York, and New Jersey points, on the one hand, and, on the other, points in Florida. Savin also holds authority to transport passengers over regular routes in southeastern Connecticut, Massachusetts, and Rhode Island.

Under 49 U.S.C. 11343(a)(2), the Commission's prior approval is required for the purchase of a carrier by any number of carriers. Here, Arrow, a regulated carrier, proposes to purchase another carrier. Therefore, this transaction is subject to the Commission's jurisdiction and can be carried out only under its regulation or an exemption from regulation.

Arrow states that Savin's principal shareholder desires to retire and sell his interest in the carrier. It argues that its purchase of Savin will promote the national transportation policy by assuring the continuation of service to the traveling public. It also will enable Arrow to achieve operating economies and efficiencies since the two carriers are small entities. Arrow contends that competition will not be diminished by the proposed purchase because its scheduled and charter services are concentrated in western Connecticut and are not competitive with Savin's.

A copy of the petition may be obtained from petitioner's representative, or it may be inspected in Room 1227, Interstate Commerce Commission Building, 12th and Constitution Avenue NW., Washington, DC, during normal business hours, or by pickup from Dynamic Concepts, Inc., in Room 2229 at the same address. [Assistance for the hearing impaired is available through TDD services (202) 275–1721.]

Decided: April 20, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips.

Noreta R. McGee

Secretary.

[FR Doc. 89–10087 Filed 4–26–89; 8:45 am]

BILLING CODE 7035–01–M

[1] Arrow also requests that the Commission exempt its purchase of Charter Buses, Inc., a Connecticut intrastate motor passenger carrier. However, this aspect of the transaction is beyond the Commission's jurisdiction because it does not involve the purchase of a "carrier" (as defined at 49 U.S.C. 10102(2)) within the meaning of 49 U.S.C. 11343.

[Finance Docket No. 31430]

Arizona Central Railroad, Inc.; Acquisition and Operation Exemption; Clarkdale Branch of the Atchison, Topeka and Santa Fe Railway Co.

Arizona Central Railroad, Inc. (ACR) has filed a notice of exemption to acquire by purchase and to operate the Clarkdale Branch of The Atchison, Topeka and Santa Fe Railway Company (ATSF) extending between Drake, AZ, (milepost 0 + 15 feet), and the Phoenix Cement Plant near Clarkdale, AZ (milepost 38 + 3940.3 feet), a distance of approximately 38.74 miles.[1] The involved transaction was to be consummated on or soon after the effective date of this exemption.

A transaction relating to the continuance in control of ACR by David L. Durbano and Phillip D. Scott is the subject of a notice of exemption filed concurrently in Finance Docket No. 31430 (Sub-No. 1), *David L. Durbano and Phillip D. Scott—Continuance in Control Exemption—Arizona Central Railroad, Inc.*

Any comments must be filed with the Commission and served on: (1) Douglas M. Durbano, Durbano, Smith, Reeve & Fuller, 4185 Harrison Boulevard, Suite 320, Ogden, UT 84403; and (2) Dennis W. Wilson, The Atchison, Topeka and Santa Fe Railway Company, 80 East Jackson Boulevard, Chicago, IL 60604.

ACR must preserve intact all sites and structures more than 50 years old until compliance with the requirements of section 106 of the National Historic Preservation Act, 16 U.S.C. 470, is achieved. *See Class Exemption—Acq. & Oper. of R. Lines Under 49 U.S.C. 10901*, 4 I.C.C.2d 305 (1988).

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: April 20, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89–10046 Filed 4–26–89; 8:45 am]

BILLING CODE 7035–01–M

[1] ATSF has retained an easement over both legs of the wye track at Drake, including sidings along those tracks, and over the Clarkdale Branch between milepost 0 + 15 feet and milepost 0 + 3000 feet, for the purpose of interchanging cars or traffic with ACR at Drake, or operating in response to any emergency situation.

[Docket No. AB–290 (Sub–No. 57X)]

Norfolk and Western Railway Co. Discontinuance Exemption; Operations in Chicago, IL

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments and Discontinuances* to discontinue service over its 1.29 mile line of railroad between milepost 513.87 and milepost 515.16 in Chicago, IL.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with

any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the discontinuance shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective May 27, 1989 (unless stayed pending reconsideration). Petitions to stay regarding matters that do not involve environmental issues [1] and formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2)[2] must be filed by May 8, 1989. Petitions for reconsideration must be filed by May 17, 1989, with:

Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

A copy of any petition filed with the Commission should be sent to applicant's representative:

Roger A. Petersen, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510–2191

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this discontinuance.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by May 2, 1989. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275–7316. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental conditions will be imposed, where appropriate, in a subsequent decision.

Decided: April 19, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89–9899 Filed 4–26–89; 8:45 am]

BILLING CODE 7035–01–M

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 4 I.C.C.2d 400 (1988). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987), and final rules published in the Federal Register on December 22, 1987 (52 FR 48440–48446).

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 88–38]

Nathan Ethridge Pearson, Jr., M.D.; Revocation of Registration

On February 29, 1988, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Nathan Pearson, M.D. (Respondent), of Southfield, Michigan. The Order proposed to revoke Respondent's DEA Certificate of Registration pursuant to 21 U.S.C. 824. Dr. Pearson timely filed a request for a hearing which was held before Administrative Law Judge Mary Ellen Bittner in Ann Arbor, Michigan on October 18, 1988.

At the hearing Judge Bittner found that Respondent, while working as a physician at a Detroit weight-loss clinic, was approached by the clinic owners and requested to pre-sign prescriptions for controlled substances. These prescriptions were filled out except for the name of the person who was to receive the prescription. The purpose of these prescriptions was to "raise revenue for operating expenses." Dr. Pearson pre-signed 10–12 pads of prescriptions, a total of approximately 500 prescriptions. These prescriptions were primarily for the controlled substances Desoxyn, Preludin, Percodan and Darvon. The clinic owners sold the prescriptions for $30 each and paid Respondent $5 per prescription or about $250 per prescription pad. Judge Bittner also found that Respondent knew that this scheme was wrong and contrary to accepted medical practice. Respondent recognized the dangers inherent in giving controlled substance prescriptions to individuals who had not been examined by a physician and further was aware that patients receiving these prescriptions might sell them on the street.

On October 21, 1986, Respondent was charged by information in the United States District Court for the Eastern District of Michigan, Southern Division, of misprision of a felony, a violation of 18 U.S.C. 4. He pled guilty to that charge on February 26, 1987.

On June 16, 1987, the Michigan Attorney General filed an Administrative Complaint against Respondent with the Michigan Department of Licensing and Regulation, Board of Medicine. Following a hearing, a Michigan administrative law examiner issued his opinion, finding the Respondent had prescribed controlled substances for other than lawful diagnostic or therapeutic purposes, contrary to Michigan law. On December 8, 1988, the Michigan Board of Medicine issued a Final Order, revoking Respondent's license to practice medicine in Michigan.

Based on these facts, and primarily on the fact that Respondent is not authorized to handle controlled substances in the State of Michigan, the Administrative Law Judge, on January 30, 1989, recommended that Respondent's DEA Certificate of Registration be revoked and any pending applications for renewal denied. The Administrator adopts the recommended ruling, findings of fact, conclusions of law and decision of Judge Bittner, in its entirety. The Administrator has consistently held that an unlicensed physician may not be registered by the DEA to handle controlled substances. *Wingfield Drugs, Inc.*, Docket No. 87–13, 52 FR 27070 (1987); *Robert F. Witek, D.D.S.*, Docket No. 87–54, 52 FR 47770 (1987); and *Bobby Watts, M.D.*, Doekct No. 87–71, 53 FR 11919 (1988).

Accordingly, pursuant to the authority vested in the Attorney General and redelegated to the Administrator of the Drug Enforcement Administration by 21 U.S.C. 824 and 28 CFR 0.100, the Administrator concludes that Respondent's DEA Certificate of Registration should be revoked and any pending applications should be denied. It is therefore ordered that Certificate of Registration AP2425709 previously issued to Respondent be, and it hereby is, revoked. The Administrator further orders that any pending applications for renewal of that registration be, and they hereby are, denied.

This order is effective April 27, 1989.

John C. Lawn,

Administrator.

Date: April 20, 1989.

[FR Doc. 89–10009 Filed 4–26–89; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Shipyard Employment Standards Advisory Committee; Meeting

AGENCY: Occupational Safety and Health Administration.
ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that the Shipyard Employment Standards Advisory Committee, established under the provisions of the Federal Advisory Committee Act (FACA) as amended (5 U.S.C. App. I), will convene on June 6, 1989, at 8:30 a.m. at the Town and Country Hotel, 500 Hotel Circle North, San Diego, California. The meeting will adjourn on June 7, 1989, at approximately 4:00 p.m. The agenda is as follows:

I. Call to order.

II. Review transcript of March 28–29, 1989 meeting.

III. Old Business. Discussion of the following standards:

(a) Confined Space Entry on Vessels and in the Shipyard.

(b) Lockout/Tagout Aboard Vessels and in the Shipyard including 29 CFR Part 1915, Subpart J, Ship's Machinery and Piping System.

(c) CFR 1915, Subpart F, General Working Conditions.

(d) 29 CFR 1910.144, Safety Color Coding for Marking Physical Hazards.

(e) 29 CFR 1910.145, Specifications for Accident Prevention Signs and Tags.

(f) 29 CFR 1910.151, Medical Services and first Aid.

IV. New Business. Discussion of the following standards:

(a) 29 CFR Part 1915, Subpart G, Gear and Equipment for Rigging and Materials Handling covering §§ 1915.111–1915.118.

(b) 29 CFR Part 1910, Subpart N, Materials Handling and Storage, covering 1910.176–1910.184

(c) 29 CFR Part 1915, Subpart H, Tools, and Related Equipment, covering §§ 1915.131–1915.136.

(d) 39 CFR Part 1910, Supart P. Hand and Portable Powered Tools and Other Hand-Held Equipment, covering §§ 1910.241–1910.244.

(e) 29 CFR Part 1915, Subpart K. Portable, Unfired Pressure Vessels, Drums and Containers, other than Ship's Equipment.

(f) 29 CFR Part 1910, Subpart O, Machinery and Machine Guarding, covering §§ 1910.211–1910.219.

V. Planning.

The Committee will consider oral presentations relating to agenda items. Persons wishing to address the Committee should submit a written request to Mr. Thomas Hall (address below) by the close of business, June 1, 1989. The request must include the name and address of the person wishing to appear, the capacity in which the appearance will be made, a short summary of the intended presentation and an estimate of the amount of timeneeded.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Hall, U.S. Department of Labor, Occupational Safety and Health Administration, Division of Consumer Affairs, Room N–3647, 200 Constitution Avenue, NW., Washington, DC 20210. (202) 528–8617.

Signed at Washington, DC this 21st day of April 1989.

Alan C. McMillan,

Acting Assistant Secretary.

[FR Doc. 89–10139 Filed 4–26–89; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 89–30]

NASA Wage Committee; 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 meeting of the NASA Wage Committee.

DATE AND TIME: April 12, 1989, 1:30 p.m. to 3:00 p.m.

ADDRESS: National Aeronautics and Space Administration, Room 7002, Federal Building 6, 400 Maryland Avenue, SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. John R. Remissong, Code NPM, National Aeronautics and Space Administration, Washington, DC 20546 (202/453–2593).

SUPPLEMENTARY INFORMATION: The Committee's primary responsibility is to consider and make recommendations to the NASA Assistant Associate Administrator for Personnel Management, on all matters involved in the development and authorization of a Wage Schedule for the Cleveland, Ohio, wage area, pursuant to Pub. L. 92–392. The Committee, chaired by Mr. John Remissong, consists of six members. During this meeting, the Committee considered and make recommendations on wage survey specifications.

Type of Meeting: Open.

Purpose of Meeting: The NASA Wage Committee recommended to the NASA Wage Fixing Authority the wage specifications to be used for the 1989 Full-Scale Wage Survey.

John Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

April 21, 1989.

[FR Doc. 89–10070 Filed 4–26–89; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL COMMISSION FOR EMPLOYMENT POLICY

Meeting and Hearing

ACTION: Notice of meeting and hearing.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463; 86 Stat. 770) notice is hereby given of an emergency public meeting and a closed executive session (pursuant to 5 USC APP.I, Sect. 10(d)) of the National Commission for Employment Policy in Hearing Room C, and a public hearing the following day in Hearing Room A, at the Interstate Commerce Commission, 12th & Constitution Avenue, NW, Washington, DC 20423.

DATE: Thursday, May 4, 1989 (meeting) 9:00–4:30; Friday, May 5, 1989 (hearing) 9:00–4:30.

Status: This meeting and the hearings are to be open to the public with the exception of the executive session.

Matters To Be Discussed: The purpose of this public meeting is to enable the Commission members to continue discussion and preparation of comments on draft legislation proposing abolishment of the National Commission for Employment Policy. Because of the recent appointment of a new Chairman and upcoming hearings on the proposed legislation, this meeting is deemed an emergency. During the public meeting, the Commission members will also discuss progress on the research agenda, budget and administrative matters. During the executive session, the Commission members will discuss matters solely related to the internal personnel rules and practices of the Commission. Such issues are considered routine administrative matters, of no significance to the public. In addition, the session is closed in order to protect information of a personnel nature, which if disclosed could constitute an unwarranted invasion of personal privacy.

The purpose of the public hearings is to enable the Commission members to

learn from various segments of the Job Training Partnership Act (JTPA) system their reactions to a draft Commission paper which examines possible explanations for the under-representation of Hispanics in JTPA. Persons invited to testify represent major Hispanic organizations, federal government organizations, and public interest groups involved in JTPA.

Interested parties may submit written testimony either prior to or after the official hearing date, but no later than July 15, 1989 to the Commission headquarters. Additional hearings will be conducted across the U.S. over the next several months. It is anticipated that the results of the first hearing will be incorporated into Commission testimony for presentation to Congress during the month of May. Results from all hearings will be used to develop formal Commission recommendations.

FOR FURTHER INFORMATION CONTACT: Barbara C. McQuown, Director, National Commission for Employment Policy, 1522 K Street, NW., Suite 300, Washington, DC 20005, tel. (202) 724–1545.

SUPPLEMENTARY INFORMATION: The National Commission for Employment Policy was established pursuant to Title IV–F of the Job Training Partnership Act (Pub. L. 97–300). The Act charges the Commission with the broad responsibility of advising the President, and the Congress on national employment issues. Handicapped individuals wishing to attend should contact the Commission so that appropriate accommodations can be made. Minutes of the meeting will be available for public inspection at the Commission's headquarters, 1522 K Street, NW., Suite 300, Washington, DC 20005.

Signed at Washington, DC, this 24th day of April 1989.

Barbara C. McQuown,

Director, National Commission for Employment Policy.

[FR Doc. 89–10216 Filed 4–26–89; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL COMMUNICATIONS SYSTEM

National Security Telecommunications Advisory Committee; Closed Meeting

A meeting of the National Security Telecommunications Advisory Committee (NSTAC) will be held on June 8, 1989. The business session of the meeting will be held at the Department of State. An executive session of the meeting will be held at the Old Executive Office Building.

Business Session

—Call to Order
—Welcome from Department of State
—Review of Government Activities
—Review of Ongoing NSTAC Activities
—Report from Industry
—Proposed Amendments to the NSTAC Bylaws
—Strategic Outlook
—Closing Remarks
—Adjournment

Executive Session

—Call to Order
—Discussion with Government Officials
—NSTAC Closing Discussion
—Adjournment

Due to the requirement to discuss classified information in conjunction with the issues listed above, the meeting will be closed to the public in the interest of National Defense. Any person desiring information about the meeting may telephone (202) 692–9274 or write the Manager, National Communications System, Washington, DC 20305–2010.

Terrence N. Danner,

Captain, U.S. Navy, Assistant Manager, NCS Joint Secretariat.

[FR Doc. 89–10086 Filed 4–26–89; 8:45 am]

BILLING CODE 3610–05–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–213]

Connecticut Yankee Atomic Power Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–61, issued to Connecticut Yankee Atomic Power Company (CYAPCO, the licensee), for operation of the Haddam Neck Plant, located in Middlesex County, Connecticut.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would provide new Technical Specifications (TS) and revisions to existing TS that provide limiting conditions for operation (LCO) and surveillance requirements in response to Generic Letter 83–37, as applicable to the Haddam Neck Plant. TS have been proposed for the following: (1) Post-Accident Sampling, (2) Sampling and Analysis of Plant Effluents, (3) Containment Pressure Monitor, (4) Reactor Coolant System Vents, (5) Noble Gas Effluent, (6) Containment High-Range Radiation Monitor, and (7) Instrumentation for Detection of Inadequate Core Cooling.

The proposed action is in accordance with the licensee's application for amendment dated July 1, 1988 with revisions by letters dated December 2, 1988 and March 1, 1989.

The Need for the Proposed Action

The proposed change to the TS is required in order for the licensee to comply with Generic Letter (GL) 83–37, "NUREG–0737 Technical Specifications," dated November 1, 1983.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revisions to the TS. The proposed revisions would provide TS for those items identified in NUREG–0737, "Clarification of TMI Action Plan Requirements," as requiring TS. TS have been proposed for all items found applicable to Haddam Neck per GL–83–37 except Long Term Auxiliary Feedwater System Evaluation (II.E.1.1), Containment Water Level Monitor (II.F.1.5), Containment Hydrogen Monitor (II.F.1.6) and Control Room Habitability Requirements (II.D.3.4). The TS for these items will be resolved in other programs such as the Integrated Safety Assessment Program (ISAP) and the TS Upgrade Program. The addition of these new TS and revisions to certain existing TS would not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that this action would result in no significant impact.

With regard to potential non-radiological impacts, the proposed changes to the TS involve systems located within the restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed amendment.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on November 2, 1988 (53 FR 44263). No request for hearing or petition for leave to intervene was filed following this notice.

Alternative to the Proposed Action

It has been determined that there is no measurable impact associated with the proposed amendment; any alternatives to the amendment will have either no environmental impact or greater environmental impact.

Alternative Use of Resources

This action does not involve the use of any resources beyond the scope of resources used during normal operation.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, the Commission concluded that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

For further details with respect to this action, see the request for amendment dated July 1, 1988 with revisions dated December 2, 1988 and March 1, 1989. Copies of the request for amendment are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the Russell Library, 123 Broad Street, Middletown, Connecticut.

Dated at Rockville, Maryland, this 20th day of April 1989.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I–4, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89–10088 Filed 4–26–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–16]

Detroit Edison Co.; Issuance of Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an amendment to Possession-Only License No. DPR–9 which currently allows Detroit Edison Company (the licensee) to possess-but-not-operate the permanently shut down Enrico Fermi Atomic Power Plant, Unit No. 1 (Fermi 1). The amendment would renew Possession-Only License No. DPR–9 to extend the expiration date of the license from June 30, 1985 to March 20, 2025.

Description of Proposed Action

Fermi 1 has been shut down since September 22, 1972 and all fuel has been removed from the site. The licensee intends to retain Fermi 1 in a safe storage (SAFSTOR) status until after the Fermi 2 license expires on March 20, 2025, at which time the residual radioactivity will be removed from Unit 1 to levels acceptable for release of the facility to unrestricted access.

Environmental Impacts

Fermi 1 is now maintained in a shutdown status in accordance with the Technical Specifications and ALARA requirements of 10 CFR Part 20. The residual radioactivity (477 curies) at Fermi 1 will decay significantly in the 40-year period of the proposed license renewal. There is very little potential for a release of radioactivity to the environment or a significant radiation exposure of workers because more than 95 percent of the residual radioactivity remains as activated metal components that are sealed within the reactor vessel which is in turn surrounded by a metal containment building.

The 40-year delay in removal of residual radioactivity will reduce potential exposure rates to workers that would dismantle Fermi 1 by a factor of about 100. In addition, the 40-year delay will result in a smaller volume of radioactive waste to be disposed of at the time of decontamination as compared to immediate decontamination. The smaller volume of radioactive waste will result in the use of a smaller area at a waste burial facility.

Finding of No Significant Impact

The staff has reviewed the proposed renewal of the Fermi 1 facility license relative to the requirements set forth in 10 CFR Part 51. Based upon the environmental assessment, the staff concluded that there are no significant environmental impacts associated with the proposed action and that the proposed license amendment will not have a significant effect on the quality of the human environment. Therefore, the Commission had determined, pursuant to 10 CFR 51.31, not to prepare an environmental impact statement for the proposed amendment.

For further details with respect to this action, see (1) the application for amendment dated May 17, 1985 as supplemented by letters dated July 23, 1986, September 15, 1986, September 25, 1987, September 15, 1988 and December 22, 1988 and (2) the Environmental Assessment. These documents are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555, and at the Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Dated at Rockville, Maryland, this 20th day of April 1989.

For the Nuclear Regulatory Commission.

Charles L. Miller,

Director, Standarization and Non-Power Reactor Project Directorate, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89–10089 Filed 4–26–89; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Nuclear Waste; Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold a meeting on May 11, 1989, Room P–422, 7920 Norfolk Avenue, Bethesda, MD. Portions of this meeting will be closed to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy 5 U.S.C. 552b(c)(6). Notice of this meeting was published in the Federal Register on April 20, 1989 (54 FR 16027). The following topics will be discussed:

Thursday, May 11, 1989—8:30 a.m.–5:00 p.m.

- Review of the Site Characterization Analysis for the DOE high level radwaste repository (Open).
- Technical Position on Environmental Monitoring of Low Level Waste Disposal Facilities (Open).
- High-Level Waste Management Research Program and Strategy Plan, including status of the Center for Nuclear Waste Regulatory Analyses (Open).
- Committee Activities—The Committee will discuss anticipated and proposed Committee activities, future meeting agenda, organizational matters, and new members, as appropriate (Open/Closed).

Procedures for the conduct of and participation in ACNW meetings were published in the Federal Register on June 6, 1988 (53 FR 20699). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and Staff. The Office of the ACRS is providing Staff support for the ACNW. Persons desiring to make oral statements should notify the Executive Director of the Office of the ACRS as far in advance as practicable so that appropriate arrangements can be made

to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the Executive Director of the Office of the ACRS, Mr. Raymond F. Fraley (telephone 301/492–4516), prior to the meeting. In view of the possibility that the schedule for ACNW meeting may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

Date April 24, 1989.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 89–10144 Filed 4–26–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–302]

Florida Power Corp.; Withdrawal of Applications for Amendments to Facility Operating License

The United States Nuclear Regulatory Commission (the Commission) has granted the request of Florida Power Corporation (the licensee) to withdraw two applications for proposed amendments to Facility Operating License No. DPR–72 for the Crystal River Unit 3 Generating Plant, located in Citrus County, Florida.

One of the proposed amendments would have modified the facility Technical Specifications to include the silicon-controlled rectifiers in appropriate surveillance and test sections. The Commission previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on May 23, 1984 (49 FR 21829). However, by letter dated April 11, 1989, the licensee withdrew the proposed change.

The other proposed amendment would have added operability and surveillance requirements for the reactor trip breaker shunt trip attachment. The Commission previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on November 30, 1988 (53 FR 48330). However, by letter dated April 11, 1989, the licensee withdrew the proposed change.

In both cases the licensee committed to incorporate the proposed changes consistent with NRC guidance in the Technical Specification Improvement Program (TSIP), and until approval of the TSIP submittal, to maintain operability requirements and surveillance procedures in accordance with current NRC guidance.

For further details with respect to this action, see the applications for amendments dated January 16, 1984 and March 29, 1985, respectively, and the licensee's letter dated April 11, 1989, which withdrew the applications for license amendments. The above documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC., at the Crystal River Public Library, 668 NW. First Avenue, Crystal River, Florida 32629.

Dated at Rockville, Maryland, this 20th day of April 1989.

For the Nuclear Regulatory Commission.

Harley Silver,

Project Manager, Project Directorate II–2, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89–10090 Filed 4–26–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–352]

Philadelphia Electric Co. Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–39, issued to the Philadelphia Electric Company, (the licensee), for operation of the Limerick Generating Station, Unit 1, located in Montgomery and Chester Counties, Pennsylvania. The proposed amendment is in response to the licensee's submittal dated February 14, 1986.

The proposed amendment would make administrative changes to the Technical Specifications (TS) to achieve consistency, remove outdated material, make minor text changes, and correct errors. The changes are grouped into four categories.

(1) Category A changes deal with correction of errors or the removal of outdated material. Specifcially, Pages 3/4 7–22 and 6–14 delete a reference to 5% power (at *). Page 3/4 3-85 deletes a reference to initial criticality (at #). These references are no longer applicable. These conditions have been satisfied and the footnotes would be deleted. Page 3/4 3-85 also would add "/" between "1" and "location" for instrument 4. The primary and secondary containment isolation trip functions on the outside atmosphere to reactor enclosure and refueling area differential pressure low Trip Setpoint and Allowable Value on Pages 3/4 3–21 and 3/4 3–22 (items e. and f.) would use the engineering units "inches of H_2O" to eliminate ambiguity. The reference to Figure B 3/4 4.6–2 on Page 3/4 4–19 (item 4.4.6.1.4) would be deleted because this figure does not exist in the TS. The drywell average air temperature sensor elevation and azimuth locations on Page 3/4 6–10 are provided to give approximate locations. The symbol "~" would be added to these locations. The footnote "*" on pages 3/4 6–47 and 3/4 6–52 will be corrected by replacing the word "and" with the word "or". The referenced penetration "035A" on Pages 3/4 6–23 and 3/4 6–42 will be corrected to "035B". An additional Action c. will be added on Page 3/4 1–2 indicating that "The provisions of Specification 4.0.4 are not applicable", because the reactor must first be in Operational Condition 1 or 2 to perform the surveillance. The number of heat detectors for Fire Zone 25 on Page 3/4 3–94 in incorrect and would be revised from "15" to "13". The two other heat detectors actually are located in the Unit 2 area. The word "positive" on Page B 3/4 6–2, item 3/4.6.1.6, would be deleted, because the allowable containment pressure range is actually both negative and positive.

(2) Category B changes deal with minor text changes to achieve consistency throughout the TS. Specifically, Specification 3.6.3 on Page 3/4 6–17 includes an Action Statement that allows four hours to restore (for example) an inoperable Main Steam Isolation Valve (MSIV), while Specification 3.4.7 on Page 3/4 4–23 allows eight hours to restore an inoperable MSIV. The change would revise Specification 3.4.7 to four hours from the existing eight hour requirement. The change to footnote " ** " on Pages 3/4 5–4 and 3/4 5–5 would add a requirement that "In the event that HPCI system is not successfully demonstrated operable during the twelve hour period, then reactor steam dome pressure is to be reduced to less than 200 psig. In the event that ADS cannot be demonstrated operable during the twelve hour period, then reactor steam dome pressure is to be reduced to less than 100 psig". This would be consistent with the respective Action Statements for each system. The drywell and suppression chamber internal pressure designated in the Limiting Condition for Operation on Page 3/4 6–9 would be corrected to "−1.0 to +2.0" consistent with that specified on Page B 3/4 6–2. The change

to Note 17 on Page 3/4 6–42 would include a statement that "Type C test is not required" consistent with other notations in the table and the fact that a Type A test is already indicated. The change to footnote " * " on Pages 3/4 7–9 and 3/4 7–10 would add a requirement that "In the event that RCIC operability is not successfully demonstrated during the twelve hour period, then reactor steam dome pressure is to be reduced to less than 150 psig". This would be consistent with the RCIC Action Statement. The change to Action b. on Page 3/4 6–1 would add a reference to Action e., because Action e. could be overlooked during the performance of Action b. The change to Action Statement 101 on Page 3/4 3–100 would revise the lower limit of detection for gammas to 0.5 micro-microcuries/mL, consistent with the gamma limit specified on Page 3/4 11–2.

(3) Category C changes deal with minor text changes that provide additional limitations or restrictions. Specifically, TS 3.6.2.1.c on Page 3/4 6–12 would be revised by adding an additional limit specifying that "one temperature instrument in each of the eight locations shall be operable". The existing specification calls for the operability of at least eight indicators without denoting their locations. The change to Specification 3.6.3. on Page 3/4 6–17 and 4.3.6.4. on Page 3/4 6–18 would delete "reactor" and reference only "instrumentation" line excess flow check valves. The change allows all instrument line excess flow check valves to be referenced, rather than only the reactor instrument line excess flow check valves.

(4) Category D changes deal with changes that eliminate ambiguity, delete superflous information, correct "information only" designations or add location information.

a. *Page 3/4 3–23*

The addition of TABLE NOTATIONS "(a)" and "**", which the licensee proposes to add to Page 3/4 3–23, Item 1.a.2), adds further clarification to include ≦ 13 seconds response time for associated valves (10 seconds diesel generator starting and 3 seconds sequence loading delays). This change is consistent with the specifications for the Reactor Vessel Water Level low, low-level 2 and the Main Steam Line Isolation response times for radiation, flow, and pressure, which also include the ≦ 13 seconds response time. These added notations eliminate ambiguity and allow for consistent interpretation. The change is justified as a clarification of the existing specifications to allow for consistency.

This proposed change falls within the example category (i) of those provided by the Commission for amendments that are not likely to involve Significant Hazards Consideration, because the proposed change allows for consistence throughout the Technical Specifications.

b. *Page 3/4 6–10*

The drywell average air temperature is the calculated volumetric average of the temperature readings at four drywell elevations. At elevation 330' there are three installed temperature sensors, and also three sensors installed at elevation 320', three at 260', and six at 248'.

The volumetric calculation requires only that one sensor at each elevation be read, without regard to the sensor's (compass) location, i.e., only the elevation location is of interest in the calculation and not the azimuth location. The azimuth has been listed in the surveillance requirements as an information guide, so that the exact location of each sensor is known, even though the azimuth of each sensor is not a factor in the actual calculation. Because the azimuth of each sensor is listed, relocation of any of these sensors at the same elevation would require an amendment to the Technical Specifications, even though the intent of the Technical Specifications clearly does not require this information as a limit. Some readings taken from these sensors could be erroneous if a sensor's azimuth location is not changed, because of nearby hot or cold pipes.

The licensee proposes to revise the identity of drywell temperature sensors at each elevation from "azimuth" to "quantity" to allow sensor azimuth relocation and preclude erroneous drywell readings. This flexibility will eliminate the need for amendments to the Technical Specifications each time a drywell modification calls for the relocation of a temperature sensor. To allow for physical limitations in the installation of equipment, the licensee also proposes to add the word (or symbol) "Approximate" before each elevation.

Because this proposed change merely changes the "information only" designations of "azimuth" to "quantity" at each elevation and adds "approximate" before elevation, it falls within the example category of amendments that are considered not likely to involve Significant Hazards Considerations as they constitute "a purely administrative * * * change in nomenclature."

Before 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.

The licensee has evaluated the administrative changes that achieve consistency throughout the TS, that remove outdated material, make minor text changes and correct errors against the standards provided above, and has determined that the changes do not involve a significant hazards consideration. These changes provide improvements to the TS by correcting errors, eliminating ambiguities and inconsistencies, or denoting additional limitations or restrictions. The staff agrees with this evaluation.

The Commission has provided examples (51 FR 7751) of amendments that are not likely to involve significant hazards considerations. One of these examples, (i) states that "A purely administrative change to the Technical Specifications for example a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature." The proposed correction of errors and removal of outdated material listed in Category A, and the minor text changes to achieve consistency throughout the TS listed in Category B, above, are similar to example (i). A second of these examples, (ii), states that "A change that constitutes an additional limitation, restriction, or control not presently included in the technical specification, e.g. a more stringent surveillance requirement." The proposed minor text changes that provide additional limitation or restrictions listed in Category C, above, are similar to example (ii).

The staff has reviewed the licensee's evaluation and determination and agrees with the licensee that this proposed amendment does not involve a significant hazards consideration. Therefore, the staff proposes to determine that the proposed amendment involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555,

and should cite the publication date and page number of this **Federal Register** notice.

Written comments may also be delivered to Room P–216, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. and 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, 2120 L Street NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By May 30, 1989, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene 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.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Att: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by 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 Walter R. Butler, Director, Project directorate I–2, Division of Reactor Projects I/II: 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 General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Conner and Wetterhahn, 1747 Pennsylvania Avenue, NW., Washington, DC 20006, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petition 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 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 February 14, 1986, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the Local Public Document Room, Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Dated at Rockville, Maryland, this 21st day of April 1989.

For the Nuclear Regulatory Commission.

Walter R. Butler,

Director, Project Directorate I–2, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89–10091 Filed 4–26–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50-277 and 50-278]

Philadelphia Electric Co. et al.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR-44 and DPR-56, issued to Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company for operation of the Peach Bottom Atomic Power Station, Unit Nos. 2 and 3 located in York County, Pennsylvania.

The proposed amendments would delete certain thermal effluent monitoring requirements from the Environmental Technical Specifications (ETS) in view of the issuance of the National Pollutant Discharge Elimination System (NPDES) permit by the Commonwealth of Pennsylvania in partial response to the licensee's application for amendment dated October 17, 1986.

The proposed amendment would also make other conforming changes of an administrative nature to the ETS. The staff is not granting these proposed changes at this time since they are not adequately supported in the application.

Previous amendments to the ETS have deleted all protection limits and report levels, and all monitoring requirements, except for those relating to thermal effluent monitoring. (See Amendment Nos. 92 and 94 dated February 24, 1984 and Amendment Nos. 102 and 104 August 3, 1984.) As stated in the NRC letter transmitting Amendnemt Nos. 92 and 94, deletion of thermal discharge monitoring requirements was "held in abeyance pending the NPDES 316 proceeding and litigation." This application proposes deletion of the last monitoring requirement (thermal discharge monitoring) since the 316(a) proceeding has been resolved and effective thermal discharge requirements have been incorporated into the NPDES Permit.

Specifically, the licensee's basis for deletion of the thermal monitoring requirement on ETS pages 5, 5a, and 5b is that the revised NPDES Permit provides an effective thermal discharge program for the Peach Bottom Atomic Power Station. The permit establishes operating limits, as well as monitoring and reporting requirements resulting from resolution of the NPDES 316 proceeding. With the conclusion of this proceeding, deletion of the thermal monitoring provisions from the Peach Bottom ETS on current pages 5, 5a, and 5b is appropriate.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability of consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis, as provided by the licensee, for this proposed finding is that the proposed amendment does not constitute a significant hazards consideration since it does not:

(1) involve a significant increase in the probability or consequences of an accident previously evaluated. The thermal discharge monitoring requirements which are proposed for deletion have no safety implications or bases. They do not impact the cooling capability of systems associated with nuclear safety and have no effect on the probability or consequences of any accident.

(2) create the possibility of a new or different kind of accident from any accident previously evaluated because the thermal discharge does not impact the design considerations associated with nuclear safety.

(3) involve a significant reduction in a margin of safety since the requested changes involve no safety margins. The effective NPDES Permit provides the necessary protection of the environment, and essential reporting provisions to the NRC and administrative controls of activities that may impact the environment are retained.

The staff has reviewed the licensee's no significant hazards consideration analysis. Based upon this review, the staff believes that the licensee has met the three standards. Therefore, based on these considerations and the three criteria given above, the Commission has made a proposed determination that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be addressed to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to Room P-216, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, 2120 L Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By May 30, 1989, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene 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 designating 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.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Att: Docketing and Servicing Branch, or may be delivered to the Commission's Public Document Room, 2120 L Street, NW. Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by 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 Walter R. Butler, Director, Project Directorate I–2, Division of Reactor Projects I/II: 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 General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Conner and Wetterhahn, 1747 Pennsylvania Avenue, NW., Washington, DC 20006, attorney for the licensee.

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 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 October 17, 1986, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

Dated at Rockville, Maryland, this 21st day of April 1989.

For the Nuclear Regulatory Commission.

Walter R. Butler,

Director, Project Directorate I–2, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89–10092 Filed 4–26–89; 8:45 am]

BILLING CODE 7590–01–M

Power Authority of the State of New York; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–64, issued to the Power Authority of the State of New York (the licensee), for operation of the Indian Point Nuclear Generating Unit No. 3 located in Westchester County, New York.

The amendment would make the following changes in accordance with the licensee's application for amendment dated March 10, 1989.

The amendment would revise the Technical Specifications (TS) to change the testing frequency of the Turbine Steam Stop and Control Valves from monthly to yearly. This test frequency is determined by the methodology presented in WCAP–11525, "Probabilistic Evaluation of Reduction in Turbine Valve Test Frequency," and is in accordance with the established NRC acceptance criteria for the probability of a missile ejection incident at Indian Point 3 (1.0×10^{-4} per year).

The amendment would also revise the Technical Specifications to eliminate the requirements on the turbine independent electrical overspeed protection system (IEOPS). The IEOPS is a redundant turbine overspeed protection system.

Both of the above changes will result in a reduced risk of unplanned plant trips.

Before 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.

The Commission has made a proposed determination that the amendment requested involves no significant hazards considerations. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability of a new or different kind of accident from any accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The license evaluated the proposed changes against the standards in 10 CFR 50.92 and has provided the following analysis:

For the reduced testing frequency of the Turbine Steam Stop and Control Valves:

1. Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response

The previously referenced Topical Report WCAP-11525 evaluates the probability of turbine missile ejection for the purpose of justifying a reduction in the frequency of turbine valve testing. The WCAP evaluation shows that the probability of a missile ejection incident for turbine valve test intervals of up to one year is significantly less than the established NRC acceptance criteria for generating a turbine missile from an unfavorable-oriented turbine. (This acceptance criteria was established by the NRC for IP-3 at 1.0×10^{-4}, as stated in an NRC letter to J. C. Brons of the New York Power Authority, dated February 26, 1987.) The small change in the probability of generating a turbine missile with longer turbine valve test intervals therefore does not represent a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed license amendment create the possibility of a different kind of accident from any accident previously evaluated?

Response

The proposed amendment reduces the frequency at which turbine valves are tested. Reducing the frequency of turbine valve testing does not result in a significant change in the failure rate, nor does it affect the failure modes for the turbine valves. Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed license amendment involve a significant reduction in the margin of safety?

Response

As noted in Response (1) and as shown in WCAP-11525, this change to the Indian Point 3 Technical Specifications will not result in a significant reduction in the margin of safety for turbine missile ejection. The probability of missile ejection remains acceptably small and within guidelines established by the NRC Staff.

For the elimination of the IEOPS:

1. Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response

The results of the WCAP-11525 evaluation demonstrate that the probability of missile generation due to overspeed is dominated by valve-related failures and that the probability of missile generation due to overspeed is well within the acceptance criteria for this event. These conclusions are made without taking any benefit for IEOPS. Further, the study demonstrates that the impact of IEOPS on reducing the probability of turbine missiles due to overspeed is minor at best. As such, this proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response

This application seeks to delete LCOs and surveillance requirements applicable to IEOPs. The IEOPs serves as a backup turbine overspeed trip device. The elimination of the IEOPs will not vary or affect any plant or turbine operating condition or parameter. As such, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment invove a significant reduction in a margin of safety.

Response

The total probability of missile ejection due to turbine overspeed and running speed is 2.62×10^{-5} yr.$^{-1}$ which is below the acceptance criteria of 1.0×10^{-4} yr.$^{-1}$. The fault tree modeling and quantification identified valve failures as dominating the missile ejection probabilities. The IEOPS has only a minor impact on reducing the probability of overspeed. The probability of missile generation at overspeed conditions is sufficiently low that the elimination of the IEOPS will not result in a violation of the 1×10^{-4} yr.$^{-1}$ missile ejection acceptance criteria. As such, this proposed change does not involve a significant reduction in a marging of safety.

Based upon the above, the NRC staff proposes to determine that the TS changes proposed for Indian Point 3 involve no significant hazards considerations.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attn: Docketing and Service Branch.

By May 30, 1989, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by 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 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 aspects(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 amendments under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no

significant hazards considerations. The final determination will serve to decide when the hearing is held.

If the final determination is that the request for amendment involves no significant hazards considerations, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If a final determination is that the amendment involves significant hazards considerations, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards considerations. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by 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 Robert A. Capra: 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 Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019, attorney for the licensee.

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 application for amendment dated March 10, 1989, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the Local Public Document Room, White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601.

Dated at Rockville, Maryland, this 21st day of April 1989.

For the Nuclear Regulatory Commission.

Joseph D. Neighbors,

Senior Project Manager, Project Directorate I–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89–10093 Filed 4–26–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–333]

Power Authority of the State of New York; Consideration of Issuance of Amendment to Facility Operating License and Proposed No significant Hazardous Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–59 issued to Power Authority of the State of New York (the licensee) for operation of James A. FitzPatrick Nuclear Power Plant located in Oswego, New York.

The proposed amendment would revise the Technical Specifications (TS) Section 3.11.A.3 concerning the Main Control Room Emergency Ventilation System (MCREVS) Limiting Condition for Operation (LCO). The present TS allows the plant to operate for a period of up to seven days with both trains of MCREVS out of service and does not specify an LCO for one train operation. The proposed change would add an allowable out of service time requirement of 14 days with one filter train inoperable and change the allowable out of service time to three days with both trains inoperable.

Before 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.

The Commission has made a proposed determination that the request for amendment involves no significant hazards consideration.

The Commission has provided guidance concerning the application of criteria for determining whether a significant hazards consideration exists by providing certain examples (March 6, 1986, 51 FR 7751). One of the examples of actions not likely to involve significant hazards considerations is example (ii) which is a change that constitutes an additional limitation, restriction or control not presently included in the technical specifications.

The staff has reviewed the proposed amendment to change the MCREVS Limiting Condition for Operation and concluded that it falls within the envelope of example (ii) because the proposed amendment would result in more restrictive conditions for operation than presently included in the TS.

Therefore, based on the above considerations, the Commission has made a proposed determination that the amendment request involves no significant hazards considerations.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to Room P–216, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene are discussed below.

By May 30, 1989, the licensee may file a request for a hearing with respect to issuance of the amendment to the

subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene 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 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 amendments under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards considerations. The final determination will serve to decide when the hearing is held.

If the final determination is that the request for amendment involves no significant hazards considerations, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If a final determination is that the amendment involves significant hazards considerations, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards considerations. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by 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 Robert A. Capra: (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 Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019.

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 commitment letter dated May 13, 1988, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the Local Public Document Room located at State University of New York, Penfield Library, Reference and Documents Department, Oswego, New York 13216.

Dated at Rockvile, Maryland, this 21st day of April 1989.

For the Nuclear Regulatory Commission.

Robert A. Capra,

Director, Project Directorate I-1, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89-10094 Filed 4-26-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-272 and 50-311]

Public Service Electric & Gas Co. et al.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR-70 and DPR-75 issued to Public Service Electric & Gas Company, Philadelphia Electric Company, Delmarve Power and Light Company and Atlantic City Electric Company (the licensees) for operation of the Salem Generating Station, Unit Nos. 1 and 2, located in Salem County, New Jersey.

The propsed amendments would revise the Action Statements for the Reactor Trip System for Modes 3, 4 and 5 with the reactor trip breakers closed and to explicity address the operable requiremets of the diverse trip features as requested in Generic Letter 85–09 in accordance with the licensee's application for amendment dated December 18, 1986.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increse in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed amendment to determine if a significant hazards consideration exists:

A. The probability of occurrence or the consequences of an accident or malfunction or [of] equipment important to safety previuiosly evaluated in the safety analysis report will not be significantly increased.

These changes are proposed in order to achieve consistency with Westinghouse generic design modification to the reactor trip breakers. These modifications and the associated proposed Technical Specifications increase the reliability of the breakers, thereby reducing the probability of malfunction and the consequences of an accident.

B. The possibility of an accident or malfunction of a different type than any evaluated previously in the safety analysis report will not be created.

Since the reactor trip breaker modifications and these proposed changes were initiated to meet staff requirements for improving the breakersm, no new type of accident or malfunction will be created.

C. The margin of safety as defined in the basis for any technical Specification is not reduced.

The proposed change will provide an additional degree of safety in the event that the reactor trip breakers become INOPERABLE during modes 3, 4 or 5 by requiring the trip breakers to be opened. Also, this change explicitly addresses both diverse components of the breakers to achieve consistency with Westinghouse Standard Technical Specifications and the guidance of Generic Letter 85–09. Therefore, it will not reduce the margin of safety for any Technical Specification.

Based on the above evaluation, we have determined that the proposed change does not involve a significant hazards consideration.

The staff has reviewed the licensee's submittal and significant hazards analysis and concurs with the licensee's determination that the proposed amendment does not involve a significant hazards consideration. Therefore, the staff proposes to determine that the proposed amendment involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be addressed to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P–216 Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, 2120 L Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By May 30, 1989, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene 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.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State commets received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Att: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by 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 Walter R. Butler, Director, Project Directorate I–2, Division of Reactor Projects I/II; 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 General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Conner and Wetterhahn, 1747 Pennsylvania Avenue NW., Washington, DC 20006, attorney for the licensee.

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 factors specified in 10 CFR 2.714(a)(1)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated December 18, 1986, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW, Washington, DC 20555, and at the Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079.

Dated at Rockville, Maryland, this 20th day of April 1989.

For the Nuclear Regulatory Commission.

Walter R. Butler,

Director, Project Directorate I–2, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89–10095 Filed 4–26–89; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34–26746; File No. SR–NASD–89–5]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Prompt Receipt and Delivery of Securities

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") on January 26, 1989, and amended on March 29, 1989, the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Following is the text of the proposed rule change, which would add section 2(b) to the Board of Governors' Interpretation on Prompt Receipt and Delivery of Securities (the "Interpretation") following Article III, Section 1 of the NASD Rules of Fair Practice:

(b) No member shall effect a "short" sale for its own account in any security unless the member makes an affirmative determination that it can borrow the securities or otherwise provide for delivery of the securities by the settlement date. This requirement will not apply to transactions in corporate debt securities, to bona fide market making transactions by a member in securities in which it is registered as a NASDAQ market maker or to transactions which result in fully hedged or arbitraged positions.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Over the last several years, the NASD Board of Governors has adopted rules providing for additional regulation of short sale practices in the over-the-counter market. In addition, it has amended its Interpretation on Prompt Receipt and Delivery of Securities to establish requirements for accepting customer short sale orders.

The Interpretation currently prohibits members from accepting a short sale order from a customer unless the member makes an affirmative determination that it will receive delivery of the security from the customer or that it can borrow the security on behalf of the customer for delivery by settlement date. The term "customer," as defined in Article II, section 1(f) of the NASD Rules of Fair Practice, excludes brokers and dealers.

The propoosed rule change would impose a similar requirement upon members effecting short sales for their own accounts. Under the proposed rule change, a member would be prohibited from effecting a short sale for its own account in any security unless the member makes an affirmative determination that it can borrow the security or otherwise provide for delivery of the security by the settlement date. The proposed amendment is intended to address unnecessary speculation in connection with the short selling of broker-dealers' proprietary positions caused by the members' ability to go short without securities to cover the short position. The proposed amendment would not apply to transactions in corporate debt securities. It would also not apply to bona fide market making transactions

by a member in securities in which it is registered as a NASDAQ market maker, or to transactions that result in a fully hedged or arbitraged position. These latter exemptions have been included to recognize that many short selling transactions are engaged in for risk reduction and market liquidity, and to ensure their availability for bona fide purposes only. The NASD has determined not to extend the exemption to non-NASDAQ over-the-counter market makers. Since those market makers are not obligated to make two-sided market, their short selling activities may not be for the purposes of reducing risk or enhancing market liquidity.

The NASD believes that the proposed rule change is consistent with section 15A(b)(6) of the Act. In pertinent part, section 15A(b)(6) mandates that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest, among other things. By requiring members to make an affirmative determination that they can borrow a security or otherwise provide for delivery of the security prior to settlement date before effecting short sales for their own accounts, the proposed rule change will enhance the integrity of the market, correct the anomaly that now exists between the obligations of customers and members, and prevent abuses that harm public investors.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change imposes any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were solicited in NASD Notice to Members 88–47. A total of four comments were received. Three commentators supported the amendment. The commentator who opposed the amendment expressed the opinion that the proposed amendment would not achieve its purpose to protect against market manipulation. The commentator gave no concrete support for his position but expressed the view that "the ability to manipulate markets decreases as the number of potential participants increases." The NASD does not believe that the proposed rule will have a significant impact on the number of market participants.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the *Federal Register* or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the proposed rule change. Persons making written submissions should file six copies thereof with Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by May 17, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Dated: April 20, 1989.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 89–10032 Filed 4–26–89; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

April 20, 1989.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following securities:

Banco Bilbao Vizcaya
American Depositary Receipts No Par Value (File No. 7–4486)
Prospect Street High Income Portfolio, Inc.
Common Stock, $.01 Par Value (File No. 7–4487)
TIS Mortgage Investment Co.
Common Stock, $.001 Par Value (File No. 7–4488)
Windmere Corp.
Common Stock, $.10 Par Value (File No. 7–4489)
Scandinavia Company, Inc.
Common Stock, $.01 Par Value (File No. 7–4490)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before May 11, 1989, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if its finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–10033 Filed 4–26–89; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. 34–26752; File No. IDD–89–01]

Self-Regulatory Organizations; the Options Clearing Corporation; Order Approving Proposed Index Participations Disclosure Document and Designating Index Participations as Other OCC-Issued Securities

On December 17, 1988, the Options Clearing Corporation ("OCC"), in conjunction with the Philadelphia Stock Exchange, Inc. ("Phlx"), American Stock Exchange, Inc. ("Amex"), and Chicago Board Options Exchange, Inc. ("CBOE") [collectively, the self-regulatory

organizations ("SROs")] submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Rule 9b–1 of the Securities Exchange Act of 1934 ("Act"),[1] copies of an Index Participations ("IPs") Disclosure Document ("IDD").[2]

Rule 9b–1 establishes a new disclosure framework for certain options contracts and "such other securities as the Commission may, by order, designate." [3] The Rule 9b–1 disclosure framework requires the delivery of a disclosure document to investors buying and selling such securities. Rule 9b–1 requires further that the disclosure document contain information concerning, among other things, the mechanics of buying, writing, and exercising standardized securities and the risks of trading such securities. Rule 9b–1 also prohibits a broker or dealer from accepting a customer's order for such broker or dealer from accepting a customer's order for such standardized securities, or approving a customner's account for trading, unless the broker or dealer furnishes the customer with a disclosure document.

The OCC requests that the Commission issue an order pursuant to Rule 9b–1(a)(4) of the Act, designating IPs as similar, for disclosure purposes, to "standardized options" under Rule 9b–1.[4] The OCC requests also that IPs be treated as standardized options for purposes of Rules 134a and 153b and Form S–20 under the Securities Act of 1933 ("Securities Act").

The OCC suggests that each of the reasons cited by the Report of the Special Study of the Options Market ("Options Study") [5] for establishing a separate disclosure system for OCC issued securities applies equally to IPs. In addition, the OCC suggests that IPs be treated like other OCC-issued securities for the purpose of calculating Securities Act registration fees because the OCC will remain only a clearing fee based on IP transactions. Moreover, the OCC suggests that additional IP classes be registered on Form 8–A under the Act, rather than Form 10, because Form 10 requires information comparable to a Form S–1 registration statement under the Securities Act. In this regard, the OCC notes that in adopting the current Rule 9b–1 disclosure system the Commission recognized that Form S–1 disclosure requirements are inappropriate when applied to OCC and that it is illogical to revive those requirements in the context of IPs registration under the Act.

The Commission has reviewed the IDD and finds that it is consistent with the requirements of the Act and the rules and regulations therunder applicable to a national securities exchange to treat IPs like other CCC-issued securities for purposes of Rule 9b–1.[6] The Commission believes that IPs are a type of security that falls into the category of "other security" under Rule 9b–1 which the Commission should treat like other OCC-issued securities for purposes of Rule 9b–1 under the Act. In this regard, in amending the definition of the term "stanardized option" in Rule 9b–1 to include "such other securities as the Commission may, by order, designate" the Commission noted that it added the new language "to authorize the Commission, by order, to allow the use of Rule 9b–1 for new investment vehicles that the commission believes should be included within the new disclosure framework." [7]

More specifically, IPs will be issued by OCC, which will interpose itself between buyers and sellers, and is the "issuer" of each contract. Moreover, just as with other OCC issued securities, the Commission believes providing investors with detailed descriptive information regarding the issuer would not be useful. Instead, a disclosure document which provides a discussion of the characteristics and risks of IPs would appear to be substantially more useful to investors.

The Commission believes that the reasons cited by the 1978 Options Study for establishing a separate disclosure system for OCC-issued securities are equally applicable to IPs. First, regular disclosure under the Securities Act focuses on disclosures regarding the issuer of the security. As with other OCC-issued securities, providing this type of disclosure to investors is not useful for IPs. While OCC's solvency is relevant informtion for an investor to know before effecting an IPs transaction, an IPs investor primarily is purchasing an instrument that closely resembles a portfolio of stock. Accordingly, a disclosure document that provides a discussion of the terms and risks of IPs would appear substantially more useful to investors.[8] Second, delivery of a Securities Act prospectus to all IP investors and redelivery of any updated prospectus would be an inefficient and unnecessarily costly way of educating the public regarding IPs.

Accordingly, the Commission designates IPs as "other securities" under Rule 9b–1(a)(4) of the Act.

The Commission believes that the IDD submitted by the OCC in conjunction with the Phlx, Amex, and CBOE satisfies the requisite disclosure framework of Rule 9b–1 [9] for several reasons. First, the IDD explains the characteristics of IPs. The IDD defines terms specifically related to the trading of IPs, such as IP, cash-out value, cash-out privilege, dividend equivalent, and dividend equivalent day, and explains the special features of IPS.

Second, the IDD adequately explains and distinguishes between the various IPs proposed by the SROs.

Third, the IDD describes the risks of buying and writing IPs. These include not only the risks of engaging in an IP transaction, but also questions concerning the margin treatment of IPs and the pendency of litigation involving the Commission's decision to approve IPs trading.

---

[1] 17 CFR 240.9b–1 (1988).

[2] On January 26, February 10, and April 14, 1989, in response to Commission comments, the SROs submitted amended copies of the IDD.

[3] Rule 9b–1(a)(4) defines the term "standardized options" as: options contracts trading on a national securities exchange, an automated quotations system of a registered securities association, or a foreign securities exchange which relate to options classes the term of which are limited to specific expiration dates and exercise prices, or such other securities as the Commission may, by order, designate.

[4] Letter from William H. Navin, Schiff Hardin & Waite, OCC legal counsel, to Richard G. Ketchum, Director, Division of Market Regulations, and Linda C. Quinn, Director, Division of Corporation Finance, SEC, dated July 6, 1988 ("Schiff Letter").

[5] *Report of the Special Study of the Options Markets to the Securities and Exchange Commission*, 96th Cong., 1st Sess. (Comm. Print 1978).

[6] Rule 9b–1 provides that the use of a disclosure document shall not be permitted unless the options classes to which the document relates are the subject of an effective Securities Act Form S–20 registration statement. OCC's Form S–20, dated February 1989, as amended April 14 and 20, 1989, covering the IPs discussed in the IDD became effective at 2:00 p.m. on April 21, 1989.

[7] Securities Exchange Act Release No. 19055 (September 16, 1982), 47 FR 41950, 41954.

[8] The Commission notes that prior distribution of the IDD to investors is necessary before a person may effect a transaction in IPs. This prior distribution could be accomplished by physically delivered an IDD to an investor before he effects an IP transaction or by a mass mailing of the IDD to customers who have been approved for options trading, followed by a period of time sufficient to ensure that investors have received the IDD.

[9] Pursuant to Rule 9b–1(c) a disclosure document shall contain, among other things: (1) A glossary of terms; (2) the mechanics of buying, writing and exercising the securities, including settlement procedures; the risks of trading the securities; (4) the market for the securities; and (5) a brief reference to the transaction costs, margin requirements and tax consequences of trading in such securities.

After a careful review of the IDD, the Commission believes that it adequately describes the characteristics and risks of IPs trading and will meet the information needs of prospective IPs investors.

In addition to Rule 9b–1 under the Act, the Commission believes that it is consistent with the protection of investors and in the public interest to treat IPs like other OCC-issued securities for purposes of Rules 134a and 153b and Form S–20 under the Securities Act. More specifically, because Rule 134a incorporates the Rule 9b–1 definition of standardized options (which includes other standardized OCC-issued securities designated by the Commission) it is logical to treat IPs as other OCC-issued securities for purposes of Rule 134a if IPs are treated as other OCC-issued securities for the disclosure purposes of Rule 9b–1. Moreover, the Commission believes it is appropriate and operationally effective to treat IPs like other OCC-issued securities for purpsoses of Rule 153b and Form S–20 because Rule 153b and Form S–20 were adopted concurrently with Rule 9b–1 and constitute elements of a unified disclosure framework. In addition, Form S–20 registration is a necessary prerequisite to the use of a disclosure document pursuant to Rule 9b–1.[10]

The Commission agrees with OCC that IPs should be treated like other OCC-issued securities for the purpose of calculating Securities Act registration fees because OCC fees which are applicable to IPs are analogous to OCC fees applicable to other OCC-issued securities.

Finally, the Commission believes it is appropriate to make available Form 8–A for registration of additional IP classes under the Act. The use of the alternative Form 10 for registration of additional IP classes under the Act would contradict IDD disclosure framework because Form 10 requires information comparable to a Form S–1 registration statement rather than a Form S–20 registration statement.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Dated: April 21, 1989.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 89–10134 Filed 4–26–89; 8:45 am]

BILLING CODE 8010–01–M

[10] *Supra* note 6.

[11] 17 CFR 200.30–3(a)(12) (1988).

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

April 20, 1989.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following securities:

American Building Maintenance Industries, Inc.
Common Stock, No Par Value (File No. 7–4491)

Americus Trust for Philip Morris Shares Scores (File No. 7–4492)

Colonial High Income Municipal Trust
Shares of Beneficial Interest (File No. 7–4493)

General Nutrition Incorporated
Common Stock, No Par Value (File No. 7–4494)

High Income Advantage Trust III
Shares of Beneficial Interest (File No. 7–4495)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before May 11, 1989, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if its finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–10034 Filed 4–26–89; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–16937; 811–1676]

Boston Mutual Fund, Inc.; Application for Deregistration

April 20, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 ("1940 Act").

Applicant: Boston Mutual Fund, Inc.

Relevant 1940 Act Sections: Deregistration under section 8(f) and Rule 8f–1.

Summary of Application: Applicant seeks an order declaring that it has ceased to be an investment company subject to the 1940 Act.

Filing Date: The application on Form N–8F was filed on April 11, 1988 and amended on January 17, 1989 and April 5, 1989. Applicant will submit additional information during the notice period to clarify and reaffirm the representations below concerning the determination of net asset value per share for purposes of the reorganization described.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 17, 1989, and should state the nature of the requester's interest, the reason for the request, and the issues contested. Hearing requests also should be accompanied by proof of service on the Applicant in the form of affidavits or, for lawyers, certificates of service. Requests for notification of a hearing may be made by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, Washington, DC 20549. Applicant, Boston Mutual Fund, Inc., 120 Royall Street, Canton, Massachusetts 02021.

FOR FURTHER INFORMATION CONTACT: Staff Attorney Cathey Baker (202) 272–3033 or Branch Chief Karen L. Skidmore (202) 272–3023 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application on Form N–8F is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 252–4300).

Applicant's Representations

1. The Applicant was organized as a corporation under Massachusetts law on February 16, 1923. The Applicant was dissolved on May 20, 1988, pursuant to Articles of Dissolution filed with the Secretary of State of the Commonwealth of Massachusetts, having met all of the prerequisites for such dissolution, including a tax good standing certificate from the Massachusetts Department of Revenue.

2. The Applicant registered under the 1940 Act as an open-end, diversified management investment company and filed a registration statement on Form N–8b–1 pursuant to section 8(b) on August 28, 1968. On that date, Applicant registered one million shares of capital stock, $1.00 par value, pursuant to a registration statement on Form S–5 filed under the Securities Act of 1933. The registration statement became effective on February 2, 1968, and the initial public offering commenced on that date.

3. Fidelity Fund, a Massachusetts business trust, was created by a Declaration of Trust dated September 27, 1984, as amended January 14, 1985. The corporate predecessor of Fidelity Fund, Fidelity Fund, Inc., was registered under the 1940 Act. Fidelity Fund assumed the registration statement of its predecessor pursuant to a reorganization effective as of December 31, 1984.

4. On November 14, 1986, the Board of Directors of the Applicant, including a majority of Directors then present who were not interested persons of the Applicant, unanimously approved an Agreement and Plan of Reorganization ("Agreement") between the Applicant and Fidelity Fund and recommended that it be approved by the Applicant's shareholders. The Applicant and Fidelity Fund entered into the Agreement on June 1, 1987. At a meeting of the shareholders of the Applicant on July 14, 1987, the holders of at least two-thirds of the shares, present at such meeting in person or by proxy, approved the Agreement and the transactions contemplated thereby, including the Applicant's dissolution as a Massachusetts corporation and deregistration as an investment company under the 1940 Act.

5. The effective date of the reorganization was September 21, 1987. The net asset value per share of outstanding shares of both the Applicant and Fidelity Fund was determined at 4:00 p.m. on September 18, 1987, the last business day prior to the effective date of the reorganization.

6. As of September 21, 1987, the Applicant had outstanding 652,659.482 shares of capital stock, representing an aggregate net asset value of $6,942,351.72 or approximately $10.64 per share. On that date, pursuant to the Agreement, the Applicant transferred all of its portfolio securities and other assets, except those held in reserve for the payment of its liabilities, to Fidelity Fund. In exchange for $6,942,351.72 of assets transferred, Fidelity Fund issued 363,093.709 shares of beneficial interest at a net asset value per share of $19.12. Thereafter, the Applicant distributed the shares of Fidelity Fund to the Applicant's shareholders in complete liquidation. Upon completion of the reorganization, each shareholder of the Applicant owned shares of Fidelity Fund with the same aggregate net asset value as those shares of the Applicant owned by the shareholder immediately prior to the reorganization. The investment objective, policies and restrictions of Fidelity Fund are similar to those of the Applicant.

7. As noted above, the Applicant established a reserve in the amount of $14,188.53 to cover all of its obligations and liabilities, which, except for reorganization expenses of $32,629.05, were not assumed by Fidelity Fund. Legal, accounting and other expenses in the approximate amount of $48,817.58 relating to the reorganization were borne by the Applicant. Upon consummation of the reorganization, $32,629.05 of these expenses were assumed by Fidelity Fund, as noted above, and paid by Fidelity Fund's investment adviser. The reserve for liabilities was terminated prior to the filing of this Application. Of the $14,188.53 in the reserve, $3,009.13 was disbursed to pay legal fees incurred in connection with the reorganization. The remaining amount of $11,179.40 was transferred to Fidelity Fund in exchange for additional shares of Fidelity Fund issued at the next determined net asset value and distributed pro rata to the former shareholders of the Applicant. No brokerage commissions were incurred in connection with the reorganization.

8. There are no shareholders of Applicant to whom distributions in complete liquidation have not been made. On April 11, 1988, the date of filing of the Application, the Applicant's investment adviser, Boston Mutual Management Corp., held one share of capital stock in order to facilitate the Applicant's dissolution as a Massachusetts corporation. The Applicant was dissolved on May 20, 1988 and has no shareholders at present. No assets have been retained by the Applicant and no liabilities remain outstanding. The Applicant is not a party to any litigation or administrative proceeding, and is engaged only in those business activities necessary for the winding-up of its affairs.

9. As of the date of filing the Application and amendments thereto, the Applicant was current on all filings required to be made under the 1940 Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 89–10035 Filed 4–26–89; 8:45 am]

BILLING CODE 8010–01–M

Issuer Delisting; Application to Withdraw From Listing and Registration; (Guardsman Products, Inc., Common Stock, $1 Par Value, American Stock Exchange) File No. 1–4704

April 21, 1989.

Guardsman Products, Inc. ("Company"), has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 and Rule 12d2–2(d) promulgated thereunder, to remove the above specified security from listing and registration on the American Stock Exchange ("AMEX"). The Company's common stock was recently listed and registered on the New York Stock Exchange ("NYSE"). Trading in the Company's stock on the NYSE commenced on March 1, 1988.

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

In making the decision to withdraw its common stock from listing on the AMEX, the Company considered the direct and indirect costs and expenses attendant on maintaining the dual listing of its common stock on the NYSE and the AMEX. The Company does not see any particular advantage in the dual trading of its stock and believes that dual listing would fragment the market for its common stock.

Any interested person may, on or before May 12, 1989, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless

the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 89-10135 Filed 4-26-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 35-24869]

Filings Under the Public Utility Holding Company Act of 1935

April 20, 1989.

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 amendments 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 May 15, 1989 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.

Northeast Utilities et al. (70-7545)

Northeast Utilities ("NU"), a registered holding company, located at 174 Brush Hill Avenue, West Springfield, MA 01090-0010, and two of its proposed wholly owned nonutility subsidiary companies, Charter Oak Energy, Inc. ("Charter Oak") and Charter Oak Paris, Inc. ("Charter Oak Paris") (collectively, "Applicants"), both located at Selden Street, Berlin, CT 06037-1616, have filed an application-declaration pursuant to sections 6(a), 7, 9(a), 10, 12(b) and 13(b) of the Act and Rules 45, 50(a)(5), 87, 90 and 91 thereunder.

A prior notice of the filing of the application-declaration was issued by the Commission on October 27, 1988 (HCAR No. 24736). The Applicants have since amended their application-declaration changing the proposed transaction requiring a supplemental notice.

NU proposes to organize and acquire the capital stock of a new wholly owned subsidiary, Charter Oak. The primary business of Charter Oak will be the investment and participation in qualifying cogeneration facilities and in qualifying small power production facilities as defined by the Public Utility Regulatory Policies Act of 1978 and the rules and regulations promulgated thereunder by the Federal Energy Regulatory Commission. The qualifying cogeneration facilities may be located in any geographic area, but participation by Charter Oak in qualifying small power production facilities will be limited to the service territories of the NU System and other members of the New England Power Pool. The initial financing for Charter Oak will be provided by the acquisition by NU of 100 shares of Charter Oak common stock, par value $1 per share, for $10,000. NU requests authorization to invest up to an aggregate amount of $7.5 million in Charter Oak for each of the four years in the period ending December 31, 1992 for the purpose of financing Charter Oak's preliminary development and administrative costs.

In order to acquire an approximate 10% beneficial equity ownership interest ("Interest") in a 213 megawatt gas-fired cogeneration qualifying facility in Paris, Texas ("Paris Plant"), Charter Oak proposes to organize, acquire the capital stock of, and provide initial financing for Charter Oak Paris, in which Charter Oak will acquire 100 shares of Charter Oak Paris common stock, par value $1 per share, for $10,000. Charter Oak Paris will acquire its Interest in the Paris Plant, at a cost not to exceed $4 million, by acquiring a 25% interest in TENASKA III Partners, Ltd., a limited partnership which owns 40% of the Paris Plant. Charter Oak Paris' investment will be funded by moneys received from Charter Oak, which will in turn receive its funding from NU.

NU's investment in Charter Oak and Charter Oak Paris, $7.5 million and $4 million, respectively, may be in the form of acquisitions of common stock, capital contributions, open account advances and/or subordinated loans ("Investments"). Any open account advances or subordinated loans will bear interest at a rate based on NU's cost of funds in effect on the date of issue, but in no event in excess of the prime rate on such date at a bank designated by NU. In addition, either or both of Charter Oak and Charter Oak Paris may obtain debt financing from unaffiliated third parties ("Debt Financing"), as long as the total of all Investments together with any Debt Financing does not exceed $7.5 million and $4 million, respectively. Such Debt Financing may require a guarantee by NU. Non-affiliate Debt Financing obtained by Charter Oak or Charter Oak Paris will not exceed a term of 15 years or bear a floating interest rate in excess of 125% of the prime rate in effect at the time of issuance or a fixed interest rate more than 350 basis points above that borne by U.S. Treasury Securities of comparable maturities. If any nonaffiliate Debt Financing obtained by Charter Oak or Charter Oak Paris is guaranteed by NU, the term of such Debt Financing will not exceed 15 years and the interest rate will not exceed the prime rate in effect on the date of issue at a bank designated by NU from among the major lenders to the companies in the NU system.

Charter Oak and Charter Oak Paris request an exception from the competitive bidding requirements of Rule 50 pursuant to Rule 50(a)(5) with respect to the proposed issuance of securities in connection with their Debt Financing.

Ohio Power Company (70-7625)

Ohio Power Company ("OPCo"), 301 Cleveland Avenue, SW., Canton, Ohio 44702, a subsidiary of American Electric Power Company, Inc., a registered holding company, has filed an application pursuant to sections 2(a)(11)(D) and 9(c)(3) of the Act.

OPCo has acquired in a bankruptcy proceeding 65,081 shares of Class A Preferred Stock ("Preferred") and 101,525 shares of Common Stock ("Common") of Simetco, Inc. ("Simetco") (together, "Stock"), an Ohio corporation. All of the Stock is voting stock, and represents about 6.52% of all of the outstanding voting securities of Simetco. OPCo requests that pursuant to sections 2(a)(11)(D) and 9(c)(3) of the Act, Section 9(a) of the Act will not apply to the acquisition of the Stock, and that the obligations, duties and liabilities imposed by the Act on affiliated companies are not necessary and appropriate under these circumstances.

Prior to 1985, Ohio Ferro-Alloys Corporation ("OFA") operated two plants in Ohio at which silicon metal and ferro silicon were produced. OFA however experienced financial difficulties and on October 30, 1986 filed

a petition under Chapter 11 of the Bankruptcy Code. In the proceeding, OPCo was allowed total general unsecured claims of approximately $3.8 million resulting from unpaid bills for electric service provided by OPCo to OFA. The total general unsecured claims pool approximated $13,130,000. Pursuant to a Plan of Reorganization filed with the Bankruptcy Court and confirmed by the Court by its order, dated November 22, 1988 ("Plan"), OFA was reorganized under the name "Simetco, Inc." and holders of general unsecured claims were distributed their pro rata share of 225,000 shares of Preferred and of 350,995 shares of Common. As a result, OPCo acquired the 65,081 shares of Preferred and 101,525 shares of Common.

Holders of Preferred are entitled dividends in the amount of the Distributable Excess Cash Flow, as defined in the Plan. Under the Plan, Distributable Excess Cash Flow will in no event exceed $7,276,500 if the Preferred is redeemed on or before April 30, 1993. If the Preferred is redeemed after that date, the aggregate Distributable Excess Cash Flow to be distributed to the holders of Preferred will equal $5,375,250. Thus, the amount of Distributable Excess Cash Flow to be distributed to the holders of Preferred is subject to both a cap and a minimum. On the redemption date, Simetco, Inc. will redeem the Preferred for $1.00 per share. Thus, at a minimum, assuming that Simetco, Inc. remains a viable enterprise, general unsecured creditors of OFA will receive in cash $5,600,250, or approximately 42 percent of their total allowed unsecured claims. Holders of the Preferred also generally are entitled to one vote for each whole share of such stock and, except as otherwise required, vote together with the holders of the Common as one class on all matters. In addition, with limited exceptions, the Preferred is transferable only with the consent of a majority of the Board of Directors.

Holders of Common are entitled, among other things, to the right to one vote for each share held and to receive dividends and distributions when declared. However, prior to the redemption of the Preferred, no such dividends or distributions on Common may be declared or paid.

In order to preserve a net operating loss carry-forward for Federal Income Tax purposes, the court prohibited the sale, assignment, exchange, disposition or other transfer of Stock owned by a person which controls 5% or more of the voting power of Simetco, Inc. for a period of 3 years from the date of acquisition. Because OPCo controls about 6.52% of the voting power of Simetco, Inc., OPCo is bound by this restriction.

OPCo acquired the Stock as a result of indebtedness acquired in the ordinary course of business and holds such Stock solely as a passive investment. OPCo will sell the Common as soon as the restrictions on sale lapse and market conditions permit. OPCo will not be represented on the Board of Directors of Simetco, Inc. or otherwise seek to change or influence control of Simetco, Inc. In this connection, without authorization from the Commission, OPCo will not vote its Stock.

Simetco, Inc. is an affiliate of OPCo as that term is defined in section 2(a)(11) of the Act, because as discussed above, OPCo controls over 5% of the voting power of Simetco, Inc. However, because OPCo is holding the Stock solely as a passive investment, acquired in the ordinary course of business and not with the purpose of changing or influencing control, OPCo requests that the Commission order, pursuant to section 9(c)(3) of the Act, that section 9(a) of the Act not apply to the acquisition of the Preferred or Common described herein. In addition, OPCo hereby requests that the Commission determine that it is not necessary or appropriate in the public interest or for the protection of investors or consumers that Simetco be subject to the obligations, duties and liabilities imposed by the Act and rules thereunder upon affiliates, or that OPCo be subject to the obligations, duties and liabilities imposed by the Act and rules thereunder as a result of Simetco being an affiliate of OPCo.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 89-10036 Filed 4-26-89; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice 1105; Delegation of Authority No. 176]

Director General of the Foreign Service; Delegation of Authority

By virtue of the authority vested in me as Secretary of State, including by sections 2656 and 2658 of Title 22 of the United States Code, I hereby delegate to the Director General of the Foreign Service the functions vested in me under section 504 of the Foreign Service Act of 1980, 22 USC 3984.

Notwithstanding any provision of this delegation of authority, the Secretary of State, the Deputy Secretary of State or the Under Secretary of State for Management may at any time exercise the functions herein delegated.

This delegation of authority supercedes any prior delegation on this subject to the extent such delegation may be inconsistent herewith.

Dated: April 14, 1989.

James A. Baker, III,

Secretary of State.

[FR Doc. 89-10112 Filed 4-26-89; 8:45 am]

BILLING CODE 4710-10-M

DEPARTMENT OF TRANSPORTATION

[Docket 46261]

U.S.-Japan Route Authority; Order Requesting Comments

Issued by the Department of Transportation on the 21st day of April, 1989.

Federal Express Corporation and The Flying Tiger Line Inc., on December 20, 1988, jointly filed an application in Docket 46025 seeking approval of the transfer of Flying Tiger's operating authority to Federal Express pursuant to section 401(h) of the Federal Aviation Act. In Docket 46026, the same applicants sought a temporary exemption from section 401(h) pending approval of the transaction. In Order 89-1-60, issued January 31, 1989, the Department granted the exemption subject to a "hold separate" requirement. The Justice Department has reviewed the merger transaction and has not challenged it in court. In Order 89-3-21 54 FR 10472, March 13, 1989, issued March 8, 1989, the Department tentatively approved the transfer of certificate and exemption authority subject to certain conditions, and asked interested parties to show cause why that tentative decision should not be made final.

If Order 89-3-21 is made final, Federal Express will be required to surrender its current small package route between the United States and Japan, as a condition to our approval of the transfer of Flying Tiger's operating authority. In the joint application, Federal Express stated its willingness to surrender this route.

This route is dervied from the 1985 Memorandum of Understanding [MOU] between the United States and Japan, which provides for three routes to be served by U.S. carriers in the U.S.-Japan market. Either side may substitute the designation of a small package delivery

service for one of its three combination services.[1] The Department awarded two MOU routes to combination carriers [2] and reserved the third route for a small package carrier.[3] In a separate proceeding, Federal Express was selected to provide small package delivery service between Portland and Tokyo.[4]

In our Order to Show Cause, we tentatively decided that Federal Express' offer to relinquish its small package authority "should be made a condition of (the Department's) approval of the transaction, lest valuable route rights in a limited entry market go to waste." We "tentatively decided to require the surrender at such time as a replacement carrier begins service, but in any event no later than the end of the start-up period for that replacement carrier." [5] This approach would ensure the route's ready availability for use by a replacement airline.

Should Federal Express commence operations on Flying Tiger's current U.S. -Japan route, it would be in a position to operate unrestricted cargo service in that market, including a continuation of the small package delivery service that it is now providing. As a result, we would like to reexamine the issue of how we might allocate this route so as to best meet the needs of the public for additional service between the U.S. and Japan.

As a threshold matter, we are inclined to make a determination about the type of service that we intend to certificate on this route at the time that we institute a formal proceeding. This would not be the first instance where we have limited applications to a particular type of service. In initally selecting carriers to serve the U.S.-Japan routes provided by the 1985 MOU, we limited one proceeding to combination services and considered only small package carriers in the second case.

Our objective in limiting the scope of this proceeding is to simplify the issues that are to be placed before the Administrative Law Judge and thereby ensure that this case will be processed in an efficient and expeditious manner. The use of this route by a U.S. carrier is a valuable right, and the public interest requires that we be in a position to award authority in this market promptly. We believe that this approach will best ensure that a replacement carrier will be able to begin service on this route, should that prove necessary, as quickly as possible. Parties may comment, in response to this Order, on the desirability of this approach. We also request that interested parties comment on whether the Department should continue to reserve this route for small package service, or instead, consider only applications from combination carriers.

Our decision to request comments on possible procedural options in no way reflects a position with regard to the disposition of the issues under consideration in Docket 46025. We believe that soliciting comments at this stage allows us to further our objective of expediting a potential selection proceeding. In the event that we do not finalize our tentative decision to approve the certificate transfers from Flying Tiger to Federal Express, or should we take any other action that does not result in the surrender of Federal Express' operating authority for Route 534, we will close this Docket.

We request interested parties to submit comments in this docket within 14 days from the service date of this order. Any reply comments must be filed within 7 calendar days after that date.

Accordingly,

1. We request comments from interested parties addressing the topic discussed above on May 10, 1989; reply comments will be due on May 17, 1989;

2. This order will be served on all certificated carriers, the U.S. Department of State, and the Ambassador of Japan to the United States; and

3. This order will be published in the **Federal Register.**

Patrick V. Murphy, Jr.,

Deputy Assistant Secretary for Policy and International Affairs.

[FR Doc. 89-10062 Filed 4-26-89; 8:45 am]

BILLING CODE 4910-62-M

[1] The 1985 Memorandum of Understanding provides that a small package carrier can serve Tokyo on a nonstop basis from any point in the U.S., except Chicago. There are also certain restrictions on the weight of packages, as well as other matters relating to this service.

With respect to combination service, the MOU permits us to select, as a gateway for this route, any point in the U.S. that was not served as a nonstop gateway by the airlines of either the U.S. or Japan as of April 1, 1985. Alternatively, the U.S. may select a carrier to provide service between Honolulu and either Tokoyo or Nagoya.

Both combination and small package services are limited by the MOU to a single daily frequency.

See Order 85-6-74, Appendix, for the relevant provisions.

[2] *U.S.-Japan Gateways Case,* Order 86-10-16, served October 15, 1986. (The combination carriers were American and Delta.)

[3] Order 85-11-29, served November 18, 1985.

[4] *U.S.-Japan Small Package Service Proceeding,* Order 87-12-1, served December 2, 1987.

[5] Order 89-3-21 at 9.

Federal Highway Administration

Environmental Impact Statement; Clackamas 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 on the Clackamas Highway (U.S. 224) between Interstate 205 and Highway 212 on Clackamas 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, will prepare an environmental impact statement (EIS) on a proposal to reconstruct a 4.0-mile section of Highway 224 in Clackamas County, Oregon. The project is located within the so-called "sunrise corridor."

The westerly three miles of the project would be a new controlled access highway alignment; the easterly one mile would be on the existing alignment. The Oregon 224/Oregon 212 highway corridor has been designated as an "Access Oregon Highway" corridor, in which a series of projects are proposed which are intended to promote economic development. This project would pass east from the Milwaukie Expressway at Interstate 205 through a newly developing industrial area.

Improvements to this corridor are considered necessary to provide for the existing and projected traffic demand. The section being investigated is approximately 4.0 miles in length and has independent utility.

Alternatives under consideration include the no-build, an alternative with a freeway design and two alternative alignments with an expressway design.

Information describing the proposed action and soliciting comments will be sent to the appropriate Federal, State, and local agencies. Public meetings will be held during project development, and a public hearing will be held. No formal scoping meeting is planned at this time.

To ensure that the full range of issues related to the 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.

(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: April 14, 1989.

Elton H. Chang

Environment Coordinator/Safety Program Engineer, Oregon Division, Salem, Oregon.

[FR Doc. 89-10111 Filed 4-26-89; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Customs Service

Implementation of International Coffee Agreement

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

ACTION: General notice.

SUMMARY: This notice advises the importing public that the Customs Service will now require that appropriate certificates accompany coffee imported from International Coffee Organization (IOC) member countries. Such coffee will not be released from Customs custody without this certificate. This action is being taken upon advice from the Office of the U.S. Trade Represenative, and is being made to achieve more effective enforcement of the International Coffee Agreement relating to imported coffee.

EFFECTIVE DATE: May 11, 1989.

FOR FURTHER INFORMATION CONTACT: Leo Wells, Office of Trade Operations (202-566-7090), U.S. Customs Service, 1301 Constitution Avenue NW., Washington DC 20229.

SUPPLEMENTARY INFORMATION:

Background

In accordance with written instructions dated October 25, 1988, received from the U.S. Trade Representative (USTR); section 1123 of the Omnibus Trade and Competitiveness Act of 1988; section 141(c) of the Trade Act of 1974 (19 U.S.C. 2171(c)); and section 1356k of the Tariff Act of 1930, as amended (19 U.S.C. 1356k), the U.S. Customs Service issued instructions to field personnel on November 23, 1988, to implement the full coffee document control provisions of the International Coffee Agreement to which the United States is a signatory. These instructions from USTR provided a basis for allowing Customs to accept a bond for the required ICO coffee document not accompanying the Customs entry. Upon further review of these procedures, USTR, under its delegated authority to coordinate the implementation of U.S. international trade policy, has instructed Customs to issue new procedures to delete this provision.

Customs Procedural Change

Based upon new written instructions dated March 15, 1989, from the USTR, Customs will not longer allow a bond to be given at the time of entry for production of the required ICO coffee certificate for coffee importations from ICO member countries. Such coffee will no longer be released from Customs custody without this required document. Amended operational procedures will be issued by Customs Headquarters to all field Customs offices to implement these new instructions.

This procedure will apply to all ICO member coffee entered, or withdrawn from warehouse for consumption on or after the effective date of this notice.

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 (566-8681). However, personnel from other offices participated in its development.

Date: April 18, 1989.

Michael H. Lane,

Acting Commissioner of Customs.

[FR Doc. 10133 Filed 4-26-89; 8:45 am]

BILLING CODE 4820-02-M

UNITED STATES INFORMATION AGENCY

Reporting and Information Collection Requirements Under OMB Review

AGENCY: United States Information Agency.

ACTION: Notice of reporting requirements submitted for OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act F(44 U.S.C. Chapter 35), agencies are required to submit proposed or established reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the Agency has made such a submission. USIA is required to submit annual reports to Congress concerning this information collection by January 31 of each year in accordance with Pub. L. 98-164. USIA is requesting approval of an information collection using a form IAP-94, "Travelers Funded by USIA", which has been approved previously by OMB clearance number 3116-0183. Respondents will be required to respond only one time.

DATE: Comments must be received by May 30, 1989.

Copies: Copies of the Request for Clearance (SF-83), supporting statement, transmittal letter and other documents submitted to OMB for approval may be obtained from the USIA Clearance Officer. Comments on the items listed should be submitted to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for USIA, and also to the USIA Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Agency Clearance Officer, Retta Graham-Hall, United States Information Agency, M/AS, 301 Fourth Street, SW., Washington, DC 20547. Telephone (202) 485-7501, and OMB review: Mr. John Horrigan, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503. Telephone (202) 395-7340.

SUPPLEMENTARY INFORMATION: Title: "Travelers Funded by USIA".

Abstract: A report is required for submission to the Speaker of the House of Representatives and the Chairman of the Senate Foreign Relations Committee listing all individuals, with their organizations, who in the preceding five years made two or more trips involving foreign travel financed in whole or in substantial part by grants from USIA's Office of Private Sector Programs. The information must be obtained from grantees, which necessitates the information collection.

Proposed Frequency of Responses:

No. of Respondents—300.
Recordkeeping Hours—80.
Total Annual Burden—380.

Dated: April 18, 1989.

Ledra Dildy,

Federal Register Liaison.

[FR Doc. 89-10080 Filed 4-26-89; 8:45 am]

BILLING CODE 8230-01-M

Reporting and Information Collection Requirements Under OMB Review

AGENCY: United States Information Agency.

ACTION: Notice of reporting requirements submitted for OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C.

Chapter 35), agencies are required to submit proposed or established reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the Agency has made such a submission. USIA is required to conduct Teacher Exchange Programs in accordance with the Fulbright-Hays Act (Pub. L. 87–256). USIA is requesting approval of the extension of the program OMB 3116–0181, which provides opportunities for U.S. teachers to exchange positions for an academic year with foreign counterparts or to attend one of a number of short term seminars abroad on a variety of topics. Respondents will be required to respond only one time.

DATE: Comments must be received by May 30, 1989.

COPIES: Copies of the Request for Clearance (SF–83), supporting statement, transmittal letter and other documents submitted to OMB for approval may be obtained from the USIA Clearance Officer. Comments on the items listed should be submitted to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for USIA, and also to the USIA Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Agency Clearance Officer, Retta Graham-Hall, United States Information Agency, M/AS, 301 Fourth Street, SW., Washington, DC 20547. Telephone (202) 485–7501, and OMB review: Mr. John Horrigan, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503. Telephone (202) 395–7340.

SUPPLEMENTARY INFORMATION: Title: "Fulbright Teacher Exchange Program".

ABSTRACT: This information collection is intended to facilitate the administration of academic-year exchanges and short-term seminar programs to educators in order to broaden the educators' understanding of other countries and cultures. This understanding, in turn, is expected to be shared with students, colleagues, members of civic and professional organizations and other interested parties in the educators' respective communities here and abroad, thereby promoting mutual understanding and contributing to the academic excellence of participating institutions.

PROPOSED FREQUENCY OF RESPONSES:

No. of Respondents—1200.

Recordkeeping Hours—208.7.

Total Annual Burden—1408.7.

Dated: April 18, 1989.

Ledra Dildy,

Federal Register Liaison.

[FR Doc. 89–10081 Filed 4–26–89; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF VETERANS AFFAIRS

Veterans' Advisory Committee on Rehabilitation; Meeting

The Department of Veterans Affairs gives notice that a meeting of the Veterans' Advisory Committee on Rehabilitation, authorized by 38 U.S.C. 1521, will be held in Room 442, Lafayette Building, 811 Vermont Avenue NW., Washington DC 20420, May 16 and May 17, 1989. The sessions will begin at 9 a.m. The Committee will be discussing issues related to the administration of veterans' rehabilitation programs.

The meeting will be open to the public up to the seating capacity of the conference room. Because of the limited seating capacity, it will be necessary for those wishing to attend to contact Dr. Carole J. Westerman, Executive Secretary, Veterans' Advisory Committee on Rehabilitation (phone 202–233–6525) prior to May 10, 1989.

Interested persons may attend, appear before, or file statements with the Committee. Statements, if in written form, may be filed before or within 10 days after the meeting. Oral statements will be heard at 9:30 a.m. on May 17, 1989.

Dated: April 19, 1989.

By direction of the Secretary.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 89–10020 Filed 4–26–89; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 80
Thursday, April 27, 1989

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).

FEDERAL COMMUNICATIONS COMMISSION

April 25, 1989.

Clarification of Item No. 2 of Common Carrier Agenda for Open Meeting of April 26, 1989

The Federal Communications Commission previously announced on April 19, 1989 its intention to hold an Open Meeting on *Applications for Review of Common Carrier Bureau's grant of waiver of General Telephone Company of California to construct coaxial cable transport facilities in Cerritos, California.*

The subject matter has been changed to read as follows:

Title: Applications for Review of Common Carrier Bureau's grant of waiver of General Telephone Company of California to construct coaxial cable transport facilities in Cerritos, California, and Application of General Telephone Company of California for authority to construct fiber optic transport facilities in Cerritos, California.

Summary: The Commission will consider three applications for review of Common Carrier Bureau's decision in File No. W-P-C 5927 (3FCC Rcd 2317 (1988)) and an application by GTE California Incorporated for authority to construct fiber optic transport facilities in Cerritos, California (File No. W-P-C-6250).

The prompt and orderly conduct of Commission business requires this change and no earlier announcement of the change was possible.

Action by the Commission April 25, 1989. Commissioners Patrick, Chairman; Quello and Dennis voting to consider this change.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Sarah Lawrence, Office of Public Affairs, telephone number (202) 632-5050.

Issued: April 25, 1989.

Federal Communications Commission.
Donna R. Searcy,
Secretary.
[FR Doc. 89-10249 Filed 4-25-89; 2:11 pm]
BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

ACTION: Amendment of notice published 4/26/89, to include an additional proceeding to the conference.

TIME AND DATE: 10:00 a.m., Tuesday, May 2, 1989.

PLACE: Hearing Room A, Interstate Commerce Commission, 12th & Constitution Avenue, NW., Washington, DC 20423.

STATUS: Open Special Conference.

PURPOSE: The purpose of the conference is for the Commission to discuss among themselves, and to vote on, the agenda item. Although the conference is open for the public observation, no public participation is permitted.

MATTERS TO BE DISCUSSED:

MC-C-30090

National Industrial Transportation League—Petition For Declaratory Order On Negotiated Motor Common Carrier Rates

and

Ex Parte MC-177

National Industrial Transportation League—Petition To Institute Rulemaking On Negotiated Motor Common Carrier Rates

CONTACT PERSON FOR MORE INFORMATION: Dennis A. Watson, Office of Government and Public Affairs, Telephone: (202) 275-7242.

Noreta R. McGee
Secretary
[FR Doc. 89-10220 Filed 4-25-89; 10:25 am]
BILLING CODE 7035-01-M

RAILROAD RETIREMENT BOARD

Notice of Public Meeting

Notice is hereby given that the Railroad Retirement Board will hold a meeting on May 3, 1989, 9:00 a.m., at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago, Illinois, 60611. The agenda for this meeting follows:

Portion Open to the Public

(1) Recommendation that the Board Waive Recovery of Benefits Paid Under the Railroad Unemployment Insurance Act—Retroactive Implementation of Waiting Period
(2) Proposed Changes in the RUIA Regulations (Status Report)
(3) Regulations Under the Railroad Unemployment Insurance Act; Part 344, Temporary Rule
(4) Proposed Board Regulations—Part 200 (General Administration) and Part 262 (Miscellaneous)
(5) Proposed Board Regulations—Parts 320 and 340
(6) Proposed Board Regulations—Part 222 (Family Relationships)

Portion Closed to the Public

(A) Appeal from Termination of the Tier I Portion of the Appellant's Annuity, Nancy M. Johnson
(B) Appeal from Termination of the Tier I Portion of the Appellant's Annuity, Claudette P. Johnson
(C) Appeal from Termination of the Tier I Portion of the Appellant's Annuity, Dolores Stroud

The person to contact for more information is Beatrice Ezerski, Secretary to the Board, COM No. 312-751-4920, FTS No. 386-4920.

Dated: April 24, 1989.

Beatrice Ezerski,
Secretary to the Board.
[FR Doc. 89-10248 Filed 4-25-89; 2:08 pm]
BILLING CODE 7905-01-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 meetings during the week of May 1, 1989.

A closed meeting will be held on Tuesday, May 2, 1989, at 2:30 p.m. An open meeting will be held on Wednesday, May 3, 1989, at 10:00 a.m., in Room 1C30.

The Commissioners, Counsel to the Commissioners, the Secretary 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 Tuesday, May 2, 1989, at 2:30 p.m., will be:

Institution of administrative proceedings of an enforcement nature.

Settlement of administrative proceedings of an enforcement nature.

Settlement of injunctive actions.

Institution of injunctive actions.

The subject matter of the open meeting scheduled for Wednesday, May 3, 1989, at 10:00 a.m., will be:

Consideration of whether to issue a Supplemental Memorandum Opinion and Order with respect to a post-effective amendment to an application-declaration filed by Eastern Utilities Associates ("EUA"), a registered holding company under the Public Utility Holding Company Act of 1935 ("Act"), and its wholly owned electric utility subsidiary company, EUA Power Corporation ("EUA Power"). EUA and EUA Power propose that the Commission release jurisdiction, as set forth in the Commission's MemoraCAR No. 24641), and authorize EUA Power to issue 17½% Series C Secured Notes ("Series C Notes") on May 15, 1989 in the amount of $26,107,102 and on November 15, 1989, in the amount of $29,145,316, in lieu of the semi-annual cash interest payments due on those dates on EUA Power's outstanding 17½% Series B Secured Notes and Series C Notes. EUA Power further proposes to issue and sell, and EUA proposes to acquire, through May 14, 1990, up to an additional $15.6 million of Class A 25% Cumulative Convertible Preferred Stock ("Preferred Stock") in order to fund EUA Power's share of costs associated with its joint ownership interest in the Seabrook Nuclear Power Project and to maintain EUA Power's debt/equity ratio. In connection therewith, EUA proposes to finance its acquisition of EUA Power's Preferred Stock through the issuance, through December 31, 1989, of up to an additional $15.6 million of short-term notes to banks under its existing lines of credit. For further information, please contact Robert Wason at (202) 272–7684.

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: Daniel Hirsch at (202) 272–2200.

Jonathan G. Katz,

Secretary.

April 24, 1989.

[FR Doc. 89–10293 Filed 4–25–89; 3:59 pm]

BILLING CODE 8010–01–M

Corrections

Federal Register
Vol. 54, No. 80
Thursday, April 27, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Child Nutrition Programs--Income Eligibility Guidelines

Correction

In notice document 89-9088 beginning on page 15241 in the issue of Monday, April 17, 1989, make the following corrections:

1. On page 15241, in the 3rd column, under **Definition of Income**, in the 16th line, "(90" should read "(9)".

2. On page 15242, in the table, in the section pertaining to the 48 Contiguous United States, District of Columbia, Guam and Territories, in the fourth column, under "Month", the fourth entry should read "1,009".

3. On the same page, in the same table, in the section pertaining to Alaska, in the fourth column, under "Week", the eighth entry should read "488".

4. On the same page, in the same table, in the section pertaining to Hawaii, in the second column, under "Year", the last entry should read "+4,348".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

[Program Announcement 916]

Public Health Conference Support Grant Program; Availability of Funds for Fiscal Year 1989

Correction

In notice document 89-7747 beginning on page 13435 in the issue of Monday, April 3, 1989, make the following corrections:

1. On page 13435, in the second column, in the first paragraph, in the fifth line "organizations" was misspelled.

2. On the same page, in the third column, in the third paragraph from the bottom, the next to last sentence should read "postmarks shall not be acceptable as proof".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 347 and 348

[Docket No. 78N-021A]

Skin Protectant Products for Over-the-Counter Human Use; Astringent Drug Products

Correction

In proposed rule document 89-7834 beginning on page 13490 in the issue of Monday, April 3, 1989, make the following corrections:

1. On page 13493, in the first column, in the last paragraph, in the sixth line "anorectal" should read "that".

2. On page 13499, in the third column, in the part heading, "Analgesic" was misspelled.

3. On the same page, in the same column, in the line preceding amendatory instruction 6, "348.8" should read "348.3".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 358

[Docket No. 81N-0201]

Pediculicide Drug Products for Over-the-Counter Human Use; Tentative Final Monograph

Correction

In proposed rule document 89-7833 beginning on page 13480 in the issue of Monday, April 3, 1989, make the following correction:

On page 13480, in the second column, in the first line the last word should read "class".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 89N-0125]

Animal Drug Export; Virginiamycin

Correction

In notice document 89-8909 beginning on page 15016 in the issue of Friday, April 14, 1989, make the following corrections:

1. On page 15017, in the first column, in the ninth line, "89-192" should not have appeared.

2. On the same page, in the same column, in the last paragraph, in the second line insert an open parenthesis between "'Act" and "section".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No.89E-0097]

Determination of Regulatory Review Period for Purposes of Patent Extension; Ifex®

Correction

In notice document 89-8602 beginning on page 14684 in the issue of Wednesday April 12, 1989, make the following corrections:On page 14684, in the second column, in the subject heading, in the second line; and in the third column, in the first complete paragraph in the second and third lines; and in the second complete paragraph, in the third line; and in designated paragraph 1, in the sixth line, "Ifex" should read "Ifex®".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-14636]

Realty Action; Exchange of Public and Private Lands, Inyo and Los Angeles Counties, CA

Correction

In notice document 89-5263, beginning on page 9902, in the issue of

Wednesday, March 8, 1989, make the following correction:

On page 9902, in the third column, under "T. 21S., R. 37E.,",in the fifth line "E½N¼NE¼," should read "E½NW¼ NE¼,".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-060-09-4212-11; CA 15906]

Realty Action; Conveyance of Public Land for Recreation and Public Purposes in Kern County, CA

Correction

In notice document 89-6833 appearing on page 12022 in the issue of Thursday, March 23, 1989, make the following correction:

In the first column, in the **SUMMARY**, in the land description, the third line should read "Sec. 2, E½SE¼NE¼, E½SE¼;".

BILLING CODE 1505-01-D-

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-060-09-4212-11; CA-15907]

Realty Action; Conveyance of Public Land for Recreation and Public Purposes in Kern County, CA

Correction

In notice document 89-6834 beginning on page 12022 in the issue of Thursday, March 23, 1989, make the following corrections:

1. On page 12022, in the third column, in the **SUMMARY**, in the land description, the fourth line should read "Sec. 14, E½NW¼NE¼, S½NE¼,".

2. On page 12023, in the first column, after the second complete paragraph, in designated paragraph 3, in the second line "Air" should read "Aid".

3. On the same page, in the same column, in designated paragraph 4, in the second line, "areas" should read "area".

4. On the same page, in the same column, in the second designated paragraph 1, in the second line "transmissionline" should read "transmission line".

BILLING CODE 1505-01-D

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 64

[Order No. 1326-89]

Judicial Administration; Designation of Officers and Employees of the United States for Coverage Under Section 1114 of Title 18 of the United States Code

Correction

In rule document 89-5044 beginning on page 9043 in the issue of Friday, March 3, 1989, make the following correction:

§ 64.2 [Corrected]

On page 9044, in the first column, in § 64.2(v), in the fourth line, "officers" should read "offices" each time it appears.

BILLING CODE 1505-01-D

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 541

Control, Custody, Care, Treatment, and Instruction of Inmates; Procedures for Handling of HIV Positive Inmates Who Pose Danger to Others

Correction

In rule document 89-6287 beginning on page 11322 in the issue of Friday, March 17, 1989, make the following correction:

§ 541.67 [Corrected]

On page 11325, in the second column, in § 541.67(c), in the fourth line between "five" and "days" add "working".

BILLING CODE 1505-01-D

MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1204

Availability of Official Information

Correction

In rule document 89-4833 beginning on page 8725 in the issue of Thursday, March 2, 1989, make the following correction:

On page 8725, in the first column, in the authority citation, in the second line, "99-507" should read "99-570".

BILLING CODE 1505-01-D

NUCLEAR REGULATORY COMMISSION

Generic Letters

Correction

In notice document 89-8993 appearing on page 15039 in the issue of Friday, April 14, 1989, make the following correction:

On page 15039, in the middle column, the fourth line should read "can now be purchased through a".

BILLING CODE 1505-01-D

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 531

Pay Under the General Schedule

Correction

In the proposed rule document beginning on page 13196 in the issue of Friday, March 31, 1989, make the following corrections:

§ 531.203 [Corrected]

1. On page 13197, in the 2nd column, in paragraph (c)(2)(i), between the 16th and 17th lines insert "rate for the grade in which pay is being fixed, the maximum".

2. On page 13198, in the file line appearing at the end of the document, the document number should read "89-7636".

BILLING CODE 1505-01-D

Federal Register

Thursday
April 27, 1989

Part II

Department of Agriculture

Food and Nutrition Service

7 CFR Part 225

Summer Food Service Program; Reorganization and Minor Revisions; Final Rule

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 225

Summer Food Service Program; Reorganization and Minor Revisions

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This final rulemaking is a complete reorganization of 7 CFR Part 225, the rules governing the Summer Food Service Program (SFSP). This revision is intended to resolve any ambiguities or inconsistencies in the regulations; eliminate unnecessary, duplicative, and obsolete provisions; and clarify the regulations' language, style, and organization so that Part 225 is more easily understood. This rulemaking includes one change mandated by the Hunger Prevention Act of 1988 (Pub. L. 100–435)—making public or private nonprofit colleges and universities participating in the National Youth Sports Program eligible to apply for Program sponsorship. In addition, this final rulemaking clarifies several of the discretionary changes to the regulations which were presented in the proposed rule. Finally, based on commenters' input, the Department has decided to withdraw, pending further study, its proposals to eliminate statistical sampling as a means of site monitoring and to eliminate reimbursement for weekend meals served by non-camp sponsors. The discretionary changes incorporated in this final rule have been made in order to clarify the intent of the Part 225 regulations and to improve program accountability and management.

EFFECTIVE DATE: May 30, 1989.

ADDRESS: Copies of all written comments on the proposed rule are available for review during normal business hours at 3101 Park Center Drive, Rom 509, Alexandria, Virginia 22302.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Eadie or Mr. James C. O'Donnell at the above address or by telephone at (703) 756–3620.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under Executive Order 12291 and has been classified *not major* because it will not have an annual effect on the economy of $100 million or more; will not cause a major increase in costs or prices for consumers, individual industries, or Federal, State, or local government agencies; and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This final rule has also been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). Pursuant to this review, Mr. G. Scott Dunn, the Acting Administrator of the Food and Nutrition Service, has certified that this rule does not have a significant economic impact on a substantial number of small entities.

No new reporting and recordkeeping requirements are included in this final rule, and Office of Management and Budget (OMB) approval under the Paperwork Reduction Act (44 U.S.C. 3507) was therefore not required. This program is listed in the Catalog of Federal Domestic Assistance under No. 10.559 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (7 CFR Part 3015, Subpart V, and final rule-related notice published at 48 FR 29114, June 24, 1983).

Background

The SFSP is authorized by section 13 of the National School Lunch Act (42 U.S.C. 1761). Section 13(g) of that Act requires the Department to issue regulations for the Program each fiscal year. On November 30, 1988, the Department published a proposed rule (53 FR 48369) setting forth the proposed SFSP regulations for 1989. That proposed rule included a complete reorganization of 7 CFR Part 225 which was intended to resolve any ambiguities or inconsistencies in the regulations; eliminate unnecessary, duplicative, and obsolete provisions; and clarify the regulations' language, style, and organization so that Part 225 would be more easily understood. In addition, the Department proposed to change the definition of "sponsor" to conform to the terms of Pub. L. 100–435, the Hunger Prevention Act of 1988. Finally, the Department also proposed several discretionary clarifications of and changes to the Program regulations governing food service management companies, weekend meal service, letter of credit procedures, overclaims against sponsors, administrative funding reviews, and other aspects of the Program. These clarifications and changes were proposed in order to improve program accountability and management.

The Department received a total of 25 comments on the proposed regulations. Commenters included State agencies, Program sponsors, advocacy groups, and other interested parties. All comments received were carefully considered and the issues raised by them are discussed in this preamble to the final rule.

Before analyzing these comments in detail, it is appropriate to mention that several commenters questioned the adequacy of the comment period for the proposed regulation. These commenters believed that the reorganization and the other changes to the regulations which were proposed required more than 30 days to review. One commenter, for example, believed that the changes contained in the proposed rule constituted a "major re-examination of SFSP regulations" and, as such, called for a 90-day comment period. Another commenter expressed concern that the regulations had not been published until the end of November and believed that final regulations would not be promulgated in time to be implemented in the 1989 Program.

While the Department understands commenters' desire to have additional time to consider and respond to the proposed regulations, it is important to note that section 13 of the National School Lunch Act mandates a deadline for publication of the final SFSP regulation which is only 60 days after the required date of publication for the proposed regulation. This very short period necessitates that a 30-day comment period be utilized except under the most extraordinary circumstances. The Department does not believe that the reorganization and the other changes and clarifications which were proposed constituted a "major re-examination" of the SFSP regulations. Almost all of the changes proposed were, in fact, clarifications of extant Program requirements.

Furthermore, the Department believes that this final regulation is being published early enough to allow for implementation during the current Program year. The Department realizes that the date of publication of this final regulation makes it impossible to implement the required changes to the State Management and Administration plans for the 1989 Program, and has therefore added regulatory language which delays implementation of these provisions until 1990. Had the Department allowed a longer period for comment, most of the other provisions in this final regulation could not have been implemented in this year's Program. For all of these reasons, a 30-day period was the maximum amount of time which could be allotted for comments.

I. Reorganization of Part 225

The Department received nine (9) comments on the proposed reorganization and related revisions, all of which were favorable. In order to assist users of these final regulations, a redesignation table has again been included at the end of this preamble which lists both the current and revised location of each paragraph in Part 225. This table should provide readers with a convenient overview of the reorganization and enable them to more easily locate specific parts of the old and new regulations. One commenter believed that § 225.4(k) in the old regulations was erroneously redesignated as § 225.5(f) in the proposed regulation. However, the Department did intend to redesignate former § 225.4(k) as § 225.5(f) in the proposed rule, not § 225.6(f) as the commenter believed.

Several commenters pointed out areas which they believed were changed inadvertently during the course of the Department's reorganization and stylistic revision of the regulations. These areas are discussed in detail in Part IV of this preamble, "Other Comments on Part 225." The Department believes that the real test of the new regulations' utility will come when they are used in next year's Program, and that users of the regulations may continue to find portions of the reorganized and revised Part 225 which they believe to be in error. The Department requests that users of the regulations submit to their state agency or regional office, as appropriate, any suggestions for additional organizational and stylistic improvements. These suggestions will be considered by the Department when it prepares future revisions and reissuances of the regulations.

Accordingly, this final rulemaking includes the reorganization of 7 CFR Part 225 as presented in the proposed rule. Stylistic revisions and technical corrections to the regulation language are discussed in Part IV of this preamble below.

II. Mandatory Change to Part 225

As explained in the preamble to the proposed rule, section 213 of the Hunger Prevention Act of 1988 (Pub. L. 100–435) mandated that public and private nonprofit colleges and universities be allowed to participate in the SFSP as sponsors provided that they are currently participating in the National Youth Sports Program (NYSP) and that they meet the other requirements for Program sponsorship. Public universities offering the NYSP were already allowed to participate in the SFSP as governmental sponsors; private colleges offering the NYSP, however, were previously barred from SFSP sponsorship due to the general ban on most private nonprofit SFSP sponsors resulting from the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35).

The Department received six comments on its proposed implementation of this provision. Four commenters agreed with the Department's proposal, one disagreed, and another raised questions regarding these sponsors' participation which were not specifically addressed in the preamble to the proposed regulation. Although the implementation of this provision is non-discretionary, the Department nevertheless believes that the objection and question raised merit consideration in this preamble.

The commenter who disagreed with the Department's proposed implementation of this provision of the Hunger Prevention Act believed that the NYSP served wealthy children who did not need SFSP benefits. In fact, the NYSP, which is administered by the National Collegiate Athletic Association through grants provided by the Department of Health and Human Services, is designed to provide supervised sports training and competition for low-income children. As a program designed for low-income children, Congress apparently felt that the NYSP serves the same population which the SFSP is designed to serve, and that the ban on SFSP sponsorship by private nonprofit colleges and universities should be modified in this particular instance.

The questions raised about implementation of this new provision involved: (a) Whether public and private nonprofit colleges and universities currently participating in the NYSP would be permitted to sponsor the Program at non-NYSP sites; and (b) whether these same colleges and universities would be eligible to participate in the SFSP if they elected *not* to have their NYSP site(s) participate in the NYSP. Even before passage of the Hunger Prevention Act, public colleges and universities offering the NYSP were eligible to sponsor the SFSP as entities of State government. Thus, public colleges and universities are eligible to participate in the SFSP without reference to their participation in the NYSP and may offer the Program at non-NYSP sites.

Private nonprofit colleges and universities, on the other hand, can only participate as SFSP sponsors if they currently participate in the NYSP. In addition, these private nonprofit colleges and universities may claim SFSP reimbursement only for meals served to NYSP participants.

Accordingly, as previously proposed, this final rule amends §§ 225.2 and 225.14(b) to allow public and private nonprofit colleges and universities participating in the NYSP to be SFSP sponsors.

Finally, as noted in the preamble to the proposed regulation, section 213 of Pub. L. 100–435 also mandated that the Department conduct a pilot project to assess the feasibility of again allowing other types of private nonprofit organizations to sponsor the SFSP. The Department received three comments specifically concerning this demonstration project and five other comments regarding the advisability of readmitting other types of private nonprofit organizations to SFSP sponsorship. Because the demonstration project is just beginning and has no bearing on the issues addressed in this final regulation, the Department will not respond to these comments in this preamble.

III. Substantive Changes to Part 225

A. Food Service Management Companies

The Department received 17 comments from nine different commenters on the proposed clarifications of the regulations pertaining to food service management companies (FSMCs). These clarifications addressed: the differences between "vended" and "self-preparation" sponsors, especially with respect to the added administrative reimbursement earned by self-preparation sponsors; the definition of an FSMC; the practical application of the regulatory prohibition on contracting out for the management responsibilities of the program; whether colleges and universities with year-round FSMC contracts are required to conduct new procurements for their SFSP meal service; whether colleges and universities acting as FSMCs are exempt from registration requirements; and the form of the bid and performance bonds required to be submitted by FSMCs.

1. *Self-Preparation Sponsors and Payment of the Higher Administrative Reimbursement.* The Department received five comments on its proposal to clarify when sponsors should be considered "self-preparation sponsors" and be entitled to receive a higher rate of administrative reimbursement. This clarification involved the proposed

amendment of the definitions of "self-preparation sponsor" and "food service management company" and the addition of a new definition ("vended sponsor") at § 225.2.

Although none of the commenters disagreed with the Department's premise—that there should be a clearer differentiation between vended and self-preparation sponsors in the regulations—four of the commenters believed that the distinction which the Department attempted to make in the proposed regulations was still confusing. A sponsor from a large metropolitan area, for example, stated that it still did not know whether it would be considered self-preparation or vended and asked whether the distinction between these two types of sponsors is simply whether the sponsor purchases meal components or an entire meal from an FSMC. Another commenter suggested that, in order to further clarify the distinction between vended and self-preparation sponsors, the Department replace the phrase "some or all of its unitized meals, with or without milk" in the definition of vended sponsor with the phrase "entire unitized meals, with or without milk, for some or all of the children served." Finally, another commenter pointed out that § 225.9(d)(7)(iii) allows for payment of the higher administrative reimbursement at self-preparation or rural sites, and believed that the proposed change would prevent a sponsor from collecting the additional reimbursement if it served even a single meal purchased from an FSMC at a single site.

The Department's intent *was* to differentiate between sponsors which purchase from a FSMC entire unitized meals, with or without milk, and sponsors which purchase a portion of a meal (for example, a pre-made sandwich) from a food vendor who happens to be registered as a FSMC. The Department also intended to clarify that a sponsor could not be considered "self-preparation" if it purchased food management services from a FSMC, regardless of whether or not it purchased unitized meals from that management company.

The Department did not, however, intend to impose an undue burden on sponsors with some self-preparation and some vended sites, nor did it intend to discourage sponsors with mostly self-preparation sites from administering one or more vended sites. The Department believes that, consistent with the language at § 225.9(d)(7)(iii), State agencies already possess the authority to approve sponsors' claims for the higher administrative reimbursement at self-preparation sites, in the rare event that the sponsor administers both self-preparation and vended sites. The Department would, however, caution State agencies to use extra care in ensuring that sponsors whose claims include both types of sites are not improperly claiming the self-preparation rate for sites receiving vended meals.

Furthermore, the Department agrees with the comment that the "some or all" language in the definition of vended sponsor could still leave open to question the very issue that the proposed regulation was intended to settle—that sponsors which purchase a portion of their meal from a vendor registered as a FSMC may still be considered self-preparation sponsors. The definition of "vended sponsor" has therefore been amended in this final regulation to read as follows:

"*Vended sponsor*" means a sponsor which purchases from a food service management company the unitized meals, with or without milk, which it will serve at its site(s), or a sponsor which purchases management services, subject to the limitations set forth in § 225.15, from a food service management company.

Accordingly, the definitions of "food service management company" and "self-preparation sponsor" which were presented in the proposed rule are contained in this final rule at § 225.2. In addition, the revised definition of "vended sponsor" set forth above is included in this final rule at § 225.2.

2. *Prohibition on Contracting Out Management Responsibilities.* The Department received four comments on its proposal to clarify that sponsors which contract with FSMCs must retain full responsibility for the performance of all of their duties as sponsors except for the management of their food service operations. Previously, the definition of "food service management company" seemed to contradict the regulations' prohibition on a sponsor contracting with an FSMC "for the management responsibilities of the Program such as monitoring, enforcing corrective action, or preparing Program applications". All of the commenters agreed with the ways in which the Department proposed to clarify this issue in the proposed regulation: to change the words "food service program" to "food service operations" in the definition of FSMC at § 225.2; and to list more fully the management responsibilities which FSMCs *may not* perform at § 225.15.

Accordingly, this final regulation includes the revised definition of "food service management company" as set forth in the proposed regulation at § 225.2 and the list of management functions which sponsors may not delegate to FSMCs at § 225.15.

3. *Food Service Management Company Procurements.* The Department received 7 comments on its proposals to clarify two aspects of the regulations pertaining to colleges and universities participating in the SFSP: (1) Whether these colleges and universities, when they are sponsors with year-round FSMC contracts, are required to conduct a separate procurement for their SFSP meal service; and (2) whether these colleges and universities, when they act as FSMCs for SFSP sponsors, are required to go through the registration process prescribed for most other FSMCs at § 225.6(g)(9).

In the proposed regulations, the Department clarified that when colleges and universities act as FSMCs, they are not required to comply with the registration requirements set forth at § 225.6(g)(9). The Department received two comments on this clarification, both of which were favorable. The proposed clarification of the bidding requirements for colleges and universities acting as sponsors also received generally favorable comment, with four commenters in support and one in opposition to the proposed changes. The commenter who disagreed objected to the wording of § 225.15(g)(5), which states that, "Sponsors which are schools or school food authorities which have an exclusive contract with food service management companies for year-round service * * * shall not be required to comply with these [bid] procedures." This commenter believed that the exclusion from following the specific bid procedures mandated in § 225.15(g)(5) should apply to all sponsors with year-round FSMC contracts.

The Department does not believe, however, that such a broad exclusion from these bidding requirements would be warranted. Local schools and colleges and universities can logically be expected to have contracted for year-round FSMCs since the bulk of their food operations occur at times of the year when the SFSP is not in operation. The same cannot be said of other types of sponsors—entities of government and residential camps—which primarily operate large-scale feeding programs during the summer months.

It has come to the Department's attention that there was a minor omission in the discussion of the procurement requirements pertaining to college and university sponsors in the preamble to the proposed rule. As set forth in the preamble, the Department intended to exclude *all* college and universities acting as SFSP sponsors

from conducting a separate procurement for their SFSP feeding operations. However, as set forth in the revised definition of "school food authority," the exclusion would only apply to public colleges and universities acting as governmental sponsors and public and private nonprofit colleges and universities participating in the NYSP and the SFSP. This leaves uncertain the status of certain colleges and universities which sponsor the SFSP as residential camps via the Upward Bound Program. The preamble language implies that college sponsors of Upward Bound would not have to conduct a separate SFSP procurement, whereas the language of the revised definition of "school food authority" would seem to require that such sponsors conduct a separate SFSP procurement.

It was not the Department's intent to place colleges and universities participating in the Upward Bound Program into a different category and require them to conduct separate procurements for their SFSP food operations. Upward Bound "camp" programs are generally held on-campus, with students residing in the college's dormitories and eating in the school cafeteria. Therefore, it would make no more sense for these colleges and universities to conduct a separate procurement for the SFSP than it would for other types of college and university participants in the SFSP. With this in mind, the Department has amended the proposed definition of "School Food Authority" at § 225.2 to clarify that all colleges and universities in the SFSP—regardless of whether they participate as government sponsors, camp sponsors, or NYSP sponsors—are permitted to use their exclusive year-round FSMC contracts for their SFSP feeding operations.

Accordingly, with the minor change mentioned above, the Department has included in this final regulation the amended definition of "School Food Authority" which was set forth in § 225.2 of the proposed regulation. This revised definition will have the effect of allowing colleges and universities to be exempt from conducting a separate FSMC procurement for the SFSP if they already have a competitively procured year-round contract with an FSMC. This change will also exempt colleges or universities acting as food service management companies from the registration requirements at § 225.6(g)(9).

4. *Performance and Bid Bonds.* The Department received one favorable comment on its proposal to clarify that "alternative" forms of the bid and performance bonds required by § 225.15(g)(8) (e.g., certified checks, cash, escrow accounts, or letters of credit) are not acceptable under the SFSP regulations. Accordingly, this final regulation includes the clarifying language in § 225.15(g)(8) as it appeared in the proposed regulation.

B. Weekend Meals

The Department received 13 comments on its proposal to clarify that reimbursement is not allowed for Program meals served on weekend days except in residential camps. Three commenters favored the proposal while 10 either opposed it outright or urged that it be modified.

The responses were wide in variety and ranged from questions of Congressional intent to suggestions that other types of sponsors be permitted to receive reimbursement for weekend meals.

The numerous proposals received on this issue have demonstrated the need for further study on this issue. Consequently, the Department will not, at this time, make final the amendatory language set forth in the proposed rule, and State agencies should follow their current practices in regard to weekend meals.

C. Overclaims for Inadequate Recordkeeping

Seven commenters responded to the Department's clarification that a sponsor's failure to keep records documenting the basis of its claim for reimbursement constitutes adequate cause for the assessment of an overclaim against the sponsor. Six commenters agreed with the proposal and one disagreed, although one of the commenters in agreement raised concerns over potential implementation difficulties. These concerns involved the possibility that the proposed regulation language had "the potential to be misapplied or abused by overzealous or misguided State agency personnel." This commenter felt that it would be easy for a sponsor to misfile or misplace one site's records when the sponsor was administering dozens of sites, or that records which already had been checked as part of a State review could be misplaced or inadvertently destroyed during the required three-year recordkeeping period. Due to these concerns, the commenter recommended that overclaims should only be permitted when there is a "pattern" of fraud or inadequate recordkeeping. Finally, this commenter also suggested that the revised wording of § 225.12(a) be as specific as that of §§ 225.15(c)(1) and 225.9(d)(4) and state that the records which the sponsor must keep are those "which justify all costs and meals claimed."

The Department agrees that the revised language of § 225.12(a) should fully conform to the language of the other Sections cited and will make the suggested modification to the wording of § 225.12(a). However, the Department does not share the commenter's apparent concern that State agencies will misapply this rule. Changing the proposed regulatory language to require that a "pattern" of fraud or abuse exist before initiation of an overclaim would not clarify what constitutes a "pattern" and would not eliminate the possibility of misapplication of the rule. However, in the rare event that unwarranted overclaims are lodged against the sponsor, the Department believes that the sponsor is adequately protected by its appeal rights under § 225.13(a).

The commenter who disagreed with the proposal in principle believed that, when a sponsor lacked records to document a claim, this lack of records was more likely to be the result of a State agency's failure to properly train the sponsor than *prima facie* evidence of fraud, waste, or abuse on the sponsor's part. This commenter further believed that "alternative documentation, including affidavits from parents or some other record", should constitute acceptable proof that the sponsor actually provided the number of meals claimed.

The Department agrees that inadequate recordkeeping may be unintentional and does not necessarily indicate that the sponsor intended to defraud the government or waste federal resources. Nevertheless, it is not logical to assume that every sponsor who fails to keep records is the victim of poor State agency training, unless there is a pattern of sponsor recordkeeping problems within that State. Furthermore, the Department does not believe that "alternative documentation" is a practical substitute for adequate Program recordkeeping, since collecting and determining the accuracy of such "alternative documentation" would be extremely time-consuming and costly to State agencies.

Accordingly, with the exception of the minor change to § 225.12(a) discussed above, this final regulation includes the proposed regulation's language in §§ 225.15(c)(1), 225.9(d)(4) and 225.12(a) which clarifies that, if a sponsor fails to keep records which adequately document the basis of all costs and meals claimed, the State agency may lodge an overclaim against the sponsor.

D. Letter of Credit (LOC) for Program Payments

The Department received two comments on its proposal to provide FNS with additional time for providing the 65 percent level of LOC funding when a State agency submits its required management and administration plan (MAP) after the February 15 deadline. Both of these comments were favorable. Accordingly, the Department is amending § 225.5(d)(2) as set forth in the proposed regulation.

One statement made in this section of the preamble to the proposed regulation requires additional clarification. In the proposed regulation, a typographical error resulted in a statement which could be misconstrued. The sentence which stated that, "FNS should have 90 days to review, ask for modifications of, and approve the MAP between the time the MAP is submitted and the time by which the State agency must have 65 percent of its estimated Program payment needs in the LOC" incorrectly implied that there is a 90-day period for FNS to review and approve a MAP. Section 225.4(b) clearly requires FNS to review a MAP within 30 days of submission. The statement should have referred to the 90-day period between the deadline for a State agency's submission of the MAP and the deadline by which FNS must, based on the MAP, adjust the LOC to ensure that the State agency has received 65 percent of its estimated administrative and operating funding for the current year.

E. MAP Requirements

Four commenters responded to the Department's proposal to require State agencies to include in their MAPs their plans for carrying out the special monitoring responsibilities in § 225.15 pertaining to food service management company (FSMC) procurements over $100,000 in value. One commenter agreed with this proposal while three disagreed. Of those disagreeing, one commenter seemed to believe that the performance of these monitoring responsibilities was a new requirement (in fact, these requirements previously appeared at former § 225.16(d)(7) and (g)), while another commenter believed that the requirement to discuss monitoring actions in the MAP would be meaningless since State agencies would not know which sponsors would have large FSMC procurements at the time of their MAP submissions.

The Department understands that, at the time of the State agency's MAP submission, it cannot know which sponsors and how many sponsors will have FSMC contracts exceeding $100,000 in value. The requirement to address these monitoring responsibilities in the MAP will necessarily be based on the prior year's Program and will not reflect the actual number and location of procurements requiring special monitoring in the current year. Nevertheless, the Department is aware of instances where some State agencies have failed to perform these functions, resulting in bid protests and irregularities. Therefore, the Department continues to believe that the Program will benefit from the requirement to have State agencies budget staff time and resources for these monitoring functions in their annual MAPs.

Accordingly, this final regulation amends § 225.4(d) by adding a requirement that the State agency's MAP include its plans for performing the special FSMC procurement monitoring functions specified at §§ 225.15(g)(5)(xiii) and 225.6(h)(4), respectively. However, due to this final regulation's publication date, regulatory language has been added to specify that this information will not be a required element of a State agency's MAP until 1990.

F. Health Inspection Funds

The Department received six comments on its proposal to require State agencies to document in their MAPs the need for funding to carry out health inspections and related functions prior to FNS's placement of these funds in the State's letter of credit (LOC). Four commenters disagreed with this proposal and two commenters agreed.

One commenter who disagreed with the proposal believed that it represented an attempt to evade section 13(k)(3) of the National School Lunch Act, which requires the Department to "make available" health inspection and meal quality testing monies to the States. The preamble to the proposed regulation attempted to make clear that this was not the Department's intent. Rather, the Department's proposal was designed to rationalize an inefficient administrative procedure whereby health inspection monies are put into a State's LOC, then later withdrawn, even when the State did not anticipate a need for health inspection funding during the current fiscal year. Thus, the Department proposed to "make available" the funding by placing it in the LOC only when the State's MAP documented a later need for the funding. Although it was not explicitly stated in the preamble to the proposed regulation, the Department would of course also make such funds available to State agencies which discovered, after the submission of their MAPs, that they would, in fact, require such funding.

The other three commenters who disagreed with the proposal believed that the Department needed to clarify whether it now intended to require State agencies to seek free health inspection services or to prove the need for paid health inspections. The Department assumes that State agencies would seek free services from State and local health departments whenever possible, but did not intend to "require" States to do so or to "prove" that they had done so. The Department agrees with the commenter who suggested that the Department clarify its intent in this regard by changing the regulatory language which was proposed. Rather than requiring States to "document" the need for these monies, this commenter believed that the States should be required to "estimate" their need for the monies in the MAP. Since the MAP is a planning document in which one can only make estimates of funding needs, the Department concurs and has changed the wording of §§ 225.4(d)(14) and 225.5(f) to conform with this suggestion.

Accordingly, this final rule incorporates in §§ 225.4(d)(14) and 225.5(f) the requirement that States include in their MAPs an estimate of the amount of funding they will need in the current year to perform health inspections and meal quality tests. As noted above, the wording of this requirement in these two Sections has been modified slightly in order to convey more accurately the Department's intent in initiating this requirement. In addition, due to this final regulation's publication date, regulatory language has been added to specify that this information will not be a required element of a State agency's MAP until 1990.

G. Administrative Funding Reviews

The proposed rulemaking included several clarifications of the requirements pertaining to the conduct of administrative funding reviews. The Department received three comments on these changes, all of which were favorable. Accordingly, the clarifications of the procedures governing these reviews which were included in the proposed rule are adopted without change at § 225.5 of this final regulation.

H. Definition of "Special Account"

The Department received one favorable comment on its proposal to change the definition of a "special account" at § 225.2 of the regulations. Accordingly, this final regulation

includes the definition of a "special account" at § 225.2 as set forth in the proposed rulemaking.

I. Deletion of Statistical Monitoring for Site Reviews

The Department received four comments on its proposed deletion of former § 225.9(e)(8) of the regulations which permitted State agencies to use "statistical monitoring procedures in lieu of the site monitoring requirements prescribed in paragraph (e)(2) of this section * * *." Two of the commenters agreed with this proposed change to the regulations while two commenters disagreed.

Although the Department had assumed that statistical monitoring procedures were not being used by the States, one State agency commenter stated that it had used such procedures successfully for ten years and that overclaims based on these techniques had not been challenged or overturned. The second commenter who disagreed with the Department stated that it would use statistical monitoring techniques if the Department would issue updated guidance on them.

The Department is still not convinced that it is appropriate to commit the resources necessary to reissue this guidance simply because one State agency is using these techniques and another is considering the possibility of doing so. Neither, however, does it seem appropriate to eliminate statistical monitoring as a possible alternative without further consideration if it is being used successfully. Therefore, the Department has in this final regulation re-inserted language which offers State agencies the option of utilizing statistical monitoring techniques. The Department will continue to study statistical monitoring's feasibility as a means of fulfilling a State agency's monitoring responsibilities and will address the subject again, if necessary, in a future reissuance of the regulations.

Accordingly, this final regulation restores at § 225.7(d)(8) language which permits State agencies to use statistical monitoring techniques in lieu of the site monitoring requirements set forth at § 225.7(d)(2). The reinsertion of this paragraph means that the paragraph redesignated as § 225.7(d)(8) ("Corrective Actions") in the proposed regulation now becomes § 225.7(d)(9) in this final regulation.

J. Media Release for Camps and other Enrolled Sites

The Department received five comments, all of which were favorable, on its proposal to require the media release issued by camps and other enrolled sites to list only the family size and income standards for reduced price meals. Accordingly, this final regulation amends § 225.15(e) by requiring that the media release issued by camps and other enrolled sites list only the Secretary's guidelines for reduced price eligibility and that these guidelines be labelled "Summer Food Service Program Eligibility Standards."

In addition, the proposed rule would also change the definition of "documentation" at § 225.2 to conform to the change in the media release by removing the phrase "free and reduced price application" and substituting in its place the words "free meal application." Several commenters found other parts of the regulatory language containing wording which required revision in light of the changes being made to the media release and the definition of documentation. These include § 225.6(c)(3)(ii)(A) and the definition of "income standards" at § 225.2.

Accordingly, the wording of the definitions of "documentation" and "income standards" at § 225.2 and the regulatory language at § 225.6(c)(3)(ii)(A) are modified in this final regulation to eliminate references to free meal income standards and to conform to the usage in the media release as set forth in the proposed rule.

K. Record Retention by Food Service Management Companies

The Department received three comments on its proposal to require food service management companies to retain their Program records for the same amount of time as State agencies and sponsors. All of these commenters favored the proposed change.

Accordingly, this final rulemaking amends § 225.6(h)(2)(vii) to clarify that food service management companies are also required to retain their Program records for more than three years when there are unresolved audit or investigative findings pertaining to the company or to a sponsor with which the company contracted.

IV. Other Comments on Part 225

Because the proposed rulemaking represented the first comprehensive reissuance of Part 225 since 1982, a number of commenters took the opportunity to offer input to the Department on topics other than those which were addressed in the preamble to the proposed rule. These additional comments are addressed below under four separate headings: (1) Comments on Provisions Mandated by Law; (2) Comments on Recently-Revised Provisions; (3) Stylistic and Technical Corrections; and (4) Miscellaneous Comments.

A. Comments on Provisions Mandated by Law

Commenters submitted suggested changes to the regulations governing the definition of area eligibility at § 225.2; the mandatory submission by State agencies of a management and administrative plan at § 225.4; the adequacy of the State administrative funding formula at § 225.5(a); the use of Program funds to support nonprofit nutrition programs for the elderly; and the time restrictions on meal service set forth at § 225.16(c)(2). The first four of these are directly mandated by sections 13(a)(1)(C), 13(n), 13(k)(1), and 12(i) of the National School Lunch Act, respectively; the last of these requirements is derived from the language of section 13(b)(2) of that Act, which limits the types and number of reimbursable meals which different types of sponsors may offer. As legislative requirements, these provisions may not be altered by the Department unless Congress amends the National School Lunch Act, and the Department cannot meaningfully comment on them in this preamble.

B. Comments on Recently-Revised Provisions

Four commenters submitted suggestions for changing regulatory provisions which have been amended in the past several years—the limitation on the number of "second" meals which may be claimed for reimbursement by sponsors and the clarification of the application requirements for households which are not categorically eligible for Program benefits.

As stated in the preamble to the final regulation (51 FR 3321) which promulgated the two percent limitation on "seconds", the intent of the National School Lunch Act is to provide one meal to each participating child and that, even given some of the unique characteristics of SFSP feeding sites, the Department bears the responsibility for ensuring that second meals are curtailed to the maximum extent practicable. In the three years since this rule's publication, the Department has received several comments to the effect that the two percent tolerance is too low and that it needs to be adjusted upward to anywhere from five to twenty percent. The Department has no firm evidence that the rule has imposed an unwarranted burden on sponsors or that it has necessitated the denial of meals to children. Therefore, the Department is satisfied that the two percent tolerance

strikes a balance between the important goals of providing meals to eligible children and ensuring that the Federal funding which supports the SFSP is utilized effectively and efficiently.

In regard to the application requirements for non-categorically eligible households, the commenter apparently believed that the Department's final rulemaking in 1988 (53 FR 4827) represented a departure from past application practices. Specifically, this commenter believed that the Department's requirement that applicant households list the income of each household member by source of income was burdensome and unnecessary. In fact, the regulatory language added at that time was merely intended to clarify the elements of a complete application in the Part 225 regulations and to bring the SFSP application requirements into full conformance with the application requirements set forth for all Child Nutrition Programs at section 9 of the National School Lunch Act. Commenters who provided the input on which the 1988 final regulation was based were generally aware that these requirements had existed prior to the issuance of the final rule and favored making these requirements explicit in the regulations.

C. Stylistic Comments and Technical Corrections

In the course of reorganizing and making stylistic and other revisions in the proposed rulemaking, the Department in several cases inadvertently changed the meaning of the regulatory text. The Department wishes to thank those commenters who brought these cases to its attention and urges users of the regulation during the coming Program year to notify the Department immediately if other apparent errors are discovered. Each of these errors, and the corrective action taken in this final rulemaking, is discussed below.

In addition, in several cases, commenters brought to the Department's attention passages in the old regulations which were transferred verbatim into the new regulation but which should have been revised in the proposed regulation. The Department believes that, because these are minor and non-controversial changes, they may be made in the final rulemaking without having been set forth in the text to the proposed regulation. These changes are also discussed in detail below.

1. *Section 225.7(d)(2)(i).* In revising the wording of this paragraph, which was formerly § 225.9(e)(2)(i), the Department inadvertently deleted wording which indicated that State agencies are required to conduct *both* a sponsor review and a review of an average of 15 percent of the sites for the types of sponsors specified at § 225.7(d)(2)(i) (A) and (B).

Accordingly, the words "conduct both a review of sponsor operations and" are reinserted at § 225.7(d)(2)(i) of this final rulemaking.

2. *Section 225.16(f)(2).* Redesignated § 225.16(f)(2) is based on two paragraphs from the old regulations §§ 225.20 (d) and (e)), both of which detailed requirements pertaining to meal service to children under six years of age. Section 225.20(e), however, dealt only with meal service to children under one year of age, and required that sponsors wishing to serve such children receive approval from the State agency to do so. This requirement was inadvertently omitted from the regulatory text when the two paragraphs were combined.

Accordingly, the requirement for State agencies to approve meal service to children under one year of age is restored in this final rulemaking by making it the second sentence of § 225.16(f)(2) and modifying the last sentence of the paragraph to read, "In both cases, the sponsor shall follow * * *."

3. *Section 225.16(c)(7).* Section 225.16(c)(7) in the proposed rulemaking was identical to § 225.20(a)(6), which stated that, "The sponsor shall serve only the type(s) of meals for which it is approved under its agreement with the State agency." Several commenters correctly noted that sponsors may serve any meals they wish, but may claim for reimbursement only those meals for which it is approved by the State agency.

Accordingly, § 225.16(c)(7) is amended in this final rulemaking to clarify that sponsors may only claim for reimbursement those meals for which it is approved in its agreement with the State agency.

4. *Section 225.6(c)(3)(ii).* This section of the regulations was taken verbatim from former § 225.21(b), except that the specific hearing procedures mandated by the regulations (formerly § 225.21(b)(4) (i)–(xii)) were moved to a separate, new paragraph which was redesignated § 225.6(c)(4). The new § 225.6(c)(3)(ii) set forth six elements required in policy statements submitted by camps and "enrollment programs". However, these six elements are irrelevant to enrollment programs because, after determining the eligibility of the enrolled site, all children at that site receive a free meal. Thus, it is pointless for enrolled sites to discuss in their policy statements their methods of collecting payments or of preventing overt identification of children receiving free meals.

Accordingly, this final regulation amends the wording of the introductory paragraph of § 225.6(c)(3)(ii) to clarify that the six required elements of a policy statement specified at § 225.6(c)(3)(ii) (A)–(F) apply to camps only and not to enrollment programs.

5. *Section 225.6(c)(4).* In revising this paragraph, which is based on former § 225.21(b)(4), the Department inadvertently extended to all sponsors a requirement that, in former § 225.21(b)(4), applied only to residential camps and enrollment programs. As discussed in number 4 above, however, this requirement, too, should not have pertained to enrollment programs. It makes little sense to require such programs to submit copies of their hearing procedures, since household applications are taken at enrolled sites only to establish the site's eligibility to serve meals free of charge.

Accordingly, this final rulemaking amends the introductory paragraph to § 225.6(c)(4) to clarify that only residential camps are required to submit copies of their hearing procedures with their Program applications.

6. *Section 225.9(c).* The introductory paragraph in § 225.9(c) in the proposed rulemaking was identical to the introductory paragraph in former Section 225.11(b). This portion of the regulations sets forth the general procedures for granting advance payments to sponsors. However, unlike the sections which describe start-up payments (§ 225.9(a)) and reimbursements for operating and administrative costs (§ 225.9(d)), the section dealing with advance payments inadvertently fails to state, as do the sections dealing with start-up payments and reimbursements, that sponsors may not receive advance payments *unless* they have executed an agreement with the State agency.

Accordingly, § 225.9(c) is amended in this final rulemaking to include a sentence specifying that sponsors may not receive advance payments unless they have executed an agreement with the State agency to administer the Program.

D. Miscellaneous Comments

Commenters also provided their input on numerous other areas of the Program regulations which were not modified in the proposed rulemaking but which were set forth as part of the overall reissuance of the Part 225 regulations. The number of regulatory provisions commented upon in this fashion was too numerous for the Department to respond

to each in great detail. Nevertheless, the following provides (in a "Suggestion/Response" format) a brief response to each of the commenters' suggestions.

1. *Audit Requirement in MAP (Section 225.4(d)(11))—Suggestion:* Remove from this section the words "by auditing", since there is no longer an audit requirement for sponsors with reimbursements under $25,000.

Response: The Department agrees. The language in the regulation is out of date. Accordingly, this final regulation amends § 225.4(d)(11) to require that State agencies include in their MAPs their plans for ensuring sponsors' fiscal integrity. The means of accomplishing this (audit, financial review, etc.) will be left to the State agency's discretion.

2. *Availability of Funds to State Agencies (Section 225.5(b)(1))—Suggestion:* The regulations state that Program funds will be made available to State agencies at the beginning of the fiscal year, but they are often not made available until six or more weeks into the fiscal year. Funds should be made available at the beginning of the fiscal year.

Response: These funds are made available to State agencies as early as is legally possible. In past years, Program monies have often not been appropriated until several weeks or months into the fiscal year. State Administrative Expense (SAE) carryover should provide ample funds for States to operate the Program at the beginning of the fiscal year until the Department receives its appropriation.

3. *Site Information Requirements (Section 225.6(c)(2)(iii))—Comment:* The commenter did not approve of the "change" to this Section. According to the commenter, previous regulations only required camp sponsors to document the number of eligible campers on the first day of each session; the new regulations require earlier submission which, according to the commenter, will result in the submission of inaccurate information.

Response: There is no inconsistency between the new wording—which requires the camp to provide the information "as soon as possible" after submission of its application for sponsorship, but "in no case later than the filing of the camp's claim for reimbursement for each session"—and the old wording, which required submission "prior to filing their claims for reimbursement for each session". If the camp is capable of submitting the information earlier than the first day of the session, it is required to do so; if this is not practical, then the information must be submitted to the State agency no later than the date on which the claim for that session is submitted.

4. *Site Caps (Section 225.6(d)(2))—Suggestion:* Eliminate site caps or *require* State agencies to grant any requests from sponsors for an upward adjustment of their site caps.

Response: The Department believes that the requirement for State agency approval of requests for upward adjustments is a prudent administrative procedure which helps to prevent the type of abuse which previously plagued the SFSP. The Department further believes that the site caps serve an important purpose in encouraging the sponsor and the State agency to work together closely to develop reasonable estimates of anticipated site attendance.

5. *Off-Site Meal Consumption (Sections 225.6(e)(14), 225.11(c)(4)(vii))—Suggestion:* End the prohibition on off-site meal consumption.

Response: The Department strongly believes that the prohibition on off-site meal consumption plays an important role in ensuring that Program benefits are delivered to the children for whom they are intended.

6. *FSMC Registration Requirements (Section 225.6(g)(1))—Suggestion:* If a State agency registers an FSMC which does not have production facilities in that State, that FSMC should not be permitted to bid on contracts within that State unless the sponsor has meal preparation facilities which the FSMC could utilize.

Response: The Department assumes that, under current procurement procedures, a company without production facilities would not be awarded a contract if it could not fulfill the meal production requirements of that contract. No regulatory change is neeeded.

7. *Procedures for Estimating Advances (Section 225.9(c)(3))—Comment:* The commenter stated that he was in agreement with the "change" made by the Department in the procedures for estimating advances.

Response: No change was made. § 225.9(c)(3) is a verbatim restatement of former § 225.11(b)(3).

8. *Income Accruing to the Program (Section 225.9(d))—Suggestion:* The Department received several suggestions on this topic:

(1) That the regulations should include more specific instructions on how sponsors are to deduct income accruing to the Program from combined operating and administrative expenses; and (2) that income from federally-supported programs other than the National Youth Sports Program should be exempted from this requirement.

Response: (1) The Department's intention in the regulations is to provide sponsors with flexibility in making such deductions by not specifying precisely how the deduction would be apportioned among operating and administrative costs; and (2) Income from other federally-supported programs must be deducted only if it is used in support of the food program. If the Department were to categorically exempt other federal funds from being deducted from combined operating and administrative costs, the federal government would be paying twice for the same meal.

9. *Sponsor Administrative Funds (Section 225.9(d)(7))—Suggestion:* Increase the amount of reimbursement to sponsors for administrative expenses.

Response: The Department currently has no evidence to suggest that an increase in administrative reimbursement to sponsors is warranted.

10. *Site Records (Section 225.11(c)(4)(ii))—Suggestion:* Amend this section to allow playground sites to keep their records at the sponsor's office, rather than at the playground site.

Response: The currently regulatory language states only that "adequate records" must be kept at the site. The Department agrees with this commenter that, while it is appropriate to expect that some records (e.g., the current day's meal count and attendance records) will be at the site, other types of records might be kept in the sponsor's office, depending on such factors as the availability of secure storage space at the site. We do not believe, however, that these distinctions need to be made explicit in the regulations. It is not realistic to be concerned that State agencies will attempt to terminate sponsors because all of a site's records are not maintained at that site; this section is intended only to require that records are made available to site reviewers in a reasonable manner.

11. *Household Application Procedures (Section 225.12(f)(1))—Suggestion:* Allow enrollment programs to use household applications from the National School Lunch or School Breakfast Programs as opposed to requiring households to fill out a separate SFSP application.

Response: The Program regulations are derived from the language of section 13(a)(1)(C) of the National School Lunch Act, which allows an enrollment program to document its eligibility from "statements of eligibility based upon income for children enrolled in the program". This language presumes that the determination of eligibility will be based on a household's current

economic circumstances, not on applications completed nine to twelve months earlier for one of the School Programs

12. *FSMC Procurement Requirements (Section 225.15(g)(5))—Comment:* The commenter approved of the "change" which requires that competitive procurement procedures be followed in contracting with food service management companies.

Response: No change has been made to this section. Section 225.15(g)(5) is a clearer rewording of the former § 225.16(d), but did not change the substantive intent of the latter section. The old § 225.16(d) also stated that the "exceptions" described in that paragraph "do not relieve the sponsor of the responsibility to ensure that normally accepted bidding procedures are followed in contracting with any food service management company."

13. *Age-Adjusted Meal Pattern (Section 225.16(d))—Suggestion:* Adjust the SFSP meal pattern to allow the service of different quantities of food to older and younger children.

Response: Given the less structured nature of food service at open playground sites compared, for instance, to food service in schools or child care settings, the Department has deemed it impractical for sponsors to try to serve substantially different meals to children of different ages and has established a single meal pattern for the SFSP. This meal pattern matches the age-adjusted meal pattern for children ages 6–12 in the Child Care Food Program and establishes minimum requirements for meal service to children participating in the Program. Consistent with § 225.16(f)(2), State agencies may authorize sponsors to serve smaller portions to children under the age of 6 if they are convinced that the sponsor can ensure that the variations in portion sizes are appropriate to the age levels of the children being served. Similarly, if sponsors are capable of serving larger meals to older children, the Department would encourage them to do so, provided that every child receives a meal which meets or exceeds the meal pattern requirements. Thus, in this sense, it is already possible for sponsors to have an "age-adjusted meal pattern" for all children.

List of Subjects in 7 CFR Part 225

Food assistance programs, Grant programs—Health, Infants, and Children.

Redesignation Table

Current Part 225	Proposed Revision of Part 225
Subpart A	Subpart A
225.1	225.1
225.2	225.2
225.3(a)	225.3(a)
225.3(b)	225.3 (b), (c)
225.3(c)	225.3(b)
225.3(d)	225.3(c)
Subpart B	Subpart B
225.4(a)	225.5(d)
225.4(b)	225.5(d)(4)
225.4(c)	225.5(d)(5)
225.4(d)	225.5(d)(6)
225.4(e)	225.5(a)(1)
225.4(f)	225.5(a)(2)
225.4(g)	225.5(b)
225.4(h)	225.5(a)(3)
225.4(i)	225.5(a)(4)
225.4(j)	225.5(e)
225.4(k)	225.5(f)
225.5(a)	225.9(b)(1)
225.5(b)	225.9(b)(2)
Subpart C	Subpart B (continued)
225.6	225.4
225.7(a)	225.6(a)(1)
225.7(b)	225.6(b)(1)
225.7(c)	225.6(b)(3)
225.7(d)	225.6(b)(4)
225.7(e)	225.6(b)(7)
225.7(f)	225.6(b)(4)
225.7(g)	225.6(b)(8)
225.7(h)	225.6(b)(5)
225.7(i)	225.6(d)(1)
225.7(j)	225.8(d)(2)
225.7(k)	225.6(b)(2)
225.7(l)	225.6(b)(6)
225.7(m)	225.6(b) (9)–(10)
225.7(n)	225.6(b)(10)
225.7(o)	225.6(b)(11)
225.8(a)	225.6(c) (1)–(2)
225.8(b)	225.6(e)
225.8(c)	225.6(a)(3)
225.8(d)	225.16(a)
225.8(e)	225.6(f)
225.9(a)	225.6(a)(2)
225.9(b)	225.7(a)
225.9(c)	225.7(b)
225.9(d)	225.7(c)
225.9(e)	225.7(d)
225.9(f)	225.7(e)
225.9(g)	225.7(f)
225.9(h)	225.7(g)
225.10	225.8
225.11(a)	225.9(a)
225.11(b)	225.9(c)
225.11(c)	225.9(d)
225.11(d)	225.9(e)
225.11(e)	225.9(f)
225.12(a)	225.10(a)
225.12(b)	225.10(b)(1)
225.12(c)	225.5(c)
225.12(d)	225.10(b)(2)
225.12(e)	225.10(b)(3)
225.12(f)	225.10(c)
225.13(a)	225.11(a)
225.13(b)	225.11(b)
225.13(c)	225.6(b)(9) and 225.11(c)
225.13(d)	225.11(d)
225.13(e)	225.11 (e) and (f)
225.13(f)	225.11(f)
225.14	225.12
225.15	225.13
225.16(a)	225.6(h) (2)–(3) and 225.15(g)(3)
225.16(b)	225.14(a)(3), 225.15(a)(3) and 225.15(g)(4)
225.16(c)	225.6(g) and 225.15(g)(2)
225.16(d)	225.6(h) (5)–(6) and 225.15(g)(5)
225.16(e)	225.6(h)(2)
225.16(f)	225.6(h)(2)(ii)
225.16(g)	225.6(h)(4)
225.16(h)	Deleted.
225.16(i)	225.6(h)(5) and 225.15(g)(5)(vi)
225.16(j)	225.15(g)(6)
225.16(k)	225.15(g)(7)
225.16(l)	225.15(g)(8)
225.16(m)	225.6(h)(7), 225.7(d)(6), 225.7(e), and 225.15(g)(1)
225.17	225.17
Subpart D	Subpart C
225.18(a)	225.14(b)
225.18(b)	225.14(c)
225.18(c)	225.14(d)
225.18(d)	225.14(a)
225.18(e)	225.14(c)(8)
225.18(f)	225.16(b)
225.18(g)	225.16(b)(1)
225.18(h)	225.16(b)(3)
225.18(i)	225.16(b)(2)
225.18(j)	225.14(c)(7)
225.19(a)	225.15(a)
225.19(b)	225.15(b)(1)
225.19(c)	225.15(b)(2)
225.19(d)	225.15(b) (3)–(4)
225.19(e)	225.15(c)(2)
225.19(f)	225.15(c)(1)
225.19(g)	225.15(d)(2)
225.19(h)	225.15(d)(3)
225.19(i)	225.15(d)(1)
225.19(j)	225.15(a)(2)
225.20(a)	225.16(c)
225.20(b)	225.16(d)
225.20(c)	225.16(e)
225.20(d)	225.16(f)(2)
225.20(e)	225.16(f)(2)
225.20(f)	225.16(f)(8)
225.20(g)	225.16(f)(6)
225.20(h)	225.16(f)(7)
225.20(i)	225.16(f)(3)
225.20(j)	225.16(f)(4)
225.20(k)	225.16(f)(5)
225.20(l)	225.9(b)
225.20(m)	Deleted.
225.20(n)	225.16(a)
225.20(o)	225.16(f)(1)
225.21(a)	225.6(c)
225.21(b)	225.6(c)
225.21(c)	225.15(e)
225.21(d)	225.15(f)
Subpart E	Subpart D
225.22	225.18
225.23	225.19
225.24	225.20
Appendix A	Appendix A
Appendix B	Appendix B
Appendix C	Appendix C

Accordingly, 7 CFR Part 225 is revised to read as follows:

PART 225—SUMMER FOOD SERVICE PROGRAM

Subpart A—General

Sec.

Subpart B—State Agency Provisions

Subpart C—Sponsor and Site Provisions

Subpart D—General Administrative Provisions

Authority: Secs. 9, 13 and 14, National School Lunch Act, as amended (42 U.S.C. 1758, 1761 and 1762a).

Subpart A—General

§ 225.1 General purpose and scope.

This Part establishes the regulations under which the Secretary will administer a Summer Food Service Program. Section 13 of the Act authorizes the Secretary to assist States through grants-in-aid to conduct nonprofit food service programs for children during the summer months and at other approved times. The primary purpose of the Program is to provide food service to children from needy areas during periods when area schools are closed for vacation.

§ 225.2 Definitions.

"*Act*" means the National School Lunch Act, as amended.

"*Administrative costs*" means costs incurred by a sponsor related to planning, organizing, and managing a food service under the Program, and excluding interest costs and operating costs.

"*Adult*" means, for the purposes of the collection of social security numbers as a condition of eligibility for Program meals, any individual 21 years of age or older.

"*Advance payments*" means financial assistance made available to a sponsor for its operating costs and/or administrative costs prior to the end of the month in which such costs will be incurred.

"*AFDC assistance unit*" means any individual or group of individuals which is currently certified to receive assistance under the Aid to Families with Dependent Children Program in a State where the standard of eligibility for AFDC benefits does not exceed the income standards for free meals under the National School Lunch Program (7 CFR Part 245).

"*Areas in which poor economic conditions exist*" means (a) the local areas from which a site draws its attendance in which at least 50 percent of the children are eligible for free or reduced price school meals under the National School Lunch Program and the School Breakfast Program, as determined (1) by information provided from departments of welfare, education, zoning commissions, census tracts, and organizations determined by the State agency to be migrant organizations, (2) by the number of free and reduced price lunches or breakfasts served to children attending public and nonprofit private schools located in the areas of Program sites, or (3) from other appropriate sources, or

(b) An enrollment program in which at least 50 percent of the enrolled children at the site are eligible for free or reduced price school meals as determined by approval of applications in accordance with Section 225.15(f) of this Part.

"*Camps*" means residential summer camps and nonresidential day camps which offer a regularly scheduled food service as part of an organized program for enrolled children. Nonresidential camp sites shall offer a continuous schedule of organized cultural or recreational programs for enrolled children between meal services.

"*Children*" means (a) persons 18 years of age and under, and (b) persons over 18 years of age who are determined by a State educational agency or a local public educational agency of a State to be mentally or physically handicapped and who participate in a public or nonprofit private school program established for the mentally or physically handicapped.

"*Continuous school calendar*" means a situation in which all or part of the student body of a school is (a) on a vacation for periods of 15 continuous school days or more during the period October through April and (b) in attendance at regularly scheduled classes during most of the period May through September.

"*Costs of obtaining food*" means costs related to obtaining food for consumption by children. Such costs may include, in addition to the purchase price of agricultural commodities and other food, the cost of processing, distributing, transporting, storing, or handling any food purchased for, or donated to, the Program.

"*Department*" means the U.S. Department of Agriculture.

"*Documentation*" means (a) the completion of the following information on a free meal application: (1) Names of all household members; (2) social security number of each adult household member or an indication that an adult household member does not possess one; (3) household income received by each household member, identified by source of income (such as earnings, wages, welfare, pensions, support payments, unemployment compensation, and social security) and total household income; and (4) the signature of an adult member of the household; or,

(b) For a child who is a member of a food stamp household or an AFDC assistance unit, "documentation" means completion of only the following information on a free meal application: (1) The name(s) and appropriate food stamp or AFDC case number(s) for the child(ren); and (2) the signature of an adult member of the household.

"*Family*" means a group of related or nonrelated individuals who are not residents of an institution or boarding house but who are living as one economic unit.

"*Fiscal year*" means the period beginning October 1 of any calendar year and ending September 30 of the following calendar year.

"*FNS*" means the Food and Nutrition Service of the Department.

"*FNSRO*" means the appropriate FNS Regional Office.

"*Food service management company*" means any commercial enterprise or nonprofit organization with which a sponsor may contract for preparing unitized meals, with or without milk, for use in the Program, or for managing a sponsor's food service operations in accordance with the limitations set forth in Section 225.15. Food service management companies may be: (a) Public agencies or entities; (b) private, nonprofit organizations; or (c) private, for-profit companies.

"*Food stamp household*" means any individual or group of individuals which is currently certified to receive assistance as a household under the Food Stamp Program.

"*Household*" means "family," as defined in this section.

"*Income accruing to the program*" means all funds used by a sponsor in its food service program, including but not limited to all monies, other than program payments, received from Federal, State and local governments, from food sales to adults, and from any other source including cash donations or grants. Income accruing to the Program will be deducted from combined operating and administrative costs.

"*Income standards*" means the family-size and income standards prescribed annually by the Secretary for determining eligibility for reduced price meals under the National School Lunch Program and the School Breakfast Program.

"*Meals*" means food which is served to children at a food service site and which meets the nutritional requirements set out in this Part.

"*Milk*" means whole milk, lowfat milk, skim milk, and buttermilk. All milk must be fluid and pasteurized and must meet State and local standards for the appropriate type of milk. Milk served may be flavored or unflavored. In Alaska, Hawaii, American Samoa, Guam, Puerto Rico, the Trust Territory of the Pacific Islands, the Northern Mariana Islands, and the Virgin Islands of the United States, if a sufficient supply of such types of fluid milk cannot be obtained, reconstituted or recombined milk may be used. All milk should contain Vitamins A and D at the levels specified by the Food and Drug Administration and at levels consistent with State and local standards for such milk.

"*Needy children*" means children from families whose incomes are equal to or below the Secretary's Guidelines for Determining Eligibility for Reduced Price School Meals.

"*OIG*" means the Office of the Inspector General of the Department.

"*Operating costs*" means the cost of operating a food service under the Program,

(a) Including the (1) cost of obtaining food, (2) labor directly involved in the preparation and service of food, (3) cost of nonfood supplies, (4) rental and use allowances for equipment and space, and (5) cost of transporting children in rural areas to feeding sites in rural areas, but

(b) Excluding (1) the cost of the purchase of land, acquisition or construction of buildings, (2) alteration of existing buildings, (3) interest costs, (4) the value of in-kind donations, and (5) administrative costs.

"*Private nonprofit*" means tax exempt under the Internal Revenue Code of 1986, as amended.

"*Program*" means the Summer Food Service Program for Children authorized by Section 13 of the Act.

"*Program funds*" means Federal financial assistance made available to State agencies for the purpose of making Program payments.

"*Program payments*" means financial assistance in the form of start-up payments, advance payments, or reimbursement paid to sponsors for operating and administrative costs.

"*Rural*" means (a) any area in a county which is not a part of a Metropolitan Statistical Area or (b) any "pocket" within a Metropolitan Statistical Area which, at the option of the State agency and with FNSRO concurrence, is determined to be geographically isolated from urban areas.

"*School food authority*" means the governing body which is responsible for the administration of one or more schools and which has the legal authority to operate a lunch program in those schools. In addition, for the purpose of determining the applicability of food service management company registration and bid procedure requirements, "school food authority" also means any college or university which participates in the Program.

"*Secretary*" means the Secretary of Agriculture.

"*Self-preparation sponsor*" means a sponsor which prepares the meals that will be served at its site(s) and does not contract with a food service management company for unitized meals, with or without milk, or for management services.

"*Session*" means a specified period of time during which an enrolled group of children attend camp.

"*Site*" means a physical location at which a sponsor provides a food service for children and at which children consume meals in a supervised setting.

"*Special account*" means an account which a State agency may require a vended sponsor to establish with the State agency or with a Federally insured bank. Operating costs payable to the sponsor by the State agency are deposited in the account and disbursement of monies from the account must be authorized by both the sponsor and the food service management company.

"*Sponsor*" means a public or private nonprofit school food authority, a public or private nonprofit residential summer camp, a unit of local, municipal, county or State government, or a public or private nonprofit college or university currently participating in the National Youth Sports Program, which develops a special summer or other school vacation program providing food service which meets the same meal requirements as meals served to children during the school year under the National School Lunch and School Breakfast Programs and which is approved to participate in the Program. Sponsors are referred to in the Act as "service institutions".

"*Start-up payments*" means financial assistance made available to a sponsor for administrative costs to enable it to effectively plan a summer food service, and to establish effective management procedures for such a service. These payments shall be deducted from subsequent administrative cost payments.

"*State*" means any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Northern Mariana Islands.

"*State agency*" means the State educational agency or an alternate agency that has been designated by the Governor or other appropriate executive or legislative authority of the State and which has been approved by the Department to administer the Program within the State, or, in States where FNS administers the Program, FNSRO.

"*Unit of local, municipal, county or State government*" means an entity which is so recognized by the State constitution or State laws, such as the State administrative procedures act, tax laws, or other applicable State laws which delineate authority for government responsibility in the State.

"*Vended sponsor*" means a sponsor which purchases from a food service management company the unitized meals, with or without milk, which it will serve at its site(s), or a sponsor which purchases management services, subject to the limitations set forth in § 225.15, from a food service management company.

§ 225.3 Administration.

(a) *Responsibility within the Department.* FNS shall act on behalf of the Department in the administration of the Program.

(b) *State administered programs.* Within the State, responsibility for the administration of the Program shall be in the State agency. Each State agency shall notify the Department by November 1 of the fiscal year as to whether or not it intends to administer the Program. Each State agency desiring to take part in the Program shall enter into a written agreement with FNS for the administration of the Program in accordance with the provisions of this

Part. The agreement shall cover the operation of the Program during the period specified therein and may be extended by written consent of both parties. The agreement shall contain an assurance that the State agency will comply with the Department's nondiscrimination regulations (7 CFR Part 15) issued under Title VI of the Civil Rights Act of 1964, and any Instructions issued by FNS pursuant to those regulations, Title IX of the Education Amendments of 1972, and section 504 of the Rehabilitation Act of 1973. However, if a State educational agency is not permitted by law to disburse funds to any of the nonpublic schools in the State, the Secretary shall disburse the funds directly to such schools within the State for the same purposes and subject to the same conditions as the disbursements to public schools within the State by the State educational agency.

(c) *Regional office administered programs.* The Secretary shall not administer the Program in the States, except that if a FNSRO has continuously administered the Program in any State since October 1, 1980, FNS shall continue to administer the Program in that State. In States in which FNSRO administers the Program, it shall have all of the responsibilities of a State agency and shall earn State administrative and Program funds as set forth in this part. A State in which FNS administers the Program may, upon request to FNS, assume administration of the Program.

Subpart B—State Agency Provisions

§ 225.4 Program management and administration plan.

(a) Not later than February 15 of each year, each State agency shall submit to FNSRO a Program management and administration plan for that fiscal year.

(b) Each plan shall be acted on or approved by March 15 or, if it is submitted late, within 30 calendar days of receipt of the plan. If the plan initially submitted is not approved, the State agency and FNS shall work together to ensure that changes to the plan, in the form of amendments, are submitted so that the plan can be approved within 60 calendar days following the initial submission of the plan. Upon approval of the plan, the State agency shall be notified of the level of State administrative funding which it is assured of receiving under § 225.5(a)(3).

(c) Approval of the Plan by FNS shall be a prerequisite to the withdrawal of Program funds by the State from the Letter of Credit and to the donation by the Department of any commodities for use in the State's Program.

(d) The Plan shall include, at a minimum, the following information:

(1) The State's administrative budget for the fiscal year, and the State's plan to comply with any standards prescribed by the Secretary for the use of these funds;

(2) The State's plans for use of Program funds and funds from within the State to the maximum extent practicable to reach needy children, including the State's methods for assessing need, and its plans and schedule for informing sponsors of the availability of the Program;

(3) The State's best estimate of the number and character of sponsors and sites to be approved, the number of meals to be served, the number of children who will participate, and a description of the estimating methods used by the State;

(4) The State's schedule for application by sponsors;

(5) The actions to be taken to maximize the use of meals prepared by sponsors and to maximize the use of school food service facilities;

(6) The State's plans and schedule for providing technical assistance and training to eligible sponsors;

(7) The State's plans for monitoring and inspecting sponsors, feeding sites, and food service management companies and for ensuring that such companies do not enter into contracts for more meals than they can provide effectively and efficiently;

(8) The State's plan and schedule for registering food service management companies;

(9) The State's plan for timely and effective action against Program violators;

(10) The State's plan for determining the amounts of Program payments to sponsors and for disbursing such payments;

(11) The State's plan for ensuring the fiscal integrity of sponsors not subject to auditing requirements prescribed by the Secretary;

(12) The State's procedure for granting a hearing and prompt determination to any sponsors wishing to appeal a State ruling, as specified in § 225.13;

(13) Beginning January 1, 1990, the State's plan for ensuring compliance with the food service management company procurement monitoring requirements set forth at § 225.6(h); and

(14) Beginning January 1, 1990, an estimate of the State's need, if any, for monies available to pay for the cost of conducting health inspections and meal quality tests.

§ 225.5 Payments to State agencies and use of Program funds.

(a) *State administrative funds.* (1) *Administrative funding formula.* For each fiscal year, FNS shall pay to each State agency for administrative expenses incurred in the Program an amount equal to

(i) 20 percent of the first $50,000 in Program funds properly payable to the State in the preceding fiscal year;

(ii) 10 percent of the next $100,000 in Program funds properly payable to the State in the preceding fiscal year;

(iii) 5 percent of the next $250,000 in Program funds properly payable to the State in the preceding fiscal year; and

(iv) 2½ percent of any remaining Program funds properly payable to the State in the preceding fiscal year,

Provided, however, That FNS may make appropriate adjustments in the level of State administrative funds to reflect changes in Program size from the preceding fiscal year as evidenced by information submitted in the State Program management and administration plan and any other information available to FNS. If a State agency fails to submit timely and accurate reports under § 225.8(c) of this Part, State administrative funds payable under this paragraph shall be subject to sanction. For such failure, FNS may recover, withhold, or cancel payment of up to one hundred percent of the funds payable to the State agency under this paragraph during the fiscal year.

(2) *Use of State administrative funds.* State administrative funds paid to any State shall be used by State agencies to employ personnel, including travel and related expenses, and to supervise and give technical assistance to sponsors in their initiation, expansion, and conduct of any food service for which Program funds are made available. State agencies may also use administrative funds for such other administrative expenses as are set forth in their approved Program management and administration plan.

(3) *Funding assurance.* At the time FNS approves the State's management and administration plan, the State shall be assured of receiving State administrative funding equal to the lesser of the following amounts: 80 percent of the amount obtained by applying the formula set forth in paragraph (a)(1) of this section to the total amount of Program payments made within the State during the prior fiscal year; or, 80 percent of the amount obtained by applying the formula set forth in paragraph (a)(1) to the amount of Program funds estimated to be needed in the management and

administration plan. The State agency shall be assured that it will receive no less than this level unless FNS determines that the State agency has failed or is failing to meet its responsibilities under this Part.

(4) *Limitation.* In no event may the total payment for State administrative costs in any fiscal year exceed the total amount of expenditures incurred by the State agency in administering the Program.

(b) *State administrative funds Letter of Credit.* (1) At the beginning of each fiscal year, FNS shall make available to each participating State agency by Letter of Credit an initial allocation of State administrative funds for use in that fiscal year. This allocation shall not exceed one-third of the administrative funds provided to the State in the preceding fiscal year. For State agencies which did not receive any Program funds during the preceding fiscal year, the amount to be made available shall be determined by FNS.

(2) Additional State administrative funds shall be made available upon the receipt and approval by FNS of the State's Program management and administration plan. The amount of such funds, plus the initial allocation, shall not exceed 80 percent of the State administrative funds determined by the formula set forth in paragraph (a)(1) of this section and based on the estimates set forth in the approved Program management and administration plan.

(3) Any remaining State administrative funds shall be paid to each State agency as soon as practicable after the conduct of the funding assessment described in paragraph (c) of this section. However, regardless of whether such assessment is made, the remaining administrative funds shall be paid no later than September 1. The remaining administrative payment shall be in an amount equal to that determined to be needed during the funding evaluation or, if such evaluation is not conducted, the amount owed the State in accordance with paragraph (a)(1) of this section, less the amounts paid under paragraphs (b)(1) and (2) of this section.

(c) *Administrative funding evaluation.* FNSRO shall conduct data on the need for Program and State administrative funding within any State agency *if* the funding needs estimated in a State's management and administration plan are no longer accurate. Based on this data, FNS may make adjustments in the level of State administrative funding paid or payable to the State agency under paragraph (b) of this section to reflect changes in the size of the State's Program as compared to that estimated in its management and administration plan. The data shall be based on approved Program participation levels and shall be collected during the period of Program operations. As soon as possible following this data collection, payment of any additional administrative funds owed shall be made to the State agency. The payment may reflect adjustments made to the level of State administrative funding based on the information collected during the funding assessment. However, FNS shall not decrease the amount of a State's administrative funds as a result of this assessment unless the State failed to make reasonable efforts to administer the Program as proposed in its management and administration plan or the State incurred unnecessary expenses.

(d) *Letter of Credit for Program payments.* (1) Not later than April 15 of each fiscal year, FNS shall make available to each participating State in a Letter of Credit an amount equal to 65 percent of the preceding fiscal year's Program payments for operating costs plus 65 percent of the preceding fiscal year's Program payments for administrative costs in the State. This amount may be adjusted to reflect changes in reimbursement rates made pursuant to § 225.9(d)(8). However, the State shall not withdraw funds from this Letter of Credit until its Program management and administration plan is approved by FNS.

(2) Based on the State agency's approved management and administration plan, FNS shall, if necessary, adjust the State's Letter of Credit to ensure that 65 percent of estimated current year Program operating and administrative funding needs is available. Such adjustment shall be made no later than May 15, or within 90 days of FNS receipt of the State agency's management and administration plan, whichever date is later.

(3) Subsequent to the adjustment provided for in paragraph (d)(2) of this section, FNS will, if necessary, make one additional adjustment to ensure that the State agency's Letter of Credit contains at least 65 percent of the Program operating and administrative funds needed during the current fiscal year. Such adjustment may be based on the administrative funding assessment provided for in paragraph (c) of this section, if one is conducted, or on any additional information which demonstrates that the funds available in the Letter of Credit do not equal at least 65 percent of current year Program needs. In no case will such adjustments be made later than September 1. Funds made available in the Letter of Credit shall be used by the State agency to make Program payments to sponsors.

(4) The Letter of Credit shall include sufficient funds to enable the State agency to make advance payments to sponsors serving areas in which schools operate under a continuous school calendar. These funds shall be made available no later than the first day of the month prior to the month during which the food service will be conducted.

(5) FNS shall make available any remaining Program funds due within 45 days of the receipt of valid claims for reimbursement from sponsors by the State agency. However, no payment shall be made for claims submitted later than 60 days after the month covered by the claim unless an exception is granted by FNS.

(6) Each State agency shall release to FNS any Program funds which it determines are unobligated as of September 30 of each fiscal year. Release of funds by the State agency shall be made as soon as practicable, but in no event later than 30 calendar days following demand by FNS, and shall be accomplished by an adjustment in the State agency's Letter of Credit.

(e) *Adjustment to Letter of Credit.* Prior to May 15 of each fiscal year, FNS shall make any adjustments necessary in each State's Letter of Credit to reflect actual expenditures in the preceding fiscal year's Program.

(f) *Health inspection funds.* If the State agency's approved management and administration plan estimates a need for health inspection funding, FNS shall make available by letter of credit an amount up to one percent of Program funds estimated to be needed in the management and administration plan. Such amount may be adjusted, based on the administrative funding assessment provided for in paragraph (c) of this section, if such assessment is conducted. Health inspection funds shall be used solely to enable State or local health departments or other governmental agencies charged with health inspection functions to carry out health inspections and meal quality tests, provided that if these agencies cannot perform such inspections or tests, the State agency may use the funds to contract with an independent agency to conduct the inspection or meal quality tests. Funds so provided but not expended or obligated shall be returned to the Department by September 30 of the same fiscal year.

§ 225.6 State agency responsibilities.

(a) *General responsibilities.* (1) The State agency shall provide sufficient qualified consultative, technical, and managerial personnel to administer the Program, monitor performance, and measure progress in achieving Program goals. The State agency shall assign Program responsibilities to personnel to ensure that all applicable requirements under this Part are met.

(2) By February 1 of each fiscal year, each State agency shall announce the purpose, eligibility criteria, and availability of the Program throughout the State, through appropriate means of communication. As part of this effort, each State agency shall compile a list of potential sponsors which have not previously participated in the Program and shall contact them. State agencies shall identify rural areas, Indian tribal territories, and areas with a concentration of migrant farm workers which qualify for the Program and shall actively seek eligible applicant sponsors to serve such areas. State agencies shall identify priority outreach areas in accordance with FNS guidance and target outreach efforts in these areas. The State agency shall encourage potential sponsors to use, to the maximum extent feasible, their own facilities or the facilities of public or nonprofit private schools for the preparation, delivery, and service of meals under the Program.

(3) Each State agency shall require applicant sponsors submitting Program application site information sheets, Program agreements, or a request for advance payments, and sponsors submitting claims for reimbursement to certify that the information submitted on these forms is true and correct and that the sponsor is aware that deliberate misrepresentation or withholding of information may result in prosecution under applicable State and Federal statutes.

(b) *Approval of sponsor applications.* (1) Each State agency shall inform all of the previous year's sponsors which meet current eligibility requirements and all other potential sponsors of the deadline date for submitting a written application for participation in the Program. The State agency shall require that all applicant sponsors submit written applications for Program participation to the State agency by June 15. However, the State agency may establish an earlier deadline date for the Program application submission.

(2) Each State agency shall inform potential sponsors of the procedure for applying for advance operating and administrative costs payments as provided for in § 225.9(c). Where applicable, each State agency shall inform sponsors of the procedure for applying for start-up payments provided for in § 225.9(a).

(3) Within 30 days of receiving a complete and correct application, the State agency shall notify the applicant of its approval or disapproval. If an incomplete application is received, the State agency shall so notify the applicant within 15 days and shall provide technical assistance for the purpose of completing the application. Any disapproved applicant shall be notified of its right to appeal under § 225.13.

(4) The State agency shall determine the eligibility of applicant sponsors applying for participation in the Program in accordance with the applicant sponsor eligibility criteria outlined in § 225.14. However, State agencies may approve the application of an otherwise eligible applicant which does not provide a year-round service to the community which it proposes to serve under the Program only if it meets one or more of the following criteria: (i) It is a residential camp; (ii) it proposes to provide a food service for the children of migrant workers; (iii) a failure to do so would deny the Program to an area in which poor economic conditions exist; or (iv) a significant number of needy children will not otherwise have reasonable access to the Program.

(5) The State agency shall use the following order of priority in approving applicants to operate sites which propose to serve the same area or the same enrolled children:

(i) Applicants which are public or nonprofit private school food authorities and other applicants which have demonstrated successful Program performance in a prior year;

(ii) Applicants which propose to prepare meals at their own facilities or which operate only one site;

(iii) Applicants which propose to utilize local school food service facilities for the preparation of meals;

(iv) Other applicants which have demonstrated ability for successful Program operations; and

(v) Applicants which plan to integrate the Program with Federal, State, or local employment or training programs.

(6) The State agency shall not approve any applicant sponsor to operate more than 200 sites or to serve an average daily attendance of more than 50,000 children unless the applicant can demonstrate to the satisfaction of the State agency that is has the capability of managing a program of that size.

(7) The State agency shall review each applicant's administrative budget as a part of the application approval process in order to assess the applicant's ability to operate in compliance with these regulations within its projected reimbursement. In approving the applicant's administrative budget, the State agency shall take into consideration the number of sites and children to be served, as well as any other relevant factors. A sponsor's administrative budget shall be subject to review for adjustments by the State agency if the sponsor's level of site participation or the number of meals served to children changes significantly.

(8) Applicants which qualify as camps shall be approved for reimbursement only for meals served free to enrolled children who meet the Program's eligibility standards.

(9) The State agency shall not approve the application of any applicant sponsor identifiable through its organization or principals as a sponsor which has been determined to be seriously deficient as described in § 225.11(c). However, the State agency may approve the application of a sponsor which has been disapproved or terminated in prior years in accordance with this paragraph if the applicant demonstrates to the satisfaction of the State agency that it has taken appropriate corrective actions to prevent recurrence of the deficiencies.

(10) If the sponsor's application to participate is denied, the official making the determination of denial must notify the applicant sponsor in writing stating all of the grounds on which the State agency based the denial. Pending the outcome of a review of a denial, the State agency shall proceed to approve other applicants in accordance with its responsibilities under paragraph (b)(5) of this section, without regard to the application under review.

(11) The State agency shall not approve the application of any applicant sponsor which submits fraudulent information or documentation when applying for Program participation or which knowingly withholds information that may lead to the disapproval of its application. Complete information regarding such disapproval of an applicant shall be submitted by the State agency through FNSRO to OIG.

(c) *Content of sponsor application.* (1) The applicant shall submit a written application to the State agency for participation in the Program as a sponsor. The State agency may use the application form developed by FNS or it may develop an application form for use in the Program. Application shall be made on a timely basis in accordance with the deadline date established under § 225.6(b)(1).

(2) At a minimum, the application shall include:

(i) A site information sheet, as developed by the State agency, for each site where a food service operation is proposed. The site information sheet shall demonstrate or describe the following:

(A) An organized and supervised system for serving meals to attending children;

(B) The estimated number and types of meals to be served and the times of service;

(C) Arrangements, within standards prescribed by the State or local health authorities, for delivery and holding of meals until time of service, and arrangements for storing and refrigerating any leftover meals until the next day;

(D) Arrangements for food service during periods of inclement weather;

(E) Access to a means of communication for making necessary adjustments in the number of meals delivered in accordance with the number of children attending daily at each site;

(F) The geographic area to be served by the site;

(G) The percentage of children in the area to be served by the site who meet the Program's income standards; and

(H) Whether the site is rural, as defined in § 225.2, or non-rural, and whether the site's food service will be self-prepared or vended.

(ii) Along with its site information sheet for a site that is not a camp, documentation supporting the eligibility of each site as serving an area in which poor economic conditions exist.

(A) For those sites at which applicants will serve children of migrant workers, the documentation requirement may be met by providing the State agency with data from an organization determined by the State agency to be a migrant organization which supports the eligibility of those children as a group.

(B) When a sponsor proposes to serve a site which it served in the previous year, documentation from the previous year may be used to support the eligibility of the site. For such sites, applicants shall only be required to obtain new documentation every other year.

(iii) Along with its site information sheet for a site which is a camp, documentation showing the number of children enrolled in each session who meet the Program's income standards. If such documentation is not available at the time of application, it shall be submitted as soon as possible thereafter and in no case later than the filing of the camp's claim for reimbursement for each session.

(iv) Information in sufficient detail to enable the State agency to determine whether the applicant meets the criteria for participation in the Program as set forth in Section 225.14; the extent of Program payments needed, including a request for advance payments and start-up payments, if applicable; and a staffing and monitoring plan.

(v) A complete administrative and operating budget for State agency review and approval. The administrative budget shall contain the projected administrative expenses which a sponsor expects to incur during the operation of the Program, and shall include information in sufficient detail to enable the State agency to assess the sponsor's ability to operate the Program within its estimated reimbursement. A sponsor's approved administrative budget shall be subject to subsequent review by the State agency for adjustments in projected administrative costs.

(vi) A plan for and a synopsis of its invitation to bid for food service, if an invitation to bid is required under § 225.15(g).

(vii) A free meal policy statement, as described in paragraph (c)(3) of this section.

(viii) For each applicant which seeks approval under § 225.14(b)(3) as a unit of local, municipal, county or State government, certification that it will directly operate the Program in accordance with § 225.14(d)(4).

(3) Each applicant shall submit a statement of its policy for serving free meals at all sites under its jurisdiction.

(i) The policy statement shall consist of an assurance to the State agency that all children are served the same meals at no separate charge and that there is no discrimination in the course of the food service.

(ii) In addition, the policy statement for camps that charge separately for meals shall include the following:

(A) A statement that the eligibility standards conform to the Secretary's family size and income standards for reduced price school meals;

(B) A description of the method or methods to be used in accepting applications from families for Program meals. Such methods shall ensure that households are permitted to apply on behalf of children who are members of food stamp households or AFDC assistance units using the categorical eligibility procedures described in § 225.15(f);

(C) A description of the method used by camps for collecting payments from children who pay the full price of the meal while preventing the overt identification of children receiving a free meal;

(D) An assurance that the camp will establish a hearing procedure for families wishing to appeal a denial of an application for free meals. Such hearing procedures shall meet the requirements set forth in paragraph (c)(4) of this section;

(E) An assurance that, if a family requests a hearing, the child shall continue to receive free meals until a decision is rendered; and

(F) An assurance that there will be no overt identification of free meal recipients and no discrimination against any child on the basis of race, color, national origin, sex, age, or handicap.

(4) Each applicant that is a camp shall submit with its application a copy of its hearing procedures. At a minimum, these procedures shall provide:

(i) That a simple, publicly announced method will be used for a family to make an oral or written request for a hearing;

(ii) That the family will have the opportunity to be assisted or represented by an attorney or other person;

(iii) That the family will have an opportunity to examine the documents and records supporting the decision being appealed both before and during the hearing;

(iv) That the hearing will be reasonably prompt and convenient for the family;

(v) That adequate notice will be given to the family of the time and place of the hearing;

(vi) That the family will have an opportunity to present oral or documentary evidence and arguments supporting its position;

(vii) That the family will have an opportunity to question or refute any testimony or other evidence and to confront and cross-examine any adverse witnesses;

(viii) That the hearing shall be conducted and the decision made by a hearing official who did not participate in the action being appealed;

(ix) That the decision shall be based on the oral and documentary evidence presented at the hearing and made a part of the record;

(x) That the family and any designated representative shall be notified in writing of the decision;

(xi) That a written record shall be prepared for each hearing which includes the action being appealed, any documentary evidence and a summary of oral testimony presented at the hearing, the decision and the reasons for

the decision, and a copy of the notice sent to the family; and

(xii) That the written record shall be maintained for a period of three years following the conclusion of the hearing, during which it shall be available for examination by the family or its representatives at any reasonable time and place.

(d) *Approval of sites.* (1) When evaluating a proposed food service site, the State agency shall ensure that:

(i) If not a camp, the proposed site serves as an area in which poor economic conditions exist, as defined by § 225.2;

(ii) The area which the site proposes to serve is not or will not be served in whole or in part by another site, unless it can be demonstrated to the satisfaction of the State agency that each site will serve children not served by any other site in the same area for the same meal; and

(iii) The site is approved to serve no more than the number of children for which its facilities are adequate.

(2) When approving the application of a site which will serve meals prepared by a food service management company, the State agency shall establish for each meal service an approved level for the maximum number of children's meals which may be served under the Program. These approved levels shall be established in accordance with the following provisions:

(i) The initial maximum approved level shall be based upon the historical record of attendance at the site if such a record has been established in prior years and the State agency determines that it is accurate. The State agency shall develop a procedure for establishing initial maximum approved levels for sites when no accurate record from prior years is available.

(ii) The maximum approved level shall be adjusted, if warranted, based upon information collected during site reviews. If attendance at the site on the day of the review is significantly below the site's approved level, the State agency should consider making a downward adjustment in the approved level with the objective of providing only one meal per child.

(iii) The sponsor may seek an upward adjustment in the approved level for its sites by requesting a site review or by providing the State agency with evidence that attendance exceeds the sites' approved levels.

(iv) Whenever the State agency establishes or adjusts approved levels of meal service for a site, it shall document the action in its files, and it shall provide the sponsor with immediate written confirmation of the approved level.

(v) Upon approval of its application or any adjustment to its maximum approved levels, the sponsor shall inform the food service management company with which it contracts of the approved level for each meal service at each site served by the food service management company. This notification of any adjustments in approved levels shall take place within the time frames set forth in the contract for adjusting meal orders. Whenever the sponsor notifies the food service management company of the approved levels or any adjustments to these levels for any of its sites, the sponsor shall clearly inform the food service management company that an approved level of meal service represents the maximum number of meals which may be served at a site and is not a standing order for a specific number of meals at that site. When the number of children attending is below the site's approved level, the sponsor shall adjust meal orders with the objective of serving only one meal per child as required under § 225.15(b)(3).

(e) *State-Sponsor Agreement.* Sponsors approved for participation in the Program shall enter into written agreements with the State agency. The agreements shall provide that the sponsor shall:

(1) Operate a nonprofit food service during any period from May through September for children on school vacation or at other times for children under a continuous school calendar system;

(2) Serve meals which meet the requirements and provisions set forth in § 225.16 during times designated as meal service periods by the sponsor, and serve the same meals to all children;

(3) Serve meals without cost to all children, except that camps may charge for meals served to children who are not served meals under the Program;

(4) Issue a free meal policy statement in accordance with § 225.6(c);

(5) Meet the training requirement for its administrative and site personnel, as required under § 225.15(d)(1);

(6) Claim reimbursement only for the type or types of meals specified in the agreement and served without charge to children at approved sites during the approved meal service period, except that camps shall claim reimbursement only for the type or types of meals specified in the agreement and served without charge to children who meet the Program's income standards. The agreement shall specify the approved levels of meal service for the sponsor's sites if such levels are required under § 225.6(d)(2). No permanent changes may be made in the serving time of any meal unless the changes are approved by the State agency;

(7) Submit claims for reimbursement in accordance with procedures established by the State agency, and those stated in § 225.9;

(8) In the storage, preparation and service of food, maintain proper sanitation and health standards in conformance with all applicable State and local laws and regulations;

(9) Accept and use, in quantities that may be efficiently utilized in the Program, such foods as may be offered as a donation by the Department;

(10) Have access to facilities necessary for storing, preparing, and serving food;

(11) Maintain a financial management system as prescribed by the State agency;

(12) Maintain on file documentation of site visits and reviews in accordance with § 225.15(d) (2) and (3);

(13) Upon request, make all accounts and records pertaining to the Program available to State, Federal, or other authorized officials for audit or administrative review, at a reasonable time and place. The records shall be retained for a period of 3 years after the end of the fiscal year to which they pertain, unless audit or investigative findings have not been resolved, in which case the records shall be retained until all issues raised by the audit or investigation have been resolved;

(14) Maintain children on site while meals are consumed; and

(15) Retain final financial and administrative responsibility for its program.

(f) *Special Account.* In addition, the State agency may require any vended sponsor to enter into a special account agreement with the State agency. The special account agreement shall stipulate that the sponsor shall establish a special account with a State agency or Federally insured bank for operating costs payable to the sponsor by the State. The agreement shall also stipulate that any disbursement of monies from the account must be authorized by both the sponsor and the food service management company. The special account agreement may contain such other terms, agreed to by both the sponsor and the food service management company, which are consistent with the terms of the contract between the sponsor and the food service management company. A copy of the special account agreement shall be submitted to the State agency and another copy maintained on file by the sponsor. Any charges made by the bank

for the account described in this section shall be considered an allowable sponsor administrative cost.

(g) *Food service management company registration.* (1) With the exception of the exemption described in paragraph (g)(9) of this section, each food service management company shall register with the State by March 15 of each fiscal year. A State agency shall consider a food service management company's application for registration submitted after March 15 of the current year only if the State agency determines and documents that failing to consider the company's application could potentially result in a significant number of needy children not having reasonable access to the Program.

(2) By February 1, each State agency shall notify each food service management company which participated in the State's Program during the previous two years that it must register with the State agency. This notification shall include, at a minimum:

(i) A statement that registration with the State agency is a prerequisite to participation in the Program;

(ii) A list of the items which must be submitted with the application for registration as set forth in paragraph (g)(4) of this section;

(iii) A complete description of the criteria developed by the State agency for determining registrant eligibility; and

(iv) Any other information necessary to apply for registration.

In addition, each State agency shall by February 1 issue a public announcement of the registration requirement, including all the information necessary to apply for registration.

(3) Each State agency shall require food service management companies submitting applications for registration to certify that the information submitted is true and correct and that the food service management company is aware that misrepresentation may result in prosecution under applicable State and Federal statues.

(4) At a minimum registration shall require:

(i) Submission of the food service management company's name and mailing address and any other names under which the company has operated during the past two years;

(ii) A certification that the food service management company meets applicable State and local health, safety, and sanitation standards;

(iii) Disclosure of present company owners, directors, and officers, and their relationship in the past two years to any sponsor or food service management company which participated in the Program;

(iv) Records of contract terminations, disallowances, and health, safety, and sanitation code violations related to Program participation during the past two years;

(v) Records of any other contract terminations and health, safety, and sanitation code violations during the past two years;

(vi) The address or addresses of the company's food preparation and distribution facilities which will be used in the Program and the name of the local official responsible for the operation of these facilities;

(vii) The number of Program meals which can be prepared in each preparation facility during a twenty-four hour period;

(viii) A certification that the food service management company will operate in accordance with current Program regulations;

(ix) A statement that the food service management company understands that it will not be paid for meals which are delivered to non-approved sites, or for meals which are delivered to approved sites outside of the agreed upon delivery time, or for meals that do not meet the meal requirements and food specifications contained in the contract between the sponsor and the food service management company;

(x) Submission of a Certified Public Accountant's audit report if an audit was performed during the prior year; and

(xi) A statement as to whether the organization is a minority business enterprise. A minority business enterprise is a business in which:

(A) The management and daily operations of the business are controlled by a member or members of a minority group (minority groups are Blacks, Hispanics, American Indians, Alaskan Natives, Orientals and Aleuts); and

(B) At least 51 percent of which is owned by a member or members of a minority group. If the business is a corporation, at least 51 percent of all classes of voting stock of the corporation must be owned by members of a minority group; if the business is a partnership, at least 51 percent of the partnership must be owned by a member or members of a minority group.

(5) Prior to approving a food service management company's request for registration, the State agency shall provide for inspection of all food preparation facilities listed on the application for registration, except those located outside the State. The State agency shall promptly notify FNSRO of the name and location of any out-of-State facility, and FNSRO shall ensure that the facility is inspected prior to registration. The purpose of the inspection is to evaluate each facility's suitability for preparation of Program meals. The State agency may waive this inspection requirement if a facility was registered during the previous summer and operated in accordance with Program requirements.

(6) No food service management company shall be registered if the State agency determines that the company lacks the administrative and financial capability to perform under the Program or if it is identifiable through its organization or principals as a food service management company which participated in the Program during any previous year and was seriously deficient in its Program operation. Serious deficiencies which are grounds for non-registration include, but are not limited to, any of the following:

(i) Noncompliance with the applicable bid procedures, contract requirements, or Program regulations;

(ii) Submission of false information to the State agency;

(iii) Failure to conform meal deliveries to meal orders;

(iv) Delivery of a significant number of meals which did not meet contract requirements;

(v) Failure to maintain adequate records;

(vi) Significant health code violations which were not corrected upon reinspection;

(vii) Failure to deliver meals; or

(viii) The conviction of any officer, owner, partner, or manager of the company for a crime in connection with the prior Program operation.

(7) The State agency shall notify in writing each food service management company which applied for registration of its determination within 30 calendar days of receiving the complete application. If the application for registration is denied, the official making the determination must notify the food service management company in writing, stating all the grounds on which the State agency based the denial.

(8) Each State agency shall submit information to FNS regarding registration of food service management companies, as required under § 225.8(d).

(9) The following types of food service management companies are exempt from the requirement for registration: (i) A school or school food authority acting as a food service management company; and (ii) a food service management company which has an exclusive contract with a school or school food authority for year-round service and has

no contracts with other Program sponsors.

(h) *Monitoring of food service management company procurements.* (1) The State agency shall ensure that sponsors' food service management company procurements are carried out in accordance with §§ 225.15(g) and 225.17 of this Part.

(2) Each State agency shall develop a standard form of contract for use by sponsors in contracting with food service management companies. Sponsors which are public entities, sponsors with exclusive year-round contracts with a food service management company, and sponsors whose food service management company contract(s) do not exceed $10,000 in aggregate value may use their existing or usual form of contract, provided that such form of contract has been submitted to and approved by the State agency. The standard contract developed by the State agency shall expressly and without exception provide that:

(i) All meals prepared by a food service management company shall be unitized, with or without milk or juice, unless the State agency has approved, pursuant to paragraph (h)(3) of this section, a request for exceptions to the unitizing requirement for certain components of a meal;

(ii) A food service management company entering into a contract with a sponsor under the Program shall not subcontract for the total meal, with or without milk, or for the assembly of the meal;

(iii) The sponsor shall provide to the food service management company a list of State agency approved food service sites, along with the approved level for the number of meals which may be claimed for reimbursement for each site, established under § 225.6(d)(2), and shall notify the food service management company of all sites which have been approved, cancelled, or terminated subsequent to the submission of the initial approved site list and of any changes in the approved level of meal service for a site. Such notification shall be provided within the time limits mutually agreed upon in the contract;

(iv) The food service management company shall maintain such records (supported by invoices, receipts, or other evidence) as the sponsor will need to meet its responsibilities under this Part, and shall submit all required reports to the sponsor promptly at the end of each month, unless more frequent reports are required by the sponsor;

(v) The food service management company shall have State or local health certification for the facility in which it proposes to prepare meals for use in the Program, and it shall ensure that health and sanitation requirements are met at all times. In addition, the food service management company shall provide for meals which it prepares to be periodically inspected by the local health department or an independent agency to determine bacteria levels in the meals being served. These levels shall conform to the standards which are applied by the local health authority with respect to the level of bacteria which may be present in meals served by other food service establishments in the locality. The results of the inspections shall be submitted promptly to the sponsor and to the State agency;

(vi) The meals served under the contract shall conform to the cycle menus and meal quality standards and food specifications approved by the State agency and upon which the bid was based;

(vii) The books and records of the food service management company pertaining to the sponsor's food service operation shall be available for inspection and audit by representatives of the State agency, the Department and the U.S. General Accounting Office at any reasonable time and place for a period of 3 years from the date of receipt of final payment under the contract, except that, if audit or investigation findings have not been resolved, such records shall be retained until all issues raised by the audit or investigation have been resolved;

(viii) The sponsor and the food service management company shall operate in accordance with current Program regulations;

(ix) The food service management company shall be paid by the sponsor for all meals delivered in accordance with the contract and this Part. However, neither the Department nor the State agency assumes any liability for payment of differences between the number of meals delivered by the food service management company and the number of meals served by the sponsor that are eligible for reimbursement;

(x) Meals shall be delivered in accordance with a delivery schedule prescribed in the contract;

(xi) Increases and decreases in the number of meals ordered shall be made by the sponsor, as needed, within a prior notice period mutually agreed upon;

(xii) All meals served under the Program shall meet the requirements of § 225.16;

(xiii) In cases of nonperformance or noncompliance on the part of the food service management company, the company shall pay the sponsor for any excess costs which the sponsor may incur by obtaining meals from another source;

(xiv) If the State agency requires the sponsor to establish a special account for the deposit of operating costs payments in accordance with the conditions set forth in § 225.6(f), the contract shall so specify;

(xv) The food service management company shall submit records of all costs incurred in the sponsor's food service operation in sufficient time to allow the sponsor to prepare and submit the claim for reimbursement to meet the 60-day submission deadline; and

(xvi) The food service management company shall comply with the appropriate bonding requirements, as set forth in § 225.15(g) (6)–(8).

(3) All meals prepared by a food service management company shall be unitized, with or without milk or juice, unless the sponsor submits to the State agency a request for exceptions to the unitizing requirement for certain components of a meal. These requests shall be submitted to the State agency in writing in sufficient time for the State agency to respond prior to the sponsor's advertising for bids. The State agency shall notify the sponsor in writing of its determination in a timely manner.

(4) Each State agency shall have a representative present at all food service management company procurement bid openings when sponsors are expected to receive more than $100,000 in Program payments.

(5) Copies of all contracts between sponsors and food service management companies, along with a certification of independent price determination, shall be submitted to the State agency prior to the beginning of Program operations. Sponsors shall also submit to the State agency copies of all bids received and their reason for selecting the food service management company chosen.

(6) All bids in an amount which exceeds the lowest bid shall be submitted to the State agency for approval before acceptance. All bids totaling $100,000 or more shall be submitted to the State agency for approval before acceptance. State agencies shall respond to a request for approval of such bids within 5 working days of receipt.

(7) Failure by a sponsor to comply with the provisions of this paragraph or § 225.15(m) shall be sufficient grounds for the State agency to terminate participation by the sponsor in accordance with § 225.18(b).

(i) *Meal pattern exceptions.* The State agency shall review and act upon requests for exceptions to the meal

pattern in accordance with the guidelines and limitations set forth in § 225.16.

§ 225.7 Program monitoring and assistance.

(a) *Training.* Prior to the beginning of Program operations, each State agency shall make available training in all necessary areas of Program administration to sponsor personnel, food service management company representatives, auditors, and health inspectors who will participate in the Program in that State. Prior to Program operations, the State agency shall ensure that the sponsor's supervisory personnel responsible for the food service receive training in all necessary areas of Program administration and operations. This training shall reflect the fact that individual sponsors or groups of sponsors require different levels and areas of Program training. State agencies are encouraged to utilize in such training, and in the training of site personnel, sponsor personnel who have previously participated in the Program. Training should be made available at convenient locations.

(b) *Program materials.* Each State agency shall develop and make available all necessary Program materials in sufficient time to enable applicant sponsors to prepare adequately for the Program.

(c) *Food specifications and meal quality standards.* With the assistance of the Department, each State agency shall develop and make available to all sponsors minimum food specifications and model meal quality standards which shall become part of all contracts between vended sponsors and food service management companies.

(d) *Program monitoring and assistance.* The State agency shall conduct Program monitoring and provide Program assistance according to the following provisions:

(1) *Pre-approval visits.* The State agency shall conduct pre-approval visits of sponsors and sites, as specified below, to assess the applicant sponsor's or site's potential for successful Program operations and to verify information provided in the application. The State agency shall visit prior to approval:

(i) All applicant sponsors which did not participate in the program in the prior year. However, if a sponsor is a school food authority, has been reviewed by the State agency under the National School Lunch Program during the preceding 12 months, and had no significant deficiencies noted in that review, a pre-approval visit may be conducted at the discretion of the State agency;

(ii) All applicant sponsors which, as a result of operational problems noted in the prior year, the State agency has determined need a pre-approval visit; and

(iii) All proposed nonschool sites with an expected average daily attendance of 300 children or more which did not participate in the Program in the prior year.

(2) *Sponsor and site reviews.* The State agency shall review sponsors and sites to ensure compliance with Program regulations, the Department's nondiscrimination regulations (7 CFR Part 15) and any other applicable instructions issued by the Department. In determining which sponsors or sites to review under this paragraph, the State agency shall, at a minimum, consider the sponsors' and sites' previous participation in the Program, their current and previous Program performance, and the results of any previous reviews of the sponsor and sites. Reviews shall be conducted as follows:

(i) State agencies shall conduct both a review of sponsor operations and review an average of 15 percent of the following sponsors' sites during their first four weeks of operation:

(A) Sponsors which have 10 or more sites and which did not operate the Program in the prior year; and

(B) Other sponsors of 10 or more sites which are determined by the State agency to need early reviews.

(ii) In addition, the State agency shall conduct the following reviews at least once during the Program:

(A) For all remaining sponsors with 10 or more sites, an average of at least 15 percent of their sites; and

(B) For 70 percent of sponsors with fewer than 10 sites, an average of at least 10 percent of their sites.

(3) *Follow-up reviews.* The State agency shall conduct follow-up reviews of sponsors and sites as necessary.

(4) *Monitoring system.* Each State agency shall develop and implement a monitoring system to ensure that sponsors, including site personnel, and the sponsor's food service management company, if applicable, immediately receive a copy of any review reports which indicate Program violations and which could result in a Program disallowance.

(5) *Records.* Documentation of Program assistance and the results of such assistance shall be maintained on file by the State agency.

(6) *Food service management company facility visits.* As a part of the review of any vended sponsor which contracts for the preparation of meals, the State agency shall inspect the food service management company's facilities. Each State agency shall establish an order of priority for visiting facilities at which food is prepared for the Program. The State agency shall respond promptly to complaints concerning facilities. If a food service management company fails to correct violations noted by the State agency during a review, the State agency shall notify the sponsor and the food service management company that reimbursement shall not be paid for meals prepared by the food service management company after a date specified in the notification. Funds provided for in § 225.5(f) may be used for conducting food service management company facility inspections.

(7) *Forms for reviews by sponsors.* Each State agency shall develop and provide monitor review forms to all approved sponsors. These forms shall be completed by sponsor monitors. The monitor review form shall include, but not be limited to, the time of the reviewer's arrival and departure, the site supervisor's signature, a certification statement to be signed by the monitor, the number of meals prepared or delivered, the number of meals served to children, the deficiencies noted, the corrective actions taken by the sponsor, and the date of such actions.

(8) *Statistical monitoring.* State agencies may use statistical monitoring procedures in lieu of the site monitoring requirements prescribed in paragraph (d)(2) of this section to accomplish the monitoring and technical assistance aspects of the Program. State agencies which use statistical monitoring procedures may use the findings in evaluating claims for reimbursement. Statistical monitoring may be used for some or all of a State's sponsors. Use of statistical monitoring does not eliminate the requirements for reviewing sponsors as specified in paragraph (d)(2) of this section.

(9) *Corrective actions.* Corrective actions which the State agency may take when Program violations are observed during the conduct of a review are discussed in § 225.11. The State agency shall conduct follow-up reviews as appropriate when corrective actions are required.

(e) *Other facility inspections and meal quality tests.* In addition to those inspections required by paragraph (d)(6) of this section, the State agency may also conduct, or arrange to have conducted: inspections of self-preparation and vended sponsors' food preparation facilities; inspections of food service sites; and meal quality tests. The procedures for carrying out

these inspections and tests shall be consistent with procedures used by local health authorities. For inspections of food service management companies' facilities not conducted by State agency personnel, copies of the results shall be provided to the State agency. The company and the sponsor shall also immediately receive a copy of the results of these inspections when corrective action is required. If a food service management company fails to correct violations noted by the State agency during a review, the State agency shall notify the sponsor and the food service management company that reimbursement shall not be paid for meals prepared by the food service management company after a date specified in the notification. Funds provided for in § 225.5(f) may be used for conducting these inspections and tests.

(f) *Financial management.* Each State agency shall establish a financial management system, in accordance with the Department's Uniform Financial Assistance Regulations (7 CFR Part 3015) and FNS guidance, to identify allowable Program costs and to establish standards for sponsor recordkeeping and reporting. The State agency shall provide guidance on these financial management standards to each sponsor.

(g) *Nondiscrimination.* (1) Each State agency shall comply with all requirements of Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and the Department's regulations concerning nondiscrimination (7 CFR Parts 15, 15a and 15b), including requirements for racial and ethnic participation data collection, public notification of the nondiscrimination policy, and reviews to assure compliance with such policy, to the end that no person shall, on the grounds of race, color, national origin, sex, age, or handicap, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under, the Program.

(2) Complaints of discrimination filed by applicants or participants shall be referred to FNS or the Secretary of Agriculture, Washington, DC 20250. A State agency which has an established grievance or complaint handling procedure may resolve sex and handicap discrimination complaints before referring a report to FNS.

§ 225.8 Records and reports.

(a) Each State agency shall maintain complete and accurate current accounting records of its Program operations which will adequately identify funds authorizations, obligations, unobligated balances, assets, liabilities, income, claims against sponsors and efforts to recover overpayments, and expenditures for administrative and operating costs. These records shall be retained for a period of three years after the date of the submission of the final Program Operations and Financial Status Report (SF–269), except that, if audit findings have not been resolved, the affected records shall be retained beyond the three year period until such time as any issues raised by the audit findings have been resolved. The State agency shall also retain a complete record of each review or appeal conducted, as required under § 225.13, for a period of three years following the date of the final determination on the review or appeal. Records may be kept in their original form or on microfilm.

(b) Each State agency shall submit to FNS a final report on the Summer Food Service Program Operations (FNS–418) for each month no more than 90 days following the last day of the month covered by the report. States shall not receive Program funds for any month for which the final report is not postmarked and/or submitted within this time limit unless FNS grants an exception. Upward adjustments to a State's report shall not be made after 90 days from the month covered by the report unless authorized by FNS. Downward adjustments shall always be made without FNS authorization, regardless of when it is determined that such adjustments need to be made. Adjustments to a State's report shall be reported to FNS in accordance with procedures established by FNS. Each State agency shall also submit to FNS a quarterly Financial Status Report (SF–269) on the use of Program funds. Such reports shall be submitted no later than 30 days after the end of each fiscal year quarter. Obligations shall be reported only for the fiscal year in which they occur. Action may be taken against the State agency, in accordance with § 225.5(a)(1), for failure to submit accurate and timely reports.

(c) The State agency must submit to FNS a final Financial Status Report no later than 120 days after the end of the fiscal year, on a form (SF–269) provided by FNS. Any requested increase in reimbursement levels for a fiscal year resulting from corrective action taken after submission of the final Program Operations and Financial Status Reports shall be submitted to FNS for approval. The request shall be accompanied by a written explanation of the basis for the adjustment and the actions taken to minimize the need for such adjustments in the future. If FNS approves such an increase, it will make payment, subject to availability of funds. Any reduction in reimbursement for that fiscal year resulting from corrective action taken after submission of the final fiscal year Program Operations and Financial Status Reports shall be handled in accordance with the provisions of § 225.12(d), except that amounts recovered may not be used to make Program payments.

(d) By October 15, each State agency shall submit to FNS, on a form provided by FNS, information concerning each food service management company which applied to the State agency for registration for that calendar year's Program. This information shall be made available to State agencies upon request in order to ensure that only qualified food service management companies contract for services in all States. FNS shall allow any food service management company to review the information concerning that company which was submitted to FNS in accordance with this paragraph.

§ 225.9 Program assistance to sponsors.

(a) *Start-up payments.* At their discretion, State agencies may make start-up payments to sponsors which have executed Program agreements. Start-up payments shall not be made more than two months before the sponsor is scheduled to begin food service operations and shall not exceed 20 percent of the sponsor's approved administrative budget. The amount of the start-up payment shall be deducted from the first advance payment for administrative costs or, if the sponsor does not receive advance payments, from the first administrative reimbursement.

(b) *Commodity assistance.* (1) Sponsors eligible to receive commodities under the Program include: self-preparation sponsors; sponsors which have entered into an agreement with a school or school food authority for the preparation of meals; and sponsors which are school food authorities and have competitively procured Program meals from the same food service management company from which they competitively procured meals for the National School Lunch Program during the last period in which school was in session. The State agency shall make available to these sponsors information on available commodities. Sponsors shall use in the Program food donated by the Department and accepted by sponsors.

(2) Not later than June 1 of each year, State agencies shall prepare a list of the sponsors which are eligible to receive commodities and the average daily number of eligible meals to be served by each of these sponsors. If the State agency does not handle the distribution of commodities donated by the Department, this list shall be forwarded to the agency of the State responsible for the distribution of commodities. The State agency shall be responsible for promptly revising the list to reflect additions or terminations of sponsors and for adjusting the average daily participation data as it deems necessary.

(c) *Advance payments.* At the sponsor's request, State agencies shall make advance payments to sponsors which have executed Program agreements in order to assist these sponsors in meeting operating costs and administrative expenses. For sponsors operating under a continuous school calendar, all advance payments shall be forwarded on the first day of each month of operation. Advance payments shall be made by the dates specified in paragraphs (c) (1) and (2) of this section for all other sponsors whose requests are received at least 30 days prior to those dates. Requests received less than 30 days prior to those dates shall be acted upon within 30 days of receipt. When making advance payments, State agencies shall observe the following criteria:

(1) *Operating costs.* (i) State agencies shall make advance payments for operating costs by June 1, July 15, and August 15. To be eligible for the second advance payment, the sponsor must have conducted training sessions covering Program duties and responsibilities for its own personnel and for site personnel. A sponsor shall not receive advance operating cost payments for any month in which it will participate in the Program for less than ten days.

(ii) To determine the amount of the advance payment to any sponsor, the State agency shall employ whichever of the following methods will result in the larger payment:

(A) The total operating costs paid to the sponsor for the same calendar month in the preceding year; or

(B) for vended sponsors, 50 percent of the amount determined by the State agency to be needed that month for meals, and, for self-preparation sponsors, 65 percent of the amount determined by the State agency to be needed that month for meals.

(2) *Administrative costs.* (i) State agencies shall make advance payments for administrative costs by June 1 and July 15. To be eligible for the second advance payment, the sponsor must certify that it is operating the number of sites for which the administrative budget was approved and that its projected administrative costs do not differ significantly from the approved budget. A sponsor shall not receive advance administrative costs payments for any month in which it will participate in the Program for less than 10 days. However, if a sponsor operates for less than 10 days in June but for at least 10 days in August, the second advance administrative costs payment shall be made by August 15.

(ii) Each payment shall equal one-third of the total amount which the State agency determines the sponsor will need to administer its program. For sponsors which will operate for 10 or more days in only one month and, therefore, will qualify for only one advance administrative costs payment, the payment shall be no less than one-half, and no more than two-thirds, of the total amount which the State agency determines the sponsor will need to administer its program.

(3) *Advance payment estimates.* When determining the amount of advance payments payable to the sponsor, the State agency shall make the best possible estimate based on the sponsor's request and any other available data. Under no circumstances may the amount of the advance payment for operating or administrative costs exceed the amount estimated by the State agency to be needed by the sponsor to meet operating or administrative costs, respectively.

(4) *Limit.* The sum of the advance operating and administrative costs payments to a sponsor for any one month shall not exceed $40,000 unless the State agency determines that a larger payment is necessary for the effective operation of the Program and the sponsor demonstrates sufficient administrative and managerial capability to justify a larger payment.

(5) *Deductions from advance payments.* The State agency shall deduct from either advance operating payments or advance administrative payments the amount of any previous payment which is under dispute or which is part of a demand for recovery under § 225.12.

(6) *Withholding of advance payments.* If the State agency has reason to believe that a sponsor will not be able to submit a valid claim for reimbursement covering the month for which advance payments have already been made, the subsequent month's advance payment shall be withheld until a valid claim is received.

(7) *Repayment of excess advance payments.* Upon demand of the State agency, sponsors shall repay any advance Program payments in excess of the amount cited on a valid claim for reimbursement.

(d) *Reimbursements.* Sponsors shall not be eligible for reimbursements for operating and administrative costs unless they have executed an agreement with the State agency. All reimbursements shall be in accordance with the terms of this agreement. Reimbursements shall not be paid for meals served at a site before the sponsor has received written notification that the site has been approved for participation in the Program. Income accruing to a sponsor's program shall be deducted from combined operating and administrative costs. The State agency may make full or partial reimbursement upon receipt of a claim for reimbursement, but shall first make any necessary adjustments in the amount to be paid. The following requirements shall be observed in submitting and paying claims:

(1) No reimbursement may be issued until the sponsor certifies that it operated all sites for which it is approved and that there has been no significant change in its projected administrative costs since its preceding claim and, for a sponsor receiving an advance payment for only one month, that there has been no significant change in its projected administrative costs since its initial advance administrative costs payment.

(2) Sponsors which operate less than 10 days in the final month of operations shall submit a combined claim for the final month and the immediate preceding month within 60 days of the last day of operation.

(3) The State agency shall forward reimbursements within 45 days of receiving valid claims. If a claim is incomplete or invalid, the State agency shall return the claim to the sponsor within 30 days with an explanation of the reason for disapproval. If the sponsor submits a revised claim, final action shall be completed within 45 days of receipt.

(4) Claims for reimbursement shall report information in accordance with the financial management system established by the State agency, and in sufficient detail to justify the reimbursement claimed and to enable the State agency to provide the Reports of Summer Food Service Program Operations required under § 225.8(b). In submitting a claim for reimbursement, each sponsor shall certify that the claim is correct and that records are available

to support this claim. Failure to maintain such records may be grounds for denial of reimbursement for meals served and/or administrative costs claimed during the period covered by the records in question. The costs of meals served to adults performing necessary food service labor may be included in the claim. Under no circumstances may a sponsor claim the cost of any disallowed meals as operating costs.

(5) A final Claim for Reimbursement shall be postmarked and/or submitted to the State agency not later than 60 days after the last day of the month covered by the claim. State agencies may establish shorter deadlines at their discretion. Claims not filed within the 60 day deadline shall not be paid with Program funds unless FNS determines that an exception should be granted. The State agency shall promptly take corrective action with respect to any Claim for Reimbursement as determined necessary through its claim review process or otherwise. In taking such corrective action, State agencies may make upward adjustments in Program funds claimed on claims filed within the 60 day deadline if such adjustments are completed within 90 days of the last day of the month covered by the claim and are reflected in the final Program Operations Report (FNS–418). Upward adjustments in Program funds claimed which are not reflected in the final FNS–418 for the month covered by the claim cannot be made unless authorized by FNS. Downward adjustments in Program funds claimed shall always be made without FNS authorization, regardless of when it is determined that such adjustments are necessary.

(6) Payments to a sponsor for operating costs shall equal the lesser of the following totals:

(i) The actual operating costs incurred by the sponsor; or

(ii) The sum of the amounts derived by multiplying the number of meals, by type, actually served under the sponsor's program to eligible children by the current rates for each meal type, as adjusted in accordance with paragraph (d)(8) of this section.

(7) Payments to a sponsor for administrative costs shall equal the lowest of the following totals:

(i) The amount estimated in the sponsor's approved administrative budget (taking into account any amendments);

(ii) The actual administrative costs incurred by the sponsor; or

(iii) The sum of the amounts derived by multiplying the number of meals, by type, actually served under the sponsor's program to eligible children by the current administrative rates for each meal type, as adjusted in accordance with paragraph (d)(8) of this section. Sponsors shall be eligible to receive additional administrative reimbursement for each meal served to participating children at rural or self-preparation sites, and the rates for such additional administrative reimbursement shall be adjusted in accordance with paragraph (d)(8) of this section.

(8) Each January 1, FNS shall publish a notice in the **Federal Register** announcing any adjustment to the reimbursement rates described in paragraphs (d) (6)(ii) and (7)(iii) of this section. Adjustments shall be based upon changes in the series for food away from home of the Consumer Price Index for all Urban Consumers since the establishment of the rates.

(9) Sponsors of camps shall be reimbursed only for meals served to children in camps whose eligibility for Program meals is documented.

(10) If a State agency has reason to believe that a sponsor or food service management company has engaged in unlawful acts in connection with Program operations, evidence found in audits, reviews, or investigations shall be a basis for nonpayment of the applicable sponsor's claims for reimbursement.

(e) The sponsor may claim reimbursement for any meals which are examined for meal quality by the State agency, auditors, or local health authorities and found to meet the meal pattern requirements.

(f) The sponsor shall not claim reimbursement for meals served to children at any site in excess of the site's approved level of meal service, if one has been established under § 225.6(d)(2). However, the total number of meals for which operating costs are claimed may exceed the approved level of meal service if the meals exceeding this level were served to adults performing necessary food service labor in accordance with paragraph (d)(4) of this section. In reviewing a sponsor's claim, the State agency shall ensure that reimbursements for second meals are limited to the percentage tolerance established in § 225.15(b)(4).

§ 225.10 Audits and management evaluations.

(a) *Audits.* State agencies shall arrange for audits of their own operations to be conducted in accordance with the Department's Uniform Federal Assistance Regulations (7 CFR Part 3015). Unless otherwise exempt, sponsors shall arrange for audits to be conducted in accordance with 7 CFR Part 3015. State agencies shall provide OIG with full opportunity to audit the State agency and sponsors. Each State agency shall make available its records, including records of the receipt and expenditure of funds, upon a reasonable request from OIG. While OIG shall rely to the fullest extent feasible upon State-sponsored audits of sponsors, it shall, when considered necessary, (1) make audits on a State-wide basis, (2) perform on-site test audits, and (3) review audit reports and related working papers of audits performed by or for State agencies.

(b) *Management evaluations.* (1) State agencies shall provide FNS with full opportunity to conduct management evaluations (including visits to sponsors) of all operations of the State agency. Each State agency shall make available its records, including records of the receipts and expenditures of funds, upon a reasonable request by FNS.

(2) The State agency shall fully respond to any recommendations made by FNSRO pursuant to the management evaluation.

(3) FNSRO may require the State agency to submit on 20 days notice a corrective action plan regarding serious problems observed during any phase of the management evaluation.

(c) *Disregards.* In conducting management evaluations or audits for any fiscal year, the State agency, FNS or OIG may disregard overpayment which does not exceed $100 or, in the case of State agency administered programs, does not exceed the amount established by State law, regulations or procedures as a minimum for which claims will be made for State losses generally. No overpayment shall be disregarded, however, when there are unpaid claims for the same fiscal year from which the overpayment can be deducted or when there is substantial evidence of violation of criminal law or civil fraud statutes.

§ 225.11 Corrective action procedures.

(a) *Purpose.* The provisions in this section shall be used by the State agency to improve Program performance.

(b) *Investigations.* Each State agency shall promptly investigate complaints received or irregularities noted in connection with the operation of the Program, and shall take appropriate action to correct any irregularities. The State agency shall maintain on file all evidence relating to such investigations and actions. The State agency shall inform the appropriate FNSRO of any suspected fraud or criminal abuse in the Program which would result in a loss or misuse of Federal funds. The

Department may make investigations at the request of the State agency, or where the Department determines investigations are appropriate.

(c) *Denial of applications and termination of sponsors.* Except as specified below, the State agency shall not enter into an agreement with any applicant sponsor identifiable through its corporate organization, officers, employees, or otherwise, as an institution which participated in any Federal child nutrition program and was seriously deficient in its operation of any such program. The State agency shall terminate the Program agreement with any sponsor which it determines to be seriously deficient. However, the State agency shall afford a sponsor reasonable opportunity to correct problems before terminating the sponsor for being seriously deficient. The State agency may approve the application of a sponsor which has been disapproved or terminated in prior years in accordance with this paragraph if the sponsor demonstrates to the satisfaction of the State agency that the sponsor has taken appropriate corrective actions to prevent recurrence of the deficiencies. Serious deficiencies which are grounds for disapproval of applications and for termination include, but are not limited to, any of the following:

(1) Noncompliance with the applicable bid procedures and contract requirements of Federal child nutrition program regulations;

(2) The submission of false information to the State agency;

(3) Failure to return to the State agency any start-up or advance payments which exceeded the amount earned for serving meals in accordance with this Part, or failure to submit all claims for reimbursement in any prior year, provided that failure to return any advance payments for months for which claims for reimbursement are under dispute from any prior year shall not be grounds for disapproval in accordance with this paragraph.

(4) Program violations at a significant proportion of the sponsor's sites. Such violations include, but are not limited to, the following:

(i) Noncompliance with the meal service time restrictions set forth at § 225.16(c);

(ii) Failure to maintain adequate records;

(iii) Failure to adjust meal orders to conform to variations in the number of participating children;

(iv) The simultaneous service of more than one meal to any child;

(v) The claiming of Program payments for meals not served to participating children;

(vi) Service of a significant number of meals which did not include required quantities of all meal components;

(vii) Excessive instances of off-site meal consumption;

(viii) Continued use of food service management companies that are in violation of health codes.

(d) *Meal service restriction.* With the exception for residential camps set forth at § 225.16(b)(1)(ii), the State agency shall restrict to one meal service per day:

(1) Any food service site which is determined to be in violation of the time restrictions for meal service set forth at § 225.16(c) when corrective action is not taken within a reasonable time as determined by the State agency; and

(2) All sites under a sponsor if more than 20 percent of the sponsor's sites are determined to be in violation of the time restrictions set forth at § 225.16(c). If this action results in children not receiving meals under the Program, the State agency shall make reasonable effort to locate another source of meal service for these children.

(e) *Meal disallowances.* (1) If the State agency determines that a sponsor has failed to plan, prepare, or order meals with the objective of providing only one meal per child at each meal service at a site, the State agency shall disallow the number of children's meals prepared or ordered in excess of the number of children served.

(2) If the State agency observes meal service violations during the conduct of a site review, the State agency shall disallow as meals served to children all of the meals observed to be in violation.

(3) The State agency shall also disallow children's meals which are in excess of a site's approved level established under § 225.6(d)(2).

(f) *Corrective action and termination of sites.* (1) Whenever the State agency observes violations during the course of a site review, it shall require the sponsor to take corrective action. If the State agency finds a high level of meal service violations, the State agency shall require a specific immediate corrective action plan to be followed by the sponsor and shall either conduct a follow-up visit or in some other manner verify that the specified corrective action has been taken.

(2) The State agency shall terminate the participation of a sponsor's site if the sponsor fails to take action to correct the Program violations noted in a State agency review report within the timeframes established by the corrective action plan.

(3) The State agency shall immediately terminate the participation of a sponsor's site if during a review it determines that the health or safety of the participating children is imminently threatened.

(4) If the site is vended, the State agency shall within 48 hours notify the food service management company providing meals to the site of the site's termination.

§ 225.12 Claims against sponsors.

(a) The State agency shall disallow any portion of a claim for reimbursement and recover any payment to a sponsor not properly payable under this Part, except as provided for in § 225.10(c). State agencies may consider claims for reimbursement not properly payable if a sponsor's records do not justify all costs and meals claimed. However, the State agency shall notify the sponsor of the reasons for any disallowance or demand for repayment.

(b) Minimum State agency collection procedures for unearned payments shall include:

(1) Written demand to the sponsor for the return of improper payments;

(2) If after 30 calendar days the sponsor fails to remit full payment or agree to a satisfactory repayment schedule, a second written demand for the return of improper payments, sent by certified mail, return receipt requested;

(3) If after 60 calendar days following the original written demand, the sponsor fails to remit full payment or agree to a satisfactory repayment schedule, a third written demand for the return of improper payments, sent by certified mail, return receipt requested; and

(4) If after 90 calendar days following the original written demand, the sponsor fails to remit full payment or agree to a satisfactory repayment schedule, the State agency shall refer the claim against the sponsor to the appropriate State or Federal authorities for pursuit of legal remedies.

(c) If FNS does not concur with the State agency's action in paying a sponsor or in failing to collect an overpayment, FNS shall notify the State agency of its intention to assert a claim against the State agency. In all such cases, the State agency shall have full opportunity to submit evidence concerning the action taken. The State agency shall be liable to FNS for failure to collect an overpayment unless FNS determines that the State agency has conformed with this Part in issuing the payment and has exerted reasonable efforts in accordance with paragraph (b) of this section to recover the improper payment.

(d) The amounts recovered by the State agency from sponsors may be

utilized to make Program payments to sponsors for the period for which the funds were initially available and/or to repay the State for any of its own funds used to make payments on claims for reimbursement. Any amounts recovered which are not so utilized shall be returned to FNS in accordance with the requirements of this Part.

§ 225.13 Appeal procedures.

(a) Each State agency shall establish a procedure to be followed by an applicant appealing: a denial of an application for participation; a denial of a sponsor's request for an advance payment; a denial of a sponsor's claim for reimbursement [except for late submission under § 225.9(d)(5)]; a State agency's refusal to forward to FNS an exception request by the sponsor for payment of a late claim or a request for an upward adjustment to a claim; a claim against a sponsor for remittance of a payment; the termination of the sponsor or a site; a denial of a sponsor's application for a site; a denial of a food service management company's application for registration; or the revocation of a food service management company's registration. Appeals shall not be allowed on decisions made by FNS with respect to late claims or upward adjustments under § 225.9(d)(5).

(b) At a minimum, appeal procedures shall provide that:

(1) The sponsor or food service management company be advised in writing of the grounds upon which the State agency based the action. The notice of action, which shall be sent by certified mail, return receipt requested, shall also state that the sponsor or food service management company has the right to appeal the State's action;

(2) The sponsor or food service management company be advised in writing that the appeal must be made within a specified time and must meet the requirements of paragraph (b)(4) of this section. The State agency shall establish this period of time at not less than one week nor more than two weeks from the date on which the notice of action is received;

(3) The appellant be allowed the opportunity to review any information upon which the action was based;

(4) The appellant be allowed to refute the charges contained in the notice of action either in person or by filing written documentation with the review official. To be considered, written documentation must be submitted by the appellant within seven days of submitting the appeal, must clearly identify the State agency action being appealed, and must include a photocopy of the notice of action issued by the State agency;

(5) A hearing be held by the review official in addition to, or in lieu of, a review of written information submitted by the appellant only if the appellant so specifies in the letter appealing the action. The appellant may retain legal counsel or may be represented by another person. Failure of the appellant's representative to appear at a scheduled hearing shall constitute the appellant's waiver of the right to a personal appearance before the review official, unless the review official agrees to reschedule the hearing. A representative of the State agency shall be allowed to attend the hearing to respond to the appellant's testimony and written information and to answer questions from the review official;

(6) If the appellant has requested a hearing, the appellant and the State agency shall be provided with at least 5 days advance written notice, sent by certified mail, return receipt requested, of the time and place of the hearing;

(7) The hearing be held within 14 days of the date of the receipt of the request for review, but, where applicable, not before the appellant's written documentation is received in accordance with paragraphs (b) (4) and (5) of this section;

(8) The review official be independent of the original decision-making process;

(9) The review official make a determination based on information provided by the State agency and the appellant, and on Program regulations;

(10) Within 5 working days after the appellant's hearing, or within 5 working days after receipt of written documentation if no hearing is held, the reviewing official make a determination based on a full review of the administrative record and inform the appellant of the determination of the review by certified mail, return receipt requested;

(11) The State agency's action remain in effect during the appeal process. However, participating sponsors and sites may continue to operate the Program during an appeal of termination, and if the appeal results in overturning the State agency's decision, reimbursement shall be paid for meals served during the appeal process. However, such continued Program operation shall not be allowed if the State agency's action is based on imminent dangers to the health or welfare of children. If the sponsor or site has been terminated for this reason, the State agency shall so specify in its notice of action; and

(12) The determination by the State review official is the final administrative determination to be afforded to the appellant.

(c) The State agency shall send written notification of the complete appeal procedures and of the actions which are appealable, as specified in paragraph (a) of this section, to each potential sponsor applying to participate and to each food service management company applying to register in accordance with § 225.6(g).

(d) A record regarding each review shall be kept by the State agency, as required under § 225.8(a). The record shall document the State agency's compliance with these regulations and shall include the basis for its decision.

Subpart C—Sponsor and Site Provisions

§ 225.14 Requirements for sponsor participation.

(a) *Applications.* Sponsors shall make written application to the State agency to participate in the Program. Such application shall be made on a timely basis in accordance with the requirements of § 225.6(b)(1).

(b) *Sponsor eligibility.* Applicants eligible to sponsor the Program include:

(1) Public or nonprofit private school food authorities;

(2) Public or nonprofit private residential summer camps;

(3) Units of local, municipal, county, or State governments; and

(4) Public or private nonprofit colleges or universities which are currently participating in the National Youth Sports Program.

(c) *General requirements.* No applicant sponsor shall be eligible to participate in the Program unless it:

(1) Demonstrates financial and administrative capability for Program operations and accepts final financial and administrative responsibility for total Program operations at all sites at which it proposes to conduct a food service;

(2) Has not been seriously deficient in operating the Program;

(3) Will conduct a regularly scheduled food service for children from areas in which poor economic conditions exist, or qualifies as a camp;

(4) Has adequate supervisory and operational personnel for overall monitoring and management of each site, including adequate personnel to conduct the visits and reviews required in §§ 225.15(d) (2) and (3);

(5) Provides an ongoing year-round service to the community which it proposes to serve under the Program, except as provided for in § 225.6(b)(4);

(6) Certifies that all sites have been visited and have the capability and the facilities to provide the meal service planned for the number of children anticipated to be served;

(7) Enters into a written agreement with the State agency upon approval of its application, as required in § 225.6(e).

(d) *Requirements specific to sponsor types.* (1) If the sponsor is not a camp, it shall provide documentation that its food service will serve children from an area in which poor economic conditions exist, as defined in § 225.2.

(2) If the sponsor is a camp, it shall certify that it will collect information on participants' eligibility to support its claim for reimbursement.

(3) If the sponsor administers the Program at sites at which summer school is in session, it shall ensure that such sites are open both to children enrolled in summer school and to all children residing in the area served by the site.

(4) Sponsors which are units of local, municipal, county or State government shall be approved to administer the Program only at sites over which they have direct operational control. Such operational control means that the sponsor shall be responsible for: (i) Managing site staff, including such areas as hiring, terminating and determining conditions of employment for site staff; and (ii) exercising management control over Program operations at sites throughout the period of Program participation by performing the functions specified in § 225.15.

§ 225.15 Management responsibilities of sponsors.

(a) *General.* (1) Sponsors shall operate the food service in accordance with: the provisions of this Part; any instructions and handbooks issued by FNS under this Part; and any instructions and handbooks issued by the State agency which are not inconsistent with the provisions of this Part.

(2) Sponsors shall not claim reimbursement under Parts 210, 215, 220, or 226 of this chapter, or any other Federally-funded program, for Program meals; *provided, however,* that funds provided under the National Youth Sports Program may be used to supplement reimbursement for Program meals. Sponsors which are school food authorities may use facilities, equipment and personnel supported by funds provided under this Part to support a nonprofit nutrition program for the elderly, including a program funded under the Older Americans Act of 1965 (42 U.S.C. 3001 *et seq.*).

(3) No sponsor may contract out for the management responsibilities of the Program described in this section.

(b) *Meal Ordering.* (1) Each sponsor shall, to the maximum extent feasible, utilize either its own food service facilities or obtain meals from a school food service facility. If the sponsor obtains meals from a school food service facility, the applicable requirements of this Part shall be embodied in a written agreement between the sponsor and the school.

(2) Upon approval of its application or any adjustment in the approved levels of meal service for its sites established under § 225.6(d)(2), vended sponsors shall inform their food service management company of the approved level at each site for which the food service management company will provide meals.

(3) Sponsors shall plan for and prepare or order meals on the basis of participation trends with the objective of providing only one meal per child at each meal service. The sponsor shall make the adjustments necessary to achieve this objective using the results from its monitoring of sites. For sites for which approved levels of meal service have been established in accordance with § 225.6(d)(2), the sponsor shall adjust the number of meals ordered or prepared with the objective of providing only one meal per child whenever the number of children attending the site is below the approved level. The sponsor shall not order or prepare meals for children at any site in excess of the site's approved level, but may order or prepare meals above the approved level if the meals are to be served to adults performing necessary food service labor in accordance with § 225.9(d)(4). Records of participation and of preparation or ordering of meals shall be maintained to demonstrate positive action toward meeting this objective.

(4) In recognition of the fluctuation in participation levels which makes it difficult to estimate precisely the number of meals needed and to reduce the resultant waste, sponsors may claim reimbursement for a number of second meals which does not exceed two percent of the number of first meals served to children for each meal type (i.e., breakfasts, lunches, supplements, or suppers) during the claiming period. The State agency shall disallow all claims for second meals if it determines that the sponsor failed to plan and prepare or order meals with the objective of providing only one meal per child at each meal service. Second meals shall be served only after all participating children at the site's meal service have been served a meal.

(c) *Records and claims.* (1) Sponsors shall maintain accurate records which justify all costs and meals claimed. Failure to maintain such records may be grounds for denial of reimbursement for meals served and/or administrative costs claimed during the period covered by the records in question. The sponsor's records shall be available at all times for inspection and audit by representatives of the Secretary, the Comptroller General of the United States, and the State agency for a period of three years following the date of submission of the final claim for reimbursement for the fiscal year.

(2) Sponsors shall submit claims for reimbursement in accordance with this Part. All final claims must be submitted to the State agency within 60 days following the last day of the month covered by the claim.

(d) *Training and monitoring.* (1) Each sponsor shall hold Program training sessions for its administrative and site personnel and shall allow no site to operate until personnel have attended at least one of these training sessions. Training of site personnel shall, at a minimum, include: the purpose of the Program; site eligibility; recordkeeping; site operations; meal pattern requirements; and the duties of a monitor. Each sponsor shall ensure that its administrative personnel attend State agency training provided to sponsors, and sponsors shall provide training throughout the summer to ensure that administrative personnel are thoroughly knowledgeable in all required areas of Program administration and operation and are provided with sufficient information to enable them to carry out their Program responsibilities. Each site shall have present at each meal service at least one person who has received this training.

(2) Sponsors shall visit each of their sites at least once during the first week of operation under the Program and shall promptly take such actions as are necessary to correct any deficiencies.

(3) Sponsors shall review food service operations at each site at least once during the first four weeks of Program operations, and thereafter shall maintain a reasonable level of site monitoring. Sponsors shall complete a monitoring form developed by the State agency during the conduct of these reviews.

(e) *Media Release.* Each sponsor shall annually announce in the media serving the area from which it draws its attendance the availability of free meals. Camps and other programs not eligible under § 225.2 (paragraph (a) of "areas in which poor economic

conditions exist") shall annually announce to all participants the availability of free meals for eligible children. All media releases issued by camps and other programs not eligible under § 225.2 (paragraph (a) of "areas in which poor economic conditions exist") shall include: the Secretary's family-size and income standards for reduced price school meals labelled "SFSP Income Eligibility Standards"; a statement that children who are members of food stamp households or AFDC assistance units are automatically eligible to receive free meal benefits at eligible program sites; and a statement that meals are available without regard to race, color, national origin, sex, age, or handicap.

(f) *Application for free Program meals.* (1) For the purpose of determining eligibility for free Program meals, camps and other programs not eligible under § 225.2 (paragraph (a) of "areas in which poor economic conditions exist") shall distribute applications for meals to parents or guardians of children enrolled in the program. The application, and any other descriptive material distributed to such persons, shall contain only the family-size and income levels for reduced price school meal eligibility with an explanation that households with incomes less than or equal to these values are eligible for free Program meals. Such forms and descriptive material may not contain the income standards for free meals in the National School Lunch or School Breakfast Programs. In addition, such forms and materials shall state that, if a child is a member of a food stamp household or an AFDC assistance unit, the child is automatically eligible to receive free program meal benefits, subject to completion of the application as described in paragraph (f)(3) of this section.

(2) Except as provided in paragraph (f)(3) of this section, the application shall contain a request for the following information: (i) The names of all children for whom application is made; (ii) the names of all other household members; (iii) the social security number of all adult household members or an indication that an adult household member does not possess one; (iv) the total current household income and the income received by each household member identified by source of income (such as earnings, wages, welfare, pensions, support payments, unemployment compensation, social security, and other cash income received or withdrawn from any other source, including savings, investments, trust accounts, and other resources); (v) a statement to the effect that, "In certain cases, foster children are eligible for free meals regardless of household income. If such children are living with you and you wish to apply for such meals, please contact us"; (vi) a statement which includes substantially the following information: "Section 9(d) of the National School Lunch Act requires that, unless you provide a food stamp or AFDC case number for your child, you must provide the social security numbers of all adult members of your household in order for your child to be eligible for free meals. Provision of these social security numbers is not mandatory, but failure to provide the numbers will result in a denial of the application for free meals. This notice must be brought to the attention of all household members whose social security numbers are disclosed. The social security numbers may be used to identify household members in carrying out efforts to verify the correctness of information stated on the application. These verification efforts may be carried out through program reviews, audits and investigations and may include contacting employers to determine income; contacting a food stamp or welfare office to determine current certification for receipt of food stamp or AFDC benefits; contacting the State employment security office to determine the amount of benefits received; and checking the documentation produced by household members to prove the amount of income received. These efforts may result in loss of benefits, administrative claims, or legal action if incorrect information is reported." State agencies and sponsors shall ensure that the notice complies with section 7 of Pub. L. 93–579 (Privacy Act of 1974). If a State or local agency plans to use the social security numbers in a manner not described by this notice, the notice shall be altered to include a description of these uses; and (vii) the signature of an adult member of the household immediately below a statement that the person signing the application certifies that all information furnished is true and correct; that the application is being made in connection with the receipt of Federal funds; that program officials may verify the information on the application; and that the deliberate misrepresentation of any of the information on the application may subject the applicant to prosecution under applicable State and Federal criminal statutes.

(3) If they so desire, households applying on behalf of children who are members of food stamp households or AFDC assistance units may apply for free meal benefits using the procedures described in this paragraph rather than the procedures described in paragraph (f)(2) of this section. Households applying on behalf of children who are members of food stamp households or AFDC assistance units shall be required to provide:

(i) The name(s) and food stamp or AFDC case number(s) of the child(ren) for whom automatic free meal eligibility is claimed; and

(ii) The signature of an adult member of the household below the statement described in paragraph (f)(2)(vii) of this section.

In accordance with paragraph (f)(2)(vi) of this section, if a food stamp or AFDC case number is provided, it may be used to verify the current food stamp or AFDC certification for the child(ren) for whom free meal benefits are being claimed. Whenever households apply for benefits for children not receiving food stamp or AFDC benefits, they must apply for those children in accordance with the requirements set forth in paragraph (f)(2) of this section.

(g) *Food service management companies.* (1) Failure by a sponsor to comply with the provisions of this section shall be sufficient grounds for the State agency to terminate that sponsor's participation in accordance with § 225.18.

(2) A sponsor may contract only with a food service management company which is registered with the State in which the sponsor will operate the Program, unless the food service management company is not required to register in accordance with § 225.6(g)(9).

(3) Any sponsor may contract with a food service management company to manage the sponsor's food service operations and/or for the preparation of unitized meals with or without milk or juice. Exceptions to the unitizing requirement may only be made in accordance with the provisions set forth at § 225.6(h)(3).

(4) Any vended sponsor shall be responsible for ensuring that its food service operation is in conformity with its agreement with the State agency and with all the applicable provisions of this Part.

(5) In addition to any applicable State or local laws governing bid procedures, and with the exceptions identified in this paragraph, each sponsor which contracts with a food service management company shall comply with the competitive bid procedures described in this paragraph. Sponsors which are schools or school food authorities and which have an exclusive

contract with a food service management company for year-round service, and sponsors whose total contracts with food service management companies will not exceed $10,000, shall not be required to comply with these procedures. These exceptions do not relieve the sponsor of the responsibility to ensure that competitive procurement procedures are followed in contracting with any food service management company. Each sponsor whose proposed contract is subject to the specific bid procedures set forth in this paragraph shall ensure, at a minimum, that:

(i) All proposed contracts are publicly announced at least once, not less than 14 calendar days prior to the opening of bids, and the announcement includes the time and place of the bid opening;

(ii) The bids are publicly opened;

(iii) The State agency is notified, at least 14 calendar days prior to the opening of the bids, of the time and place of the bid opening;

(iv) The invitation to bid does not specify a minimum price;

(v) The invitation to bid contains a cycle menu approved by the State agency upon which the bid is based;

(vi) The invitation to bid contains food specifications and meal quality standards approved by the State agency upon which the bid is based;

(vii) The invitation to bid does not specify special meal requirements to meet ethnic or religious needs unless such special requirements are necessary to meet the needs of the children to be served;

(viii) Neither the invitation to bid nor the contract provides for loans or any other monetary benefit or term or condition to be made to sponsors by food service management companies;

(ix) Nonfood items are excluded from the invitation to bid, except where such items are essential to the conduct of the food service;

(x) A copy of the food service management company registration determination issued by the State agency is submitted by the food service management company with its bid;

(xi) Copies of all contracts between sponsors and food service management companies, along with a certification of independent price determination, are submitted to the State agency prior to the beginning of Program operations;

(xii) Copies of all bids received are submitted to the State agency, along with the sponsor's reason for choosing the successful bidder;

(xiii) All bids in an amount which exceeds the lowest bid and all bids totaling $100,000 or more are submitted to the State agency for approval before acceptance. State agencies shall respond to a request for approval of such bids within 5 working days of receipt.

(6) Each food service management company which submits a bid over $100,000 shall obtain a bid bond in an amount not less than five (5) percent nor more than ten (10) percent, as determined by the sponsor, of the value of the contract for which the bid is made. A copy of the bid bond shall accompany each bid.

(7) Each food service management company which enters into a food service contract for over $100,000 with a sponsor shall obtain a performance bond in an amount not less than ten (10) percent nor more than twenty-five (25) percent of the value of the contract, as determined by the State agency, of the value of the contract for which the bid is made. Any food service management company which enters into more than one contract with any one sponsor shall obtain a performance bond covering all contracts if the aggregate amount of the contracts exceeds $100,000. Sponsors shall require the food service management company to furnish a copy of the performance bond within ten days of the awarding of the contract.

(8) Food service management companies shall obtain bid bonds and performance bonds only from surety companies listed in the current Department of the Treasury Circular 570. No sponsor or State agency shall allow food service management companies to post any "alternative" forms of bid or performance bonds, including but not limited to cash, certified checks, letters of credit, or escrow accounts.

(h) *Other responsibilities.* Sponsors shall comply with all of the meal service requirements set forth in § 225.16.

§ 225.16 Meal Service Requirements.

(a) *Sanitation.* Sponsors shall ensure that in storing, preparing, and serving food, proper sanitation and health standards are met which conform with all applicable State and local laws and regulations. Sponsors shall ensure that adequate facilities are available to store food or hold meals. Within two weeks of receiving notification of their approval, but in any case prior to commencement of Program operation, sponsors shall submit to the State agency a copy of their letter advising the appropriate health department of their intention to provide a food service during a specific period at specific sites.

(b) *Meal Services.* The meals which may be served under the Program are breakfast, lunch, supper, and supplemental food. No sponsor shall be approved to provide more than two services of supplemental food per day. A sponsor shall only be reimbursed for meals served in accordance with this section.

(1) *Camps.* Sponsors of camps shall only be reimbursed for meals served in camps to children from families which meet the eligibility standards for this Program. The sponsor shall maintain a copy of the documentation establishing the eligibility of each child receiving meals under the Program. Meal service at camps shall be subject to the following provisions:

(i) A camp may serve up to four meals each day;

(ii) Residential camps are not subject to the time restrictions for meal service set forth at paragraphs (c) (1) and (2) of this section; and

(iii) A camp shall be approved to serve these meals only if it has the administrative capability to do so; if the service period of the different meals does not coincide or overlap; and, where applicable, if it has adequate food preparation and holding facilities.

(2) *Sites other than camps and those serving migrant children.* Food service sites other than camps shall serve children in areas where poor economic conditions exist, as defined in § 225.2. A sponsor which operates in accordance with this Part shall receive reimbursement for all meals served to children at these sites. Food service sites other than camps and those which primarily serve migrant children may serve either:

(i) One meal each day, a breakfast, a lunch, or a supplement; or

(ii) Two meals each day, if one is a lunch and the other is a breakfast or a supplement.

(3) *Sites which serve children of migrant families.* Food service sites which primarily serve children from migrant families may be approved to serve up to four meals each day. These sites shall serve children in areas where poor economic conditions exist as defined in § 225.2. A sponsor which operates in accordance with this Part shall receive reimbursement for all meals served to children at these sites. A site which primarily serves children from migrant families shall only be approved to serve more than one meal each day if it has the administrative capability to do so; if the service period of the different meals does not coincide or overlap; and, where applicable, if it has adequate food preparation and holding facilities.

(c) *Time restrictions for meal service.* (1) Three hours shall elapse between the beginning of one meal service, including supplements, and the beginning of another, except that 4 hours shall elapse between the service of a lunch and

supper when no supplement is served between lunch and supper. The service of supper shall begin no later than 7 p.m., unless the State agency has granted a waiver of this requirement due to extenuating circumstances. These waivers shall be granted only when the State agency and the sponsor ensure that special arrangements shall be made to monitor these sites. In no case may the service of supper extend beyond 8 p.m. The time restrictions in this paragraph shall not apply to residential camps.

(2) The duration of the meal service shall be limited to two hours for lunch or supper and one hour for all other meals.

(3) Meals served outside of the period of approved meal service shall not be eligible for Program payments.

(4) Any permanent or planned changes in meal service periods must be approved by the State agency.

(5) Meals which are not prepared at the food service site shall be delivered no earlier than one hour prior to the beginning of the meal service (unless the site has adequate facilities for holding hot or cold meals within the temperatures required by State or local health regulations) and no later than the beginning of the meal service.

(6) The sponsor shall claim for reimbursement only the type(s) of meals for which it is approved under its agreement with the State agency.

(d) *Meal patterns.* The meal requirements for the Program are designed to provide nutritious and well-balanced meals to each child. Sponsors shall ensure that meals served meet all of the requirements. Except as otherwise provided in this section, the following tables present the minimum requirements for meals served to children in the Program.

Breakfast

(1) Children age 12 and up may be served adult-size portions based on the greater food needs of older boys and girls, but shall be served not less than the minimum quantities specified in this section. The minimum amount of food components to be served as breakfast are as follows:

Food components	Minimum amount
Vegetables and Fruits	
Vegetable(s) and/or fruit(s)	½ cup. [1]
or	
Full-strength vegetable or fruit juice or an equivalent quantity of any combination of vegetable(s), fruit(s), and juice.	½ cup (4 fl. oz.)
Bread and Bread Alternates [2]	
Bread	1 slice.
or	
Cornbread, biscuits, rolls, muffins, etc.	1 serving. [3]
or	
Cold dry cereal	½ cup. [4]
or	
Cooked cereal or cereal grains	½ cup.
or	
Cooked pasta or noodle products or an equivalent quantity of any combination of bread/bread alternate.	½ cup.
Milk [5]	
Milk, fluid	1 cup (½ pint, 8 fl. oz.)
Meat and Meat Alternates (Optional)	
Lean meat or poultry or fish	1 oz.
or	
Cheese	1 oz.
or	
Eggs	1 large egg.
or	
Cooked dry beans or peas	½ cup.
or	
Peanut butter or an equivalent quantity of any combination of meat/meat alternate.	2 tbsp.

[1] For the purposes of the requirement outlined in this table, a cup means a standard measuring cup.
[2] Bread, pasta or noodle products, and cereal grains (such as rice, bulgur, or corn grits) shall be whole-grain or enriched; cornbread, biscuits, rolls, muffins, etc., shall be made with whole-grain or enriched meal or flour; cereal shall be whole-grain, enriched or fortified.
[3] Serving sizes and equivalents will be in guidance materials to be distributed by FNS to State agencies.
[4] Either volume (cup) or weight (oz.), whichever is less.
[5] Milk shall be served as a beverage or on cereal, or used in part for each purpose.

Lunch or Supper

(2) The minimum amounts of food components to be served as lunch or supper are as follows:

Food components	Minimum amount
Meat and Meat Alternates	
Lean meat or poultry or fish	2 oz.
or	
Cheese	2 oz.
or	
Eggs	1 large egg
or	
Cooked dry beans or peas	½ cup [1]
or	
Peanut butter or soynut butter or other nut or seed butters.	4 tbsp.
or	
Peanuts or soynuts or tree nuts or seed [2].	1 oz. =50% [3]
or	
An equivalent quantity of any combination of the above meat/meat alternates.	
Vegetables and Fruit	
Vegetable(s) and/or fruit(s) [4]	¾ cup total
Bread and Bread Alternates [5]	
Bread	1 slice
or	
Cornbread, biscuits, rolls, muffins, etc.	1 serving [6]
or	
Cooked pasta or noodle products.	½ cup
or	
Cooked cereal grains or an equivalent quantity of any combination of bread/bread alternate.	½ cup
Milk	
Milk, fluid, served as a beverage.	1 cup (½ pint, 8 fl. oz.)

[1] For purposes of the requirements outlined in the table, a cup means a standard measuring cup.
[2] Tree nuts and seeds that may be used as meat alternates are listed in program guidance.
[3] No more than 50% of the requirement shall be met with nuts or seeds. Nuts or seeds shall be combined with another meat/meat alternate to fulfill the requirement. For purposes of determining combinations, 1 oz. of nuts or seeds is equal to 1 oz. of cooked lean meat, poultry or fish.
[4] Serve 2 or more kinds of vegetable(s) and or fruit(s) or a combination of both. Full strength vegetable or fruit juice may be counted to meet not more than one-half of this requirement.
[5] Bread, pasta or noodle products, and cereal grains (such as rice, bulgur, or corn grits) shall be whole-grain or enriched, cornbread, biscuits, rolls, muffins, etc., shall be made with whole-grain or enriched meal or flour, cereal shall be whole-grain or enriched or fortified.
[6] Serving sizes and equivalents will be in guidance materials to be distributed by FNS to State agencies.

Supplemental Food

(3) The minimum amounts of food components to be served as supplemental food are as follows. Select two of the following four components. (Juice may not be served when milk is served as the only other component.)

Food components	Minimum amount
Meat and Meat Alternates	
Lean meat or poultry or fish	1 oz.
or	
Cheese	1 oz.
or	
Eggs	1 large egg.
or	
Cooked dry beans or peas	½ cup [1].
or	
Peanut butter or soynut butter or other nut or seed butters.	2 tbsp.
or	
Peanuts or soynuts or tree nuts or seeds [2].	1 oz.
or	
An equivalent quantity of any combination of the above meat/meat alternates.	
Vegetables and Fruits	
Vegetable(s) and/or fruit(s)	¾ cup.
or	
Full-strength vegetable or fruit juice or an equivalent quantity of any combination of vegetable(s), fruit(s) and juice.	¾ cup (6 fl. oz.).
Bread and Bread Alternates [3]	
Bread	1 slice.
or	
Cornbread, biscuits, rolls, muffins, etc.	1 serving [4].
or	
Cold dry cereal	¾ cup or 1 oz. [5]
or	
Cooked cereal	½ cup.

Food components	Minimum amount
or	
Cooked cereal grains or an equivalent quantity of any combination of bread/bread alternate.	½ cup.
Milk [6]	
Milk, fluid	1 cup (½ pint, 8 fl. oz.

[1] For purposes of the requirements outlined in this table, a cup means a standard measuring cup.
[2] Tree nuts and seeds that may be used as meat alternates are listed in program guidance.
[3] Bread, pasta or noodle products, and cereal grains (such as rice, bulgur, or corn grits) shall be whole-grain or enriched; cornbread, biscuits, rolls, muffins, etc. shall be made with whole-grain or enriched meal or flour, cereal shall be whole-grain or enriched or fortified.
[4] Serving sizes and equivalents will be in guidance materials to be distributed by FNS to State agencies.
[5] Either volume (cup) or weight (oz.), whichever is less.
[6] Milk should be served as a beverage or on cereal, or used in part for each purpose.

(e) *Meat or meat alternate.* Meat or meat alternates served under the Program are subject to the following requirements and recommendations.

(1) The required quantity of meat or meat alternate shall be the quantity of the edible portion as served. These foods must be served in a main dish, or in a main dish and one other menu item.

(2) Cooked dry beans or peas may be used as a meat alternate or as a vegetable, but they may not be used to meet both component requirements in a meal.

(3) Textured vegetable protein products, cheese alternate products, and enriched macaroni with fortified protein may be used to meet part, but not all, of the meat/meat alternate requirement. The Department will provide guidance to State agencies on the part of the meat/meat alternate requirement which these foods may be used to meet. If enriched macaroni with fortified protein is served as a meat alternate it shall not be counted toward the bread requirement.

(4) If the sponsor believes that the recommended portion size of any meat or meat alternate is too large to be appealing to children, the sponsor may reduce the portion size of that meat or meat alternate and supplement it with another meat or meat alternate to meet the full requirement.

(5) Nuts and seeds and their butters listed in program guidance are nutritionally comparable to meat or other meat alternates based on available nutritional data. Acorns, chestnuts, and coconuts shall not be used as meat alternates due to their low protein content. Nut and seed meals or flours shall not be used as a meat alternate except as defined in this section under paragraph (e)(3) and in this Part under Appendix A: Alternate Foods for Meals. As noted in paragraph (d)(2) of this section, nuts or seeds may be used to meet no more than one-half of the meat/meat alternate requirement for lunch or supper. Therefore, nuts or seeds must be combined with another meat/meat alternate to fulfill the requirement. For the supplemental food pattern, nuts or seeds may be used to fulfill all of the meat/meat alternate requirement.

(f) *Exceptions to and Variations from the Meal Pattern*

(1) *Meals prepared in schools.* The State agency may allow sponsors which serve meals prepared in schools participating in the National School Lunch or School Breakfast Programs to substitute the meal pattern requirements of the regulations governing those programs (7 CFR Part 210 and 7 CFR Part 220, respectively) for the meal pattern requirements contained in this section.

(2) *Children under 6.* The State agency may authorize the sponsor to serve food in smaller quantities than are indicated in paragraph (d) of this section to children under six years of age if the sponsor has the capability to ensure that variations in portion size are in accordance with the age levels of the children served. Sponsors wishing to serve children under one year of age shall first receive approval to do so from the State agency. In both cases, the sponsor shall follow the age-appropriate meal pattern requirements contained in the Child Care Food Program regulations (7 CFR Part 226).

(3) *Statewide substitutions.* In American Samoa, Puerto Rico, Guam, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Northern Mariana Islands, the following variations from the meal requirements are authorized: a serving of a starchy vegetable—such as ufi, tanniers, yams, plantains, or sweet potatoes—may be substituted for the bread requirements.

(4) *Individual substitutions.* Substitutions may be made by sponsors in food listed in paragraph (d) of this section if individual participating children are unable, because of medical or other special dietary needs, to consume such foods. Such substitutions shall be made only when supported by a statement from a recognized medical authority which includes recommended alternate foods. Such statement shall be kept on file by the sponsor.

(5) *Special variations.* FNS may approve variations in the food components of the meals on an experimental or a continuing basis for any sponsor where there is evidence that such variations are nutritionally sound and are necessary to meet ethnic, religious, economic, or physical needs.

(6) *Temporary unavailability of milk.* If emergency conditions prevent a sponsor normally having a supply of milk from temporarily obtaining milk deliveries, the State agency may approve the service of breakfasts, lunches or suppers without milk during the emergency period.

(7) *Continuing unavailability of milk.* The inability of a sponsor to obtain a supply of milk on a continuing basis shall not bar it from participation in the Program. In such cases, the State agency may approve service of meals without milk, provided that an equivalent amount of canned, whole dry or nonfat dry milk is used in the preparation of the milk components set forth in paragraph (d) of this section. In addition, the State agency may approve the use of nonfat dry milk in meals served to children participating in activities which make the service of fluid milk impracticable, and in locations which are unable to obtain fluid milk. Such authorization shall stipulate that nonfat dry milk be reconstituted at normal dilution and under sanitary conditions consistent with State and local health regulations.

(8) *Additional foods.* To improve the nutrition of participating children, additional foods may be served with each meal.

Subpart D—General Administrative Provisions

§ 225.17 Procurement standards.

(a) State agencies and sponsors shall comply with the standards prescribed in the Department's Uniform Federal Assistance Regulations at 7 CFR Part 3015, Subpart S, in the procurement of food, supplies, goods, and other services with Program payments.

(b) The State agency shall make available to sponsors information on 7 CFR Part 3015.

(c) Sponsors may use their own procurement procedures which reflect applicable State and local laws and regulations, provided that procurements made with Program funds conform with provisions of this section, as well as with procurement requirements which may be established by the State agency, with approval of FNS, to prevent fraud, waste, and Program abuse.

(d) The State agency shall ensure that all sponsors are aware of the following practices specified in 7 CFR Part 3015, with respect to minority business enterprises:

(1) Including qualified minority business enterprises on solicitation lists,

(2) Soliciting minority business enterprises whenever they are potential sources,

(3) When economically feasible, dividing total requirements into smaller tasks or quantities so as to permit maximum participation by minority business enterprises,

(4) Establishing delivery schedules which will assist minority business enterprises to meet deadlines, and

(5) Using the services and assistance of the Small Business Administration, and the Office of Minority Business Enterprise of the Department of Commerce as required.

§ 225.18 Miscellaneous administrative provisions.

(a) *Grant closeout procedures.* Grant closeout procedures for the Program shall be in accordance with the Department's Uniform Federal Assistance Regulations (7 CFR Part 3015), Subpart N.

(b) *Termination for cause.* (1) FNS may terminate a State agency's participation in the Program in whole, or in part, whenever it is determined that the State agency has failed to comply with the conditions of the Program. FNS shall promptly notify the State agency in writing of the termination and reason for the termination, together with the effective date, and shall allow the State 30 calendar days to respond. In instances where the State does respond, FNS shall inform the State of its final determination no later than 30 calendar days after the State responds.

(2) A State agency shall terminate a sponsor's participation in the Program by written notice whenever it is determined by the State agency that the sponsor has failed to comply with the conditions of the Program.

(3) When participation in the Program has been terminated for cause, any funds paid to the State agency or a sponsor or any recoveries by FNS from the State agency or by the State agency from a sponsor shall be in accordance with the legal rights and liabilities of the parties.

(c) *Termination for convenience.* FNS and the State agency may agree to terminate the State agency's participation in the Program in whole, or in part, when both parties agree that the continuation of the Program would not produce beneficial results commensurate with the further expenditure of funds. The two parties shall agree upon the termination conditions, including the effective date, and in the case of partial termination, the portion to be terminated. The State agency shall not incur new obligations for the terminated portion after the effective date, and shall cancel as many outstanding obligations as possible. The Department shall allow full credit to the State agency for the Federal share of the noncancellable obligation properly incurred by the State agency prior to termination. A State agency may terminate a sponsor's participation in the manner provided for in this paragraph.

(d) *Maintenance of effort.* Expenditure of funds from State and local sources for the maintenance of food programs for children shall not be diminished as a result of funds received under the Act and a certification to this effect shall become part of the agreement provided for in § 225.3(c).

(e) *Program benefits.* The value of benefits and assistance available under the Program shall not be considered as income or resources of recipients and their families for any purpose under Federal, State or local laws, including, but not limited to, law relating to taxation, welfare, and public assistance programs.

(f) *State requirements.* Nothing contained in this Part shall prevent a State agency from imposing additional operating requirements which are not inconsistent with the provisions of this part, provided that such additional requirements shall not deny the Program to an area in which poor economic conditions exist, and shall not result in a significant number of needy children not having access to the Program. Prior to imposing any additional requirements, the State agency must receive approval from FNSRO.

(g) *Fraud penalty.* Whoever embezzles, willfully misapplies, steals, or obtains by fraud any funds, assets, or property that are the subject of a grant or other form of assistance under this Part, whether received directly or indirectly from the Department, or whoever receives, conceals, or retains such funds, assets, or property to his use or gain, knowing such funds, assets, or property have been embezzled, willfully misapplied, stolen or obtained by fraud shall, if such funds, assets, or property are of the value of $100 or more, be fined not more than $100,000 or imprisoned not more than five years, or both, if such funds, assets, or property are of a value of less than $100, shall be fined not more than $1,000 or imprisoned for not more than one year, or both.

(h) *Claims adjustment authority.* The Secretary shall have the authority to determine the amount of, to settle, and to adjust any claim arising under the Program, and to compromise or deny such claim or any part thereof. The Secretary shall also have the authority to waive such claims if the Secretary determines that to do so would serve the purposes of the Program. This provision shall not diminish the authority of the Attorney General of the United States under section 516 of Title 28, U.S. Code, to conduct litigation on behalf of the United States.

§ 225.19 Regional office addresses.

Persons desiring information concerning the Program may write to the appropriate State agency or Regional Office of FNS as indicated below:

(a) In the State of Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, and Vermont: Northeast Regional Office, FNS, U.S. Department of Agriculture, 10 Causeway Street, Boston, MA 02222–1065.

(b) In the States of Delaware, District of Columbia, Maryland, New Jersey, Pennsylvania, Puerto Rio, Virginia, Virgin Islands, and West Virginia: Mid-Atlantic Regional Office, FNS, U.S. Department of Agriculuture, Corporate Boulevard CN–02150, Trenton, NJ 08650.

(c) In the States of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee: Southeast Regional Office, FNS, U.S. Department of Agriculture, 1100 Spring Street, NW., Atlanta, GA 30367.

(d) In the States of Illinois, Indiana, Michigan, Minnesota, Ohio and Wisconsin: Midwest Regional Office, FNS, U.S. Department of Agriculture, 50 E. Washington Street, Chicago, IL 60602.

(e) In the States of Arkansas, Louisiana, New Mexico, Oklahoma and Texas: Southwest Regional Office, FNS, U.S. Department of Agriculture, 1100 Commerce Street, Room 5–C–30, Dallas, TX 75242.

(f) In the States of Colorado, Iowa, Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah and Wyoming: Mountain Plains Regional Office, FNS, U.S. Department of Agriculture, 1244 Speer Boulevard, Suite 903, Denver, CO 80204.

(g) In the States of Alaska, American Samoa, Arizona, California, Guam, Hawaii, Idaho, Nevada, Oregon, Trust Territory of the Pacific Islands, the North Mariana Islands, and Washington: Western Regional Office, FNS, U.S. Department of Agriculture, 550 Kearney Street, Room 400, San Francisco, CA 94108.

§ 225.20 Information collection/recordkeeping—OMB assigned control numbers.

Section where requirements are described		Current OMB control number
1988 regulations	1989 regulations	
225.3(b)	225.3(b)	0584-0057
225.5(b)	225.9(b)(2)	0584-0057
225.6(a)	225.4(a)	0584-0057
225.7(k)	225.6(b)(2)	0584-0057
225.8(a)	225.6(c)(1)	0584-0017

Section where requirements are described		Current OMB control number
1988 regulations	1989 regulations	
225.8(b)	225.6(e)	0584-0057
225.9 (a), (d), (f), (g).	225.6(a)(2), 225.7 (c), (e), (f).	0584-0057
225.9(e)	225.7(d)	0584-0023
225.10(a)	225.8(a)	0584-0280
225.10(b)	225.8(b)	0584-0057
225.11(c)	225.9(d)	0584-0041
225.12(a)	225.10(a)	0584-0057
225.14(a)	225.12(a)	0584-0057
225.15(a)	225.13(a)	0584-0057
225.16 (a), (c), (e), (i).	225.6(g), 225.6(h) (2), (3), (5).	0584-0057
225.16(c)(6)	225.6(g)(3)	0584-0061
225.17	225.17	0584-0057
225.18(f)	225.16(b)	0584-0280
225.19(f)	225.15(c)(1)	0584-0280
225.21(a)(b)	225.6(c)	0584-0057
225.21(b)(4)	225.6(c)	0584-0280
225.22(b)(2)	225.18(b)(2)	0584-0057

Appendix A to Part 225—Alternate Foods for Meals

Vegetable Protein Products

1. Schools, institutions, and service institutions may use a vegetable protein product, defined in paragraph 2, as a food component meeting the meal requirements specified in § 210.10, § 225.16 or § 226.20 under the following terms and conditions:

(a) The vegetable protein product must be prepared in combination with raw or cooked meat, poulty or seafood and shall resemble, as well as substitute in part for, one of these major protein foods. "Substitute" refers to a vegetable protein product whose presence in another food results in the presence of a smaller amount of meat, poultry or seafood than is customarily expected or than appears to be present in that food. Examples of items in which a vegetable protein product may be used include, but are not limited to, beef patties, beef crumbles, pizza topping, meat loaf, meat sauce, taco filling, burritos, and tuna salad.

(b) Vegetable protein products may be used in the dry form (nonhydrated), partially hydrated or fully hydrated form in combination with meat, poultry or seafood. The moisture content of the fully hydrated vegetable protein product shall be such that the mixture will have a minimum of 18 percent protein by weight or equivalent amount for the dry or partially hydrated form (based on the level that would be provided if the product were fully hydrated).

(c) The quantity, by weight, of the fully hydrated vegetable protein product must not exceed 30 parts to 70 parts meat, poultry or seafood on an uncooked basis. The quantity by weight of the dry or partially hydrated vegetable protein product must not exceed a level equivalent to the amount (dry weight) used in the fully hydrated product at the 30 percent level of substitution. The dry or partially hydrated product's replacement of meat, poultry or seafood will be based on the level of substitution it would provide if it were fully hydrated.

(d) A vegetable protein product may be used to satisfy the meat/meat alternative requirement when combined with meat, poultry or seafood and when it meets the other requirements of this section. The combination of the vegetable protein product and meat, poultry or seafood may meet all or part of the meat/meat alternate requirement specified in § 210.10, § 225.16 or § 226.20.

(e) The contribution vegetable protein products make toward the meat/meat alternate requirement specified in § 210.10, § 225.16, and § 226.20 shall be determined on the basis of the preparation yield of the meat, poultry or seafood with which it is combined. When computing the preparation yield of a product containing meat, poultry or seafood and vegetable protein product, the vegetable protein product shall be evaluated as having the same preparation yield that is applied to the meat, poultry or seafood it replaces.

(f) When vegetable protein products are served in a meal with other alternate food authorized in Appendix A, each individual alternate food shall be used as specifically directed.

2. A vegetable protein product to be used to resemble, and substitute in part for, meat, poultry or seafood, as specified in paragraph 1, must meet the following criteria:

(a) The vegetable protein product (substitute food) shall contain one or more vegetable protein products which are defined as follows:

(1) Vegetable (plant) protein products are foods which are processed so that some portion of the nonprotein constituents of the vegetable is removed. These vegetable protein products are safe and suitable edible products produced from vegetable (plant) sources including, but not limited to, soybeans, peanuts, wheat, and corn.

(b) The types of vegetable protein products described in paragraph 2(a)(1) of this appendix shall include flour, concentrate, and isolate as defined below:

(1) When a product contains less than 65 percent protein by weight calculated on a moisture-free basis excluding added flavors, colors, or other added substances it is a "_____ flour", the blank to be filled with the name of the source of the protein, e.g., "soy" or "peanut".

(2) When a product contains 65 percent or more but less than 90 percent protein by weight calculated on a moisture-free basis excluding added flavors, colors, or other added substances, it is a "_____ protein concentrate", the blank to be filled with the name of the source of the protein, e.g., "soy" or "peanut".

(3) When a product contains 90 percent or more protein by weight calculated on a moisture-free basis excluding added flavors, colors or other added substances, it is a "_____ protein isolate" or "_____ isolated protein," the blank to be filled in with the name of the source of the protein, e.g., "soy" or "peanut".

(c) Compliance with the moisture and protein provisions of paragraph 2(b) (1), (2), and (3) of this appendix shall be determined by the appropriate methods described in "Official Methods of Analysis of the Association of Official Analytical Chemists" (14th edition, 1984).

(d) Vegetable protein products which are used to resemble, and substitute in part for, meat, poultry or seafood shall be labeled in conformance with the following:

(1) The common or usual names for a vegetable protein product used to resemble, and substitute in part for, meat, poultry or seafood shall include the term "vegetable protein product" and may include the term "textured" or "texturized" and/or a term such as "granules" when such term is appropriate. The term "plant" may be used in the name in lieu of the term "vegetable"; and

(2) The vegetable protein products used as ingredients in the substitute food shall be listed by source (e.g. soy or peanut) and product type (e.g., flour, concentrate, isolate) in the ingredient state of the label. Product type(s) listed shall comply with the appropriate definition(s) set forth in paragraph 2(b) (1), (2) and (3), and may include a term which accurately describes the physical form of the product (e.g., "granules") when such term is appropriate.

(e) Vegetable protein products which are used to resemble, and substitute in part for, meat, poultry or seafood shall meet the following nutritional specifications:

(1) The biological quality of the protein in the vegetable protein product shall be at least 80 percent that of casein, such percentage to be determined by performing a Protein Efficiency Ratio (PER) assay unless FNS grants an exception to the PER by approving an alternate test;

(2) The vegetable protein product shall contain at least 18 percent protein by weight when hydrated or formulated to be used in combination with meat, poultry or seafood. ("When hydrated or formulated" refers to a dry vegetable protein product and the amount of water, fat or oil, colors, flavors or any other substances which have been added in order to make the resultant mixture resemble that meat, poultry or seafood);

(3) The vegetable protein produce must contain the following levels of nutrients per gram of protein:

Nutrient	Amount
Vitamin A (IU)	13
Thiamine (milligrams)	0.02
Riboflavin (milligrams)	.01
Niacin (milligrams)	.3
Panthothenic acid (milligrams)	.04
Vitamin B6 (milligrams)	.02
Vitamin B12 (micrograms)	.1
Iron (milligrams)	.15
Magnesium (milligrams)	1.15
Zinc (milligrams)	.5
Copper (micrograms)	24
Potassium (milligrams)	17

(4) Compliance with the nutrient provisions set forth in paragraph 2(e) (1), (2) and (3) of this appendix shall be determined by the appropriate methods described in "Official Methods of Analysis of the Association of Official Analytical Chemists" (latest edition).

(f) Vegetable protein products to be used in the child nutrition programs to resemble, and substitute in part for, meat, poultry or seafood that comply with the labeling and nutritional specifications set forth in paragraph 2(d) (1) and (2) and paragraph 2(e) (1), (2) and (3) shall bear a label containing the following statement: "This product meets USDA–FNS requirements for use in meeting a

portion of the meat/meat alternate requirement of the child nutrition programs." This statement shall appear on the principal display panel area of the package.

(g) It is recommended that, for vegetable protein products to be used to resemble, and substitute in part for, meat, poultry or seafood and labeled as specified in paragraph 2(f) of this appendix, manufacturers provide information on the percent protein contained in the dry vegetable protein product (on an as is basis).

(h) It is recommended that for a vegetable protein product mix, manufacturers provide information on (1) the amount by weight of dry vegetable protein product in the package, (2) hydration instructions, and (3) instructions on how to combine the mix with meat, poultry or seafood. A vegetable protein product mix is defined as a dry product containing vegetable protein products that comply with the labeling and nutritional specifications set forth in paragraphs 2(d) (1) and (2) and paragraph 2(e) (1), (2) and (3) along with substantial levels (more than 5 percent) of seasonings, bread crumbs, flavorings, etc.

3. Schools, institutions, and service institutions may use a commercially prepared meat, poultry or seafood product combined with vegetable protein products to meet all or part of the meat/meat alternate requirement specified in § 210.10, § 225.16 or § 226.20 if the product bears a label containing the statement: "This item contains vegetable protein product(s) which is authorized as an alternate food in the child nutrition programs" (outlined in paragraph 2 of this appendix). This would designate that the vegetable protein product used in the formulation of the meat, poultry or seafood item complies with the naming and nutritional specifications set forth in paragraph 2 of this appendix. The presence of this label does not ensure the proper level of hydration, ratio of substitution nor the contribution that the product makes toward meal pattern requirements for the child nutrition programs.

Appendix B to Part 225—(Reserved)

Appendix C to Part 225—Child Nutrition (CN) Labeling Program

1. The Child Nutrition (CN) Labeling Program is a voluntary technical assistance program administered by the Food and Nutrition Service (FNS) in conjunction with the Food Safety and Inspection Service (FSIS) and Agricultural Marketing Service (AMS) of the U.S. Department of Agriculture (USDA), and National Marine Fisheries Service of the U.S. Department of Commerce (USDC) for the Child Nutrition Programs. This program essentially involves the review of a manufacturer's recipe or product formulation to determine the contribution a serving of a commercially prepared product makes toward meal pattern requirements and a review of the CN label statement to ensure its accuracy. CN labeled products must be produced in accordance with all requirements set forth in this rule.

2. Products eligible for CN labels are as follows:

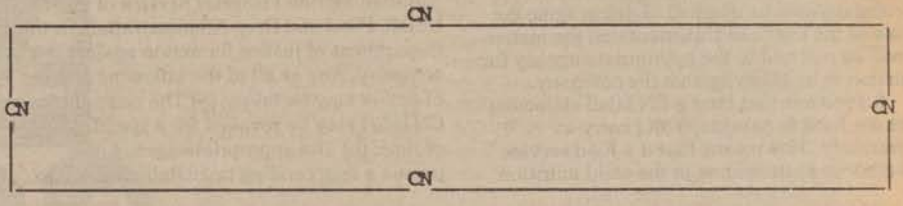
(a) Commercially prepared food products that contribute significantly to the meat/meat alternate component of meal pattern requirements of 7 CFR 210.10, 225.16, and 226.20 and are served in the main dish.

(b) Juice drinks and juice drink products that contain a minimum of 50 percent full strength juice by volume.

3. For the purpose of this appendix the following definitions apply:

(a) "CN label" is a food product label that contains a CN label statement and CN logo as defined in paragraph 3(b) and (c) below.

(b) The "CN logo" (as shown below) is a distinct border which is used around the edges of a "CN label statement" as defined in paragraph 3(c).



(c) The "CN label statement" includes the following:

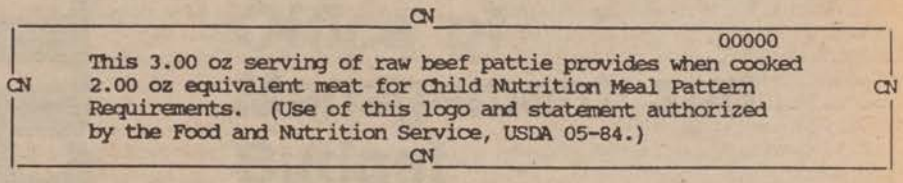
(1) The product identification number (assigned by FNS);

(2) The statement of the product's contribution toward meal pattern requirements of 7 CFR 210.10, 220.8, 225.16, and 226.20. The statement shall identify the contribution of a specific portion of a meat/meat alternate product toward the meat/meat alternate, bread/bread alternate, and/or vegetable/fruit component of the meal pattern requirements. For juice drinks and juice drink products the statement shall identify their contribution toward the vegetable/fruit component of the meal pattern requirements.

(3) Statement specifying that the use of the CN logo and CN statement was authorized by FNS, and

(4) The approval date.

For example:



(d) "Federal inspection" means inspection of food products by FSIS, AMS or USDC.

4. Food processors or manufacturers may use the CN label statement and CN logo as defined in paragraph 3 (b) and (c) under the following terms and conditions:

(a) The CN label must be reviewed and approved at the national level by the Food and Nutrition Service and appropriate USDA or USDC Federal agency responsible for the inspection of the product.

(b) The CN labeled product must be produced under Federal inspection by USDA or USDC. The Federal inspection must be performed in accordance with an approved partial or total quality control program or standards established by the appropriate Federal inspection service.

(c) The CN label statement must be printed as an integral part of the product label along with the product name, ingredient listing, the inspection shield or mark for the appropriate inspection program, the establishment number where appropriate and the manufacturer's or distributor's name and address.

(1) The inspection marking for CN labeled non-meat, non-poultry, and non-seafood products with the exception of juice drinks and juice drink products is established as follows:

INSPECTED BY THE
U.S. DEPT. OF AGRICULTURE
IN ACCORDANCE WITH
FNS REQUIREMENTS

(d) Yields for determining the product's contribution toward meal pattern requirements must be calculated using the Food Buying Guide for Child Nutrition Programs (Program Aid Number 1331).

5. In the event a company uses the CN logo and CN label statement inappropriately, the company will be directed to discontinue the use of the logo and statement and the matter will be referred to the appropriate agency for action to be taken against the company.

6. Products that bear a CN label statement as set forth in paragraph 3(c) carry a warranty. This means that if a food service authority participating in the child nutrition programs purchases a CN labeled product and uses it in accordance with the manufacturer's directions, the school or institution will not have an audit claim filed against it for the CN labeled product for noncompliance with the meal pattern requirements of 7 CFR 210.10, 220.8, 225.16, and 226.20. If a State or Federal auditor finds that a product that is CN labeled does not actually meet the meal pattern requirements claimed on the label, the auditor will report this finding to FNS. FNS will prepare a report on the findings and send it to the appropriate divisions of FSIS and AMS of the USDA, National Marine Fisheries Service of the USDC, Food and Drug Administration, or the Department of Justice for action against the company. Any or all of the following courses of action may be taken: (a) The company's CN label may be revoked for a specific period of time; (b) The appropriate agency may pursue a misbranding or mislabeling action against the company producing the product; (c) The company's name will be circulated to regional FNS offices; and (d) FNS will require the food service program involved to notify the State agency of the labeling violation.

7. FNS is authorized to issue operational policies, procedures, and instructions for the CN Labeling Program. To apply for a CN label and to obtain additional information on CN label application procedures, write to: CN Labels, U.S. Department of Agriculture, Food and Nutrition Service, Nutrition and Technical Services Division, 3101 Park Center Drive, Alexandria, Virginia 22302.

G. Scott Dunn,

Acting Administrator.

Date: April 20, 1989.

[FR Doc. 89-9956 Filed 4-26-89; 8:45 am]

BILLING CODE 3410-30-M

federal register

Thursday
April 27, 1989

Part III

Office of Management and Budget

Budget Rescissions and Deferrals; Notice

OFFICE OF MANAGEMENT AND BUDGET

Budget Rescissions and Deferrals

To the Congress of the United States:

In accordance with the Impoundment Control Act of 1974, I herewith report five revised deferrals of budget authority now totaling $649,663,811.

The deferrals affect programs in the Departments of Agriculture, Defense-Civil, Energy, Health and Human Services-Social Security Administration, and Justice.

The details of the deferrals are contained in the enclosed report.

George Bush

The White House,
April 18, 1989.

BILLING CODE 3110-01-M

1

CONTENTS OF SPECIAL MESSAGE
(in thousands of dollars)

DEFERRAL NO.	ITEM	BUDGET AUTHORITY*
	Department of Agriculture:	
	Forest Service:	
D89-4A	Cooperative work.....	508,000
	Department of Defense - Civil:	
D89-5A	Wildlife conservation.....	1,439
	Department of Energy:	
	Power Marketing Administration:	
D89-6A	Southwestern Power Administration, Operation and maintenance.....	8,400
	Department of Health and Human Services:	
	Social Security Administration:	
D89-7A	Limitation on administrative expenses (construction).....	6,824
	Department of Justice:	
	Office of Justice Programs:	
D89-8A	Crime victims fund.....	125,000
	Total, deferrals.....	649,664

* Detail does not add to total due to rounding.

SUMMARY OF SPECIAL MESSAGES
FOR FY 1989
(in thousands of dollars)

	RESCISSIONS	DEFERRALS
Fourth special message:		
New items.....	---	---
Revisions to previous special messages..	---	213,644
Effects of fourth special message.....	---	213,644
Amounts from previous special messages that are changed by this message (changes noted above).....	---	436,020
Subtotal, rescissions and deferrals.....	---	649,664
Amounts from previous special messages that are not changed by this message....	143,096	8,506,511
Total amount proposed to date in all special messages.....	143,096	9,156,175

D89-4A

Supplementary Report

Report Pursuant to Section 1014(c) of Public Law 93-344

This report updates Deferral No. D89-4 transmitted to Congress on September 30, 1988.

This revision to a deferral of the Department of Agriculture, Forest Service, Cooperative work account, increases the amount previously reported from $335,263,000 to $508,000,000. This increase of $172,737,000 is composed of repayments to this account of prior year advances to other accounts for firefighting costs that cannot be used this year.

Deferral No: D89-4A

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of Agriculture	**New budget authority.....*** $ 276,199,000 (16 U.S.C. 576b)
Bureau: Forest Service	**Other budgetary resources..*** 702,491,725
Appropriation title and symbol: Cooperative work 1/ 12X8028	**Total budgetary resources..*** 978,690,725
	Amount to be deferred: Part of year..... $ ____ Entire year.....* 508,000,000
OMB identification code: 12-8028-0-7-302	**Legal authority (in addition to sec. 1013):** [X] Antideficiency Act [ ] Other ____
Grant program: [ ] Yes [X] No	
Type of account or fund: [ ] Annual [ ] Multiple-year ____ (expiration date) [X] No-Year	**Type of budget authority:** [X] Appropriation [ ] Contract authority [ ] Other ____

*Justification: Funds are received from States, counties, timber sale operators, individuals, associations, and others. These funds are expended by the Forest Service as authorized by law and the terms of the applicable trust agreements. The work consists of protection and improvement of the National Forest System. The work benefits the national forest users, research investigations, reforestation, and administration of private forest lands. Much of the work for which deposits have been made cannot be done, or is not planned to be done, during the same year that the collections are being realized. Examples include areas where the timber operators have not completed all of the contract obligations during the year funds are deposited. As a result restoration efforts cannot begin, and the funds cannot be obligated this year. This deferral action is taken under the provisions of the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in FY 1988 (D88-5).
* Revised from previous report.

D89-5A

Supplementary Report

Report Pursuant to Section 1014(c) of Public Law 93-344

This report updates Deferral No. D89-5 transmitted to Congress on September 30, 1988.

This revision to a deferral of the Department of Defense - Civil, Wildlife conservation account increases the amount previously reported from $1,212,125 to $1,439,350. This increase of $227,225 results from the deferral of unanticipated actual balances carried over from FY 1988 and increased FY 1989 receipts.

Deferral No: D89-5A

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of Defense - Civil	**New budget authority.....*** (16 U.S.C. 670F) $ 2,100,000
Bureau: Wildlife Conservation, Military Reservations 1/	**Other budgetary resources.*** 1,735,244
Appropriation title and symbol: Wildlife Conservation, Army 21X5095; Wildlife Conservation, Navy 17X5095; Wildlife Conservation, Air Force 57X5095	**Total budgetary resources.*** 3,835,244
	Amount to be deferred: Part of year..... $; Entire year.....* 1,439,350
OMB identification code: 97-5095-0-2-303	**Legal authority (in addition to sec. 1013):** [X] Antideficiency Act; [ ] Other
Grant program: [ ] Yes [X] No	
Type of account or fund: [ ] Annual; [ ] Multiple-year (expiration date); [X] No-Year	**Type of budget authority:** [X] Appropriation; [ ] Contract authority; [ ] Other

Coverage:

Appropriation	Account Symbol	OMB Identification Code	Amount Deferred
*Wildlife Conservation, Army.....	21X5095	21-5095-0-2-303	$1,061,575
*Wildlife Conservation, Navy.....	17X5095	17-5095-0-2-303	136,947
*Wildlife Conservation, Air Force...	57X5095	57-5095-0-2-303	240,828
			1,439,350

***Justification:** These are permanent appropriations of receipts generated from hunting and fishing fees in accordance with the purpose of the law -- to carry out a program of natural resource conservation. These programs are carried out through cooperative plans agreed upon by the local representatives of the Secretary of Defense, the Secretary of the Interior, and the appropriate agency

1/ These accounts were the subject of a similar deferral in FY 1988 (D88-9B).
* Revised from previous report.

Deferral No: D89-5A

of the State in which the reservation is located. These funds are being deferred (1) until, pursuant to the authorizing legislation (16 U.S.C. 670f(a)), installations have accumulated funds over a period of time sufficient to fund a major project; (2) until individual installations have been designed and obtained approval for the project, and (3) because there is a seasonal relationship between the collection of fees and their subsequent expenditure, most of the fees are collected during the winter and spring months. Funds collected in a prior year are deferred in order to be available to finance the program during summer and fall months or in subsequent years. Additional amounts will be apportioned when projects are identified and project approval is obtained. This deferral is made under the provisions of the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

D89-6A

Supplementary Report

Report Pursuant to Section 1014(c) of Public Law 93-344

This report updates Deferral No. D89-6 transmitted to Congress on September 30, 1988.

This revision to a deferral of the Department of Energy's account for Operation and maintenance, Southwestern Power Administration, increases the amount previously reported from $2,800,000 to $8,400,000. This increase of $5,600,000 results from savings realized during 1988 due to lower costs to purchase power that increased the unobligated balances carried over from 1988 into 1989. These funds cannot be effectively used in 1989 due to continued low costs to purchase power.

Deferral No: D89-6A

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of Energy	New budget authority..... $ 15,389,000 (P.L. 100-371)
Bureau: Power Marketing Administration	Other budgetary resources..* 34,208,647
Appropriation title and symbol: Southwestern Power Administration, Operation and maintenance 1/ 89X0303	Total budgetary resources..* 49,597,647
	Amount to be deferred: Part of year..... $
	Entire year.....* 8,400,000
OMB identification code: 89-0303-0-1-271	Legal authority (in addition to sec. 1013): [X] Antideficiency Act
Grant program: [ ] Yes [X] No	[ ] Other
Type of account or fund: [ ] Annual	Type of budget authority: [X] Appropriation
[ ] Multiple-year (expiration date)	[ ] Contract authority
[X] No-Year	[ ] Other

*Justification: This account funds the activities of the Southwestern Power Administration (SWPA), an agency that markets wholesale hydroelectric power produced at Corps of Engineers dams in six southwestern states. SWPA activities also include construction, operation and maintenance of approximately 1,660 miles of transmission lines over which power is distributed to customers. The law requires SWPA to deliver power to its customers at the lowest cost consistent with sound business practice. Further, the law requires SWPA to recover all costs from its customers, thus mandating that SWPA carefully examine proposed costs to avoid unnecessary spending. In FY 1988, available funds were in excess of amounts required to purchase power and pay non-Federal utilities to deliver it because of operational changes. As a result, the level of unobligated funds carried into FY 1989 for purchasing power was higher than assumed when the FY 1989 Budget was prepared. The FY 1989 appropriations are sufficient to cover anticipated power and wheeling, construction and maintenance costs. There currently is no plan to use these funds in FY 1989, although the funds will be made available if a significant, unplanned need arises (such as an increase in power and wheeling costs). This deferral action is taken under the provisions of the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in FY 1988 (D88-16A).
* Revised from previous report.

D89-7A

Supplementary Report

Report Pursuant to Section 1014(c) of Public Law 93-344

This report updates Deferral No. D89-7 transmitted to Congress on September 30, 1988.

This revision to a deferral of the Department of Health and Human Services, Social Security Administration's Limitation on Administrative Expenses (Construction) account increases the amount previously reported from $6,744,607 to $6,824,461. This increase of $79,854 results from more unobligated funds becoming available at the end of FY 1988 than previously anticipated.

Deferral No: D89-7A

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of Health and Human Services	New budget authority..... $ _____ (P.L. _____)
Bureau: Social Security Administration	Other budgetary resources..* 7,456,461
Appropriation title and symbol: Limitation on administrative expenses (construction) 1/ 75X8704	Total budgetary resources..* 7,456,461
	Amount to be deferred: Part of year..... $ _____
	Entire year.....* 6,824,461
OMB identification code: 20-8007-0-6-651	Legal authority (in addition to sec. 1013): [X] Antideficiency Act
Grant program: [ ] Yes [X] No	[ ] Other _____
Type of account or fund:	Type of budget authority:
[ ] Annual	[X] Appropriation
[ ] Multiple-year _____ (expiration date)	[ ] Contract authority
[X] No-Year	[ ] Other _____

Justification: This account provides funding for construction and renovation of the Social Security Administration's (SSA) headquarters and field office buildings. The only costs in FY 1989 are for roof repair and replacement projects. It has been determined that obligational authority in the amount of this deferral is not needed at the present time. Some additional obligations will occur in FY 1990 for roof repair and replacement. Should new requirements arise, subsequent apportionments will include revisions to this deferral. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in FY 1988 (D88-10A).

* Revised from previous report.

Supplementary Report D89-8A

Report Pursuant to Section 1014(c) of Public Law 93-344

This report updates Deferral No. D89-8 transmitted to Congress on September 30, 1988.

This revision to a deferral of the Department of Justice - Crime victims fund account increases the amount previously reported from $90,000,000 to $125,000,000. This increase of $35,000,000 results from a reestimate of the funds to be collected in FY 1989.

Deferral No: D89-8A

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of Justice	**New budget authority.....*** $ 125,000,000 (P.L. 100-690)
Bureau: Office of Justice Programs	**Other budgetary resources...*** 114,567,566
Appropriation title and symbol: Crime victims fund 1/ 15X5041	**Total budgetary resources...*** 239,567,566
	Amount to be deferred: Part of year..... $ ____ Entire year.....* 125,000,000
OMB identification code: 15-5041-0-2-754	**Legal authority (in addition to sec. 1013):** [X] Antideficiency Act [ ] Other ____
Grant program: [X] Yes [ ] No	
Type of account or fund: [ ] Annual [ ] Multiple-year ____ (expiration date) [X] No-Year	**Type of budget authority:** [X] Appropriation [ ] Contract authority [ ] Other ____

Justification: This appropriation is a special fund which is credited with Federal criminal fines, forfeited appearance bonds, and penalties not to exceed $125 million each fiscal year. From these funds, grants are provided to states for crime victim compensation programs and crime victim assistance programs. Each state receives a small amount fixed by law plus additional amounts based on actual program performance. The carryover from FY 1988 will be obligated early in FY 1989. The estimated FY 1989 collections are deferred and will be obligated in FY 1990. This allows the Office of Justice Programs to know precisely how much money is available for award and avoid overobligating or underobligating fund collections. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in FY 1988 (D88-19).

* Revised from previous report.

[FR Doc. 89-10019 Filed 4-26-89; 8:45 am]
BILLING CODE 3110-01-C

Federal Register

Thursday
April 27, 1989

Part IV

Department of Education

34 CFR Part 300

Assistance to States for Education of Handicapped Children; Final Regulations

DEPARTMENT OF EDUCATION

34 CFR Part 300

RIN 1820-AA71

Assistance to States for Education of Handicapped Children

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations for the Assistance to States for Education of Handicapped Children program. The regulations are needed to implement the amendments to Part B of the Education of the Handicapped Act (Part B) that are included in the Education of the Handicapped Act Amendments of 1986 (1986 Amendments) and in the Handicapped Programs Technical Amendments of 1988 (1988 Amendments). These final regulations: require that State plans include sections dealing with interagency agreements and personnel standards; clarify the responsibility of educational and other agencies to provide special education and related services; add nonsupplanting requirements at the State level; permit the State to use additional Part B set-aside funds for monitoring and complaint investigations; alter program requirements for the Secretary of the Interior; and add technical amendments to the Part B procedures for waiving the supplement not supplant requirement, to the child count procedures, to the procedural safeguards, and to the formula for calculating State allocations.

EFFECTIVE DATE: The regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments, with the exception of §§ 300.152, 300.153, and 300.260. Sections 300.152, 300.153, and 300.260 will become effective after the information collection requirements contained in those sections have been submitted by the Department of Education to and approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Ms. Lucille Sleger, Division of Assistance to States, Office of Special Education Programs, Department of Education, 400 Maryland Avenue SW., (Switzer Building, Room 3622-MES 2720) Washington, DC 20202; Telephone: (202) 732-1104.

SUPPLEMENTARY INFORMATION: Part B of the Education of the Handicapped Act (20 U.S.C. 1411, *et seq.*), as amended, authorizes formula grants to States and, through States, to local educational agencies and intermediate educational units to assist them in the education of handicapped children. The purpose of the Education of the Handicapped Act is stated as follows:

> It is the purpose of this Act to assure that all handicapped children have available to them, within the time periods specified in section 612(2)(B), a free appropriate public education which emphasizes special education and related services designed to meet their unique needs, to assure that the rights of handicapped children and their parents or guardians are protected, to assist States and localities to provide for the education of all handicapped children, and to assess and assure the effectiveness of efforts to educate handicapped children. (20 U.S.C. 1400(c))

The 1986 Amendments amended Part B of the Education of the Handicapped Act. These final regulations implement the changes made to Part B by the 1986 Amendments. On March 14, 1988, the Secretary published a notice of proposed rulemaking for this part in the **Federal Register**, Vol. 53, No. 49 FR 8390. This notice of proposed rulemaking included a summary of the major issues in the proposed regulations. That summary addressed revisions to the Part B regulatory requirements that: (1) Revised supplanting requirements that require States to assure that Part B funds will not be used to supplant State, local and Federal funds (other than Part B funds); (2) added a new regulation for the development and implementation of interagency agreements; (3) added a new regulation stating that Part B funds shall not be construed to permit a State to reduce assistance or alter eligibility under programs supported by Federal Medicaid and Maternal and Child Health programs; (4) revised terms and conditions of grants to the Secretary of the Interior; (5) added a new requirement allowing State educational agencies (SEAs) to use their Part B set-aside funds to pay increased costs of State-level monitoring and complaint investigations; and (6) revised the child count requirements. The summary in the notice of proposed rulemaking also included a discussion of a proposed addition to the comment following § 300.552 that addressed the general requirements for educating preschool handicapped children in the least restrictive environment and new requirements for establishing State personnel standards. The summary appeared in the notice of proposed rulemaking on pages 8390 and 8391 as published in the **Federal Register** on March 14, 1988.

As a result of public comments, language is added to § 300.153 to clarify the personnel standards in States for individuals in a State who provide special education and related services under Part B. For the most part, the language in § 300.153 duplicates the language in the statute.

This program will enhance the family life of the participants through parental participation in each handicapped child's educational program.

Analysis of Comments and Changes

In response to the Secretary's invitation in the notice of proposed rulemaking, 832 parties submitted comments on the proposed regulations. In addition, as noted in the notice of proposed rulemaking, Part H of the Act contains a statutory provision for personnel standards that is virtually identical to the statutory provision in this part. As was indicated in the notice of proposed rulemaking for this part, the more than 1500 comments sent to the Department about the notice of proposed rulemaking for Part H of the Act that addressed the personnel standards provisions proposed for the Part H program also were taken into consideration in drafting the notice of proposed rulemaking and these final regulations for § 300.153. (*See* proposed

34 CFR 303 at 52 FR 44360, December 8, 1987.) Comments received on the notice of proposed rulemaking for the Preschool Grants for Handicapped Children Program (52 FR 44346, November 18, 1987) regarding the implementation of the least restrictive environment requirement for preschool aged children covered by Part B also were considered in preparing the final regulations. An analysis of these comments and a summary of substantive changes in the regulations since publication of the notice of proposed rulemaking follows.

Substantive issues are discussed under the section of the regulations to which they pertain. Minor changes made to the language published in the notice of proposed rulemaking—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

Section 300.150 State-Level Nonsupplanting

Comments: Several commenters argued that this section should be changed to specify that the required assurance applies only to Federal, State, and local funds under the direct control of the State educational agency. They argued that the requirement is not enforceable. Commenters stated that this section should be changed to require a description of the SEA's attempts to get non-educational agencies to pay for services required to meet the needs of handicapped children under this part. Some commenters argued that the Department should exempt programs and projects funded under the Chapter 1 State Operated and Supported Programs for Handicapped Children program from this requirement.

Discussion: Section 300.150 of the final regulations uses the language in the statute. The statute does not limit the applicability of this requirement to funds directly under the control of the State educational agency. The statutory nonsupplanting requirement applies to all Part B funds that are distributed in accordance with the statutory formula (20 U.S.C. 1411(d)) to local educational agencies or intermediate educational units. There is no provision for exempting Federal funds such as funds provided under the Chapter 1 State Operated and Supported Programs for Handicapped Children program from this requirement unless a waiver is granted in accordance with § 300.589. This nonsupplanting provision does not apply to Part B funds that are not distributed to local educational agencies or intermediate educational units pursuant to 20 U.S.C. 1411.

Changes: New language is added to the comment following § 300.150 to clarify that the State must assure that the requirements of this section are applied to all Part B funds that are distributed to local educational agencies and intermediate educational units under 20 U.S.C. 1411(d).

Section 300.152 Interagency Agreements

Comments: Several commenters felt that the Secretary should use only the statutory language in this section of the regulation. They felt that the requirement to have State educational agencies include in their State plans a description of the role each agency plays in providing or paying for special education and related service limits the flexibility of State educational agencies to provide or pay for services to children with handicaps because the State educational agency is committed to the projected plan that they submit to the Department as part of the State plan. During the fiscal year, particular circumstances may occur that require novel procedures not covered in the plan. One commenter asked if interagency agreements need to be part of the State plans. Other commenters stated that the Secretary should add requirements for involving local educational agencies in the development of interagency agreements and for timelines for reimbursements.

Discussion: The 1986 Amendments added a new State plan requirement to section 613 of the Act concerning the development and implementation of interagency agreements on financial responsibility for providing free appropriate public education for handicapped children. Because in the past, many States have experienced problems with coordination of responsibility for providing and paying for appropriate services for handicapped children, the Secretary believes that including a description in the State plan of the roles that agencies will play in providing and paying for appropriate services is necessary to implement this new statutory requirement. In order to develop these interagency agreements, the agencies involved will have to identify and agree upon their respective roles and shared responsibility to determine their reasonable proportional share of costs and to ensure that the EHA-B requirements are met. Monitoring reviews of participating States continue to show problems in the provision of free appropriate public education to children with handicaps because of the failure to make clear how children who are the responsibility of more than one agency will be served. The lack of clarity in allocation of fiscal responsibility among such agencies has resulted in situations where some children do not receive needed service, parents are charged for services that are a public responsibility, or litigation ensues because of multiagency disputes over financial responsibilities. The requirement for States to include this information in the State plan will obligate States to resolve any areas of ambiguity in allocation of responsibility among the various agencies and provide information to parents and the involved agencies about the availability of services and other resources. Including the actual interagency agreements in State plans however, seems unduly burdensome. States can amend the descriptions in their State plans to reflect any changes that may occur during the State plan period. The Secretary believes States should decide whether to include local educational agencies in the development of interagency agreements.

Changes: None.

Comments: One commenter asked the Secretary to require States to add a description of the procedures that educational agencies may use to secure reimbursement from agencies that are parties to an interagency agreement to their State plans.

Discussion: The Secretary believes that the development of these procedures is a State responsibility.

Changes: None.

Comments: One commenter asked if the State educational agency must develop agreements with local educational agencies.

Discussion: The preamble to the notice of proposed rulemaking included a discussion of the meaning of the phrase "other appropriate State and local agencies." The preamble to the notice of the proposed regulations stated that:

> Other appropriate agencies are all those State and local agencies other than the SEA that provide or pay for special education or related services for children with handicapping conditions. The regulations require the SEA to describe the role that each of those agencies will play in providing or paying for those services. As required by statute, the regulations also require that SEA policies and procedures provide for the development and implementation of interagency agreements that define the responsibilities of each agency and establish mechanisms for resolving interagency disputes. (**Federal Register**, Vol. 53, No. 49, 3/14/88, p. 8390).

There is no requirement for SEAs to develop separate agreements with LEAs to satisfy this requirement.

Changes: None.

Section 300.153 Personnel Standards

Comments: The majority of comments that the Department received in response to the notice of proposed rulemaking addressed this section of the proposed regulations. The following paragraphs summarize these comments, which are classified under the categories that follow. As noted in the preamble, the Secretary also considered concerns raised by commenters about the section dealing with personnel standards in the notice of proposed rulemaking for Part H of the Act.

Appropriate Qualifications of Personnel

Numerous commenters were concerned that hiring individuals who meet the licensure requirements established for a profession or discipline, or the highest State standard for a profession or discipline, would not assure that these individuals would be appropriately trained to work in a school setting. These commenters stated that:

- Related service providers who meet the highest requirements in the State may not have appropriate special education training or instructional skills since these may not be required for licensure or certification.
- The phrase "highest standard" should be changed to read "highest standard appropriate to an educational setting."
- Implementing the "highest requirement" standard would not achieve uniform standards across States, if this is the intent behind the statute.
- Multiple levels of supervision exist in a school setting in order to provide appropriate supervision for school personnel. Because such supervision is not available outside of the schools, individuals in private practice may require advanced degrees and additional training. A high level of competence can be maintained in a school setting because of this formal supervision; thus, current certification standards are appropriate.
- The unintended result of this requirement may be increased specialization which results in less ability to work with regular educators and students in the regular classroom environment.
- Licensure can be used as a barrier to practice and interfere with professional growth.
- The Secretary should recognize the differences in school psychology and school social work as distinct from psychology and social work when considering the highest requirements for training.
- Requiring personnel to meet appropriate qualifications will not necessarily enhance the quality of services available to handicapped children.

Impact on Individuals Currently Working With Handicapped Children

Numerous commenters felt that the personnel standards would place a burden upon individuals who are currently providing special education and related services to handicapped children. These commenters stated that:

- There is no provision for grandfathering into the system personnel who are certified under current State standards and are already employed by the State or by local educational agencies and other State agencies. The Supreme Court has declared that certification to practice a profession in a State is a property right under the U.S. Constitution that cannot be abridged without due process.
- State educational agencies should not have the authority to force individuals who hold SEA certification for a profession or discipline to meet additional standards that exceed the current certification standards.
- Individuals already certified could find it necessary to return to school to qualify for licensure if a State imposed an additional licensure requirement. This could be a financial burden for those individuals or for local and State educational agencies.
- States should include an analysis in the State plan of the current State standards for, and status of personnel in, each profession or discipline in the State and whether these personnel meet the highest standard to determine the impact of these requirements on personnel currently employed in a State.

Personnel Shortages

Numerous commenters pointed out that there is already a shortage of qualified personnel to serve children with handicaps. These commenters stated that:

- Increasing certification and licensure standards would intensify this problem.
- This requirement would divert candidates to clinical employment instead of positions in schools.
- This requirement would adversely affect the ability to attract and secure staff in rural areas.

Increased Burdens on States and School Districts

A number of commenters stated that the requirement to have personnel meet the highest requirements in the State for a profession or discipline would place an added burden on local educational agencies and would preempt the State's authority. These commenters stated that:

- The requirements would result in high education costs for those school systems that pay for additional training for employees.
- The personnel standards at § 300.153 contradict the language of the statute and § 300.600 of the regulations, which states that all programs funded under Part B must meet the education standards of the State educational agency.
- This is an area in which the Federal government should not intervene.
- The Department should be flexible in setting timelines; the need for change in personnel standards will vary among States.

Recommendations to Use Specific Language in the Final Regulations

Numerous commenters suggested changing the language that appeared in the notice of proposed rulemaking for this section. These commenters made the following suggestions:

- The wording in § 300.153 is vague and subject to various interpretations (e.g., "appropriately" and "adequately" describe standards that are distinguishable from "the highest standard").
- Use the same language for personnel standards that the Secretary used in the notice of proposed rulemaking for Part H of the Act.
- The regulations should provide guidance for what the "highest requirements" should be in a State.
- Add the following language if a State employs individuals who do not meet State standards: "(1) The steps the State is taking to require the hiring of personnel that meet standards as determined by the State, and (2) the steps the State is taking to require individuals providing special education and related services who do not meet these standards to meet them."
- Include language to assure that States are taking timely steps to require the retraining or training of personnel that meet appropriate professional requirements and improve their personnel standards by adding the following language at the end of § 300.153(2)(b): "* * * and timelines for accomplishing those steps."
- Define terms such as "profession," "discipline," and "highest requirement."
- Add additional guidelines on how to determine the level of competency within professions.
- Add language to the regulations requiring States to include the timelines

in the State plan for retraining or hiring personnel who meet the highest requirement in the State.

Support for the Language in the Notice of Proposed Rulemaking

Numerous commenters supported § 300.153 as it appeared in the notice of proposed rulemaking. These commenters stated that:

- The proposed regulations would assure that handicapped children receive special education and related services from personnel who have been trained according to the standards adopted by a profession regardless of the setting in which services are provided.
- Individuals who do not meet the highest standards for a profession are not qualified to provide special education and related services required under this part.

Discussion: There are two issues States must address in meeting the requirements under section 613(a)(4) of the Act and § 300.153: first, the substantial number of special education personnel who have been issued temporary or emergency teaching certificates; and second, discrepancies between the State's certification standards for personnel providing special education and related services under Part B and the standards for individuals providing similar services in other agencies.

With respect to determining the highest standard for personnel who provide special education and related services, the Secretary agrees with the numerous commenters who stated that the standards required under this part must be based on the highest standards in the State for personnel providing similar services to children and youth with handicaps. Each State must determine the range of occupational categories that are needed for the delivery of services under Part B to children and youth with handicaps. When identifying the highest requirements in the State for each occupational category, the State educational agency must look at the standards appropriate for the responsibilities of and the supervisory controls for personnel providing special education and related services under this part. These standards may be different from those that are appropriate for personnel in other agencies. The Secretary notes, for example, that school psychologists are members of a specific occupational category who have training requirements appropriate for their responsibilities under Part B.

The legislative history for the Act states that:

> The Committee is concerned about the increasing number of personnel providing special education and related services who do not meet the highest State standards established for employment in a specific profession or discipline. For example, many teachers providing special education have been issued temporary teaching certification and do not meet full certification standards related to the area in which they provide instruction. The Committee intends that the States will take steps to ensure that all special education teachers are fully qualified and certified for the areas in which they are providing instruction.
>
> The Committee also is concerned that some States have established education and training requirements for individuals providing services that do not apply to all members of that profession employed by State and local educational agencies. For example, 19 States currently require a speech-language pathologist to have a master's degree to legally provide services to handicapped infants, children, and youth in a nonpublic agency. However, in these same States, the State educational agency allows individuals with less than a master's degree to provide services to handicapped infants, children, and youth in the schools. The Committee hopes that States will take steps to ensure that professionals providing special education and related services meet appropriate professional requirements in the State to practice a specific profession or discipline.

H.R. Rep. No. 860, 99th Cong., 2d Sess., 38–39 (1986)

The intent of the 1988 Amendments is to ensure that only fully qualified personnel provide services to handicapped children in schools.

The Act requires State educational agencies to establish and maintain appropriate standards for those personnel providing special education and related services and to ensure that personnel meet these standards. It also requires that States must include in their State plans the steps that they are taking to require the retraining of personnel who do not meet these standards or the hiring of personnel who meet appropriate requirements. The Secretary believes that these steps must be reached within a reasonable time period to be established by the State.

In addition, the Secretary has determined that the information that the State collects and uses to ascertain the status of personnel standards in the State (*see* § 300.153(d)) must be made available to the public. This requirement conforms to the rule in 34 CFR 76.106(a) that requires States to make available for public inspection "[a]ll State plans and related official materials."

Changes: Section 300.153 has been amended to add definitions of "appropriate professional requirements in the State," "highest requirements in the State applicable to a specific profession or discipline," "profession or discipline," and "State approved or recognized certification, licensing, registration, or other comparable requirements."

Section 300.153(c)(1) (proposed § 300.153(b)) has been changed to make it clear that standards for temporary or emergency certification are among the personnel standards subject to the requirements of this part. This provision also requires that State plans must include procedures for notifying agencies and personnel of the steps that the State is taking and the timelines that it has established for the retraining or hiring of personnel to meet appropriate professional requirements in the State.

The Secretary appreciates that these requirements regarding personnel standards may require retraining or additional training of some individuals currently employed by school systems. Any new personnel standards established by the State would, of course, be implemented in a manner consistent with the legal rights of individual employees to continued employment and due process. In order to monitor the progress of each State in complying with the requirements regarding personnel standards, the Secretary requires States to establish timelines for implementation of these requirements and to describe procedures for giving notice of the changed requirements, including those timelines, in their State Plans.

Language has been added to § 300.153(e) to make it consistent with the definitions of "profession or discipline" and "State approved or recognized certification, licensing, registration, or other comparable requirements" in § 300.153(a) (3)–(4).

The comment following § 300.153 is revised to clarify that each State uses its own existing highest requirements to determine which personnel standards are appropriate for retraining or hiring staff who provide special education and related services to children and youth with handicaps. Each State determines which occupational categories are required to serve handicapped children under Part B. A provision has been added to § 300.153(d) to require that the State make available to the public the information it collects and uses to ascertain the status of personnel standards.

It is important for the Secretary and the public to be able, upon request, to inspect the information used in establishing personnel standards under this part. The State need not, however, append this material to the State Plan submitted to the Department.

Section 300.370 Use of State Allocations

Comments: Some commenters noted that this section provided sufficient flexibility to allow States to make the administrative arrangements needed to monitor this program. One commenter wanted to add language stating that State educational agencies may employ personnel or contract with intermediate educational units to carry out their monitoring activities.

Discussion: The section, which incorporates statutory language, permits States to use the funds available under this part to employ personnel or contract with intermediate educational units for the administration of monitoring activities.

Changes: None.

Section 300.552 Placements

Comments: A number of commenters felt that the requirements regarding placement in the least restrictive environment should apply to preschool children.

Discussion: The requirements in this part apply to all children aged three through 21 who are eligible for services under this part or who are participating in a program, such as the Chapter 1 the State Operated or Supported Programs for Handicapped Children program, that incorporates the requirements of this part.

Changes: Language is added to the comment following this section to emphasize that the requirement to serve children in the least restrictive environment applies to all preschool children aged three through five with handicaps.

Comments: Some commenters wanted clarification of the definition of "least restrictive environment" for preschool children. These commenters were especially interested in satisfying the least restrictive environment requirements in States that do not provide preschool programs for non-handicapped children. Several commenters felt that a placement decision must be based upon a child's individualized education program. These commenters said that the appropriate placement for a particular child may not be an integrated setting. Other comments pointed out that alternative delivery models, including home-based or center-based programs, should be available for meeting the needs of preschoolers with handicaps.

Discussion: The existing requirements about placements in the least restrictive environment [§§ 300.550–300.556) apply to all children participating in the Part B program. The Secretary notes that the appropriate setting for a particular child may not be an integrated setting. There are a variety of placements that can meet the needs of preschool children with handicaps. The determination about the placement of a particular child must be based upon that child's individualized education program.

Changes: Language has been added to the comment following § 300.552: (1) To emphasize that the requirement to serve children in the least restrictive environment, to the maximum extent appropriate, applies to preschool children and (2) to provide examples of alternative methods of meeting this requirement in States that do not provide preschool programs for non-handicapped children.

Comment: Some commenters wanted to revise the language in these regulations to emphasize the importance of involving family members to assist in their child's development. They stated, for example, that family members should be trained to provide services for their preschool child.

Discussion: "Parent counseling and training" is defined at 34 CFR 300.13(b)(6) as a related service and can be included in an individualized education program if it is determined to be needed to assist a child in benefitting from special education. The regulations implementing Part B also emphasize the role of parents at the meeting held to develop a child's individualized education program. *See* Question 26 in Appendix C to 34 CFR Part 300. Finally, the regulations at 34 CFR 300.370(b)(2) include "parent training activities" under the definition of "support services" for which a State educational agency (SEA) may use its Part B allocation.

The Secretary has consistently supported parental involvement in all educational programs. This includes supporting the important role of parents as active participants in the development and implementation of their child's educational program. States are encouraged to increase efforts to include parents in developing and providing special education and related services to their preschool child with handicaps.

Changes: None.

Comments: One commenter stated that locating classes for preschool children with handicaps in regular elementary schools should not be considered an alternative that promotes the integration of handicapped and non-handicapped children.

Discussion: The continuum of alternative placements described at § 300.551 includes a variety of placements. The statement added to the comment following § 300.552 is consistent with requirements in § 300.551.

Changes: None.

Section 300.702 Limitations and Exclusions

Comments: Several commenters objected to the 12 percent cap on the number of children whom the Secretary may count for the purpose of generating program funds. Other commenters asked the Secretary to add more detailed requirements to this section, for example, to elaborate upon the requirement at § 300.702(b) regarding the availability of funds.

Discussion: The requirement establishing the 12 percent cap is statutory. It applies to the number of children who may be counted for the purposes of generating program funds and does not put any limitations on the number of children who can be served under this part. The only language that is added to the existing language in this section is statutory language that was added to reflect changes made by the 1986 Amendments. The Secretary does not feel that more extensive changes should be made to this section at this time.

Changes: None.

Technical Amendments Added by the 1986 Amendments

Technical amendments have been added in these final regulations that were not published as part of the notice of proposed rulemaking. Amendments are added to § 300.589(a), which deals with the EHA–B supplement and not supplant waiver procedure, and to the comments following § 300.750 and § 300.751. Sections 300.750 and 300.751 describe the requirements State educational agencies must use for submitting child count data to the Secretary. These changes add the statutory changes made by the 1986 Amendments.

Technical Changes Resulting From the 1988 Amendments

Technical amendments are added in the final regulations to reflect amendments made to Part B by the 1988 Amendments. The reference to the State Operated or Supported Programs for Handicapped Children Program is changed so that the title reads "subpart 2 of part D of Chapter 1 of title 1 of the Elementary and Secondary Education Act of 1965 and section 202(1) of the Carl Perkins Vocational Education Act" in § 300.138 and § 300.753(b)(3). Section 300.300(3)(b) is amended to state that the provision does not apply to children

aged three through five in any fiscal year for which the State receives a grant under section 619(a)(1) of the Act.

Waiver of Rulemaking

In accordance with section 431(b)(2)(A) of the General Provision Act (20 U.S.C. 1232(b)(2)(A)) and the Administrative Procedures Act, 5 U.S.C. 553, it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, since the technical changes added to these regulations merely incorporate statutory changes into existing regulations and do not themselves establish new substantive policy, public comment could have no effect on the content of these amendments. Therefore, the Secretary has determined under 5 U.S.C. 553(b)(B) that proposed rulemaking on these amendments is unnecessary and contrary to public interest.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

List of Subjects in 34 CFR Part 300

Administrative practice and procedures, Education, Education of handicapped, Grant programs—education, Privacy, Private schools, Reporting and recordkeeping requirements.

Dated: February 28, 1989.

Lauro F. Cavazos,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number 84.027; Assistance to States for Education of Handicapped Children)

The Secretary amends Part 300 of Title 34 of the Code of Federal Regulations as follows:

PART 300—ASSISTANCE TO STATES FOR EDUCATION OF HANDICAPPED CHILDREN

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

Authority: 20 U.S.C. 1411–1420, unless otherwise noted.

§ 300.138 [Amended]

2. Section 300.138 is amended by removing "section 121 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 241e–2) section 305(b)(8) of that Act (20 U.S.C. 844a(b)(8)) or Title IV–C of that Act (20 U.S.C. 1831), and section 110(a) of the Vocational Education Act of 1963," and adding in its place "subpart 2 of part D of Chapter 1 of Title I of the Elementary and Secondary Education Act of 1965 and section 202(1) of the Carl D. Perkins Vocational Education Act."

3. Subpart B is amended by adding a new § 300.150 to read as follows:

§ 300.150 State-level nonsupplanting.

Each program plan must provide assurance satisfactory to the Secretary that funds provided under this part will be used so as to supplement and increase the level of Federal (other than funds available under this part), State, and local funds—including funds that are not under the direct control of State or local educational agencies—expended for special education and related services provided to handicapped children under this part and in no case to supplant those Federal (other than funds available under this part), State, and local funds unless a waiver is granted in accordance with § 300.589.

(Authority: 20 U.S.C. 1413(a)(9))

Comment. This requirement is distinct from the supplanting provision already contained in these regulations at § 300.230. Under this provision, the State must assure that Part B funds distributed to local educational agencies and intermediate educational units will be used to supplement and not supplant other Federal, State, and local funds (including funds not under the control of educational agencies) that would have been expended for special education and related services provided to handicapped children in the absence of the Part B funds. The portion of Part B funds that are not distributed to local educational agencies or intermediate educational units under the statutory formula (20 U.S.C. 1411(d)) are not subject to this supplanting provision. *See* 20 U.S.C. 1411(c)(3). States may not permit local educational agencies or intermediate educational units to use Part B funds to satisfy a financial commitment for services that would have been paid for by a health or other agency pursuant to policy or practice but for the fact that these services are now included in handicapped children's individualized education programs. (H. R. Rep. No. 860, 99th Cong., 21–22 (1986))

4. Subpart B is further amended by adding new §§ 300.152 and 300.153 to read as follows:

§ 300.152 Interagency agreements.

(a) Each State plan must set forth policies and procedures for developing and implementing interagency agreements between—

(1) The State educational agency; and

(2) All other State and local agencies that provide or pay for services required under this part for handicapped children.

(b) The policies and procedures referred to in paragraph (a) of this section must—

(1) Describe the role that each of those agencies plays in providing or paying for services required under this part for handicapped children; and

(2) Provide for the development and implementation of interagency agreements that—

(i) Define the financial responsibility of each agency for providing handicapped children with free appropriate public education;

(ii) Establish procedures for resolving interagency disputes among agencies that are parties to the agreements; and

(iii) Establish procedures under which local educational agencies may initiate proceedings in order to secure reimbursement from agencies that are parties to the agreement or otherwise implement the provisions of the agreement.

(Authority: 20 U.S.C. 1413 (a)(13))

§ 300.153 Personnel standards

(a) As used in this part:

(1) "Appropriate professional requirements in the State" means entry level requirements that—

(i) Are based on the highest requirements in the State applicable to the profession or discipline in which a person is providing special education or related services; and

(ii) Establish suitable qualifications for personnel providing special education and related services under this part to children and youth with handicaps who are served by State, local, and private agencies (*see* § 300.2);

(2) "Highest requirements in the State applicable to a specific profession or discipline" means the highest entry-level academic degree needed for any State approved or recognized certification, licensing, registration, or other comparable requirements that apply to that profession or discipline;

(3) "Profession or discipline" means a specific occupational category that—

(i) Provides special education and related services to handicapped children under this part;

(ii) Has been established or designated by the State; and

(iii) Has a required scope of responsibility and degree of supervision.

(4) "State approved or recognized certification, licensing, registration, or other comparable requirements" means the requirements that a State legislature either has enacted or has authorized a State agency to promulgate through rules to establish the entry-level standards for employment in a specific profession or discipline in that State.

(b)(1) Each State plan must include policies and procedures relating to the establishment and maintenance of standards to ensure that personnel necessary to carry out the purposes of this part are appropriately and adequately prepared and trained.

(2) The policies and procedures required in paragraph (b)(1) of this section must provide for the establishment and maintenance of standards that are consistent with any State approved or recognized certification, licensing, or other comparable requirements that apply to the profession or discipline in which a person is providing special education or related services.

(c) To the extent that a State's standards for a profession or discipline, including standards for temporary or emergency certification, are not based on the highest requirements in the State applicable to a specific profession or discipline, the State plan must include the steps the State is taking and the procedures for notifying public agencies and personnel of those steps and the timelines it has established for the retraining or hiring of personnel to meet appropriate professional requirements in the State.

(d)(1) In meeting the requirements in paragraphs (b) and (c) of this section, a determination must be made about the status of personnel standards in the State. That determination must be based on current information that accurately describes, for each profession or discipline in which personnel are providing special education or related services, whether the applicable standards are consistent with the highest requirements in the State for that profession or discipline.

(2) The information required in paragraph (d)(1) of this section must be on file in the State educational agency, and available to the public.

(e) In identifying the "highest requirements in the State" for purposes of this section, the requirements of all State statutes and the rules of all State agencies applicable to serving children and youth with handicaps must be considered.

(Authority: 20 U.S.C. 1413(a)(14))

Comment: The regulations require that the State use its own existing highest requirements to determine the standards appropriate to personnel who provide special education and related services under this part. The regulations do not require States to set any specified training standard, such as a master's degree, for employment of personnel who provide services under this part. In some instances, States will be required to show that they are taking steps to retrain or to hire personnel to meet the standards adopted by the State educational agency that are based on requirements for practice in a specific profession or discipline that were established by other State agencies. States in this position need not, however, require personnel providing services under this part to apply for and obtain the license, registration, or other comparable credential required by other agencies of individuals in that profession or discipline. The regulations permit each State to determine the specific occupational categories required to provide special education and related services and to revise or expand these categories as needed. The professions or disciplines defined by the State need not be limited to traditional occupational categories.

5. Section 300.260 is revised to read as follows:

§ 300.260 Submission of application; approval.

(a) In order to receive a grant under this part, the Secretary of the Interior shall submit an application that—

(1) Meets the requirements in section 612(1), 612(2)(A), 612(2)(C)–(E), 612(4), 612(5), 612(6), and 612(7) of the Act;

(2) Meets the requirements in section 613(a), 613(b), 613(c), and 613(e) of the Act;

(3) Meets the requirements of section 614(a) of the Act;

(4) Meets the requirements of this part that implement the sections of the Act listed in paragraphs (a)(1)–(a)(3) of this section; and

(5) Includes an assurance that there have been public hearings on the application, adequate notice of the public hearings, and an opportunity for members of tribes, tribal governing bodies, and designated local school boards to comment on the application before the adoption of the policies, programs, and procedures required under sections 612, 613, and 614(a) of the Act.

(b) Sections 300.580–300.586 apply to grants available to the Secretary of the Interior under this part.

(Authority: 20 U.S.C. 1411(f))

6. In § 300.300 paragraph (b)(3) is revised to read as follows:

§ 300.300 Timelines for free appropriate public education.

* * * * *

(b) * * *

(3) If a public agency provides education to 50 percent or more of its handicapped children in any disability category in any of these age groups, it must make a free appropriate public education available to all its handicapped children of the same age who have that disability. This provision does not apply to children aged three through five for any fiscal year for which the State receives a grant under section 619(a)(1) of the Act.

* * * * *

7. Section 300.370 is amended by revising the section title and paragraph (a) to read as follows:

§ 300.370 Use of State agency allocations.

(a) The State may use the portion of its allocation that it does not use for administration under §§ 300.620–300.621—

(1) For support services and direct services in accordance with the priority requirements under §§ 300.320–300.324; and

(2) For the administrative costs of the State's monitoring activities and complaint investigations, to the extent that these costs exceed the administrative costs for monitoring and complaint investigations incurred during fiscal year 1985.

* * * * *

8. Section 300.552 is amended by adding a new second and third paragraphs in the comment to read as follows:

§ 300.552 Placements.

* * * * *

The requirements of § 300.552, as well as the other requirements of §§ 300.550–300.556, apply to all preschool handicapped children who are entitled to receive a free appropriate public education. Public agencies that provide preschool programs for non-handicapped children must ensure that the requirements of § 300.552(c) are met. Public agencies that do not operate programs for non-handicapped preschool children are not required to initiate such programs solely to satisfy the requirements regarding placement in the least restrictive environment embodied in §§ 300.550–300.556. For these public agencies, some alternative methods for meeting the requirements of §§ 300.550–300.556 include:

(1) Providing opportunities for the participation (even part-time) of preschool handicapped children in other preschool programs operated by public agencies (such as Head Start);

(2) Placing handicapped children in private school programs for non-handicapped preschool children or private school preschool programs that integrate handicapped and non-handicapped children; and

(3) Locating classes for handicapped preschool children in regular elementary schools.

In each case the public agency must ensure that each child's placement is in the least restrictive environment in which the unique needs of that child can be met, based upon the child's individualized education program, and meets all of the other requirements of §§ 300.340–300.349 and §§ 300.550–300.556.

10. Section 300.589 is amended by revising paragraph (a) to read as follows:

§ 300.589 Waiver of requirement regarding supplement and supplanting with Part B funds.

(a) Under sections 613(a)(9)(B) and 614(a)(2)(B)(ii) of the Act, State and local educational agencies must insure that Federal funds provided under this part are used to supplement and increase the level of Federal, State, and local funds (including funds that are not under the direct control of State or local educational agencies) expended for special education and related services provided to handicapped children under this part and in no case to supplant those Federal, State, and local funds. The nonsupplanting requirement applies only to funds allocated to local educational agencies (*See* § 300.372).

* * * * *

11. The center heading preceding § 300.600 is revised to read as follows:

General

12. Section 300.600 is amended by adding a new paragraph (c) to read as follows:

§ 300.600 Responsibility for all educational programs.

* * * * *

(c) This part may not be construed to limit the responsibility of agencies other than educational agencies for providing or paying some or all of the costs of a free appropriate public education to handicapped children in the State.

* * * * *

13. Subpart F is amended by adding a new § 300.601 to read as follows:

§ 300.601 Relation of Part B to other Federal programs.

This part may not be construed to permit a State to reduce medical and other assistance available to handicapped children, or to alter a handicapped child's eligibility, under Title V (Maternal and Child Health) or Title XIX (Medicaid) of the Social Security Act, to receive services that are also part of a free appropriate public education.

(Authority: 20 U.S.C. 1413(e))

14. Section 300.701 is amended by revising paragraph (a) to read as follows and removing and reserving paragraph (b).

§ 300.701 State entitlement, formula.

(a) The Secretary calculates the maximum amount of the grant to which a State is entitled under section 611 of the Act in any fiscal year as follows:

(1) If the State is eligible for a grant under section 619 of the Act, the maximum entitlement is equal to the number of handicapped children aged three through 21 in the State who are receiving special education and related services, multiplied by 40 percent of the average per pupil expenditure in public elementary and secondary schools in the United States.

(2) If the State is not eligible for a grant under section 619 of the Act, the maximum entitlement is equal to the number of handicapped children aged six through 21 in the State who are receiving special education and related services, multiplied by 40 percent of the average per pupil expenditure in public elementary and secondary schools in the United States.

(Authority: 20 U.S.C. 1411(a)(1))

(b) [Reserved]

* * * * *

15. Section 300.702 is amended by revising paragraphs (a)(1), (a)(3), and (b) and adding a new paragraph (a)(2). As revised, § 300.702 reads as follows:

§ 300.702 Limitation and exclusions.

(a) In determining the amount of a grant under § 300.701—

(1) If a State serves all handicapped children aged three through five in the State, the Secretary does not count handicapped children aged three through 17 in the State to the extent that the number of those children is greater than 12 percent of the number of all children aged three through 17 in the State;

(2) If a State does not serve all handicapped children aged three through five in the State, the Secretary does not count handicapped children aged five through 17 to the extent that the number of those children is greater than 12 percent of the number of all children aged five through 17 in the State; and

(3) The Secretary does not count handicapped children who are counted under subpart 2 of Part D of Chapter 1 of title I of the Augustus F. Hawkins—Robert J. Stafford Elementary and Secondary School Improvement Amendments of 1988.

(b) For the purposes of paragraph (a) of this section, the number of children aged three through 17 and five through 17 in any State is determined by the Secretary on the basis of the most recent satisfactory data available.

(Authority: 20 U.S.C. 1411(a)(5))

16. Section 300.709 is amended by revising paragraph (b) to read as follows:

§ 300.709 Payments to the Secretary of Interior.

* * * * *

(b) The amount of those payments for any fiscal year is 1.25 percent of the aggregate amounts available to all States for that fiscal year under this part.

(Authority: 20 U.S.C. 1411(f)(1))

17. Section 300.750 is amended by revising the comment to read as follows:

§ 300.750 Annual report of children served—report requirement.

* * * * *

Comment. It is very important to understand that this report and the requirements that relate to it are solely for allocation purposes. The population of children the State may count for allocation purposes may differ from the population of children to whom the State must make available a free appropriate public education. For example, while section 611(a)(5) of the Act limits the number of children who may be counted for allocation purposes to 12 percent of the general school population aged three through 17 (in States that serve all handicapped children aged three through five) or five through 17 (in States that do not serve all handicapped children aged three through five), a State might find that 14 percent (or some other percentage) of its children are handicapped. In that case, the State must make a free appropriate public education available to all of those handicapped children.

18. Section 300.751 is amended by adding a new paragraph (a)(2), and revising paragraphs (a)(3), (a)(4, (c), and (d) to read as follows:

§ 300.751 Annual report of children served—information required in the report.

(a) In its report, the State educational agency shall include a table which shows:

* * * * *

(2) The number of handicapped children aged three through five who are receiving a free appropriate public education;

(3) The number of those handicapped children aged six through 21 within each disability category, as defined in the definition of "handicapped children" in § 300.5 of Subpart A; and

(4) The number of those handicapped children aged three through 21 for each year of age (three, four, five, etc.).

* * * * *

(c) The State educational agency may not report a child aged six through 21 under more than one disability category.

(d) If a handicapped child aged six through 21 has more than one disability, the State educational agency shall report that child in accordance with the following procedure:

(1) A child who is both deaf and blind must be reported as "deaf-blind."

(2) A child who has more than one disability (other than a deaf-blind) must be reported as "multihandicapped."

* * * * *

(Authority: 20 U.S.C. 1411(a)(3); 1411(a)(5)(A)(ii); 1418(b))

(Approved by the Office of Management and Budget under control number 1820-0043)

§ 300.753 [Amended]

19. In § 300.753, paragraph (b)(4) is amended by removing "section 121" and adding, in its place, "subpart 2 of part D of Chapter 1 of title 1".

[FR Doc. 89-10038 Filed 4-26-89; 8:45 am]
BILLING CODE 4000-01-M

federal register

Thursday
April 27, 1989

Part V

Department of Transportation

Coast Guard

33 CFR Parts 166 and 167

Traffic Separation Schemes and Shipping Safety Fairways Off the Coast of California; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 166 and 167

[CGD 83-032]

RIN 2115-AB29

Traffic Separation Schemes and Shipping Safety Fairways Off the Coast of California

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: The Coast Guard proposes to establish a routing system comprised of amended traffic separation schemes (TSSs) and new shipping safety fairways along the coast of California. The proposed rule will modify the existing TSSs in the approaches to San Francisco, in the Santa Barbara Channel and in the approaches to Los Angeles/Long Beach. It will also establish new shipping safety fairways connecting the San Francisco TSS and the Santa Barbara Channel TSS and overlaying the precautionary areas in the approaches to Los Angeles/Long Beach and San Francisco. The proposed routing measures will increase navigation safety by separating opposing vessel traffic and by preserving a right of way for navigation through areas which are now, or will be, sites of offshore oil and gas development.

DATE: Comments must be received on or before July 26, 1989.

ADDRESS: Comments should be submitted to Executive Secretary, Marine Safety Council (G-LRA-2/3600) (CGD 83-032), U.S. Coast Guard, 2100 Second Street, SW., Washington, DC 20593-0001. Comments may be delivered to and will be available for inspection and copying in Room 3600 between the hours of 8:00 a.m. and 3:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Margie G. Hegy, Project Manager, Short Range Aids to Navigation Division, Office of Navigation Safety and Waterway Services, telephone (202) 267-0415, between 7:30 a.m. and 3:30 p.m., Monday through Friday.

SUPPLEMENTARY INFORMATION:

Regulatory Information Number

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

Request for Comments

The public is invited to participate in this proposed rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their name and address, identify this notice as CGD 83-032, and give the reasons for the comment. Persons desiring acknowledgment that their comments have been received should enclose a stamped self-addressed postcard or envelope.

All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held at a time and place to be set in a subsequent notice if written requests for a hearing are received, and if it is determined that the opportunity to make oral presentations will be beneficial to this rulemaking.

Drafting Information

The principal persons involved in drafting this proposed rulemaking are: Lieutenant (j.g.) Daphne Reese, Margie G. Hegy, Project Manager, and Christena Green, Project Attorney, Office of Chief Counsel.

Background

The Ports and Waterways Safety Act (PWSA), 33 U.S.C. 1223(c), authorizes the Secretary of the Department in which the Coast Guard is operating to establish traffic separation schemes (TSS) and shipping safety fairways, where necessary, to provide safe access routes for vessels proceeding to or from United States ports.

Shipping safety fairways and TSSs are different measures which provide safe port access routes for vessels. Where the primary risk to vessels is collision with offshore structures, a shipping safety fairway is an appropriate routing measure. Where the primary risk is collision with other vessels because of disorganized traffic patterns, a TSS is the preferred routing measure.

A TSS is an internationally recognized routing measure that minimizes the risk of collision by separating vessels into opposing streams of traffic through the establishment of traffic lanes. To be internationally recognized, a TSS must be approved by the International Maritime Organization (IMO). IMO approves TSSs only if the proposed routing system complies with IMO principles and guidelines on ships routing. Vessel use of a TSS is voluntary; however, vessels operating in or near an IMO approved TSS are subject to Rule 10 of the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS).

A shipping safety fairway is an area in which no fixed structures, temporary or permanent, are permitted. Vessel use of shipping safety fairways of voluntary and the direction of traffic flow within the shipping safety fairway may be recommended. Shipping safety fairways and inhibit exploration for and exploitation of mineral resources in the designated area. Shipping safety fairways, however, may be a necessary measure to reconcile convenient mineral exploitation needs and concern for navigation safety. Presently there are three IMO approved TSSs and one shipping safety fairway off the coast of California: a three-pronged TSS in the approaches to San Francisco Bay; a TSS through the Santa Barbara Channel; a two-pronged TSS in the approach to Los Angeles/Long Beach; and a shipping safety fairway off Point Hueneme.

Before either a new TSS or shipping safety fairway can be established, the PWSA requires the Coast Guard to conduct a port access route study taking into account all other uses of the area under consideration and ensuring that the interests of all affected parties are considered. These uses include, as appropriate, the exploration for, or exploitation of, oil, gas or other mineral resources; the construction or operation of deepwater ports or other structures; the establishment or operation of marine or estuarine sanctuaries; and activities involving recreational or commercial fishing. Publication of a notice of study advises all bidders in future lease sales that occupancy rights within the study area may be restricted by a routing system developed as a result of the study. In the interest of promoting a multiple use approach to offshore waters, the Coast Guard, as far as practicable, will try to minimize impacts on other uses of the area. Once a shipping safety fairway or TSS is designated under the authority of the PWSA, however, the paramount right of navigation is recognized within the designated area.

Regulatory History

The 1978 amendments to the PWSA required the Coast Guard to undertake a port access route study to determine the need for traffic separation schemes or shipping safety fairways to increase vessel traffic safety in offshore areas subject to the jurisdiction of the United States. The Coast Guard initiated this study by publishing a Notice of

Proposed Study on April 16, 1979 (44 FR 22543).

For the purposes of the port access route study, the U.S. coastline was divided into 32 geographically defined areas. Study area 22 included the coast of southern California and was assigned to the Eleventh Coast Guard District for study. Study areas 23 to 25 included the central and northern California coast and were assigned to the former Twelfth Coast Guard District. Through public participation and government agency consultation, the studies evaluated potential traffic density patterns, waterways use conflicts, and the need for safe access routes in offshore area.

The Study Results for the coast of southern California (area 22) were published on June 24, 1982, at 47 FR 27430. An additional study of the Port Access Routes, Northern Approach to Santa Barbara Channel, was announced on July 26, 1984, at 49 FR 30078, with results of that study published on December 5, 1985, at 50 FR 49861.

The Study Results for the central and northern coast of California (areas 23–25) were published on October 14, 1982, at 47 FR 46043. An additional study on Port Access Routes, Entrance to San Francisco Bay was announced on December 17, 1984, at 49 FR 48946, and the study results were published on May 8, 1986, at 51 FR 17071.

Discussion of Proposal

The port access route studies recommended amendments to the TSSs currently established off the coast of California and the designation of new shipping safety fairways to establish a comprehensive safe routing system for vessels proceeding to, from, or between the ports of San Francisco and Los Angeles/Long Beach. The Coast Guard believes the proposed routing measures are necessary to meet present and future needs of safe navigation by providing clear lanes for vessel traffic between San Francisco and Los Angeles/Long Beach. The proposed routing measures represent the most practicable reconciliation between safe access routes and the needs of all other reasonable uses of the areas involved.

The proposed California offshore routing system includes the following elements:

(1) Los Angeles/Long Beach TSS—amendments to the TSS and precautionary area in the approach to Los Angeles/Long Beach, and establishment of a shipping safety fairway overlaying the Los Angeles/Long Beach precautionary area;

(2) Santa Barbara Channel TSS—an extension of the TSS approximately 18 miles northwest and a shift in the lanes of the southern section of the TSS;

(3) Coastal Fairways—Establishment of two parallel one-mile wide shipping safety fairways along the central California coast connecting the Santa Barbara Channel TSS and the San Francisco TSS; and

(4) San Francisco TSS—amendments to the lanes of the TSS and the precautionary area and establishment of a shipping safety fairway overlaying the reconfigured precautionary area and a new TSS segment in the main ship channel.

The details of each of these elements are discussed below.

Los Angeles/Long Beach TSS

The TSS in the approaches to Los Angeles/Long Beach is comprised of the Southern Approach, the Western Approach and a precautionary area. The TSS was approved by IMO in 1975. As a result of the port access route studies for southern California, the Coast Guard believes navigation safety will be improved if the following modifications are made to this TSS: shifting a lane in the Western Approach to the Los Angeles/Long Beach TSS; reconfiguring the precautionary area; and establishing a new shipping safety fairway overlaying the precautionary area.

Western Approach

At the time of the study, vessels were departing from Long Beach, turning west at the breakwater and crossing through the pilot boarding area to enter the northbound lane of the TSS. The modification to the Western Approach consists of reducing a portion of the TSS separation zone from two miles to one mile in width; relocating the outbound lane one mile to the south; and merging the existing two-mile separation zone at a slightly adjusted turning point in the TSS. This adjustment will alleviate the problems of vessel traffic crossing in and near the pilot boarding area at the harbor entrance. This modification was approved by IMO in 1983.

Precautionary Area

The port access route study found that the eastern side of the precautionary area was not normally used by vessels proceeding in or out of the TSS lanes. The Coast Guard proposes to reduce the size of the precautionary area by moving the eastern boundary away from the coastline, releasing the unused area to offshore oil and gas activities or other uses. The western boundary of the area will be extended to connect with the outbound lane of the adjusted Western Approach TSS. The northern boundary will be moved south to line up with the breakwater. This modification was approved by IMO in 1983.

Shipping Safety Fairway

As a result of the port access route studies, the Coast Guard proposes to designate a shipping safety fairway to overlay the precautionary area. This change is necessary to resolve the potential conflict between vessel navigation and offshore oil and gas activities in the area between the Western Approach TSS lanes and the Southern Approach TSS lanes. At the present time there is no express prohibition against structures being erected within a precautionary area. Establishment of the shipping safety fairway to overlay the precautionary area will prohibit fixed structures in this area.

The Santa Barbara Channel TSS

The TSS in the Santa Barbara Channel, comprised of a north-westbound traffic lane and a south-eastbound traffic lane between Point Vicente and Point Conception, was approved by IMO in 1973. The Coast Guard proposes extending the north-west end of the TSS and shifting the lanes off Anacapa Island.

Lane Shift

The lanes of the Santa Barbara Channel TSS would shift one-half mile southward at a point off Anacapa Island, resulting in a slight shift at the westerly end of the present scheme, and a readjustment of the turning point where it joins the existing TSS "In the Approaches to Los Angeles/Long Beach." This modification is intended to facilitate development of a known oil and gas field while protecting traffic lanes from interference by offshore structures. The modification was approved by IMO in 1983.

Extension to Point Arguello

The Coast Guard originally proposed a thirty mile extension of the Santa Barbara Channel TSS but IMO did not approve the entire extension. Instead IMO approved an extension of the north-west end of the Santa Barbara Channel TSS 18 miles north-west to a point 13 miles off Point Arguello. This extension will carry traffic west of an area expected to undergo offshore development for gas and oil in the future. Exploration in the area shoreward of this proposed extension has revealed large quantities of resources, and platforms are anticipated to be located in this area as development takes place. The modification was approved by IMO in

1985. The IMO has conditioned extension of the TSS on the placement of a radar beacon and light on platform *"Harvest"*, located at position 34°28.09'N, 120°40.46'W, to ensure vessels can fix their position when entering the TSS.

Shipping Safety Fairways Off California

The Coast Guard had originally considered the establishment of a five-mile-wide shipping safety fairway between the San Francisco TSS and the Santa Barbara TSS. This five-mile width was intended to provide space for designation of TSS lanes if the need arose in the future, and to allow room for adjustment if a narrowing of the shipping safety fairway was the only means of providing access for future offshore development of a particular area. The large number of offshore tracts which could not be leased if a five-mile-wide shipping safety fairway were established caused the Coast Guard to modify its proposal. The Coast Guard determined that two one-mile-wide shipping safety fairways would still serve the purpose of providing obstruction free corridors for coastwise traffic.

This rulemaking proposes two parallel one-mile-wide shipping safety fairways approximately 165 nautical miles long between the southern end of the IMO approved San Francisco TSS extension and the end of the IMO approved extension of the Santa Barbara Channel TSS at Point Arguello. Shipping safety fairways are needed in areas where blocks have been leased off the central California coast in the Santa Maria Basin near Point Conception, and where exploratory drilling has confirmed that the area has promise as a major site for oil and gas production.

A Congressional moratorium and action by California state and environmental groups have limited the Minerals Management Service (MMS) to offering only a few blocks for lease in offshore California. Preliminary indications are that several areas off the coast of California, including the Santa Cruz Basin near San Francisco, are of high interest to offshore developers. Since MMS has adopted an area wide leasing plan, it is impossible for the Coast Guard to identify the exact areas where drilling is likely to be concentrated until leases are actually awarded. Because of expected industry interest and the uncertainties inherent in MMS area wide lease sales, the Coast Guard believes that the proposed shipping safety fairways best meet the mandate of the PWSA that safe access routes be established to reconcile, as far as practicable, the potential for future multiple use conflicts.

The Coast Guard proposes to place the shipping safety fairways in areas where it is essential to guarantee obstruction free routes to vessel traffic during the time of oil and gas exploration and exploitation off California. The shipping safety fairways are especially important in this area where IMO navigational requirements for establishment of a TSS cannot currently be met, but where a right of way for navigation is necessary as offshore areas are leased.

Off San Francisco TSS

The TSS in the approaches to San Francisco, comprised of the Southern Approach, Main Approach, Northern Approach, and a precautionary area, was approved by IMO in 1973. As a result of the port access route studies, the Coast Guard proposes modifying the Southern and Northern TSS segments; renaming the Main Approach segment; reconfiguring the precautionary area; redescribing the separation zone within the precautionary area as an "area to be avoided"; establishing a new TSS segment over the Main Ship Channel into San Francisco; and establishing a new shipping safety fairway to overlay the precautionary area.

Southern Approach

The Southern Approach lanes would be rotated approximately two degrees in a clockwise direction away from the coastline and would be lengthened by approximately 28 miles. This adjustment would have the effect of routing traffic two miles further away from the coast. Vessel traffic would travel no closer than five miles to the coastline. The lengthening of the traffic lanes would help to separate opposing traffic transiting coastwise between San Francisco and the Santa Barbara Channel. It would also provide safe routing for vessels transiting through the Santa Cruz Basin, an area of high interest to offshore oil and gas developers.

Main Approach TSS

Although no modifications are proposed to the original Main Approach TSS segment, it will be renamed the Western Approach.

Northern Approach

The Northern Approach lanes will be slightly rotated in a counterclockwise direction, to keep vessel traffic approximately a mile further offshore and away from the Point Reyes-Farallon Island Marine Sanctuary.

IMO has approved the modifications to these three segments conditioned upon the establishment of a radar beacon at Ano Nuevo, on the central coast of California near the termination of the southern lane of the scheme, to ensure that vessels can adequately fix their position when entering the Southern Approach lanes of the TSS.

Main Ship Channel TSS

A new TSS segment will be established over the Main Ship Channel in the entrance to San Francisco Bay. The present traffic pattern in the Main Ship Channel is divided into separate east and westbound lanes by the arrangement of aids to navigation in the channel and by recommendation of the San Francisco Vessel Traffic Service. The effect of this change will be to make Rule 10 of the 72 COLREGS mandatory on vessels approaching the entrance to San Francisco Bay.

Precautionary Area

The Coast Guard proposes that the existing precautionary area in the Off San Francisco TSS be reconfigured to exclude certain shoal areas that are not suitable for safe navigation. The existing precautionary area is a circular area six miles in radius from the center at the Large Navigation Buoy (LNB). This IMO approved precautionary area may imply to inexperienced mariners that the entire precautionary area is available for navigation. However, the eastern part of this area contains several hazardous shoal areas. The U.S. charts appropriately indicate a break in the circle of the precautionary areas for these shoals. The IMO has approved a reconfiguration of the precautionary area to exclude these shoal areas. This will contribute to safe navigation by clarifying the safe waters when proceeding into San Francisco Bay.

Separation Zone

The Coast Guard proposes to appropriately redesignate the present separation zone under IMO guidelines as an "area to be avoided." The use of a circular separation zone of one-half mile radius centered on the LNB in the IMO approved precautionary area has been effective in keeping mariners away from the buoy. However, a separation zone is intended only to separate opposing lanes of traffic, a function which does not apply in this situation. This modification would not alter the purpose of the area or reduce navigation safety. It would serve only to bring the scheme into alignment with IMO definitions and principles. The redesignation of this area has been approved by IMO.

Shipping Safety Fairway

The precautionary area in the San Francisco TSS is at the junction of four TSS segments. Placement of structures in the precautionary area would create a hazard to navigation. At the present time there is no express prohibition against structures being erected within a precautionary area. A shipping safety fairway overlaying the precautionary area is the most appropriate means of keeping the precautionary area free of obstructions for the paramount right of safety of navigation.

Future Adjustment Process

The Coast Guard is aware of the multiple use conflicts which may arise in the future due to the restrictions and regulations governing shipping safety fairways and TSSs. The PWSA provides discretion for adjusting designating routing measures to accommodate other needs, if the need cannot be reasonably accommodated otherwise. The adjustment, however, cannot unacceptably adversely affect the purpose for which the existing designation was made and the need for which continues. Generally, where vessel traffic lanes (TSS or shipping safety fairway) are one-mile-wide, underlying resources are accessible via directional drilling. In the future, however, adjustments to vessel traffic lanes may be appropriate to allow recovery of known oil, gas, or mineral deposits. If that situation develops, a port access route study would be conducted to determine whether alternative routing is possible through areas where other lease rights may be affected and whether, in the case of a TSS, the proposed adjustment would conform with IMO guidelines.

Regulatory Evaluation

The proposed regulations are considered non-major under Executive Order 12291. They are, however, considered significant under Department of Transportation regulatory policies and procedures (DOT Order 2100.5 of May 22, 1980). A draft regulatory evaluation has been prepared and placed in the rulemaking docket. It may be inspected and copies at the Marine Safety Council, U.S. Coast Guard, Room 3600, 2100 Second Street SW., Washington, DC 20593–0001 between the hours of 8:00 a.m. and 3:00 p.m., Monday through Friday except holidays.

The proposed offshore routing system, comprised of shipping safety fairways and traffic separation schemes, is necessary to increase the level of navigation safety along the coast of California. The proposed routing systems recognize the paramount right-or-way for navigation. TSS segments will reduce the risk of vessel collisions in areas of heavy traffic density by separating the vessels into designated directional lanes. The shipping safety fairways will reduce the risk that vessels will collide with oil and gas drilling platforms in areas of offshore development.

Impact on the Shipping Industry

The distance offshore of the proposed routing system varies depending upon the configuration of the California coastline, the complexity of the offshore port approaches, and the extent to which traffic routes can be kept direct. The system is approximately nineteen miles off Point Arguello, thirty miles off Morro Bay, and eight miles off Point Sur.

The proposed routing system follows current traffic patterns along the coast of California, with one exception. In the area off Point Conception, the proposed extension of the Santa Barbara Channel TSS would route traffic slightly further west than its present direct course. The PWSA mandates that routes be established where conflicts with safe navigation are determined to exist. This routing will encourage vessels to navigate clear of the known areas of most concentrated present and expected future drilling activity in the Santa Barbara and Santa Maria Basins.

Since development has not been permitted within a substantial area off the central and northern California coast, it is difficult to assess what effects the proposed lanes will have on vessel traffic patterns. The Coast Guard intends to review the lanes after they have been in place for some time to ensure they are accomplishing their purpose.

Several alternative routing configurations were given consideration during the three port access route studies, the results of which are the basis of this rulemaking. Some of those alternatives considered locating the TSSs and safety fairways as much as fifty miles offshore. However, the further offshore the routing, the greater the impact to the shipping industry in additional hours in transit time between ports, and the likelihood that the routing would not be used.

The Coast Guard anticipates that vessel traffic which operates along the coast of California for navigational and commercial convenience will continue to do so. Vessels which routinely operate further offshore will not move closer to shore to use a routing measure unless there is an advantage in doing so. Similarly, those vessels operating close to shore to take advantage of aids to navigation and a radar return from objects on the shoreline cannot be expected to move further offshore unless it is in their navigational or economic interest.

Neither traffic separation schemes nor shipping safety fairways will be mandatory for vessels. A vessel voluntarily entering an IMO approved TSS becomes subject to Rule 10 of the 72 COLREGS. Rule 10 requires that vessels proceed in the appropriate traffic lane in the general direction of traffic flow for that lane. It also requires that vessels shall not normally enter a separation zone or cross a separation line. Fishing vessels are allowed some latitude to operate in the separation zone, but they shall not impede the passage of any vessel following a traffic lane.

Impact on the Environment

Implementation of the routing system itself will have no direct effect on the environment of the coast off California, and will have only positive effects by reducing the risk of casualties. Implementation of the rule will provide deep draft vessels with established navigation routes between Los Angeles/Long Beach and San Francisco where structures will not be permitted, and where lanes of opposing traffic will be separated.

The proposal will benefit the marine environment to the extent it reduces the risk of pollution from vessel/structure or vessel/vessel casualties.

The shipping safety fairways will prohibit erection of structures in areas of expected offshore development. However, at this time the total number and exact location of future structures is unknown. Therefore, an accurate assessment of the risk of casualties between vessels and structures is difficult because of the limited data on future offshore development. The risk of collision between vessels and structures, with resulting oil spill, has been demonstrated in the Gulf of Mexico. Twenty years of experience with the shipping safety fairway network in the Gulf of Mexico provides some evidence that shipping safety fairways reduce the risk of casualties in areas where offshore structures are numerous along popular navigation routes.

The San Francisco and Santa Barbara Channel TSS amendments will reduce the risk of vessel/vessel casualties by extending the TSS lanes into areas where the need for traffic management was shown to exist by the port access route studies.

Therefore, the Coast Guard has determined that this action will not have a significant impact on the environment.

A Finding of No Significant Impact (FONSI) is on file in the docket.

Impact on Endangered or Listed Species

The Coast Guard prepared an environmental assessment on the proposed offshore routing system with particular attention given to any potential impact on the California Sea Otter. The assessment concluded that this routing system will have no adverse effect on endangered species or any critical habitat designated as endangered or threatened pursuant to the Endangered Species Act of 1973. The Coast Guard will discuss with the Fish and Wildlife Service any comments on sea otters or other marine life which are submitted in response to this proposed rulemaking.

The modification to the San Francisco TSS, which shifts the northern approach away from the coast, is specifically intended to keep traffic further away from the Point Reyes/Farallon Island Marine Sanctuary.

Impact on Offshore Leasing and Development

The PWSA requires that the Coast Guard establish safe access routes for movement of vessel traffic proceeding to or from U.S. ports. Expected development on the Outer Continental Shelf off the coast of California will result in the acquisition of leases and the uncontrolled placement of structures which would interfere with the establishment of safe routing measures in the future. The Coast Guard, in anticipation of future offshore resource development, is proposing to establish shipping safety fairways and to extend existing TSSs to create a comprehensive system of vessel routing measures. The proposed routing measures reconcile, as far as practicable, the potential conflict between resource development and safety of navigation. The proposal to extend the TSSs and establish shipping safety fairways in advance of extensive offshore development is similar to actions taken by the COE when it first developed its system of shipping safety fairways in the Gulf of Mexico. This proposal will establish safe port access routes with minimal restrictions on future offshore development. This rulemaking has no impact upon present lease holders and the Coast Guard believes it will have the least adverse impact upon future lease blocks.

The primary economic impact of this proposal will be its effect on the Minerals Management Service (MMS) offshore leasing program. Shipping safety fairways prohibit erection of structures such as drilling platforms and could make oil and gas deposits inaccessible. Also, the oil and gas industry is likely to be reluctant to bid on blocks that have surface occupancy restrictions. The perceived value of a block to a prospective bidder would be reduced by the additional costs of operating in areas with these encumbrances. This would result in fewer bids in MMS lease sales and ultimately in reduced oil and gas recovery as well as lost revenues to the Federal Government.

The Coast Guard originally considered establishing a five-mile-wide shipping safety fairway along the coast of California connecting the San Francisco and Santa Barbara TSSs. This was not acceptable to MMS because a large number of offshore tracts would be totally precluded from oil exploration and development. The proposed TSS extensions and the two one-mile wide shipping safety fairways, separated by a two-mile wide non-fairway area, would provide structure-free corridors for coastwise traffic. No single three-mile square lease tract would be entirely foreclosed from exploration or development. The two one-mile wide fairways along the coast will have little or no effect on resource development because industy can explore and develop affected resources form surface areas directly adjacent to the vessel traffic lanes, inlcuding the two-mile corridor separating the northbound and southbound lanes. The Coast Guard invites comments on the potential resource impacts of this proposal.

The Coast Guard also proposes to overlay the San Francisco and Los Angeles/Long Beach precautionary areas with shipping safety fairways. In the San Francisco precautionary area, vessel traffic from eight TSS lanes (four inbound and four outbound) converge and pilots embark and debark vessels, arriving or departing the port of San Francisco. In the Los Angeles/Long Beach precautionary area, two inbound and two outbound TSS lanes converge. This area also has pilot embarking and debarking areas. The entrances to the port of Los Angeles and port of Long Beach are through two openings in the breakwater and all vessels must enter the precautionary area when arriving at or departing from these ports. In these high density vessel traffic areas where mariners are already on notice to navigate with caution, the Coast Guard believes the erection of structures would present an unacceptable additional risk to navigation safety.

The shipping safety fairways overlaying the precautionary areas will prohibit erection of structures and will preclude potential resource development in the San Francisco and Los Angeles/Long Beach precautionary areas. The great majority of the San Francisco precautionary area is already under deferral from leasing by the Farallon Islands National Marine Sanctuary, the Point Reyes Wilderness area, as well as an additional area deferred by the Secretary of the Interior.

MMS estimates that the potential loss of revenues to the Federal Government resulting from this proposal is significantly less than $100 million annually.

The Coast Guard anticipates that future population shifts, changes in transportation routes, knowledge of resource locations, and technological breakthroughs may make adjustment to the fairways desirable. If this occurs, the Coast Guard will restudy the affected areas, and, if appropriate, modify the fairways.

In circumstances where it is asserted that structures must be placed in an area designated as a shipping safety fairway or TSS to gain access to significant quantities of oil or gas, a request for adjustment would be given the appropriate consideration in accordance with the PWSA and rulemaking procedures. A port access route study will normally be required before a rulemaking can commence.

The Coast Guard believes that the proposed routing system effectively meets the mandate of the PWSA to reconcile the need for safe access routes with the needs of all other uses of the area, and minimizes the potential economic impact on MMS's offshore leasing program and future offshore development.

Regulatory Flexibility

The Coast Guard certifies, pursuant to section 605(b) of the Regulatory Flexibility Act (94 Stat. 1164; Pub. L. 96-354), that this proposed rulemaking will not have a significant economic impact on a substantial number of small entities. If any economic impact results from the proposed shipping safety fairways, it will be felt by major oil companies which compete for offshore lease rights in the area affected by the fairway restrictions, and by the Federal government to the degree that revenues from royalties may be deferred while production is inhibited by a shipping safety fairway. A substantial number of small businesses, local governments or organizations will not be economically affected.

Federalism

This proposed rulemaking has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects

33 CFR Part 166

Anchorage grounds, Marine safety, Navigation (water), Waterways, Shipping safety fairways.

33 CFR Part 167

Navigation (water), Vessel, Traffic separation scheme.

In consideration of the foregoing, the Coast Guard proposes to amend 33 CFR Parts 166 and 167 as follows:

PART 166—SHIPPING SAFETY FAIRWAYS

1. The authority citation for Part 166 is revised to read as follows:

Authority: 33 U.S.C. 1223; 49 CFR 1.46.

2. Section 166.300 is amended by redesignating paragraph (b)(1) as paragraph (b)(2) and by adding new paragraph (b) (1), (3) and (4) to read as follows:

§ 166.300 Areas along the coast of California.

* * * * *

(b) *Designated areas*—(1) *Los Angeles/Long Beach Shipping Safety Fairway.* An area overlaying the Los Angeles/Long Beach Precautionary area which consists of the water area enclosed by the Los Angeles/Long Beach breakwater and a line connecting Point Fermin Light at 33° 42'18" N., 118°17'36" W. with the following geographical positions:

Latitude	*Longitude*
33°37'42" N.	118°17'30" W.
33°37'42" N.	118°06'30" W.
33°43'" N.	118°10'48" W.

* * * * *

(3) *California Coastal Shipping Safety Fairways.* (i) Northbound (recommended for northbound and westbound coastwise vessel traffic): The area enclosed by rhumb lines joining points at:

Latitude	*Longitude*
34°26'36" N.	120°51'27" W.
34°28'00" N.	120°57'30" W.
34°31'15" N.	121°01'45" W.
35°00'00' N.	121°18'30" W.
37°00'00" N.	122°30'54" W.
37°00'00" N.	122°32'06" W.
35°00'00" N.	121°19'49" W.
34°30'45" N.	121°03'00" W.
34°27'00" N.	120°58'00" W.
34°25'42" N.	120°51'45" W.

(ii) Southbound (recommended for southbound and eastbound coastwise vessel traffic): The area enclosed by rhumb lines joining points at:

Latitude	*Longitude*
34°23'45" N.	120°52'27" W.
34°25'00" N.	120°58'30" W.
34°29'45" N.	121°05'00" W.
35°00'00" N.	121°22'48" W.
37°00'00" N.	122°34'42" W.
37°00'00" N.	122°36'00" W.
35°00'00" N.	121°24'06" W.
34°29'00" N.	121°06'00" W.
34°24'27" N.	120°59'30" W.
34°22'48" N.	120°52'42" W.

(4) *San Francisco Bay Approach Safety Fairway.* An area overlaying the San Francisco precautionary area bounded to the west by an arc of a circle radius six miles centered upon geographical position 37°45'00" N., 122°41'30" W., and between points at:

Latitude	*Longitude*
37°42'42" N.	122°34'36" W.
37°50'18" N.	122°38'00" W.

and bounded to the east by rhumb lines joining points at:

Latitude	*Longitude*
37°42'42" N.	122°34'36" W.
37°45'54" N.	122°38'00" W.
37°50'18" N.	122°38'00" W.

PART 167—OFFSHORE TRAFFIC SEPARATION SCHEMES

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

Authority: 33 U.S.C. 1223; 49 CFR 1.46.

4. In Part 167, the heading is revised to read as follows:

PART 167—OFFSHORE TRAFFIC SEPARATION SCHEMES, PRECAUTIONARY AREAS, AND AREAS TO BE AVOIDED

5. In Part 167, Subpart A is amended by revising § 167.1, by adding new paragraph (e) to § 167.5, and by revising § 167.15 to read as follows:

Subpart A—General

§ 167.1 Purpose.

The purpose of the regulations in this part is to establish and designate traffic separation schemes, precautionary areas, and areas to be avoided to provide access routes for vessels proceeding to and from U.S. ports.

§ 167.5 Definitions.

* * * * *

(e) "Area to be avoided" means a routing measure comprising an area within defined limits in which either navigation is particularly hazardous or it is exceptionally important to avoid casualties and which should be avoided by all ships, or certain classes of ships.

§ 167.15 Modification of traffic separation schemes, precautionary areas and areas to be avoided.

(a) A traffic separation scheme, precautionary area, or area to be avoided described in this part may be permanently amended in accordance with 33 U.S.C. 1223 and with international agreements.

(b) A traffic separation scheme, precautionary area, or area to be avoided in this part may be temporarily adjusted by the Commandant of the Coast Guard in an emergency, or to accommodate operations which would create an undue hazard for vessels using the scheme or which would contravene Rule 10 of the International Regulations for Preventing Collisions at Sea, 1972. Adjustment may be in the form of a temporary traffic lane shift, a temporary suspension of a section of the scheme, a temporary precautionary area overlaying a lane, or other appropriate measure. Adjustments will only be made where, in the judgment of the Coast Guard, there is no reasonable alternative means of conducting an operation and navigation safety will not be jeopardized by the adjustment. Notice of adjustments will be made in the appropriate Notice to Mariners and in the **Federal Register.** Requests by members of the public for temporary adjustments to a traffic separation scheme, precautionary area, or area to be avoided must be submitted 150 days prior to the time the adjustment is desired. Such requests, describing the interference that would otherwise occur to the traffic separation scheme, precautionary area or area to be avoided, should be submitted to the District Commander of the Coast Guard District in which the routing measure is located.

6. In Part 167, the table of contents for Subpart B is amended by revising the heading and by adding additional sections at the end of the existing table to read as follows:

Subpart B—Description of Traffic Separation Schemes, Precautionary Areas and Areas to be Avoided. (Unless otherwise specified all geographic positions are based on North American Datum of 1927)

* * * * *

Pacific Coast

7. In Part 167, the heading of Subpart B is revised to read as follows:

Subpart B—Descriptions of Traffic Separation Schemes, Precautionary Areas and Areas to be Avoided. (Unless otherwise specified, all geographic positions are based on North American Datum of 1927)

8. In Part 167, Subpart B is amended by adding an undesignated heading, §§ 167.500 to 167.503, §§ 167.510 to 167.512, and §§ 167.520 to 167.526 immediately following § 167.350 to read as follows:

Pacific Coast

§ 167.500 Los Angeles/Long Beach traffic separation scheme and precautionary area.

The specific elements of the Los Angeles/Long Beach Traffic Separation Scheme and Precautionary Area are described in §§ 167.501 to 167.503.

§ 167.501 Southern approach.

(a) A separation zone is established by a line connecting the following geographical positions:

Latitude	Longitude
33°37.7′ N.	118°07.7′ W.
33°20.0′ N.	118°02.2′ W.
33°19.5′ N.	118°04.6′ W.
33°37.7′ N.	118°10.1′ W.

(b) A traffic lane for southbound traffic is established between the separation zone and a line connecting the following geographical positions:

Latitude	Longitude
33°37.7′ N.	118°11.3′ W.
33°19.1′ N.	118°06.3′ W.

(c) A traffic lane for northbound traffic is established between the separation zone and a line connecting the following geographical positions:

Latitude	Longitude
33°37.7′ N.	118°06.5′ W.
33°20.3′ N.	118°00.5′ W.

§ 167.502 Western approach.

(a) A separation zone is bounded by a line connecting the following geographical positions:

Latitude	Longitude
33°39.7′ N.	118°17.6′ W.
33°38.7′ N.	118°17.6′ W.
33°38.7′ N.	118°27.6′ W.
33°43.2′ N.	118°36.9′ W.
33°44.9′ N.	118°35.7′ W.
33°39.7′ N.	118°24.9′ W.

(b) A traffic lane for northbound coastwise traffic is established between the separation zone and a line connecting the following geographical positions:

Latitude	Longitude
33°40.7′ N.	118°17.6′ W.
33°40.7′ N.	118°24.6′ W.
33°45.8′ N.	118°35.1′ W.

(c) A traffic lane for southbound coastwise traffic is established between the separation zone and a line connecting the following geographical positions:

Latitude	Longitude
33°37.7′ N.	118°17.6′ W.
33°37.7′ N.	118°28.0′ W.
33°42.3′ N.	118°37.5′ W.

§ 167.503 Precautionary area.

The Los Angeles/Long Beach Precautionary Area consists of the water area enclosed by the Los Angeles/Long Beach breakwater and a line connecting Point Fermin Light at 33°42.3′ N., 118°17.6′ W. with the following geographical positions:

Latitude	Longitude
33°37.7′ N.	118°17.6′ W.
33°37.7′ N.	118°06.5′ W.
33°43.4′ N.	118°10.8′ W.

§ 167.510 Santa Barbara Channel traffic separation scheme.

The specific elements of the Santa Barbara Traffic Separation Scheme are described in §§ 167.511 and 167.512.

§ 167.511 Between Point Vicente and Point Conception.

(a) A separation zone is bounded by a line connecting the following geographical positions:

Latitude	Longitude
34°20.90′ N.	120°30.10′ W.
34°04.00′ N.	119°15.90′ W.
33°44.90′ N.	118°35.70′ W.
33°43.20′ N.	118°36.90′ W.
34°02.20′ N.	119°17.40′ W.
34°18.90′ N.	120°30.90′ W.

(b) A traffic lane for north-westbound traffic is established between the separation zone and a line connecting the following geographical positions:

Latitude	Longitude
34°21.80′ N.	120°29.90′ W.
34°04.80′ N.	119°15.10′ W.
33°45.80′ N.	118°35.10′ W.

(c) A traffic lane for south-eastbound traffic is established between the separation zone and a line connecting the following geographical positions:

Latitude	Longitude
33°42.30′ N.	118°37.50′ W.
34°01.40′ N.	119°18.20′ W.
34°18.00′ N.	120°31.10′ W.

§ 167.512 Between Point Conception and Point Arguello.

(a) A separation zone is bounded by a line connecting the following geographical positions:

Latitude	Longitude
34°20.90′ N.	120°30.10′ W.
34°25.70′ N.	120°51.75′ W.
34°23.75′ N.	120°52.45′ W.
34°18.90′ N.	120°30.90′ W.

(b) A traffic lane for westbound traffic is established between the separation zone and a line connecting the following geographical positions:

Latitude	Longitude
34°21.80′ N.	120°29.90′ W.
34°26.60′ N.	120°51.45′ W.

(c) A traffic lane for eastbound traffic is established between the separation zone and a line connecting the following geographical positions:

Latitude	Longitude
34°18.00′ N.	120°31.10′ W.
34°22.80′ N.	120°52.70′ W.

§ 167.520 San Francisco Bay approach traffic separation scheme, precautionary area, and area to be avoided.

The specific elements of the San Francisco Bay Approach Traffic Separation Scheme, Precautionary Area, and Area to be Avoided are described in §§ 167.521 to 167.526.

§ 167.521 Southern approach.

(a) A separation zone is bounded by a line connecting the following geographical positions:

Latitude	Longitude
37°39.0′ N.	122°41.4′ W.
37°00.0′ N.	122°34.7′ W.
37°00.0′ N.	122°32.1′ W.
37°39.2′ N.	122°39.8′ W.

(b) A traffic lane for northbound traffic is established between the separation zone and a line connecting the following geographical positions:

Latitude	Longitude
37°00.0′ N.	122°30.9′ W.
37°39.3′ N.	122°38.7′ W.

(c) A traffic lane for southbound traffic is established between the separation zone and a line connecting the following geographical positions:

Latitude	Longitude
37°39.0′ N.	122°42.5′ W.
37°00.0′ N.	122°36.0′ W.

§ 167.522 Western approach.

(a) A separation zone is bounded by a line connecting the following geographical positions:

Latitude	Longitude
37°41.9′ N.	122°48.0′ W.
37°38.1′ N.	122°58.1′ W.
37°36.5′ N.	122°57.3′ W.
37°41.1′ N.	122°47.2′ W.

(b) A traffic lane for south-westbound traffic is established between the separation zone and a line connecting the following geographical positions:

Latitude	Longitude
37°42.8′ N.	122°48.5′ W.
37°39.6′ N.	122°58.8′ W.

(c) A traffic lane for north-eastbound traffic is established between the separation zone and a line connecting the following geographical positions:

Latitude	*Longitude*
37°35.0′ N.	122°56.5′ W.
37°40.4′ N.	122°46.3′ W.

§ 167.523 Northern approach.

(a) A separation zone is bounded by a line connecting the following geographical positions:

Latitude	*Longitude*
37°48.4′ N.	122°47.6′ W.
37°56.7′ N.	123°03.7′ W.
37°55.2′ N.	123°04.9′ W.
37°47.7′ N.	122°48.2′ W.

(b) A traffic lane for north-westbound traffic is established between the separation zone and a line connecting the following geographical positions:

Latitude	*Longitude*
37°49.2′ N.	122°46.7′ W.
37°58.0′ N.	123°02.7′ W.

(c) A traffic lane for south-eastbound traffic is established between the separation zone and a line connecting the following geographical positions:

Latitude	*Longitude*
37°53.9′ N.	123°06.1′ W.
37°46.7′ N.	122°48.7′ W.

§ 167.524 Main ship channel.

(a) A separation line connects the following geographical positions:

Latitude	*Longitude*
37°45.9′ N.	122°38.0′ W.
37°47.0′ N.	122°34.3′ W.
37°48.1′ N.	122°31.0′ W.

(b) A traffic lane for eastbound traffic is established between the separation line and a line connecting the following geographical positions:

Latitude	*Longitude*
37°45.8′ N.	122°37.7′ W.
37°47.8′ N.	122°30.8′ W.

(c) A traffic lane for westbound traffic is establishing between the separation line and a line connecting the following geographical positions:

Latitude	*Longitude*
37°46.2′ N.	122°37.9′ W.
37°46.9′ N.	122°35.3′ W.
37°48.5′ N.	122°31.3′ W.

§ 167.525 Precautionary area.

A precautionary area is established bounded to the west by an arc of a circle radius 6 miles centered upon geographical position 37°45.0′ N., 122°41.5′ W. and between the following geographical positions:

Latitude	*Longitude*
37°42.7′ N.	122°34.6′ W.
37°50.2′ N.	122°37.9′ W.

and bounded to the east by a line connecting the following geographical positions:

Latitude	*Longitude*
37°42.7′ N.	122°34.6′ W.
37°45.9′ N.	122°38.0′ W.
37°50.2′ N.	122°37.9′ W.

§ 167.526 Area to be avoided.

A circular area to be avoided is centered upon geographical position 37°45.0′ N. and 122°41.5′ W. with a radius of half a mile.

Dated: March 24, 1988.

Signed:

P.A. Yost,

Admiral, U.S. Coast Guard Commandant.

[FR Doc. 89–10109 Filed 4–26–89; 8:45 am]

BILLING CODE 4910–14–M

Reader Aids

Federal Register

Vol. 54, No. 80

Thursday, April 27, 1989

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-5237

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	523-3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230

Other Services

Data base and machine readable specifications	523-3408
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Library	523-5240
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, APRIL

13345-13504.....3
13505-13662.....4
13663-13834.....5
13835-14042.....6
14043-14198.....7
14199-14332.....10
14333-14618.....11
14619-14790.....12
14791-14924.....13
14925-15162.....14
15163-15354.....17
15355-15738.....18
15739-15912.....19
15913-16096.....20
16097-16352.....21
16353-17686.....24
17687-17946.....25
17947-18086.....26
18087-18266.....27

CFR PARTS AFFECTED DURING APRIL

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
5948.....13663
5949.....14329
5950.....14331
5951.....14617
5952.....14619
5953.....15157
5954.....15163
5955.....15357
5956.....15737
5957.....17687
5958.....17695
5959.....17697
5960.....17699

Executive Orders:
July 2, 1910 (Amended by PLO 6726).....17708
December 12, 1917 (Amended by PLO 6718).....14801
3053 (Amended by PLO 6715).....13524
4415 (Revoked by PLO 6716).....13524
6206 (Modified by PLO 6714).....13523
11222 (Revoked by EO 12674).....15159
12513 (See Notice of April 21, 1989).....17701
12565 (Revoked by EO 12674).....15159
12635 (See Notice of Apr. 6, 1989).....14197
12660 (Amended by EO 12675).....17691
12674.....15159
12675.....17691

Administrative Orders:
Memorandums:
April 13, 1989.....15361
Notices:
April 6, 1989.....14197
April 21, 1989.....17701
Presidential Determinations:
No. 89-12 of March 15, 1989.....15355
No. 89-13 of Apr. 12, 1989.....17689

4 CFR

Proposed Rules:
21.....14361

5 CFR

213.....15639
872.....13665
873.....13665
1204.....18198

Proposed Rules:
531.....18198

7 CFR

2.....13505, 14043, 16097
17.....14199
58.....15165
220.....13605
225.....18200
246.....18087
354.....13506, 14621
401.....14201
406.....14205
906.....18093
910.....14050, 14925, 16097
911.....15168
915.....15168
916.....18095
925.....15169
946.....13835
955.....13666
979.....13507
982.....13508
985.....13509
1065.....15170
1106.....13836
1137.....13667
1230.....15913
1260.....15915
1745.....13345, 16194
1749.....13345, 16194
1750.....14622
1785.....13668, 17703, 17856
1807.....14333
1910.....14630, 18097
1924.....14333
1930.....14334
1942.....14333
1944.....14333, 14334, 14630
1951.....14637
1962.....14791
1980.....14333, 14791

Proposed Rules:
27.....15210, 16438-T
28.....15210, 16438-T
33.....15216
55.....13977
56.....13977
70.....13977
301.....15217
403.....14240
916.....14080
917.....14080
918.....15218
919.....13891
949.....17742
987.....13526
1007.....13692
1030.....15413
1036.....15413
1049.....13526
1079.....15417
1930.....14822, 18116
1933.....17751
1944.....14822, 17751, 17958

1955.....17958

8 CFR

103.....13513
245a.....13360

9 CFR

77.....15371
91.....15918
92.....15302
94.....14792
97.....13515, 14638
201.....16353
203.....16353

Proposed Rules:

92.....14968
318.....15946

10 CFR

2.....14925, 15372
30.....14051
40.....14051
50.....13361, 15372
51.....15372
52.....15372
70.....14051
73.....17703
170.....15372

Proposed Rules:

2.....17961
35.....13892
50.....17962
71.....13528

12 CFR

207.....16357
220.....16357
221.....16357
224.....16357
226.....13455, 13855
229.....13837, 13839, 13841
303.....14064
346.....14064
563.....15400

Proposed Rules:

304.....13693
522.....14085
523.....15951
545.....14091
563.....15426

13 CFR

108.....15919

Proposed Rules:

120.....15952

14 CFR

39.....13874, 13875, 14206, 14207, 14639–14644, 15739–15747, 16098
61.....15144, 15148
63.....15072, 15148
65.....15148
67.....15144
71.....13516, 13455, 13876, 14070, 14208–14212, 15748, 16101–16103
73.....13517, 13877, 14212, 14213
91.....13810
97.....14070, 16104
121.....15134
1204.....14955
1206.....13518

Proposed Rules:

Ch. I.....14098
27.....17936
29.....17936
39.....13893, 13895, 14241, 14657–14660, 15766–15772 16127
71.....13529, 13896, 14098, 14414, 14661, 15774–15778, 15953
75.....14414
121.....15134

15 CFR

785.....16360

16 CFR

1.....14072
13.....14337
306.....14072

Proposed Rules:

13.....13529, 13533, 13695
436.....14662

17 CFR

4.....15748
140.....18098
145.....18098
200.....18099
211.....14073
231.....17947
241.....17947

Proposed Rules:

240.....15226, 15429
250.....15954
259.....15954

18 CFR

37.....15920
154.....13670
157.....13670
260.....13670
284.....13670
385.....13670
388.....13670

19 CFR

4.....15171
101.....15630
122.....14213
178.....15402
192.....15402
201.....13672, 13677
353.....13977, 14909

Proposed Rules:

111.....14824
162.....14242
171.....14242, 16195
175.....15440
177.....13978

20 CFR

217.....13362
639.....15404, 16042, 18073

21 CFR

5.....14796
58.....15923
175.....15749
176.....13880, 14074, 18102
177.....15750
178.....13877, 14734, 17704
444.....13878
510.....17705
520.....14340, 15751
522.....17705
546.....13977
573.....14214, 15874
872.....13828
878.....13826, 16438–T
892.....13828
1308.....14797, 14799

Proposed Rules:

109.....16128
130.....15441
163.....14663
176.....13606
182.....15441
184.....15441
291.....13897
347.....13490, 18197
348.....13490, 18197
358.....13480, 18197
509.....16128
864.....13698, 16438–T
872.....13833
892.....13833
1301.....16130
1305.....16130
1306.....17769
1316.....14246

22 CFR

34.....13364
192.....16195

23 CFR

646.....13369

Proposed Rule:

658.....16372

24 CFR

201.....14075, 16360
203.....14075, 16360
234.....14075, 16360
576.....13978

25 CFR

61.....14192

Proposed Rule:

101.....14361
103.....14361

26 CFR

1.....13606, 13679, 13978
35a.....14341
301.....13606
602.....13606

Proposed Rule:

1.....14825, 18117
31.....14363
601.....15779

27 CFR

47.....13680

28 CFR

0.....15752
2.....15172
64.....18198
541.....18198

Proposed Rules:

2.....15226
31.....14768

29 CFR

103.....16336
500.....13807
1601.....13519
1926.....15405
2610.....13520, 14955
2622.....13520
2676.....14956

Proposed Rules:

1926.....16131

30 CFR

206.....16105
701.....13814
740.....13814
750.....13814
773.....13814
774.....13814
800.....13814
843.....13814
935.....15173

Proposed Rule:

218.....14364
920.....14367, 16133
943.....15227
948.....16136
950.....15955

31 CFR

316.....15924
342.....15924
351.....15924
515.....13881, 14215
565.....13882

32 CFR

80.....13369
169.....13373
191.....15752
372.....13376
384.....13379
392.....13381, 15173
706.....13681
806b.....13521, 14957

Proposed Rules:

169a.....15442
172.....18117
1656.....14968

33 CFR

100.....13382, 14646, 14647, 16106
117.....14647, 15753, 16106
160.....14077
161.....15173
165.....13883, 14076, 14957, 15179, 15753, 16107

Proposed Rule:

1.....14250
100.....14099, 14100, 14663, 14664, 15780
165.....13389, 14826
166.....18258
167.....14827, 18258

34 CFR

300.....18248
307.....15308
608.....14041
690.....14788

Proposed Rules:

345.....14778
425.....14740
426.....14740
432.....14740
433.....14740
434.....14740
435.....14740
436.....14740
437.....14740
438.....14740
441.....14740

36 CFR

217.....13807

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List: April 25, 1989

Public Laws

are now available for the 101st Congress, 1st Session, 1989

Pamphlet prints of public laws, often referred to as slip laws, are the initial publication of Federal laws upon enactment and are printed as soon as possible after approval by the President. Legislative history references appear on each law. Subscription service includes all public laws, issued irregularly upon enactment, for the 101st Congress, 1st Session, 1989.

(Individual laws also may be purchased from the Superintendent of Documents, Washington, DC 20402-9328. Prices vary. See Reader Aids Section of the Federal Register for announcements of newly enacted laws and prices).

Superintendent of Documents Subscriptions Order Form

Order Processing Code:
*6216

Charge your order. It's easy! MasterCard VISA

☐ **YES,** please send me _____ subscriptions to **PUBLIC LAWS** for the 101st Congress, 1st Session, 1989 for $107 per subscription.

1. The total cost of my order is $_____ . All prices include regular domestic postage and handling and are subject to change. International customers please add 25%.

Please Type or Print

2. _____
(Company or personal name)

_____
(Additional address/attention line)

_____
(Street address)

_____
(City, State, ZIP Code)

(_____)
_____
(Daytime phone including area code)

3. **Please choose method of payment:**

☐ Check payable to the Superintendent of Documents

☐ GPO Deposit Account ☐☐☐☐☐☐☐☐-☐

☐ VISA or MasterCard Account

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

_____
(Credit card expiration date)

Thank you for your order!

_____
(Signature)

1/89

4. **Mail To:** Superintendent of Documents, Government Printing Office, Washington, D.C. 20402-9371