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Briefing on How To Use the Federal Register—
For information on briefing in Washington, DC, see announcement on the inside cover of this issue.

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THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

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

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 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: June 15; 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

Regulation Identifier Numbers (RINs)

Agencies have begun including a Regulation Identifier Number in the headings of their **Federal Register** documents. RINs also appear in entries listed in the *Unified Agenda of Federal Regulations*, which is published in the **Federal Register** in April and October of each year. Assigning RINs makes it easier for the public and agency managers to track the entries at the various stages of their development.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 27 and 28

[CN-89-001]

Revisions of User Fees for Cotton Classification, Testing and Standards

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service (AMS) is adopting without change the increases in user fees charged for cotton classification, testing and standards which were proposed in the regulatory revision published in the Federal Register on April 17, 1989. The user fee increases are needed to cover the costs of providing these services. The new fees are effective on July 1, 1989, to be in effect at the beginning of the classing season.

EFFECTIVE DATE: July 1, 1989.

FOR FURTHER INFORMATION CONTACT: Garry L. Lewicki, (202) 447-2145.

SUPPLEMENTARY INFORMATION: A proposed rule detailing the increases in the user fees charged for cotton classification, testing and standards was published on April 17 in the Federal Register (54 FR 15210). Pursuant to a correction published in the Federal Register on April 24, 1989, (54 FR 16438-T), a fifteen day comment period was provided for interested persons to respond to the proposed rule; no comments were received.

Therefore, AMS is adopting without change these increases in user fees.

This final rule has been reviewed in accordance with Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be "non-major" since it does not meet the criteria for a major regulatory action as stated in the order.

The Administrator, Agricultural Marketing Service (AMS), has certified that this action will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because: (1) The fee increases merely reflect a minimal increase in the cost-per-unit currently borne by those entities utilizing the services; (2) the cost increase will not affect competition in the marketplace; (3) the use of classification and testing services and the purchase of standards is voluntary.

The information collection requirements contained in this final rule have been previously approved by the Office of Management and Budget and assigned OMB control numbers under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Fees for the Classification Under the Cotton Statistics and Estimates Act of 1927

The user fee charged to cotton producers for manual classification services under the Smith-Doxey amendment to the Cotton Statistics and Estimates Act (7 U.S.C. 473a) was $1.03 during the 1988 harvest season (53 FR 20089) as determined using the formula provided in the Uniform Cotton Classing Fees Act of 1987. The charges cover salaries, cost of equipment and supplies, and other overhead and include administrative and supervisory costs. This final rule increases the user fee for manual classification charged to producers from $1.03 per bale to $1.23 per bale. This new fee was calculated by using the 1988 base fee adjusted for the rate of inflation, the projected size of the crop and the addition of a surcharge necessary to maintain an adequate operating reserve. The 1988 base fee is $1.15 per bale. A 4.1 percent, or five cents per bale, increase due to the Implicit Price Deflator of the Gross National Product is added to the $1.15 resulting in a 1989 base fee of $1.20 per bale. The 1989 crop is currently estimated at 12,700,000 running bales. The base fee is decreased two percent based on the estimated size of the crop (one percent for every 100,000 bales or portion thereof above the base of 12,500,000 bales). This percentage factor amounts to a two cents per bale reduction and is subtracted from the base fee of $1.20 per bale resulting in a fee of $1.18 per bale. A five-cent surcharge is added to the $1.18 per bale fee since the projected operating reserve is less than 25 percent. The projected operating reserve is 16 percent. This would establish the 1989 season fee at $1.23 per bale. No further adjustments are warranted under the formula.

Therefore, the fee for this service in § 28.909 during the 1989 harvest season is $1.23 per bale. The additional fee for High Volume Instrument (HVI) classification remains 50 cents per bale and the fee for HVI classification during the 1989 harvest season is revised to $1.73 per bale. As provided for in the Uniform Cotton Classing Fees Act of 1987, a 5 cent per bale discount continues to be applied to voluntary centralized billing and collecting agents.

The fee for a manual review classification in § 28.911 is also increased from $1.03 to $1.23 per bale since the fee for review classification is the same as the original classification fee. For the same reason the fee for HVI review classification is increased from $1.53 to $1.73 per bale.

Fees for Cotton Standards

Practical forms of the cotton standards are prepared and sold by the Cotton Division offices in Memphis, Tennessee, under the authority of the United States Cotton Standards Act (7 U.S.C. 51 *et seq.*). The Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35) directs that the price for standards will cover, as nearly as practicable, the costs of providing the standards.

This final rule increases the fees listed in §§ 28.123 and 28.151 for practical forms of the cotton standards, including both grade and staple standards for American Upland cotton, American Pima cotton and for cotton linters. The fees need to be adjusted due to increased costs for salaries and preparation, delivery, and postage of the standards. Current and estimated demand for the standards has also been factored into the fee revision since per unit costs are directly related to volume.

The fees for American Upland cotton grade standards are increased from $100.00 to $110.00 f.o.b. Memphis, Tennessee, or overseas air freight collect. The price is increased from $104.00 to $114.00 for domestic surface delivery and from $140.00 to $150.00 for

overseas air parcel post delivered. The fees for American Upland staple standards f.o.b. Memphis and overseas airfreight collect increase from $14.00 to $16.00. The domestic surface delivered fee increases from $16.00 to $18.00 and the overseas air parcel post delivered fee increases from $28.00 to $30.00. The fees for American Pima grade standards are increased from $126.00 to $140.00 f.o.b. Memphis or overseas air freight collect. The price is increased from $130.00 to $144.00 for domestic surface delivered and from $166.00 to $180.00 for overseas air parcel post delivered. Fees for American Pima staple standards increase from $15.00 to $17.00 for f.o.b. Memphis and overseas air freight collect. The domestic surface delivered fee increased from $17.00 to $19.00 and the overseas air parcel post delivered fee increases from $29.00 to $31.00. The fees for linters grade standards are increased from $100.00 to $110.00 f.o.b. Memphis or overseas air freight collect. The price for domestic surface delivery increases from $104.00 to $114.00 and the price for overseas air parcel post delivery increases from $140.00 to $150.00. The f.o.b. Memphis or overseas air freight collect fees for linters staple standards increases from $16.00 to $18.00. The delivered price increases from $18.00 to $20.00 for domestic and from $30.00 to $32.00 for overseas air parcel post.

Fees for Classification Services Under the United States Cotton Standards Act

Certain other cotton classification services are conducted under the United States Cotton Standards Act. Fees for these services have been reviewed. In order to recover increased costs, including supervision and overhead, the fees for classification of cotton or samples in § 28.116 are increased: For grade, staple and micronaire readings from $1.30 per sample to $1.45; for grade and staple only from $1.15 per sample to $1.25; and for grade only or staple only from $.90 to $1.00.

The fee in § 28.117 for each new memorandum or certificate issued in substitution for a prior one increases from $4.00 per sheet to $4.50. The additional hourly fee charged for Form C determinations in §§ 28.120 and 28.149 increases from $18.00 per hour or each portion thereof to $20.00 per hour, or each portion thereof, plus traveling expenses and subsistence or per diem. The fee in § 28.122 for a complete practical classing examination for cotton or cotton linters increases from $125.00 to $135.00 and the fee for reexamination for a failed part, either grade or staple, increases from $75.00 to $80.00. Fees for the classification, comparison, or review of linters in § 28.148 increases from $1.20 to $1.30 per bale or sample involved. In § 28.148, the fee for classification or comparison of cotton linters and the issuance of a memorandum increases from $1.20 to $1.30 per sample.

The United States Cotton Futures Act (7 U.S.C. 15b) authorizes the Secretary to make such regulations as are necessary to carry out the provisions of that Act. Pursuant to that authority, Part 27 of the regulations (7 CFR Part 27) provides for cotton classification under the Cotton Futures Act including fees to recover the costs of classification and micronaire. Under this final rule, the fees charged for the services are increased to cover the costs of providing such services, including overhead costs.

These fees have been reviewed and the fees in § 27.80 for initial classification is increased from $1.20 per bale to $1.30 per bale; the fee for review classification is increased from $1.40 per bale to $1.50 per bale. All supervision fees are increased by 20 cents. Pursuant to § 27.85, fees for withdrawal of requests or applications for review, after such services have been started, are the same as the fees in § 27.80 for services completed, so such charges are increases by this rule. Fees for certificates which appear in § 27.81 increases from 60 cents to 65 cents per certificate.

Testing Services

Cotton testing services are provided by USDA Laboratory in Clemson, South Carolina under the authority of the Cotton Statistics and Estimates Act of 1927 (7 U.S.C. 471–478). The tests are available, upon request, to private sources on a fee basis. The Cotton Services Testing Amendment (7 U.S.C. 473d) specifies that the fees for the services be reasonable and cover as nearly as practicable the costs of rendering the services. The cost of providing these services has increased since the last fee increase in 1987 due to higher costs for salaries and miscellaneous overhead costs including supplies and materials. Therefore, the fees for cotton testing services are increased to recover, as nearly as practicable, the costs of these services.

The fees for fiber and processing tests in § 28.956, except items 1.0, 5.0, 7.0, 7.1, 8.0, 8.1, 9.0, 15.0, 18.0, and 19.0, are increased as follows:

Item No.	Fee	
	Current	Proposed
1.0a	84.00	84.00
1.0b	68.00	88.00
1.0c	84.00	84.00
1.0d	124.00	124.00
2.0a	15.00	17.00
2.0b	16.00	18.00
2.0c	15.00	17.00
2.0d	25.00	27.00
2.1a	23.00	25.00
2.1b	25.00	27.00
2.1c	23.00	25.00
2.1d	37.00	39.00
3.0	95.00	105.00
3.1	15.00	17.00
4.0	25.00	30.00
4.1	12.00	15.00
5.0	1.60	1.60
6.0	1.08	1.10
7.0	8.50	8.50
7.1	5.50	5.50
8.0	8.75	8.75
8.1	5.50	5.50
9.0a	8.75	8.75
9.0b	6.50	6.50
9.0c	5.50	5.50
10.0	0.55	0.65
10.1	0.30	0.35
11.0	10.00	12.00
Minimum	50.00	60.00
12.0	6.00	6.50
13.0a	65.00	70.00
13.0b	103.00	108.00
13.0c	125.00	130.00
13.1a	48.00	52.00
13.1b	70.00	74.00
13.1c	97.00	101.00
13.2	117.00	122.00
14.0a	22.00	24.00
14.0b	27.00	29.00
14.0c	32.00	34.00
15.0a	7.50	7.50
15.0b	13.00	13.00
16.0	14.00	15.00
17.0	4.50	5.00
Minimum	22.50	25.00
18.0	25.00	25.00
19.0	80.00	80.00
20.0	105.00	110.00
20.1	80.00	85.00
21.0	95.00	100.00
22.0	140.00	145.00
23.0	200.00	210.00
24.0	220.00	230.00
25.0	29.00	31.00
25.1	40.00	42.00
26.0a	75.00	80.00
26.0b	22.00	23.00
27.0	11.00	12.00
28.0	4.50	5.00
28.1	6.50	7.50
29.0	17.00	18.00
29.1	29.00	31.00
30.0	12.00	14.00
Minimum	36.00	42.00
31.0	2.50	3.00
32.0	3.00	3.50
33.0	1.10	1.25
33.1	12.00	15.00

List of Subjects

7 CFR Part 27

Cotton, Classification, Samples, Micronaire, Spot markets.

7 CFR Part 28

Cotton samples, Standards, Cotton linters, Grades, Staples, Market news, Testing.

For the reasons set forth in the preamble, the following amendments to 7 CFR Parts 27 and 28 are adopted as follows:

PART 27—[AMENDED]

1. The authority citation for Part 27 continues to read as follows:

Authority: 90 Stat. 1841–1846; 7 U.S.C. 15b.

2. The introductory text of § 27.80 and paragraphs (a), (b), (d) through (h) and § 27.81 are revised to read as follows:

§ 27.80 Fees; classification, micronaire, and supervision.

For services rendered by the Cotton Division pursuant to this subpart, whether the cotton involved is tenderable or not, the person requesting the services shall pay fees as follows:

(a) Initial classification and certification—$1.30 per bale.

(b) Review classification and certification—$1.50 per bale.

(c) * * *

(d) Combination service—$2.80 per bale. (Initial classification, review classification, and Micronaire determination covered by the same request and only the review classification and Micronaire determination results certified on cotton class certificates.)

(e) Supervision, by a supervisor of cotton inspection, of the inspection, weighing, or sampling of cotton when any two or more of these operations are performed together—$1.55 per bale.

(f) Supervision, by a supervisor of cotton inspection, of the inspection, weighing, or sampling of cotton when any one of these operations is performed individually—$1.55 per bale.

(g) Supervision, by a supervisor of cotton inspection, of transfers of cotton to a different delivery point, including issuance of new cotton class certificates in substitution for prior certificates—$2.65 per bale.

(h) Supervision, by a supervisor of cotton inspection, of transfers of cotton to a different warehouse at the same delivery point, including issuance of new cotton class certificates in substitution for prior certificates—$1.90 per bale.

§ 27.81 Fees; certificates.

For each new certificate issued in substitution for a prior certificate at the request of the holder thereof, for the purpose of business convenience, or when made necessary by the transfer of cotton under the supervision of any exchange inspection agency as provided in § 27.73, the person making the request shall pay a fee of $.65 for each certificate issued.

PART 28—[AMENDED]

3. The authority citation for Subpart A of Part 28 continues to read as follows:

Authority: Sec. 5, 50 Stat. 62, as amended (7 U.S.C. 55); sec. 10, 42 Stat. 1519 (7 U.S.C. 61).

4. Section 28.116 is amended by revising paragraph (a) to read as follows:

§ 28.116 Amounts of Fees for classification; exemption.

(a) For the classification of any cotton or samples, the person requesting the services shall pay a fee, as follows, subject to the additional fee provided by paragraph (c) of this section.

(1) Grade, staple, and micronaire reading—$1.45 per sample.

(2) Grade, staple only—$1.25 per sample.

(3) Grade only or staple only—$1.00 per sample.

* * * * *

5. Section 28.117, 28.120, and 28.122 are revised to read as follows:

§ 28.117 Fee for new memorandum or certificate.

For each new memorandum or certificate issued in substitution for a prior memorandum or certificate at the request of the holder thereof, on account of the breaking or splitting of the lot of cotton covered thereby or otherwise for his business convenience, the person requesting such substitution shall pay a fee of $4.50 per sheet.

§ 28.120 Expenses to be borne by party requesting classification.

For any samples submitted for Form A or Form D determinations, the expenses of inspecting and sampling, the preparation of the samples and delivery of such samples to the classification room or other place specifically designated for the purpose by the Director shall be borne by the party requesting classification. For samples submitted for Form C determinations, the party requesting the classification shall pay the fees prescribed in this subpart and, in addition, a fee of $20.00 per hour, or each portion thereof, plus the necessary traveling expenses and subsistence, or per diem in lieu of subsistence, incurred on account of such request, in accordance with the fiscal regulations of the Department applicable to the Division employee supervising the sampling.

§ 28.122 Fee for practical classing examination.

The fee for the complete practical classing examination for cotton or cotton linters shall be $135.00. Any applicant who passes both parts of the examination may be issued a certificate indicating this accomplishment. Any person who passes one part of the examination, either grade or staple, and fails to pass the other part, may be reexamined for that part that was failed. The fee for this practical reexamination is $80.00.

6. Section 28.123 is revised to read as follows:

§ 28.123 Costs of practical forms of cotton standards.

The costs of practical forms of the cotton standards of the United States shall be as follows:

Effective date: July 1, 1989	Dollars each box or roll			
	Domestic shipments		Shipments delivered outside the continental United States	
	f.o.b. Memphis, Tenn.	Surface delivery	Air freight collect	Air parcel post delivered
Grade standards:				
American Upland	$110.00	$114.00	$110.00	$150.00
American Pima	140.00	144.00	140.00	180.00
Standards for length of staple:				
American Upland (prepared in one pound rolls for each length	16.00	18.00	16.00	30.00
American Pima (prepared in one pound rolls for each length)	17.00	19.00	17.00	31.00

7. Sections 28.148 and 28.149 are revised to read as follows:

§ 28.148 Fees and costs; classification; review; other.

The fee for the classification, comparison, or review of linters with respect to grade, staple, and character or any of these qualities shall be at the rate of $1.30 for each bale or sample involved. The provisions of §§ 28.115 through 28.126 relating to other fees and costs shall, so far as applicable apply to services performed with respect to linters.

§ 28.149 Fees and costs; Form C determination.

For samples submitted for Form C determinations, the party requesting the classification shall pay the fees prescribed in this subpart and, in addition, a fee of $20.00 per hour, or each portion thereof, plus the necessary traveling expenses and subsistence, or per diem in lieu of subsistence, incurred on acccount of each request, in accordance with the fiscal regulations of the Department applicable to the Division employee supervising the sampling.

8. Section 28.151 is revised to read as follows:

§ 28.151 Cost of practical forms for linters, period effective.

Practical forms of the official cotton linters standards of the United States will be furnished to any person subject to the applicable terms and conditions specified in § 28.105; *Provided*, That no practical form of any of the official cotton linters standards of the United States for grade shall be considered as representing any such standards after the date of its cancellation in accordance with this subpart, or, in any event, after the expiration of 12 months following the date of its certification. The cost of the practical forms of cotton linters standards of the United States shall be as follows:

Effective date: July 1, 1989	Dollars each box or roll			
	Domestic shipments		Shipments delivered outside the continental United States	
	f.o.b. Memphis, Tenn.	Surface delivery	Air freight collect	Air parcel post delivered
Linters Grade Standards (6 sample box for each grade)	$110.00	$114.00	$110.00	$150.00
Linters Staple Standards (prepared in one pound rolls for each length)	18.00	20.00	18.00	32.00

9. The authority citation of Subpart B of Part 28 continues to read as follows:

Authority: Sec. 205, 60 Stat. 1090, as amended (7 U.S.C. 1624).

10. Section 28.184 is revised to read as follows:

§ 28.184 Cotton linters; general.

Requests for the classification or comparison of cotton linters pursuant to this subpart and the samples involved shall be submitted to the Cotton Division. All samples classed shall be on the basis of the official cotton linters standards of the United States. The fee for classification or comparison and the issuance of a memorandum showing the results of such classification or comparison shall be $1.30 per sample.

11. The authority citation for Subpart D of Part 28 continues to read as follows:

Authority: Sec. 3a, 50 Stat. 62, as amended (7 U.S.C. 473a); Sec. 3c, 50 Stat. 62 (7 U.S.C. 473c); unless otherwise noted.

12. Paragraph (b) of § 28.909 is revised to read as follows:

§ 28.909 Costs.

* * * * *

(b) The cost of manual cotton classification service to producers is $1.23 per sample.

* * * * *

13. Paragraph (b) of § 28.910 is revised to read as follows:

§ 28.910 Classification of samples and issuance of classification data.

* * * * *

(b) Upon request of an owner of cotton for which classification memoranda have been issued under this subpart, a new memorandum shall be issued for the business convenience of such owner without the reclassification of the cotton. Such rewritten memorandum shall bear the date of its issuance and the date or inclusive dates of the original classification. The fee for a new memorandum shall be $4.50 per sheet.

14. Section 28.911 is revised to read as follows:

§ 28.911 Review classification.

A producer may request one manual or one High Volume Instrument (HVI) review classification for each bale of eligible cotton. The fee for manual review classification is $1.23 per sample. The fee for HVI review classification is $1.73 per sample. Samples for review classification must be drawn by gins or warehouses licensed pursuant to § 28.20–28.22, or by employees of the United States Department of Agriculture. Each sample for review classification shall be taken, handled, and submitted according to § 28.908 and to supplemental instructions issued by the Director or an authorized representative of the Director. Costs incident to sampling, tagging, identification, containers, and shipment for samples for review classification shall be assumed by the producer. After classification, the samples shall become the property of the Government unless the producer requests the return of the samples. The proceeds from the sale of samples that become Government property shall be used to defray the costs of providing the services under this subpart. Producers who request return of their samples after classing will pay a fee of 30 cents per sample in addition to the fee established above in this section.

15. The authority citation for Subpart E of Part 28 continues to read as follows:

Authority: Sec. 3c, 50 Stat. 62; 7 U.S.C. 473c: sec. 3d, 55 Stat. 131 (7 U.S.C. 473d).

16. Section 28.956 is revised to read as follows:

§ 28.956 Prescribed fees.

Fees for fiber and processing tests shall be assessed as listed below:

Item No.	Kind of test	Fee per test
1.0	Calibration cotton for use with High Volume Instruments, per 5 pound package:	
	a. f.o.b. Memphis, Tennessee	$84.00
	b. By surface delivery within continental United States.	88.00
	c. By air freight collect outside continental United States.	84.00

Item No.	Kind of test	Fee per test
	d. By air parcel post delivery outside continental United States.	124.00
2.0	Furnishing international calibration cotton standards with standard values for micronaire reading and fiber strength at zero and ⅛-inch gage and Fibrograph length:	
	a. f.o.b. Memphis, Tennessee ½-lb. sample.	17.00
	b. By surface delivery within continental United States, ½-lb sample.	18.00
	c. By air freight collect outside continental United States, ½-lb. sample.	17.00
	d. By air parcel post delivery outside continental United States, ½-lb. sample.	27.00
2.1	Furnishing international calibration cotton standards with standards values for micronaire reading only:	
	a. f.o.b. Memphis, Tennessee 1-lb. sample.	25.00
	b. Surface delivery within continental United States, 1-lb sample.	27.00
	c. By air freight collect outside continental United States, 1-lb. sample.	25.00
	d. By air parcel post delivery outside continental United States, 1-lb. sample.	39.00
3.0	Furnishing color standards, including a set of standard tiles and a master diagram for use in calibrating Nickerson-Hunter Cotton Colorimeters, per set.	105.00
3.1	Furnishing replacement calibration tiles for above sets, each tile.	17.00
4.0	Furnishing a Colorimeter calibration sample box containing 6 cotton samples with color values Rd and +b plotted on a color diagram based on the Nickerson-Hunter Cotton Colorimeter, per box.	30.00
4.1	Furnishing new Colorimeter readings on samples in calibration boxes returned for check readings, per 6-sample box.	15.00
5.0	High Volume Instrument (HVI) measurement. Readings micronaire, length, length unformity, ⅛-inch gage strength, color and trash content. Based on a 6 oz. (170 g) sample, per sample.	1.60
6.0	Color of ginned cotton lint. Reporting data on the reflectance and yellowness in terms of Rd and b values as based on the Nickerson-Hunter Cotton Colorimeter on samples which measure 5×6½ inches and weigh approximately 50 grams, per sample.	1.10
7.0	Fiber length of ginned cotton lint by Fibrograph method. Reporting the average length and average length uniformity as based on 4 specimens from a blended sample, per sample.	8.50
7.1	Fiber length of ginned cotton lint by Fibrograph method. Reporting the average length and average length uniformity as based on 2 specimens from each unblended sample.	5.50
8.0	Pressley strength of ginned cotton lint by flat bundle method for either zero or ⅛-inch gage as specified by applicant. Reporting the average strength as based on 6 specimens from a blended sample, per sample.	8.75
8.1	Pressley strength of ginned cotton lint by flat bundle method for either zero or ⅛-inch gage as specified by applicant. Reporting the strength as based on 2 specimens for each unblended sample, per sample.	5.50
9.0	Stelometer strength and elongation of ginned cotton lint by the flat bundle method for ⅛-inch gage. Reporting the average strength and elongation:	
	a. Based on 6 specimens from each blended sample, per sample.	8.75
	b. Based on 4 specimens from each blended sample, per sample.	6.50
	c. Based on 2 specimens from each blended sample, per sample.	5.50
10.0	Micronaire readings on ginned lint. Reporting the micronaire based on 2 specimens per sample.	.65
10.1	Micronaire reading based on 1 specimen per sample.	.35
11.0	Fiber maturity and fineness of ginned cotton lint by the Causticaire method. Reporting the average maturity, fineness, and micronaire reading as based on 2 specimens from a blinded sample, per sample.	12.00
	Minimum fee	60.00
12.0	Fiber fineness and maturity of ginned cotton lint by the IIC-Shirley Fineness/Maturity Tester method, reporting the average micronaire, maturity ratio, percent mature fibers and fineness (linear density) based on 2 specimens from a blended sample, per sample.	6.50
13.0	Fiber length array of cotton samples. Reporting the average percentage of fibers by weight in each ⅛-inch group, average length and average length variability as based on 3 specimens from a blended sample:	
	a. Ginned cotton lint, per sample.	70.00
	b. Cotton comber noils, per sample.	108.00
	c. Other cotton wastes, per sample.	130.00
13.1	Fiber length array of cotton samples. Reporting the average percentage of fibers by weight in each ⅛-inch group, average length and average length variability as based on 2 specimens from a blended sample:	
	a. Ginned cotton lint, per sample.	52.00
	b. Cotton comber noils, per sample.	74.00
	c. Other cotton wastes, per sample.	101.00
13.2	Fiber length array of cotton samples, including purified or absorbent cotton. Reporting the average percentage of fibers by weight in each ⅛-inch group, average length and average length variability as based on 3 specimens from a blended sample:	122.00
14.0	Fiber Length and Length Distribution of cotton samples by the Almeter method. Reporting the upper 25 percent length, mean length, coefficient of variation, and short fiber percentages by weight, number of tuft in each ⅛-inch group, as based on 2 specimens from a blended sample:.	
	a. Report percentages of fiber by weight only.	24.00
	b. Report percentages of fiber by weight and number or tuft.	29.00
	c. Report percentages of fiber by weight, number and tuft.	34.00
15.0	Foreign matter content of cotton samples. Reporting data on the non-lint content as based on the Shirley Analyzer separation of lint and foreign matter:	
	a. For samples of ginned lint or comber noils, per 100-gram specimen.	7.50
	b. For samples of ginning and processing wastes other than comber noils, per 100-gram specimen.	13.00
16.0	Neps content of ginned cotton lint. Reporting the neps per 100 square inches as based on the web prepared from a 3-gram specimen by using accessory equipment with the mechanical fiber blender, per sample.	15.00
17.0	Sugar content of cotton. Reporting the percent sugar content as based on a quantitative analysis of reducing substances (sugars) on cotton fibers, per sample.	5.00
	Minimum fee	25.00
18.0	Miniature carded cotton spinning test. Reporting data on tenacity (centinewtons per tex) of 22's yarn and HVI data (see Item 5.0). Based on the processing of 50 grams of cotton in accordance with special procedures per sample.	25.00
19.0	Two-pound cotton carded yarn spinning test available to cotton breeders only. Reporting data on yarn skein strength, yarn appearance, yarn neps and the classification and the fiber length of the cotton as well as comments on any unusual processing performance as based on the processing of 2 pounds of cotton in accordance with standard procedures into two standard carded yarn numbers employing a standard twist multiplier, per sample.	80.00

Item No.	Kind of test	Fee per test
20.0	Cotton carded yarn spinning test. Reporting data on waste extracted, yarn skein strength, yarn appearance, yarn neps, and classification, and fiber length as well as comments summarizing any unusual observations as based on the processing of 6 pounds of cotton in accordance with standard laboratory procedures at one of the standard rates of carding 6½, 9½ or 12½ pounds-per-hour into two of the standard carded yarn number of 8s, 14s, 22s, 36s, 44s, or 50s, employing a standard twist multiplier unless otherwise specified, per sample.	110.00
20.1	Cotton carded yarn spinning test (open-end) for short staple (31/32nd inches and shorter) cottons. Reporting data on waste extracted, yarn skein strength, yarn appearance, yarn neps and classification and fiber length as well as comments summarizing any unusual observations as based on the processing of 6 pounds of cotton in accordance with standard laboratory procedures at a carding rate of 12½ pounds-per-hour into 8's using a silver weight of 60 grains per yard; a rotor speed of 45,000 RPM; and opening roll speed of 7,200 RPM; a twist multiple of 4.5; and rotor diameter of 46 millimeters.	85.00
21.0	Spinning potential tests. Determining the finest yarn which can be spun with no ends down and reporting spinning potential yarn number. This test requires an additional 4 poinds of cotton, per sample.	100.00
22.0	Cotton combed yarn spinning test. Reporting data on waste extracted, yarn skein strength, yarn appearance, yarn neps, and classification, and fiber length as well as comments summarizing any unusual observations as based on the processing of 8 pounds of cotton in accordance with standards procedures at one of the standard rates of carding of 4½, 6½, or 9½ pounds-per-hour into two of the standards combed yarn numbers of 22s, 36s, 44s, 50s, 60s, 80s, or 100s employing a standard twist multiplier unless otherwise specified, per sample.	145.00
23.0	Cotton carded and combed yarn spinning test. Reporting the results as based on the processing of 10 pounds of cotton into two of the standard carded and two of the standard combed yarn numbers employing the same carding rate and the same yarn numbers for both the carded and the combed yarns, per sample.	210.00
24.0	Cotton carded and combed yarn spinning test. Reporting the results as based on the processing of 9 pounds of cotton into two of the standard combed yarn numbers employing different carding rates and/or yarn numbers for the carded and the combed yarns, per sample.	230.00
25.0	Processing and testing of additional yarn. Any carded or combed yarn number processed in connection with spinning tests including either additional yarn numbers or additional twist multipliers employed on the same yarn numbers, per additional lot of yarn.	31.00
25.1	Processing and furnishing of additional yarn: Any yarn number processed in connection with spinning tests. Approximately 300 yards on each of 16 paper tubes for testing by the applicant, per additional lot of yarn.	42.00
26.0	Twist in yarns by direct-counting method. Reporting direction of twist and average turns per inch of yarn:	
	a. Single yarns based on 40 specimens per lot of yarn.	80.00
	b. Plied or cabled yarns based on 10 specimens, per lot of yarn.	23.00
27.0	Skein strength of yarn. Reporting data on the strength and the yarn numbers based on 25 skeins from yarn furnished by the applicant per sample.	12.00
28.0	Appearance grade of yarn furnished on bobbins by applicant. Reporting the appearance grade in accordance with ASTM standards as based on yarn wound from one bobbin, per bobbin.	5.00
28.1	Furnishing yarn would on boards in connection with yarn appearance tests.	7.50
29.0	Strength of cotton fabric. Reporting the average warp and filling strength by the grab method as based on 5 breaks for both warp and filling of fabric furnished by the applicant, per sample.	18.00
29.1	Cotton fabric analysis. Reporting data on the number of warp and filing threads per inch and weight per yard of fabric as based on at least three (3) 6×6-inch specimens of fabric which were processed or furnished by the applicant, per sample.	31.00
30.0	Chemical finishing test on finished drawing sliver. The Ahiba Texomat Dyer is used for scouring, bleaching and dyeing of a 3-gram sample. Color measurements are made on the unfinished, bleached and dyed cotton samples, using a Hunterlab Colorimeter, Model 25 M-3. The color values are reported in terms of reflectance (Rd), yellowness (+b) and blueness (−b).	14.00
	Minimum fee	42.00
31.0	Furnishing copies of test data worksheets. Includes individual observations and calculations which are not routinely furnished to the applicant, per sheet.	3.00
32.0	Furnishing identified cotton samples. Includes samples of ginned lint stock at any stage of processing or testing, waste of any type, yarn or fabric selected and identified in connection with fiber and/or spinning tests, per identified sample.	3.50
33.0	Furnishing additional copies of test reports. Include extra copies in addition to the 2 copies routinely furnished in connection with each test item, per additional sheet.	1.25
33.1	Furnishing a certified relisting of test results. Includes samples or sub-samples selected from any previous tests, per sheet.	15.00
34.0	Classification of ginned cotton lint is available in connection with other fiber tests, under the provisions of 7 CFR 28, § 28.56, at the fees prescribed by 7 CFR 28, § 28.116. Classification includes grade, staple, and micronaire reading based on a 6 oz. (170 g) sample.	

J. Patrick Boyle,
Administrator.
May 30, 1989.

[FR Doc. 89-13173 Filed 5-31-89; 8:45 am]
BILLING CODE 3410-02-M

7 CFR Part 51

[Docket No. FV-89-207]

Inspection and Certifying Services

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action establishes a voluntary user fee service of document review and certification related to the destruction of imported Chilean produce which occurred during the period March 13, 1989, through April 26, 1989. This action will facilitate the Chilean compensation program for the benefit of United States importers and others in the domestic marketing and distribution chain.

EFFECTIVE DATE: Effective on May 23, 1989. The expiration date of this regulation is September 1, 1989.

FOR FURTHER INFORMATION CONTACT: Charles R. Brader, Director, Fruit and Vegetable Division, AMS, P.O. Box 96456, Room 2077-South, Washington, DC 20090-6456 or call (202) 447-4722.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been designated as "nonmajor."

Pursuant to the requirements set forth in the Regulatory Flexibility Act, the Administrator of AMS has determine that this action will not have a significant economic impact on a substantial number of small entities.

This service is performed on a voluntary basis upon the request of applicants. This rule will not impose substantial direct economic cost, recordkeeping, or personnel workload changes on small entities, and will not alter the market share or competitive position of these entities relative to large businesses.

On April 18, 1989, the Government of Chile issued Decree Number 58 which provides for compensation for Chilean fruit destroyed in March and April 1989. For compensation claims to be recognized by Chilean authorities, Decree Number 58 requires the submission of documents which evidence destruction of such fruit. In order to facilitate the Chilean compensation program for the benefit of United States importers and others in the domestic marketing and distribution chain, the Agricultural Marketing Service (AMS) will review and certify relevant documents as a user fee service pursuant to the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 *et seq.*). The AMS certification program will be limited to certifying that the documents reviewed by the agency, which are to be submitted to the Chilean government as evidence of destruction of dumping, constitute the kinds of documents that would be accepted in a USDA proceeding. The certification statement will not attest to the authenticity or reliability of the documents, or that destruction by dumping actually occurred. In certifying documents submitted under this rule, AMS will generally apply the criteria found in 7 CFR 46.22 and 46.23, which are applicable in USDA proceedings relating to the destruction of fresh produce, insofar as those criteria are relevant to the destruction of Chilean produce.

This service will be available to all applicants in accordance with these regulations. However, AMS expects that it will receive most requests for service through the American Produce Association, which represents the major U.S. importers of Chilean produce and which has taken steps to make its services with regard to the Chilean indemnification program available to all financially interested parties. All documents reviewed by AMS will be returned directly to the applicant and AMS will not arrange for any additional processing of documents by the Chilean authorities.

Because of the very short time frame involved, AMS will review and certify documents on an overtime basis based upon existing staffing capabilities. The fee will be $37 per hour. This fee has been calculated based on existing hourly fees and overtime charges for inspection services performed in accordance with the regulations in Part 51.

Pursuant to 5 U.S.C. 553, it is found and determined that, upon good cause, it is impracticable, unnecessary and contrary to the public interest to give preliminary 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**. This determination is made because of the very short time frame resulting from the June 30, 1989, expiration date of Chilean Decree Number 58. Accordingly, all documents must be processed in advance of that date. For the same reason, it is impractical for the agency to follow the procedures set forth in Executive Order 12291.

This interim rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 51

Fresh fruits, vegetables, and other products; Inspection, certification, and standards.

PART 51—[AMENDED]

For reasons set forth in the preamble, 7 CFR Part 51 is amended to read as follows:

1. The authority citation for 7 CFR Part 51 continues to read as follows:

Authority: Secs. 203, 205, 60 Stat. 1087, as amended, 1090 as amended; 7 U.S.C. 1622, 1624, unless otherwise noted.

2. The Subpart—Regulations is amended by adding the following undesignated center heading and §§ 51.63–51.77 to read as follows:

Subpart—Regulations

Document Certification Service

Subpart—Regulations

Document Certification Service

§ 51.63 Certification of documents.

Certification of documents regarding destruction by dumping of grapes grown in Chile during the 1988–89 season and imported into the United States during the period March 13, 1989 through April 26, 1989 will be made in accordance with §§ 51.64 through 51.77.

§ 51.64 Documents which may be certified.

The types of documents which may be certified are those referenced in 7 CFR 46.23 and shall include:

(a) USDA inspection certificates;

(b) A state, county, or municipal certificate;

(c) A certificate issued by a commercial inspection agency; or

(d) An inspection certificate of a disinterested party which shall include such information as required by 7 CFR 46.23(c), insofar as such information is relevant to the destruction of produce from Chile.

§ 51.65 Filing of application.

An application for document review and certification shall be regarded as filed only when received at the office of the Director, Fruit and Vegetable Division, AMS, P.O. Box 96456, Room 2077–South, Washington, DC 20090–6456. A record showing the date and time of filing shall be made and kept in such office.

§ 51.66 When application may be rejected.

An application may be rejected by the Department for the failure of the applicant:

(a) To observe the regulations of this part,

(b) To furnish necessary information,

(c) To pay for previous certification services rendered, or

(d) When it appears that to perform the certification service would not be to the best interest of the Government.

Such applicant shall be notified promptly of the reason for such rejection and may resubmit the application after correction of all deficiencies.

§ 51.67 When application may be withdrawn.

An applicant may be withdrawn by the applicant at any time before the certification is performed: *Provided*, That the applicant shall pay any expenses which have been incurred by the Department in connection with such application.

§ 51.68 Authority to request certification service.

Proof of the interest of an applicant in the certification involved, or of the authority of any person applying for the certification service on behalf of another may be required, at the discretion of the reviewing and certifying official.

§ 51.69 Order of certification service.

Certification shall be performed, insofar as practicable, in the order in which applications are received.

§ 51.70 Financial interest of official.

No official shall review documents concerning any product in which the official is directly or indirectly financially interested.

§ 51.71 Certification of documents.

Certification of documents shall be issued in a manner approved by the Administrator.

§ 51.72 Issuance of certifications or denial thereof.

(a) A separate certification of documents shall be issued for each document reviewed. The document review shall be conducted in accordance with the applicable provisions of 7 CFR 46.22 and 46.23. The person signing and issuing the certificate shall be one of the following:

(1) The official who performed the document review; or

(2) Any other official of the Department who has been authorized by the Administrator to act in a supervisory capacity with respect to the service.

(b) Upon review of documents submitted for certification, certification may be denied if the documents fail to meet the requirements for certification contained in these regulations. The applicant shall be promptly notified of such a denial.

§ 51.73 Issuance of corrected certifications.

A corrected certification may be issued if errors in any pertinent information require the issuance of a corrected certification. Whenever a corrected certification is issued, such certification shall supersede the certification which was issued in error and the superseded certification shall become null and void after the issuance of the corrected certification.

§ 51.74 Disposition of certifications.

The original document certification shall be affixed on each document reviewed and shall be delivered or mailed promptly to the applicant or to a person designated by the applicant. No copies of such documents shall be retained by the agency.

§ 51.75 Resubmission of rejected documents.

Any document submitted for certification which is rejected by the certifying official may be resubmitted after correction of all deficiencies.

§ 51.76 Fees charged for document certification.

Fees for document certification shall be made according to the following schedule:

(a) Document certification per applicant request—$37 per hour

(b) Resubmission of rejected document certification per applicant request—$37 per hour.

(c) Costs including travel incurred by the agency in providing the document certification service may be charged to the applicant. Any charges shall be included with the fee for certification on the bill furnished the applicant.

§ 51.77 Payment of fees charged for document certification.

The fees and charges for document certification services shall be paid by the applicant to the Director, Fruit and Vegetable Division, AMS, P.O. Box 96456, Room 2077–South, Washington, DC 20090–6456 with a check made payable to the Agricultural Marketing Service.

Dated: May 23, 1989.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 89–13055 Filed 5–31–89; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 1135

[DA–89–021]

Milk in the Southwestern Idaho-Eastern Oregon Marketing Area; Order Suspending Certain Provisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rule.

SUMMARY: This action continues to suspend for the months of June through November 1989 portions of the Southwestern Idaho-Eastern Oregon Federal milk order that have been suspended since December 1988. The suspended provisions relate to the limits on the amount of milk not needed for fluid (bottling) use that may be moved directly from farms to nonpool manufacturing plants and still be priced under the order. The action was requested by a cooperative association that represents a majority of the producers supplying the market to prevent uneconomic movements of milk.

EFFECTIVE DATE: June 1, 1989.

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

SUPPLEMENTARY INFORMATION:

Prior document in this proceeding:

Notice of Proposed Suspension: Issued April 25, 1989; published April 28, 1989 (54 FR 18298).

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

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

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and of the order regulating the handling of milk in the Southwestern Idaho-Eastern Oregon marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on April 28, 1989 (54 FR 18298) concerning a proposed suspension of certain provisions of the order. Interested persons were afforded opportunity to file written data, views and arguments thereon. No comments opposing the suspension were received.

After consideration of all relevant material, including the proposal in the notice, the comments received, and other available information, it is hereby found and determined that for the months of June through November 1989 the following provisions of the order do not tend to effectuate the declared policy of the Act:

In § 1135.13, paragraphs (f) (3), (4), (5), and (6).

Statement of Consideration

This action continues to remove for the months of June through November 1989 the limit on the amount of producer milk that a cooperative association or other handler may divert from pool plants to nonpool plants. The provisions,

which have been suspended since December 1988, provide that a cooperative association may divert up to 80 percent of its total member milk received at all pool plants or diverted therefrom during any month. Similarly, the operator of a pool plant may divert up to 80 percent of its receipts of producer milk [for which the operator of such plant is the handler during the month) during any month.

Dairymen's Creamery Association, Inc. (DCA), an association of producers that supplies much of the market's fluid milk needs and handles much of the market's reserve milk supplies, requested the suspension. DCA indicated that operation of the 80-percent diversion limit would mean that over 2,000,000 pounds of milk must be unloaded and re-loaded each month at the Meridian, Idaho, pool supply plant to be transferred to nonpool manufacturing plants. According to the cooperative such unnecessary handling would be undertaken for the sole purpose of meeting the delivery requirements of the order. The cooperative stated that such unnecessary unloading and re-loading takes employees' time, increases the exposure of milk to contamination, and requires additional cleaning of lines and tanks.

Western Dairymen Cooperative, Inc. (WDCI) filed comments supporting the requested suspension. WDCI stated that the suspension would greatly reduce hauling costs, as well as reducing the cost of operating the supply plant.

For the year preceding April 1989, producer milk pooled under the Southwestern Idaho-Eastern Oregon milk order increased 22 percent over production levels of the previous year. Although receipts of producer milk used in Class I have also increased, they have done so at a much slower rate. Consequently, the percentage of milk produced in the market that is surplus to the market's fluid milk needs has increased significantly in the past year.

Given the marked increase in the volume of producer milk pooled under the order, the requested suspension will allow the pooling of producers who stand ready to supply the fluid milk requirements of the marketing area to be handled without undue expense. There is no indication that the suspension would encourage association with the order of the milk of producers who are not bona fide suppliers of the bottling needs of the market.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing in the marketing area in that without extensive, unnecessary and expensive hauling and handling, substantial quantities of milk from producers who regularly supply the market would be excluded from the marketwide pool, thereby causing a disruption in the orderly marketing of milk;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this suspension.

Therefore, good cause exists for making this order effective upon publication in the **Federal Register.**

List of Subjects in 7 CFR Part 1135

Milk marketing orders, Milk, Dairy products.

It is therefore ordered, That the following provisions in § 1135.13 of the Southwestern Idaho-Eastern Oregon order are hereby suspended for the months of June through November 1989:

PART 1135—MILK IN THE SOUTHWESTERN IDAHO-EASTERN OREGON MARKETING AREA

1. The authority citation for 7 CFR Part 1135 continues to read as follows:

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

§ 1135.13 [Temporarily suspended in part]

2. In § 1135.13, paragraphs (f) (3), (4), (5), and (6) are suspended.

Signed at Washington, DC, on: May 26, 1989.

Jo Ann R. Smith,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 89–13031 Filed 5–31–89; 8:45 am]

BILLING CODE 3410-02-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Parts 563c and 571

[No. 89–1480]

RIN 3068–AA62

Investment Portfolio Policy and Accounting Guidelines

Dated: May 19, 1989.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule; final statement of policy.

SUMMARY: The Federal Home Loan Bank Board ("Bank Board," "Board" or "FHLBB") is amending its regulations governing institutions chartered by the Board or insured ("insured institution" or "insured institutions") by the Federal Savings and Loan Insurance Corporation ("FSLIC") by amending its rules and by adopting a Statement of Policy that clarifies and re-emphasizes that the securities activities of an insured institution must be conducted in a safe and sound manner, must be in compliance with an approved and documented investment policy and strategies, and must be accounted for in accordance with generally accepted accounting principles ("GAAP"). Insured institutions must comply with the documentation requirements on August 30, 1989. As existing GAAP literature addresses the proper accounting for securities activities, the Board will continue to challenge accounting for securities activities not properly reported in accordance with GAAP.

The final rule requires separate accounting for and disclosure of securities held for investment, held for sale, and held for trading, consistent with the requirements of GAAP. The final Statement of Policy reiterates the need for the safe and sound investment of an institution's funds and requires an insured institution's board of directors to review and approve the institution's investment policy and strategies and to monitor the institution's compliance with the approved investment policy and strategies. The Statement of Policy reiterates the requirement that securities activity be recorded in accordance with GAAP; requires management of an institution to support its classification of and accounting for securities via appropriate documentation; requires auditors to document their concurrence or lack thereof with management's classification and accounting; and offers guidance on the factors to be considered by management and its auditors in carrying out their respective responsibilities.

EFFECTIVE DATE: June 1, 1989. Pre-existing GAAP requirements are unaffected by this Statement of Policy. Insured institutions must comply with the documentation requirements of an investment policy and strategies and board of director reviews on August 30, 1989. For further discussion, see section II.F. Effective Date of the Supplementary Information and § 571.19(e) Effective Date of the Statement of Policy.

FOR FURTHER INFORMATION CONTACT: Joe A. Hargett, Professional Accounting Fellow, (202) 331–4583, David H.

Martens, Chief Accountant, (202) 331–4579, Office of Regulatory Activities, Federal Home Loan Bank System, 801 Seventeenth Street NW., Washington, DC 20006; Douglas P. Foster, Chief Accountant, (202) 906–7503, Gary Jeffers, Staff Attorney, (202) 906–6457, Corporate and Securities Division, or Julie L. Williams, Deputy General Counsel, (202) 906–6459, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: With the increased investment powers of savings institutions and the proliferation of different types of securities,[1] some insured institutions have expanded their investment activity to include a variety of securities and portfolio strategies as an alternative or as an adjunct to traditional lending activities. The extent, volume, and nature of the activity of purchasing, originating, and selling securities has led to questions regarding the appropriate and consistent accounting for and financial statement presentation of such securities in accordance with GAAP, and the institutional safety and soundness implications of such accounting. As a result, the Board on June 9, 1988, proposed to amend its regulations and to adopt a Statement of Policy regarding investment portfolio policies and accounting guidelines applicable to institutions that are chartered by the Board or the accounts of which are insured by the FSLIC. *See* Board Res. No. 88–460, 51 FR 23244 (June 21, 1988).

The Board invited comments on the proposed Statement of Policy and the proposed rule at the time they were issued. (The comment period was subsequently extended to September 20, 1988.) In addition, the Board conducted a public hearing on September 22, 1988, on the proposed Statement of Policy and proposed rule. Many commentators responded with letters addressing the issues covered by the proposals and suggested modifications to some of the provisions of the proposed Statement of Policy and proposed rule.

The Board has carefully studied the issues raised by the commentators in determining whether and in what manner to proceed with an investment portfolio policy and any related accounting guidelines. Accordingly, today the Board is issuing its Statement of Policy and related regulations with respect to investment portfolio policy and accounting guidelines.

[1] "Securities", as used throughout this preamble, refers generically to investment securities, high yield corporate debt securities, loans, mortgage-backed securities, and derivative securities.

The Board notes that the Administrative Procedures Act (the "APA"), 5 U.S.C. 553(b)(3)(A), exempts general policy statements and interpretative rules from notice and comment requirements. Certain portions of the final Statement of Policy differ significantly from the proposed Statement of Policy. However, as permitted by section 553(b)(3)(A) of the APA, the Board has not submitted the revised portions for public comment before adopting this final Statement of Policy.

This preamble will first review the comments received on the proposed Statement of Policy and proposed rule. An overview of the final Statement of Policy and final rule is then provided.

I. Summary of Comments

The Board received 188 comment letters on its proposal. Of these, 144 letters were received from insured institutions, 19 letters from thrift industry trade and accounting associations, 14 letters from broker/dealers, investment advisors and mortgage product companies, two letters from accounting firms, three letters from law firms representing unnamed clients, one letter from an individual and five letters from members of Congress either forwarding letters from their insured institution constituents (which letters are included in the summary as insured institutions) or commenting on the concerns of the Congressional representatives.

The letters responded to concerns in seven general areas. These areas of concern are: (1) The impact on the industry of the proposed rule and proposed Statement of Policy; (2) the proposed policy and strategies requirements; (3) the extent of the board of directors' involvement in the management of institutions; (4) various issues regarding GAAP, notably the definitions of and relevance of certain terms and concepts such as "intent" and "ability to hold"; (5) the documentation requirements; (6) the impact of accounting for mutual fund investments; and (7) the effective date. These comments have been carefully considered by the Board in issuing this final rule and final Statement of Policy. The comments received on each of these areas are specifically addressed below.

A. Impact of Rule and Statement of Policy on the Industry

Eighty seven respondents commented on the anticipated overall impact the proposed rule and proposed Statement of Policy would have on the savings and loan industry. Many commentators perceived the proposed rule and the proposed Statement of Policy as an overreaction to industry abuses that would result in excessive and costly regulation. Commentators observed that the Board's existing regulations, examination procedures, and the existing supervisory monitoring system can be used to correct perceived abuses. They contended that the powers currently available to the Board should be exercised rather than imposing additional, burdensome, and redundant regulations. In addition to being burdensome and disruptive, commentators argued that the proposed Statement of Policy would not necessarily promote the safety and soundness of insured institutions or the thrift industry.

Sixty seven commentators charged that the proposed Statement of Policy failed to take into account the dynamic investing environment that has developed since deregulation of interest rates and the resulting frequent, and sometimes volatile, swings in interest rates. Commentators expressed the belief that the proposal limited management's flexibility and discouraged or deterred the prudent use of modern portfolio management techniques. Respondents speculated that insured institutions that actively manage risk will be discouraged from doing so for fear of creating a sale or trading portfolio (with the attendant accounting implications) when their intent was only to better position the investment portfolio against interest rate risk. Commentators suggested that, as a reaction to a Statement of Policy of this nature, insured institutions may take insufficient interest rate risks, e.g., by withdrawing from the market or resorting to U.S. government securities, thereby diminishing profitability. Respondents argued that the Board's intent of limiting speculative excesses and promoting board of director involvement could have the opposite effect, resulting instead in board of director complacency and assumption of insufficient rate risk.

Another industry-wide effect anticipated by commentators was the increased dependence by insured institutions on expert investment advisors for purposes of drafting the investment policies and strategies and advising on investment transactions. Respondents noted that thrifts may not find these expert services affordable. Similarly, respondents argued, small thrifts generally will not have the resources to hire support personnel to effect the myriad of requirements in the proposed Statement of Policy. Thus, respondents contended there would be a

disproportionate economic impact on smaller insured institutions. Certain commentators suggest that small thrifts should have less detailed compliance requirements.

Commentators speculated that the adoption of the proposed Statement of Policy would have a potentially detrimental impact on the earnings and image of insured institutions and would erode investor support and confidence in the insured institutions. Respondents suggested that these anticipated market perceptions may result in a diminished capability of thrifts to raise capital in the financial markets at a time when significant infusions of new capital are sorely needed. Thus, the reduced ability to attract outside capital could create more risk to the FSLIC. The proposed Statement of Policy was, therefore, perceived as potentially lowering the value of a thrift charter vis-a-vis a bank charter.

In addition, commentators noted that the accounting implications of a transaction are often a primary consideration for entering into a transaction. Therefore, numerous transactions considered beneficial by the respondents may not be consummated because insured institutions would be more concerned about the accounting impact of the transactions rather than the economic benefits of the transactions.

B. Implementation and Documentation of Investment Policy and Strategies

Comments were received from 35 respondents regarding the proposed policy and investment strategies requirements. Most commentators agreed that thrifts should have a clear, written statement of overall policy from which to make portfolio management decisions and that the investment policy should address the overall mission of the insured institution. Some commentators noted, however, that the cost to create a written policy may be excessive and wasteful.

Commentators argued that the proposed Statement of Policy did not reflect modern portfolio theory. Concerns were expressed by commentators that the proposed Statement of Policy envisioned a neatly written, specific plan for all scenarios of business cycles, *i.e.*, rising and falling interest rate environments, with strategies for management to follow in each cycle. Respondents observed that portfolio management does not operate in this fashion; a too specific investment policy would not provide sufficient latitude for necessary investment activities in an ever-changing financial environment. Rather, respondents believed the investment policy should be sufficiently broad to permit management to manage the portfolio, to react to changing market conditions on a timely basis, to take advantage of investment opportunities, and to adjust the portfolio to reflect exposure to interest rate risk through restructuring and hedging. Commentators expressed the belief that the proposed Statement of Policy would hinder the flexibility deemed necessary to manage interest rate risk in a safe and sound manner. Thus, respondents believed, following the policy strictly could be economically detrimental to the investment activities of insured institutions.

In addition, respondents commented that volatile markets may make the best plan obsolete in a short period. Commentators suggested that the focus of the policy should center on the overall investment results to be achieved; hence, strategies should not be developed for each type of instrument.

With regard to the items listed in the proposed Statement of Policy for consideration in developing the investment policy, critics charged that the proposed list ignored credit risk and ratings mix, instrument mix, and risk concentrations. Other respondents feared that a board of directors might address only the factors listed in the proposed Statement of Policy and might ignore other relevant investment and market factors. An additional criticism levied by critics was that numerous factors that affect portfolio management could not possibly be foreseen and, therefore, could not be discussed in the investment policy. Thus, critics argued, there will be a need for numerous revisions to the investment policy and frequent board approvals resulting in loss of valuable management and board of director productivity.

C. Board of Directors' Responsibilities

Seventy five respondents addressed the role of the board of directors and the role of management in the establishment of the investment policy and strategies. Commentators perceived the proper role of the board of directors of an insured institution as setting only the broad policies by which the insured institution should conduct its operations. According to this reasoning, the board of directors should then appropriately delegate to management the responsibility for operating the insured institution on a daily basis. These commentators indicated that it is the responsibility of the board of directors to monitor the performance of the insured institution (and management and any outside consultants) and to ensure that appropriate internal controls and procedures are implemented.

The proposed Statement of Policy is perceived by these commentators as creating a new level of board of director involvement, a level that moves beyond the normal oversight role of the board of directors and into the daily financial decisions of an insured institution. (This perception was heightened by the perceived excessive documentation requirements of the proposed Statement of Policy.) Respondents believed that the existing system of checks and balances between the board of directors and management would be compromised by the increased oversight requirements of the proposed Statement of Policy and that the board of directors would be less able to provide overall guidance when forced to focus on the daily investment activities of the institution.

In keeping with their belief that it is management's responsibility to operate an institution in accordance with the broad policies established by the board of directors, the commentators noted that the board of directors' involvement in the daily operations of an institution would create an inflexible situation whereby the board must act without regard to management's expertise or effectiveness. Other respondents commented that management may hesitate to act on legitimate investment strategies until the board of directors approved such activities, thus delaying or preventing a timely, responsible action to fluctuating market conditions. Commentators indicated that a board of directors typically does not have sufficient time or expertise to develop strategies that set out the manner in which the investment policy is to be carried out. The respondents argued that the board of directors often do not have a thorough knowledge of the investment function or specific securities. Thus, their involvement in guiding such activities is inappropriate. Respondents urged that the final Statement of Policy clarify that the board of directors is ultimately responsible for compliance while management has the responsibility for: (1) Execution of investment transactions in accordance with the board of directors policy; and (2) the proper reporting of investment activities to the board of directors. Commentators also suggested that the board of directors' responsibility for oversight of the investment portfolio be delegated to an investment committee of the board of directors, similar to any other specialized function of the board, *e.g.*, pension and compensation committee, audit committee, etc

An additional concern expressed by many commentators was that the proposed Statement of Policy would place directors in a position of liability beyond the present standard of care under the business judgment rule. Commentators suggested that increasing the board's responsibilities and the attendant legal liability could make it more difficult to obtain director and officer liability insurance at reasonable costs and would deter competent persons from participating on the boards of directors of insured institutions. Finally, several commentators cited various existing regulations that set forth board of directors' responsibilities regarding the oversight of an insured institution and suggested that a consistent approach be established in the final Statement of Policy.

D. Reporting in Accordance With GAAP

Comments directed at various aspects of GAAP and the Board's authority to promulgate GAAP were received from 145 respondents. At the outset, one commentator wished for the Board to make it clear in the final Statement of Policy that trading is a permissible activity for thrifts so long as the accounting for the activity conforms with GAAP. Another commentator observed that GAAP presently limits the use of amortized cost for investments to *bona fide* investment activity. The general areas of comment are discussed separately below.

1. Authority to Promulgate GAAP

Twenty nine commentators perceived the Board as promulgating GAAP in the proposed Statement of Policy and believed that the Board is not empowered to promulgate GAAP. Respondents believed the Board, while properly having input to the promulgation of GAAP, should let the accounting profession define what constitutes "held for investment", "held for sale", and "held for trading". Once GAAP is established by the accounting profession, commentators suggested the Board could offer guidance. Other commentators stressed that the Board is not an appropriate source for clarification of GAAP. Respondents stated that any attempt by the Board would result in the creation of regulatory accounting principles ("RAP"), could result in disparities in accounting amongst financial industries, and may result in noncompliance with the Competitive Equality Banking Act of 1987 ("CEBA").

Commentators noted that the Financial Accounting Standards Board ("FASB") is currently working on a financial instruments project to address many concerns regarding the accounting for financial instruments. Commentators also cited the work of the American Institute of Certified Public Accountants' ("AICPA") Savings and Loan Committee on a proposed Statement of Position with respect to accounting for securities activities of thrifts. Forty seven commentators believed that the Board should wait until these accounting bodies established appropriate accounting standards and definitions of concepts regarding accounting for securities.

Six commentators further noted that the banking agencies have adopted the Federal Financial Institutions Examination Council's ("FFIEC") document regarding securities transactions, the Supervisory Policy Statement on the Selection of Securities Dealers and Unsuitable Investment Practices (the "Appendix") and urged the Board to consider adopting that document. Adoption of the FFIEC document, commentators contended, would place the Board in conformity with banking agencies (and Bank RAP), and would be consistent with the letter and spirit of section 402 of CEBA.

Three commentators noted that there is a misguided belief that thrifts and banks should follow the same accounting principles. They indicated that the differences between these institutions should lead to different accounting practices, where appropriate such as investment transactions, to reflect these differences.

2. Intent and Ability

Forty two commentators specifically addressed the definition of the concepts "intent" and "ability to hold for the foreseeable future". The comments on these concepts were diverse with most of the remarks directed to the concept of "intent"; however, many remarks directed at "intent" appeared equally attributable to "ability to hold". The comments ranged from the belief that any attempt to define the terms is fruitless as any definition would be arbitrary or subjective, would be unworkable and would create more problems than would be solved, to the notion that the concepts are essential to the accounting for securities but greater clarity of definition is needed. The latter commentators suggested that, without adequate definitions, the proposed Statement of Policy would lend itself to the same abuses and inconsistent reporting as practice currently exists.

Commentators suggested guidance should be developed to distinguish between trading for the purpose of short-term gains ("gains trading") and sales for prudent asset/liability management. Additional guidance was believed by some commentators to be necessary to ensure consistent application by boards of directors, management, independent accountants, and Federal Home Loan Bank System supervisory personnel and examiners.

Certain commentators believed that intent is difficult to prove but that the Board should encourage proper documentation of intent as current GAAP hinges on the factors of intent and ability to hold. One commentator believed documented intent is a strong indication of management's commitment to follow GAAP; undeclared and undocumented intent should be a strong indication of a lack of commitment to GAAP by management. The proposed Statement of Policy was perceived by some commentators as greatly expanding the meaning and scope of the concepts of "intent" and "ability to hold". Commentators believed that the expanded concepts give rise to a presumption of trading where intent is not documented. The proposed Statement of Policy was perceived by other commentators as emphasizing form of documentation over the economic substance of securities transactions. (*See* discussion under the caption E. "Documentation Requirements", infra.) Respondents suggested economic substance should be the controlling criteria for recording transactions.

The proposed Statement of Policy was also perceived by commentators to stress the consistency of securities activity with stated investment policies. Commentators argued that the real world changes quicker than statements of policy and strategies can be revised and approved by boards of directors. Insured institutions, respondents argued, must react to the changing financial markets to operate prudently and profitably.

Respondents expressed concerns that the concepts reflected in the proposed Statement of Policy were too rigid and specific when viewed from a "passage of time" perspective; the rationale for owning a security can change based upon fluctuating market conditions over time. There may have been a documented, valid intent to hold a security when the security was purchased or originated; yet, if a liquidity need arises or if a perception of prepayment risk exists, respondents argued that the insured institution should be able to restructure its portfolio without invalidating its previously stated intent and without

jeopardizing the classification [2] of and accounting for other similar securities.

Many commentators were concerned that the guidance offered on both intent and ability to hold was subjective and had no relevance to actual investment decisions. These commentators argued that a determination of intent is a matter of perception and does not require a subsequent, confirming event. Other commentators believed that subsequent events should be reviewed to confirm that the intent was to invest in a security for investment, for sale, or for trading purposes. These commentators argued that a presumption of trading arising from the lack of documentation of intent is not realistic.

Commentators argued that the classification of transactions should be based on substantive facts and circumstances. They argued that there should not be a presumption of trading, but, rather, that the concepts of intent and ability to hold should guide the classification of and accounting for securities. The overall concern of respondents was that if one or more of the factors identified as a presumption of trading are present, the security will be classified as a trading asset by examiners regardless of management's stated intent to hold to maturity. If the activities considered to be presumptions of trading are to survive in the final Statement of Policy, commentators suggested that the Statement of Policy should discuss the relative weight to be applied to the factors listed in the proposed Statement of Policy. Further, the final Statement of Policy should specify under what circumstances the "taint" of the presumption of trading could be removed.

Other commentators stressed that intent should be documented at the origination of the securities transaction and the security classified accordingly as held for investment, held for sale, or held for trading for accounting purposes. In contrast, certain commentators believed that the intent documented at the acquisition of or origination of a security (and used to classify the security for accounting purposes) may become a poor determinate of classification at a later review date. These commentators believed appropriate classification only becomes apparent through time.

[2] "Classification", as used throughout this preamble, refers to the balance sheet classification of securities and does not refer to classification of assets under 12 CFR 561.16c, "Classification of Certain Assets". Furthermore, "classification" as used throughout this statement of policy, does not refer to a classification of assets that falls within the arbitration process mandated by the CEBA.

With respect to the ability-to-hold determination, one commentator believed that the financial strength of the insured institution should be considered as well as the ability to access alternative sources of funds through alternative markets. The commentator believed consideration should be given to the regulatory capital position of the insured institution and other regulatory and external market limitations. Further, the commentator believed strong thrifts should not be confined to specific definitions. A commentator suggested that a system of permissible investment be driven by the regulatory capital position of the insured institution.

A general observation offered by one commentator was that the proposed Statement of Policy would help sharpen management's thinking and planning with respect to management's intent and ability to hold securities. Another commentator believed that supervisory personnel should be able to make determinations of investment, sale, or trading classifications without specific definitions.

3. Disparity Between Economics and Accounting

In embracing GAAP as it exists in current literature, commentators suggested that the Board supports accounting conventions that may bear no relationship to economic reality. Although one commentator believed that GAAP has kept pace with the development of securities and related activities, most commentators argued that GAAP has not kept pace with the rapid changes in the securities market or, stated differently, that newly developed financial instruments have stretched the limitations of the current accounting model, which is based on historical cost. A commentator believed that the Board will be continually behind the industry in maintaining the policy statement due to the development of new financial instruments and financing techniques.

4. Move Toward Market Accounting

Seventeen respondents perceived the proposed statement of policy as a move to mark-to-market ("market") accounting. Three respondents presented favorable remarks regarding the perceived adoption of market accounting, regarding such accounting as the best tool for evaluating the true financial health of a thrift. Conversely, fourteen respondents expressed concerns that market adjustments that occur at specific points in time can result in significant fluctuations in income between periods and would have a potentially deleterious impact on capital. Respondents argued that extensive market accounting will discourage positive risk management efforts and only encourage short-term profit motives driven by interest rate swings.

One commentator argued that the use of market accounting would encourage sound economic management by equalizing the accounting for securities gains and losses, if market accounting is not applied selectively. The commentator believed that selective application would not lead to accounting consistency and, therefore, to the objective of fair and comparable reporting. The commentator believed that the true thrift mission is to provide a safe depository for savings by creating a credit risk, rate risk controlled interest margin for the insured institution.

Many commentators believed that it is appropriate to sell at a gain to take advantage of market circumstances. Therefore, these commentators suggested that prudent, timely sales by an investor will essentially replicate market accounting. Conversely, respondents noted that the Board, in adoption of GAAP, is focusing only on the market value changes of assets and ignoring the market value changes of liabilities. Thus, these respondents noted that the economic condition of thrifts would be misrepresented. The respondents believed this inconsistent treatment of balance sheet items may result in a less accurate representation of the financial condition of a thrift than cost basis accounting. Commentators, therefore, urged that the accounting treatment should mirror economic reality whenever possible.

5. Presumption of Trading

The Board received numerous comments regarding the Board's conclusion that certain securities activities are generally indicative of trading activities and should be recorded as such. Certain commentators believed the automatic classification of the "six deadly sins"[3] as trading is not warranted. While certain transactions are speculative by their nature, *e.g.*, arbitrages, futures and "when issued" securities, commentators believed specific reasons may exist in a

[3] This term refers to the six securities transactions referred to in the Board's proposed Statement of Policy at 12 CFR 571.19(d)(4)(i)(D) (1)—(6) and Section I of the Appendix to the document prepared by the Federal Financial Institutions Examination Council ("FFIEC") entitled Supervisory Policy Statement on the Selection of Securities Dealers and Unsuitable Investment Practices ("FFIEC Policy Statement").

particular market environment to justify entering into certain of the transactions identified in the proposed Statement of Policy as indicative of trading. These respondents also noted that the list of transactions may not be complete.

E. Documentation Requirements

While two respondents favored the documentation requirements, forty two commentators expressed concern. The commentators who expressed concern believed that while the Board may have the authority to require documentation, the proposed Statement of Policy creates excessive documentation requirements. Respondents charged that the documentation requirements will be cumbersome to implement and will require hundreds of hours to develop, implement, assess, and revise investment policies and strategies. On an ongoing basis, respondents argued that a requirement to document the rationale for investment decisions and to document the transactions entered into is also burdensome. As a result of the documentation requirements, commentators contended management will spend less time monitoring financial markets and prudently managing their portfolio and will spend more time documenting strategies and transactions, thereby diverting energy from productive endeavors. Further, commentators argued, management will have to expand the reports to the board of directors regarding investment activity and deviations from investment policies and strategies.

A commentator believed that much of the documentation required is not necessary for purposes of supporting a sound investment policy. Some respondents believed that only strategies should be documented, with documentation of individual transactions limited to identification, at the time of the transaction, to the applicable strategy. The documentation requirement was considered by commentators to be especially onerous in a volatile market when a large volume of transactions would be performed. Such a volume of transactions may appear to deviate from the thrift's stated investment policy or strategies. Concern also was expressed by critics that the documentation requirements would be disproportionately burdensome on small insured institutions and would tax the lesser financial and personnel resources available to smaller thrifts. Thus, commentators urged that a cost/benefit analysis be made to determine if the documentation requirement (in its proposed form) is warranted and in the best interests of thrifts or the FSLIC.

Four commentators noted that deviations, and the reasons therefor, from an investment policy should be documented in writing by management and that the proposed Statement of Policy should permit such documentation by exception. One commentator urged that the documentation by exception procedure included in the proposed rule should be clarified and strengthened in the final Statement of Policy. Another commentator believed more guidance is needed to state how frequently an insured institution may change its overall investment policy before the insured institution is presumed to be trading.

Concern was expressed by commentators that such documentation would result in extended examinations by independent accountants and by Bank System examiners, causing additional costs to insured institutions. Further, commentators argued, the documentation would provide a trail for auditors and examiners to question management decisions. The commentators suggested that, without careful training of auditors and examiners, the documentation may be misinterpreted and improperly result in misclassification of activities as sale or trading and that, in the case of abusive or incompetent management, the documentation will likely be untruthful or wrong and, therefore, a useless exercise.

Finally, some commentators expressed concern that, in the event of spurious lawsuits, plaintiffs will have access to detailed records and the documentation will serve as a trail of management intent and actions from which claims for trading losses may be made. Such claims may have nothing to do with the sound management of insured institutions. Thus, it was contended by these respondents that the documentation will only provide plaintiffs with data that could be misinterpreted and used wrongfully against management.

F. Mutual Funds

In response to the Board's proposed rule and Statement of Policy, numerous comments were received regarding the appropriate accounting for investments in mutual funds. Thirty commentators noted that under the Uniform Accounting Standards Regulation adopted by the Board on December 21, 1987, amortized cost accounting for mutual funds qualifying as liquid assets may be used until December 31, 1993. The commentators believed the use of the lower of cost or market accounting for mutual funds threatens the utility of mutual funds as a viable alternative to directly investing in complex financial markets. Mutual funds are attractive to certain insured institutions due to their liquidity, the professional advice and professional management of the funds, and the perceived safety of the funds. Thus, mutual funds are considered by these respondents to be a cost-effective manner of managing thrift assets. Commentators stated that to require lower of cost or market accounting for these investments would remove those benefits from thrifts. One commentator argued that amortized cost should be used on the basis that thrifts are accomplishing through mutual funds what they could otherwise achieve directly in the financial markets; thus, the Emerging Issues Task Force Consensus No. 86-40 should be set aside. The commentators requested the delay of lower of cost or market accounting for all mutual funds until December 31, 1993.

G. Effective Date

Thirty nine commentators urged that the final Statement of Policy should be adopted prospectively, not retroactively. A variety of options were presented by respondents as to the implementation of the Statement of Policy. Suggested specific dates suggested by respondents included no later than January 1, 1989, July 1, 1989, and January 1, 1990. Suggested time periods ranged from six months to two years after adoption of the final Statement of Policy, six months or the next fiscal year, fiscal years beginning ninety (90) days after adoption of the final Statement of Policy, and the first fiscal year beginning six months after adoption of the Statement of Policy.

Other commentators suggested that the Statement of Policy be applied prospectively to transactions entered into after the effective date of the Statement of Policy and that the current portfolio be grandfathered as to its classification and accounting. Some commentators suggested, in a less specific manner, that insured institutions be permitted a phase-in period or transition period for compliance with the Statement of Policy. The purpose of a phase-in period or transition rules would be to permit boards of directors and management adequate time to put the necessary systems and documentation in place to achieve compliance with the Statement of Policy. One respondent suggested a phase-in period of two years.

Two commentators suggested that, since the issue is being addressed by the AICPA Savings and Loan Committee,

the Board should coordinate implementation of its Statement of Policy with the AICPA. This would ensure the uniformity with the accounting profession mandated by CEBA.

II. Summary of the Statement of Policy

The extensive comments received, described above, have provided useful insights and guidance to the Board in considering the issues presented by the proposed Statement of Policy and in developing a final version of the Statement of Policy that reflects an appropriate approach to both the accounting and the safety and soundness concerns addressed in the Statement of Policy. The Board's initial goal in proposing the Statement of Policy, and its intention in now finalizing the proposal, is to insure that insured institutions account for securities transactions in accordance with GAAP and that management of an institution have in place appropriate policies, procedures, and documentation to direct and reflect the institution's securities transactions, consistent with safe and sound operations of the institution and prudent business practices, and to support adequately the accounting treatment of a transaction that the institution seeks. The following sections discuss the Board's final Statement of Policy in detail, and in so doing, address the issues and concerns raised by the commentators.

A. Implementation and Documentation of Investment Policy and Strategies

In its Statement of Policy, the Board envisions that an insured institution, with the assistance of management and qualified consultants, if needed, will adopt a written investment policy to set forth the broad direction that the institution's board of directors believes to be an appropriate investment course for the institution, given the present financial position of the institution and the current and reasonably anticipated economic environment. This investment policy would consider, among other things, the institution's business plan, its plans for growth, and the current economic environment in which the institution operates including a range of reasonably foreseeable economic environments,[4] types of securities, and safety and soundness considerations pertaining to the institution. The Board envisions that significant changes in the investment policy of the institution that may be dictated by changing market conditions or a change in perception by the institution's board of directors regarding the institution's investment goals would be documented and would be unusual.

The Board's Statement of Policy requires the institution to develop investment strategies that set out, in reasonable detail, the manner in which the investment policy is to be implemented. The investment strategies are to address, *inter alia*, considerations such as the type, nature, dollar amount and maturity of each group of instruments to be invested in and the acceptable range of interest rate risk for each type of security. The Board believes that documented investment strategies should be in sufficient detail to permit management and its consultants, if any, to determine the direction of periodic (daily, weekly, monthly, etc.) investment activity envisioned by the board of directors. Management's investment strategies should be long-term in nature and, therefore, should only be modified in unusual circumstances.

Management's strategies should include planned management responses to rising and falling interest rate environments and to other external factors that past history and current events support as being reasonable. The strategies should address the range of external factors for which the strategies would continue to be valid and should also justify the boundary or boundaries beyond which the probabilities of specific events occurring are remote based on past history and current events. The range with respect to interest rates, for example, would thus have an upper limit and a lower limit. For events within the reasonably foreseeable range, investment strategies for securities that are accounted for as held for investment should proscribe sales of investment securities. Accordingly, sales of investment securities within the range should be extremely rare[5] and the reasons for the sales must be documented adequately and on a timely basis. If management believes that an event has occurred that is outside the limits of the reasonably foreseeable range and is thereby motivated to sell such securities, management must document its belief that such a remotely possible event has occurred in order to justify the continued use of amortized cost accounting.

In considering the structure outlined above, the Board focused on the recurrent, regulatory themes of safety and soundness, a director's duty of care, and the need for institutions to have sound internal controls. The Board believes that the establishment, documentation, and periodic review of an institution's overall investment policy and specific strategies in consideration of a reasonable range of economic and changing interest rate environments is critical to setting management's operational orientation and in ensuring such operations are carried out in a safe and sound manner. The establishment of strategies in changing interest rate environments is consistent with modern portfolio theory, and the Board does not believe that management's investment flexibility is limited by requiring the establishment, documentation, and periodic review of investment policies and strategies. Rather, the Board believes that such requirements merely reflect safe and sound business practices by an institution in evaluating its current investment and potential investment opportunities. The Board acknowledges that some strategies will, in the course of normal operations, be reviewed subsequent to their enactment and may require adjustment. This is considered appropriate as a responsible self-evaluation of management plans in a changing economic environment.

In proposing items to be considered in developing and documenting such policies and strategies, the Board intends for its list of factors to be a component of, but not the definitive source for, all factors to be considered. Thus, as stated in the proposed Statement of Policy, the Board envisions that this list be used as a starting point with additional factors considered as appropriate.

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[4] The "range of reasonably foreseeable economic environments" would consider, *inter alia*, the magnitude of fluctuations of interest rates in recent years, significant economic events and conditions on the local, regional, and national level that may affect the decision of the institution to engage in securities transactions, and the experience of the management of the institution in dealing with significant economic events of the past and the ability to apply that experience to future events. Given the need to demonstrate a positive intent to hold to maturity to justify the use of amortized cost accounting for securities, the range should include external market events that history and current events support as having a better than remote chance of occurrence. The range utilized by the institution need not include remotely possible interest rates or economic conditions and events, but should address the widest range within which the institution would expect to conduct its operations over the lives of the assets held. When conditions move to the extremes of potentially possible conditions, an institution generally should re-evaluate its financial position and evaluate the need to re-position itself (assets and liabilities) for the significant changes encountered.

[5] Within the range of reasonably foreseen events, the Board would consider the number of occurrences of sales of securities held for investment to be essentially non-existent and the dollar amount of such sales, if any, would be negligible.

In light of these considerations, and with this explanation of their intended scope, the Board has determined to adopt the investment policy and strategies requirements substantially as proposed in the Statement of Policy.

B. Board of Directors' Responsibilities

The Statement of Policy requires the board of directors of an insured institution to review and approve the investment policy. In addition, the Statement of Policy requires the board of directors, or an investment committee thereof, periodically to review the institution's investment strategies and activities for consistency with the approved investment policy and strategies. Such review should encompass any significant deviations from the institution's investment policy and strategies, the reasons for the deviations and the basis for the alternative investment activities, including, among other considerations, the amount, nature, type, maturity, interest rate risk, etc., of alternative investments as contrasted with the originally planned investment activities. This review should be documented in the minutes of any meetings of the board of directors or an investment committee during which the review is conducted. Such review is not intended to impose an exceptional new burden on an institution's board of directors but, rather, to fulfill the board of directors' existing, basic fiduciary duty to supervise adequately the actions of management regarding investment activities and to safeguard and account properly for the assets of the insured institution.

For example, R-Memorandum 62, "Director Responsibilities: FHLBB Guidelines; Procedures for Obtaining Information to Support Directors' Decisions" (R–62), dated April 19, 1988, states:

> The duty of care includes the responsibility of the directors to select and retain competent management; to oversee the activities of the institution by attending directors' meetings; to require that adequate and reliable information is provided upon which they can make decisions; to carefully review the documentation which is provided; to make the necessary policy decisions upon which management is to operate the institution; to monitor the activities that are delegated to the officers of the institution to insure that the board of directors' policies are being carried out; and to establish controls to assure themselves that the institution is being operated in a safe and sound manner and in compliance with law and regulations. "Directors who willingly allow others to make major decisions affecting the future of the corporation wholly without supervision or oversight may not defend on their lack of knowledge, for that ignorance itself is a breach of fiduciary duty." *Joy* v. *North*, 692 F.2d. 880, 896 (2nd Cir. 1982).

The Bank Board believes that an institution's directors must have a reasonable level of understanding of the investment policies and strategies adopted and approved, including the uses, risks, and rewards of various securities and securities strategies. This does not mean that directors must become experts in these areas, but the Board does not support the complete reliance by a board of directors upon management or outside consultants, if any, and believes such complete reliance relinquishes a board of directors' responsibilities to oversee the safe and sound operations of their institution. Accordingly, the Board has determined to retain its requirement that the board of directors review and approve the securities activities[6] as consistent with the investment policy and strategies of the institution and as properly recorded in accordance with GAAP. The Board realizes that not all directors may be best qualified to perform such a review. As a result, the Board's Statement of Policy permits an investment committee of the board of directors to perform the appropriate reviews.

Further, as cited in R-Memorandum 70, "Use of Investment Consultants," dated March 16, 1988, to the extent an independent consultant is utilized by the insured institution to accomplish these requirements, management has the responsibility to oversee the activities of the consultant to ensure that the consultant's actions are consistent with the investment policy and strategies of the insured institution and management's actions. The ultimate responsibility for the oversight of investment consultants lies with the institution's board of directors.

C. Reporting in Accordance with GAAP

1. General

Management has the basic responsibility to assure that an institution properly classifies and accounts for the securities transactions entered into and held at any financial reporting date. The Statement of Policy and regulations that the Board has determined to adopt are intended to provide guidance regarding the proper classification of and accounting for securities held for investment, for sale, and for trading. The Board believes that the Statement of Policy and the amendment to the regulations constitute "specific principles or procedures on particular accounting or reporting matters as the Corporation may require by regulation or otherwise". *See* 12 CFR 563.23–3(a) (1987). The final Statement of Policy thus sets an enforceable standard for the classification of and accounting for securities held for investment, held for sale, or held for trading by insured institutions.

2. Authority to Promulgate GAAP

Through the adoption of the final Statement of Policy, the Board does not intend to preempt the accounting standards setting bodies of their function in the setting of appropriate accounting standards for certain investment securities. As stated in the proposed Statement of Policy, the Board believed the encapsulation of GAAP was merely a summary of current authoritative accounting literature.

As a part of the comment process on the proposed Statement of Policy, the staff of the Financial Accounting Standards Board sent a letter to the Board dated September 20, 1988. In return, the Board posed certain questions to the FASB staff, to which the FASB staff responded in a letter dated December 21, 1988. (*See* 54 FR 11736 (March 22, 1989) for copies of these letters.) The letters explained the FASB staff's position and upheld the clear delineation of accounting among securities held tor investment (until maturity), held for sale, and held for trading. Further, the Chief Accountant of the SEC set forth the SEC staff's position regarding the appropriate accounting for certain securities in an April 14, 1989 letter to the Chairman of the Accounting Standards Executive Committee of the AICPA. The Board believes its Statement of Policy is consistent with the views expressed by the FASB staff and the SEC staff in their respective correspondence. Accordingly, the Board does not believe it is preempting the accounting standards setting bodies when setting forth its requirement that institutions comply with the delineations within current GAAP literature and the requirement that institutions document investment policy and strategies.

The Board realizes that GAAP, specifically, accounting for securities, as currently defined and interpreted by the FASB staff, may change through the due process of the accounting standards setting bodies. When these bodies promulgate new generally accepted accounting principles, the Board, consistent with its requirements, will adopt the new principles. Until such time, the Board will continue to apply

[6] Securities activities may be approved based on a summary report of transactions.

and uphold current authoritative literature.

3. Intent and Ability

In summarizing the current accounting treatment from the relevant accounting literature in the preamble to the proposed Statement of Policy, the Board focused on the two significant factors used in determining the appropriate classification of and accounting for securities held for investment, for sale, and for trading, *i.e.*, the intent and ability to hold the securities consistent with the institution's strategies. As stated in the preamble to the proposed Statement of Policy, the AICPA Audit and Accounting Guide for Savings and Loan Associations ("S&L Audit Guide") refers to these factors in the context of determining whether an estimated allowance for loss in value of securities held must be recorded, *i.e.*, whether there is impairment of a security that requires recognition.[7] The AICPA Industry Audit Guide, Audits of Banks ("Bank Audit Guide") refers to these factors in the same context [8] and in the context of the proper classification of and accounting for securities.[9] In neither the S&L Audit Guide nor the Bank Audit Guide are the terms "intent" and "ability to hold" substantially discussed.

The Board's Statement of Policy provides guidance on the application of these terms in determining the appropriate classification of and accounting for securities held by an insured institution for investment, for sale and for trading. In setting forth the guidance regarding the concepts of intent and ability to hold, the Board originally focused on an accounting concept of foreseeable future. Statement of Financial Accounting Standards No. 65 "Accounting for Certain Mortgage Banking Activities" ("SFAS No. 65") requires that a mortgage loan or mortgage-backed security shall not be classified as a long-term investment unless the institution "* * * has both the ability and intent to hold the loan or security for the foreseeable future or until maturity." [10] In drafting the proposed Statement of Policy, the Board believed that the terms "for the foreseeable future" and "until maturity" as used in SFAS No. 65 were mutually exclusive terms. After discussion with members of the FASB staff and the staff of the Securities and Exchange Commission ("SEC"), the Board acknowledges the FASB staff's interpretation that the terms are not mutually exclusive, but, in fact, are to be applied consistently.[11] Therefore, an institution must have the positive intent and ability to hold securities to maturity, not just a current lack of intent to sell, in order to account for the securities at amortized cost.

In light of the guidance provided by the FASB staff in its letters to the Board, the Board believes that guidance on the concepts of intent and ability to hold to maturity is appropriate based on the significant changes that have occurred in the financial markets in the 1980's. The Board believes that the guidance provided, while certainly not all inclusive, will provide management and its auditors with assistance in carrying out their respective responsibilities to ensure that securities activities are classified and accounted for appropriately.

The use of amortized cost accounting for securities is appropriate only when institutions meet the criteria expressed in authoritative accounting literature. Specifically, the use of amortized cost is based upon certain assumptions, *i.e.*, principally, that the entire principal amount is assured of being recovered. Where the established accounting criteria are not met, using amortized cost is inappropriate.

In evaluating the intent of an institution with respect to its security practices, a positive intent to hold to maturity, not just the current lack of intent to dispose, must be present for a security to be deemed for investment purposes. This does not imply that an institution may never sell securities from the investment portfolio. Significant events that were not reasonably foreseen when a security was acquired or originated may affect the institution's intent and/or ability to hold that security until maturity, although such instances should be extremely rare.[12] A positive intent to hold a security until maturity is presumed to exist only if management's strategies, as supported by its actions, proscribe the sale of securities due to changes in external factors that are reasonably foreseen.

Amortized cost is appropriate only when all future events that can be foreseen, and that will lead to a sale, are not considered to be more than remotely possible. If an event in the future has a reasonable possibility of occurring, and that event may lead to a sale, then the institution must use either market accounting or the lower of cost or market accounting. The use of market accounting or the lower of cost or market accounting depends upon, respectively, whether the security is held for the purpose of realizing a holding gain on the assets held for indefinite periods of time (held for sale) or earning a dealer's spread between the bid and asked prices (held for trading).[13]

It is management's responsibility to support the asset valuation method it believes appropriate for particular securities transactions. Documentation of management's strategies and subsequent actions consistent with such strategies is an essential element in supporting a valuation method.[14] Such documentation of strategies should clearly demonstrate, for example, management's positive intent to hold a security to maturity and the ability to hold the security to maturity if a security is to be recorded using amortized cost. Where such documentation exists and management's past and subsequent actions support the course of action set forth in the strategy, the Board will presume that the requisite intent exists. However, subsequent management actions must bear out the presumption.

Where circumstances occur that are outside the range of reasonably foreseeable events, the Board ordinarily would not consider the use of a particular valuation method to be placed in jeopardy if sales of investment securities occurs.[15] However, it is the

[7] AICPA Audit and Accounting Guide for Savings and Loan Associations (1979), Chapter 3, "Accounting Principles and Auditing Procedures", page 21.

[8] AICPA Industry Audit Guide, Audits of Banks (1983), Chapter 5, "Investment Securities, Accounting", page 30.

[9] *Id.* at p. 32.

[10] *See* SFAS No. 65, paragraph 6.

[11] *See* 54 FR 11736 (March 22, 1989) for the September 21, 1988 FASB letter.

[12] Within the range of reasonably foreseen events, the Board would consider the number of occurrences of sales of securities held for investment to be essentially non-existent and the dollar amount of such sales, if any, would be negligible.

[13] These definitions are drawn from a letter, dated December 21, 1988, to the Federal Home Loan Bank Board from the staff of the Financial Accounting Standards Board ("FASB"). *See* 54 FR 11736 (March 22, 1989) for the text of the letter.

[14] It is the duty of the independent accountant to verify (and document) that management's choice of an asset valuation method is proper.

[15] In this regard, the Board is aware that legislation will be passed in 1989 that will require institutions to meet significant new and restructured capital requirements. The imposition of such new requirements could be considered a remote event if the new legislation's capital requirement could not have been reasonably foreseen at the time the institution acquired securities for its investment portfolio. If such is the case, and if the institution adopts a new business plan and investment policy (as a necessary and/or justifiable response to the new legislation) and that plan calls for the reduction of assets to meet the new capital requirements, investment securities could be sold pursuant to a corresponding investment policy without jeopardizing the accounting for other securities held to maturity.

responsibility of management to document that its actions with respect to securities accounted for under a particular valuation method are in response to the unforeseen events and that such unforeseen events are outside the range of reasonably foreseeable economic events based upon past history and current events.

The Board notes the practice of securitization of certain assets, e.g., securitizing of loans by FNMA, FHMLC and GNMA, and that commentators expressed concern that securitization of assets may be considered as an activity that would preclude the use of amortized cost in accounting for the FNMA, FHMLC or GNMA securities, for example. The securitizing of an asset, in the case of federally-backed certificates, is generally performed for two purposes: (1) To reduce exposure to credit losses, and (2) to enhance liquidity. The Board does not believe that merely securitizing assets (or a significant volume of securitization) must, by itself, constitute an activity that precludes the use of amortized cost accounting. The securitization of assets may serve as an indicator that the institution intends to use the security for purposes that would be inconsistent with a positive intent to hold the security to maturity. Where the institution uses the security for purposes inconsistent with holding the security to maturity, e.g., to take advantage of the liquidity enhancement feature, the Board believes that the use of amortized cost accounting would not be appropriate. The Board will challenge the use of amortized cost accounting in those instances. Certainly, the sale of a security will negate a stated positive intent to hold to maturity in the absence of a remotely possible event.

The Board emphasizes that, where management intends to engage in securitization of assets, the investment strategies should address, *inter alia*, the assets to be securitized, the intended use of the security, the circumstances under which the security would be utilized for liquidity purposes, for example, or sold. Management's subsequent actions must support the stated strategy where a security is to be accounted for using amortized cost.

In analyzing ability to hold, the proposed Statement of Policy addressed not only an institution's financial ability but also its regulatory ability to hold securities in compliance with applicable regulations, *e.g.*, regulatory capital requirements, liquidity, loans-to-one borrower limitations, equity risk limitations, growth limitations, investment authorities, etc. These considerations continue to be valid in assessing the appropriateness of recording securities investments on a historical cost basis.

4. Disparity Between Economics and Accounting

The Board appreciates the number of comments received regarding the inconsistencies between accounting and economic results, the inconsistency between market and lower of cost or market accounting, and the impact the adoption of the final rule and final Statement of Policy could have on the asset/liability management of institutions. The Board continues to be frustrated by the pace at which the accounting setting bodies develop guidance reflective of economic transactions and, specifically, sophisticated securities activities. Thus, the Board again takes the opportunity to encourage the accounting standards setting bodies to quicken their deliberations on these significant issues. To the extent that financial statements are intended to present fairly the activities of an entity, it is difficult to accept an outdated accounting convention that differs significantly from the economic reality of an institution. However, as stated previously, the Board recognizes the benefits of the uniform treatment and comparability that result from the application of GAAP and, while GAAP is not perfect, has adopted GAAP consistent with its mandate under the CEBA.

The Board recognizes that certain concerns expressed regarding the impact on the thrift industry exist. However, the Board continues to believe that the safe and sound management of an institution is of pre-eminent concern. Numerous commentators indicated that stricter adherence to the existing requirements for amortized cost accounting might result in institutions holding their securities in lieu of actively managing them. Active portfolio management is prudent for certain institutions for various reasons including asset/liability management. Portfolios can be actively managed by utilizing techniques such as adjusting assets or liabilities and/or hedging. However, active asset management is not consistent with the concept of intent to hold securities to maturity. Those institutions whose strategies include active asset management would be expected to account for those securities on a basis other than amortized cost.

5. Move to Market Accounting

The Statement of Policy is not an attempt to adopt market value accounting. If it were, the Bank Board would give weight to the effect of market fluctuations in an institution's liability portfolio on determination of economic or "market" capital. Because GAAP currently precludes such consideration, the Board is restricted in its ability to adopt such an approach for financial reporting purposes. Nonetheless, the Board may continue to consider the appropriateness of a market value concept for both assets and liabilities for use in assessing the economic position of an institution and for measuring the extent to which an institution operates in a safe and sound manner.

6. Presumption of Trading

The Board has considered the comments received with respect to the six types of transactions listed in the proposed Statement of Policy and has reviewed the proposed position that these securities activities "are presumed to indicate trading unless an institution has documentation that clearly supports the consistency of such activity with the intent to hold securities" (emphasis added). *See* proposed § 571.19(d)(i)(D)(1)–(6), 12 FR 23244, 23250 (June 21, 1988). The Board continues to believe that when institutions have engaged in any of the "six deadly sins", the transactions have been entered into with the intent to earn a short-term profit. Further, the Board believes that management cannot be presumed to have a positive intent to hold a security to maturity when any of the six listed transactions are present, when sales are planned or when management's past actions indicate a pattern of changing intent responsive to reasonably foreseeable events.[16]

GAAP as promulgated and interpreted by the FASB and its staff and set forth in this Statement of Policy encompasses the majority of these transactions. Moreover, the Federal Financial Institutions Examination Council has issued a policy statement entitled "Supervisory Policy Statement on the Selection of Securities Dealers and Unsuitable Investment Practices" ("FFIEC Policy Statement"). Specifically, section I, "Trading in the Investment Portfolio" which is included as an Appendix to this Policy Statement, provides useful guidance on the application of existing GAAP standards in this area. The first paragraph to section I expresses the similar observations and conclusions of the

[16] A pattern of changing intent within reasonably foreseeable events will be presumed to eliminate the credibility of all assertions that a positive intent existed in the past or continues to exist.

Board with regard to securities transactions of some insured institutions and the accounting for those securities transactions. Accordingly, the Board adopts section I of the Appendix to the FFIEC Policy Statement for purposes of reporting to the Federal Home Loan Banks on the Thrift Financial Report. Thus, there will be a presumption of trading that will arise for any of the six listed transactions. If an institution believes it appropriate to account for assets arising from any of the six listed transactions on an amortized cost basis under their particular circumstances, documentation must exist, first, to rebut the presumption of trading and, second, to document that the criteria are met for the use of amortized cost accounting.[17]

D. Documentation Requirements

1. General

The Board has considered its documentation requirements in light of the comments received. The Board continues to believe that management should document: (1) Compliance of an institution's investment activities with the approved investment policy and strategies as consistent with the overall requirement of safe and sound management of the institution; and (2) compliance with GAAP. The Board also believes that auditors, in reporting upon management's financial statements, must be able to support, via documentation, their conclusions regarding concurrence with management's classification of and accounting for securities.

Further, concomitant with management's responsibility properly to classify and account for securities transactions, management has the responsibility to maintain an accurate and complete record of the transactions engaged in by the institution. *See* 12 CFR 563.17–1(c) for existing documentation requirements. This section would apply equally to investment activities. Such records, both on a detailed basis and in reports to the institution's board of directors and other persons, should be maintained in sufficiently concise and coherent detail to permit comprehensible review by the institution's board of directors and other persons that have legitimate access to the insured institution's records, *e.g.*, Federal Home Loan Bank System examiners, independent accountants, etc. Such reviews necessarily evaluate the judgments of the board of directors and management in all areas of the institution's operations including the institution's investment activities and the application of GAAP.

The Board believes it is justified in these requirements and wishes to re-emphasize the ability of an institution to document specific transactions or groups of like securities transactions on an exception basis.

2. Small Business Concerns

The Board has considered in particular the comments regarding the potential impact of the documentation requirements on small financial institutions. The Board believes that, for the most part, small institutions would not be engaging in highly complex securities transactions such that the need for a complex investment policy statement and investment strategies would be required. However, the small institution is not relieved of the responsibility for adequate documentation pursuant to 12 CFR 563.17–1(c) where the small institution engages in securities transactions. The small institution would be required to state its investment policy and strategies with respect to its planned activities, including, but not limited to, addressing the suggested factors previously discussed in this preamble. Due to the limited nature of the small institution's activities, the Board believes the level of documentation (of the investment policy, strategies, and transactions) would be in proportion to the level and complexity of transactions consummated. Thus, the Board does not believe the documentation requirement is unduly burdensome on small institutions.

For small institutions that wish to engage in sophisticated securities transactions, the documentation requirement would serve the important function of board and management assessment of (and documentation of) the scope, the risks and the rewards of such activity before engaging in the securities transactions. The Board's concern is that many institutions, large and small, have engaged in highly complex securities transactions without the requisite assessment of the scope and the risk of the transactions. Thus, to the extent any insured institution wishes to engage in sophisticated securities transactions, there is a need systematically and thoroughly to assess the transaction and the potential impact on the institution. The documentation requirement forces a board and management consciously to consider the numerous, relevant factors and assertively state its policy and strategies. Thus, the documentation requirement is justified for all institutions.

E. Mutual Funds

The Board appreciates the comments received but has previously addressed the accounting for mutual funds and decided thereon. Thus, the issues raised regarding mutual funds are not addressed in this final rule and final Statement of Policy.

F. Effective Date

The Board has considered the comments received urging prospective adoption of the rule and Statement of Policy and has weighed these recommendations against the Bank Board's regulatory obligations, and the conclusions of the FASB staff as set forth in their letters to the Board dated September 20, 1988, and December 21, 1988 and the SEC staff position as stated in the April 14, 1989 letter. In these letters, the FASB staff states their belief that existing GAAP literature is clear in its continuing requirement of a "positive intent to hold (securities) to maturity" (which the FASB staff believes does not equate to a current "lack of intent to sell") in order to account for securities at cost. The Board believes that, with respect to the accounting aspects of the Statement of Policy, it is simply setting forth additional clarification of the proper application of pre-existing GAAP requirements and would expect insured institutions to comply with the requirements of GAAP in documents filed with the Board. *See* 12 CFR 563.23–3(c), 563c.1(b)(1), and 561.13(a)(1), for example, regarding the Board's current requirements for insured institutions to report in accordance with GAAP.

In light of these regulatory responsibilities and based upon the FASB staff's reiteration of current GAAP literature and the SEC staff position, the Board will continue its practice of challenging the use of amortized cost accounting when institutions engage in significant securities activities that the Board believes are not reported consistent with GAAP. The Board recognizes there will be issues regarding the practical implementation of the Statement of Policy and the Board intends to provide additional guidance in the application of the Statement of Policy in the near future. The Board intends to proceed in a reasonable, prudent and cautious manner in light of the issues of practical implementation of the Statement of Policy. However, the Board, in response to the recommendations received, will defer adoption of the revised documentation requirements of this

[17] However, under GAAP, short sales must always be accounted for at market or the lower of cost or market.

Statement of Policy for investment policy and strategies and revised board of directors' reviews until August 30, 1989.

Initial Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, 5 U.S.C. 603, the Board is providing the following regulatory flexibility analysis:

1. *Reasons, Objectives, and Legal Basis Underlying the Rule.* These elements are incorporated above in **SUPPLEMENTARY INFORMATION.**

2. *Small Institutions to Which the Rule Applies.* The Small Business Administration defines a small financial institution as a "commercial bank or savings and loan association, the assets of which, for the preceding fiscal year, do not exceed $100 million." 13 CFR 121.13(a) (1987). Therefore, small entities to which the rule applies are the 1,651 insured institutions that had assets totaling $100 million or less as of December 31, 1987.

3. *Impact of the Rule on Small Institutions.* All institutions, including small institutions, should benefit from the rule and Statement of Policy which treat all institutions identically regardless of their size for the reasons discussed herein. Further, inasmuch as the intent of the amended rules and adopted Statement of Policy is to require all institutions to adopt, maintain and document sound investment policies and strategies in proportion to their level and type of investment activity, there is no disproportionate or adverse impact on small institutions. The Board, therefore, believes that the amended rule and adopted Statement of Policy will not have a significantly disproportionate economic impact on small institutions.

4. *Overlapping or conflicting federal rules.* There are no known federal rules that duplicate, overlap, or conflict with this proposed rule.

5. *Alternatives to the Rule.* There are no alternatives that would be less burdensome than the proposed rule in addressing the concerns expressed in the **SUPPLEMENTARY INFORMATION** set forth above.

List of Subjects in 12 CFR Parts 563c and 571

Accounting, Bank deposit insurance, Reporting and recordkeeping requirements, Savings and loan associations, Securities.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

Accordingly, the Board hereby proposes to amend Parts 563c and 571, Subchapter D, Chapter V, Title 12, Code of Federal Regulations, as set forth below.

PART 563c—ACCOUNTING REQUIREMENTS

1. The authority citation for Part 563c continues to read as follows:

Authority: Sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 402–403, 407, 48 Stat. 1256–1257, 1260, as amended (12 U.S.C. 1725–1726, 1730); secs. 3(b), 12–14, 23, 48 Stat. 882, 892, 894–895, 901, as amended (15 U.S.C. 78c(b), m, n, w); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–48 Comp., p. 1071.

2. Amend § 563c.102 by revising paragraph I.4.; by revising the first sentence of paragraph I.6.(a); by redesignating paragraph I.7. through 25 as the new paragraphs I.8. through 26; and by adding a new paragraph I.7. to read as follows:

§ 563c.102 Financial statement presentation.

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I. Balance Sheet

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4. *Trading account assets.* Include securities considered to be held for trading purposes in accordance with the Statement of Policy at § 571.19.

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6. *Investment securities.* (a) Include securities considered to be held for investment purposes in accordance with the Statement of Policy at § 571.19. * * *

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7. *Assets held for sale.* Investments in assets considered to be held for sale purposes in accordance with the Statement of Policy at § 571.19 should be reported separately in the statement of financial condition.

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PART 571—STATEMENTS OF POLICY

3. The authority citation for Part 571 continues to read as follows:

Authority: Sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 402, 403, 406, 407, 48 Stat. 1256, 1257, 1259, 1260, as amended (12 U.S.C. 1725, 1726, 1729, 1730); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–48 Comp., p. 1071.

4. Amend Part 571 by adding a new § 571.19 to read as follows:

§ 571.19 Investment portfolio policy and accounting guidelines

(a) *General.* This Statement of Policy sets forth the Federal Home Loan Bank Board's ("Board") position on the need for an institution to document prudent investment portfolio policy and strategies. It places with the institution's board of directors the responsibility for the establishment of and ongoing monitoring of management's compliance with the institution's investment policy and strategies. The Statement of Policy reiterates the requirement that securities [1] be recorded in accordance with generally accepted accounting principles ("GAAP") and requires the management of an institution to support via documentation the appropriate classification [2] of and accounting for securities in accordance with generally accepted accounting principles. This documentation is then required to be reviewed by the institution's auditors for consistency with promulgated GAAP. From a regulatory standpoint, there is the need for an institution to engage in safe and sound investment of its resources.

(b) *Investment policy and strategies.*—(1) *Content of policy and strategies.* An institution must document its overall investment policy for the institution as a whole and must also document its investment strategies for each different type of security portfolio. The investment policy and strategies must distinguish between those securities activities undertaken for investment, for sale, and for trading. Generally, such activities may be differentiated based upon an institution's desire to earn an interest yield (held for investment), to realize a holding gain from assets held for indefinite periods of time (held for sale), or to earn a dealer's spread between the bid and asked prices (held for trading).[3] The institution's policy should state the overall investment course reflecting, inter alia, the institution's business plan, capital adequacy, its plans for growth, and the current economic environment, including a range of reasonably foreseeable economic environments.[4]

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[1] "Securities", as used throughout this Statement of Policy, refers generically to investment securities, high yield corporate debt securities, loans, mortgage-backed securities, and derivative securities.

[2] "Classification", as used throughout this Statement of Policy, refers to the balance sheet classification of securities and does not refer to the classification of assets for purposes of loss allowance analysis under 12 CFR 561.16c, "Classification of Certain Assets". Furthermore, "classification" as used throughout this statement of policy, does not refer to a classification of assets that falls within the arbitration process mandated by the Competitive Equality Banking Act of 1987.

[3] These definitions are drawn from a letter, dated December 21, 1988, to the Federal Home Loan Bank Board from the staff of the Financial Accounting Standards Board ("FASB"). *See* 54 FR 11736 (March 22, 1989) for the text of the letter.

[4] The "range of reasonably foreseeable economic environments" would consider, inter alia, the magnitude of fluctuations of interest rates in recent years, significant economic events and conditions

Continued

The investment strategies should reflect the more specific plans to carry out the investment policy by addressing the type, nature, dollar amount and anticipated maturity of each type of security that will be used to achieve the strategies. Management's strategies should include planned management responses to rising and falling interest rate environments and to other external factors that past history and current events support as being reasonable. The strategies should address the range of external factors for which the strategies would continue to be valid and should also justify the boundary or boundaries beyond which the probabilities of specific events occurring are remote based on past history and current events. The range with respect to interest rates, for example, would thus have an upper limit and a lower limit. For events within the reasonably foreseeable range, investment strategies for securities that are accounted for as held for investment should proscribe sales of investment securities. Accordingly, sales of investment securities within the range should be extremely rare [5] and the reasons for the sales must be documented adequately and on a timely basis. If management believes that an event has occurred that is outside the limits of the reasonably foreseeable range and is thereby motivated to sell such securities, management must document its belief that such a remotely possible event has occurred in order to justify the continued use of amortized cost accounting. Furthermore, changes in policy and strategies for the institution as a whole or for a particular group of assets, *e.g.*, from loans held for sale to loans held for investment or *vice versa*, shall be documented and based upon sound rationale. The investment policy and strategies must, at a minimum, address the following:

(i) The investment policy and strategies in rising and falling interest rate environments within a reasonably foreseeable range of interest rates;

(ii) The institution's intent to purchase and originate securities for investment, for sale, or for trading;

(iii) The liquidity considerations of the institution;

(iv) The institution's desired rate of return on investments;

(v) The institution's desired degree of interest rate risk;

(vi) The institution's desired asset/liability position;

(vii) The use of hedging techniques, if any;

(viii) The types of products to be originated and/or purchased;

(ix) The intent of the institution to build a mortgage-servicing portfolio;

(x) The institution's plan for reinvestment of proceeds from sales; and

(xi) The characteristics of the investments originated or purchased.

(2) *Board of directors' review and approval.* The investment policy must be reviewed and approved periodically (but no less than annually) by the institution's board of directors. Furthermore, the institution's investment strategies and securities activities must be approved no less than quarterly by the institution's board of directors or an investment committee thereof to ensure that securities activities are consistent with the investment policy and strategies of the institution. Securities activities may be approved based on a summary report of transactions.

(3) *Portfolio decisions.* An institution shall identify and determine whether securities are intended to be held for investment, for sale, or for trading at the time the securities are committed to be purchased or originated. Documentation of decisions may be made by exception when appropriate, e.g., "all adjustable rate mortgages are purchased or originated for the investment portfolio". Any exceptions to a strategy require identification and documentation at the commitment date.

(c) *Safety and soundness.* Securities activities must be conducted in a safe and sound manner and by competent personnel. Investment decisions and securities activities shall be carried out consistent with the investment policy and strategies that appropriately consider adequate liquidity, protection from interest rate risk, desired rate of return, asset/liability position, capital adequacy, and management capabilities of an institution. In addition to understanding and approving the institution's investment policy and strategies, the institution's board of directors or an investment committee of the board of directors (in conjunction with the full board) has the fiduciary duty to oversee the establishment of strong internal controls, ensure that management and their investment consultants, if any, are reputable and capable, and to ensure that securities activities are consistent with the investment policy and strategies of the institution and are classified and accounted for in accordance with GAAP.

(d) *Generally Accepted Accounting Principles.* (1) Accounting guidance for securities including investment securities, high yield corporate debt securities, loans and mortgage-backed securities and their derivatives exists in various degrees of detail in the Financial Accounting Standards Board ("FASB") Statement of Financial Accounting Standards ("SFAS") No. 12, "Accounting for Certain Marketable Securities", SFAS No. 65, "Accounting for Certain Mortgage Banking Activities", SFAS No. 80, "Accounting for Futures Contracts", SFAS No. 91, "Accounting for Nonrefundable Fees and Costs Associated with Originating or Acquiring Loans and Initial Direct Costs of Leases", the September 20, 1988, and December 21, 1988, letters from the FASB staff to the Federal Home Loan Bank Board, the American Institute of Certified Public Accountants' ("AICPA") Audit and Accounting Guide for Savings and Loan Associations, the AICPA's Industry Audit Guide for Audits of Banks, the April 14, 1989 letter from the Chief Accountant of the SEC to the Chairman of the Accounting Standards Executive Committee of the AICPA, and various consensuses of the FASB's Emerging Issues Task Force. As stated in the FASB staff's letters to the Board, GAAP's emphasis on the intent to hold to maturity as a premise for cost accounting is well founded within existing GAAP literature promulgated by the FASB. Further, GAAP currently requires that investments held for sale are to be recorded at the lower of cost or market and investments held for trading purposes are to be valued at market.

(2) An institution's investment activities shall be classified and accounted for in accordance with GAAP. Critical to the proper classification of and accounting for securities as investments is the intent and ability of an institution to hold the securities until maturity. A positive

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on the local, regional, and national level that may affect the decision of the institution to engage in securities transactions, and the experience of the management of the institution in dealing with significant economic events of the past and the ability to apply that experience to future events. Given the need to demonstrate a positive intent to hold to maturity to justify the use of amortized cost for securities, the range should include external market events that history and current events support as having a better than remote chance of occurrence. The range utilized by the institution need not include remotely possible interest rates or economic conditions and events, but should address the widest range within which the institution would expect to conduct its operations over the lives of the assets held. When conditions move to the extremes of potentially possible conditions, an institution generally should re-evaluate its financial position and evaluate the need to re-position itself (assets and liabilities) for the significant changes encountered.

[5] Within the range of reasonably foreseen events, the Board would consider the number of occurrences of sales of securities held for investment to be essentially non-existent and the dollar amount of such sales, if any, would be negligible.

intent to hold to maturity, not just a current lack of intent to dispose, is necessary for securities acquired to be considered held for investment purposes. Those institutions whose strategies include active asset management would be expected to account for those securities on a basis other than amortized cost.

(3) Management is responsible for analyzing the types, extent and timing of securities activity to ascertain the appropriate classification of and accounting for securities transactions in accordance with current GAAP literature. In supporting management's intent and ability to hold securities until maturity, management must document how its sale, purchase, and origination activities support the institution's intent and ability to hold securities until maturity. Independent accountants must obtain and evaluate management's documentation and analyses and document their conclusions regarding management's compliance with GAAP. Additionally, certain transactions carry a presumption of trading; *see* Section I, "Trading in the Investment Portfolio" to the Appendix to the Federal Financial Institutions Examination Council ("FFIEC") policy statement entitled "Supervisory Policy Statement on the Selection of Securities Dealers and Unsuitable Investment Practices" included as an Appendix to this Statement of Policy.

(i) *Intent*—(A) *Sales intent.* The necessity of analyzing sales activity is considered to be minimal since sales activity will be extremely rare for securities held for investment purposes. This does not imply that an institution may never sell securities from the investment portfolio. Significant events that were not reasonably foreseen when a security was acquired or originated may affect the institution's intent and/or ability to hold a security until maturity, although such instances should be extremely rare. Where management's strategies proscribe the sales of securities due to changes in external factors that are reasonably foreseen, a positive intent to hold until maturity will be presumed to exist. Past and subsequent management actions must bear out the presumption. Accordingly, the reasons for sales of securities will need to be determined. Among the factors to be considered in analyzing sales activity include, but are not limited to, analyses of:

(1) Whether the reason for the sale is consistent with the investment strategy;

(2) The number of sales transactions at gains and at losses during the reporting period;

(3) The relative volume of gross gains and gross losses on sale of securities as percentages of net income and equity;

(4) The net gain or loss from sales as a percentage of income and equity;

(5) The dollar amount of securities sold compared with outstanding balances throughout the reporting period;

(6) The rapidity of turnover, including consideration of the average number of days securities are owned prior to sale;

(7) A trend indicating that sales of securities transpire largely when gains are recognized ("gains trading" or "par capping");

(B) *Originations and purchases intent.* The types and extent of originations and purchases shall also be analyzed for intent to hold until maturity. Among the factors to be considered in analyzing origination and purchase activity include, but are not limited to, analyses of:

(1) The nature of securities (type, term, duration, yield, etc.) originated and/or purchases;

(2) The means of financing the acquisition;

(3) Trends indicating that market value is consistently below cost at the time of origination and/or purchase.

(C) *Other intent.* Other securities activities that shall be considered when reviewing an institution's intent to hold securities until maturity include, but are not limited to:

(1) The period of time between sales and purchases of securities;

(2) The method by which securities are financed. The consistent funding of securities via very short-term liabilities that have not been extended in duration via interest rate swaps, options, futures, etc., may indicate that the intent to hold the securities is short-term or that the ability to hold is in doubt; and

(3) The reasons for an institution's securitization of loans. There are numerous reasons to securitize loans, one being the ability to raise debt at lower cost when collateralized by mortgage-backed securities. Securitization does not automatically portend sale or trade accounting; however, the extent of securitization should be considered in light of an institution's investment policy and strategies, activity and liquidity needs.

(ii) *Ability to hold.* In supporting and analyzing an institution's ability to hold securities until maturity, documentation shall include, but is not limited to, analyses of the following:

(A) The availability of funding;

(B) The ability to meet margin calls and overcollateralization requirements; and

(C) The ability of the institution to fund commitments to purchase or originate securities in light of regulatory limitations (or the non-compliance therewith), *e.g.*, regulatory capital requirements, liquidity, loans-to-one borrower limitations, equity risk limitations, growth limitations, investment authorities, etc. In determining whether an institution's pair-off activity is considered to be investment activity (instead of trading activity), regulatory limitations shall be analyzed based upon gross commitments to purchase or originate securities adjusted for anticipated prepayments through the period of delivery.

(e) *Effective date.* The requirements for the establishment and documentation of investment policies and strategies, management and its auditors requirements to support via documentation the proper classification of and accounting for its securities activities in accordance with GAAP and board of directors' reviews are effective August 30, 1989. As authoritative GAAP literature has been in existence, the Board would expect insured institutions to properly apply the appropriate accounting principles in financial statements filed with the Board and the Board will continue its practice of challenging the reporting of securities activities not properly accounted for in accordance with GAAP.

Appendix to § 571.19

FFIEC Supervisory Policy Statement on the Selection of Securities Dealers and Unsuitable Investment Practices.

I. Trading in the Investment Portfolio

Trading in the investment portfolio is characterized by a high volume of purchase and sale activity, which when considered in light of a short holding period for securities, clearly demonstrates management's intent to profit from short-term price movements. In this situation, a failure to follow accounting and reporting standards applicable to trading accounts may result in a misstatement of the depository institution's income and a filing of false regulatory reports and other published financial data. It is an unsafe and unsound practice to record and report holdings of securities that result from trading transactions using accounting standards which are intended for investment portfolio transactions; therefore, the discipline associated with accounting standards applicable to trading accounts is necessary. Securities held in trading accounts should be marked to market, or the lower of cost or market, periodically with unrealized gains or losses recognized in current income. Prices used in periodic revaluations should be obtained from sources that are independent of the securities dealer doing business with the depository.

The following practices are considered to be unsuitable when they occur in a depository institution's investment portfolio.

A. "Gains Trading"

"Gains trading" is a securities trading activity conducted in an investment portfolio, often termed "active portfolio management." "Gains trading" is characterized by the purchase of a security as an investment and the subsequent sale of that same security at a profit within several days or weeks. Those securities initially purchased with the intent to resell are retained as investment portfolio assets if they cannot be sold at a profit. These "losers" are retained in the investment portfolio because investment portfolio holdings are accounted for at cost, and losses are not recognized unless the security is sold. "Gains trading" often results in a portfolio of securities with extended maturities, lower credit quality, high market depreciation and limited practical liquidity.

In many cases, "gains trading" has involved the trading of "when issued" securities and "pair offs" or "corporate settlements" because the extended settlement period associated with these practices allows speculators the opportunity for substantial price changes to occur before payment for the securities is due.

"When-Issued" Securities Trading

"When-issued" securities trading is the buying and selling of securities in the interim between the announcement of an offering and the issuance and payment date of these securities. A purchaser of a "when-issued" security acquires all the risks and rewards of owning a security and may sell the "when-issued" security at a profit before taking delivery and paying for it. Frequent purchases and sales of securities during the "when-issued" period generally are indications of trading activity and should not be conducted in a bank's investment portfolio.

C. "Pair-Offs"

A "pair-off" is a security purchase transaction which is closed out or sold at, or prior to, settlement date. As an example, an investment portfolio manager will commit to purchase a security; then, prior to the predetermined settlement date, the portfolio manager will "pair-off" the purchase with a sale of the same security prior to, or on, the original settlement date. Profits or losses on the transaction are settled by one party to the transaction remitting to the counter party the difference between the purchase and sale price. Like "when issued" trading, "pair-offs" permit speculation on securities price movements without paying for the securities.

D. Corporate Settlement on U.S. Government and Federal Agency Securities Purchases

Regular-way settlement for transactions in U.S. Government and Federal agency securities is one business day after the trade date. Regular-way settlement for corporate securities is five business days after the trade date. The use of a corporate settlement method (5 business days) for U.S. Government securities purchases appears to be offered by dealers in order to facilitate speculation on the part of the purchaser.

E. Repositioning Repurchase Agreements

Dealers who encourage speculation through the use of "pair-off", "when-issued" and "corporate settlement" transactions often provide the financing at settlement of purchased securities which cannot be sold at a profit. The buyer purchasing the security pays the dealer a small "margin" that is equivalent roughly to the actual loss in the security. The dealer then agrees to fund the purchase by buying the security back from the purchaser under a resale agreement. Apart from inprudently funding a longer-term, fixed-rate asset with short-term, variable-rate source funds, the purchaser acquires all the risks of ownership of a large amount of depreciated securities for a very small margin payment. Purchasing securities in these circumstances is inherently speculative and is a wholly unsuitable investment practice for depository institutions.

F. Short Sales

A short sale is the sale of a security that is not owned. The purpose of a short sale generally is to speculate on the fall in the price of the security. Short sales are speculative transactions that should be conducted in a trading account, and when conducted in the investment portfolio, they are considered to be unsuitable.

Short sales are not permissible activities for Federal credit unions.

By the Federal Home Loan Bank Board.

Nadine Y. Washington,

Assistant Secretary.

[FR Doc. 89-12928 Filed 5-31-89; 8:45 am]

[BILLING CODE 6720-01-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 778

[Docket No. 90400-9100]

Removal of "Advice of the Manufacturer" Provision

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: This rule amends the Export Administration Regulations by removing and reserving § 778.6, "Advice of the Manufacturer." This section had required exporters of goods capable of sensitive nuclear uses to request a written statement from the manufacturer specifying whether a validated license is required for export. The Department has determined that the practical utility of the letter of inquiry and the manufacturer's advice was minimal because § 778.6 stated that "notwithstanding the advice provided by the manufacturer, the exporter remains responsible for filing an export license application for any export subject to § 778.3." Section 778.3 contains provisions on licensing requirements for export of commodities and technical data with sensitive end-uses.

EFFECTIVE DATE: This rule is effective June 1, 1989.

FOR FURTHER INFORMATION CONTACT: Vincent Greenwald, Office of Technology and Policy Analysis, Bureau of Export Administration, Telephone: (202) 377-3856.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. This rule is consistent with Executive Orders 12291 and 12661.

2. This rule removes a collection of information subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection had been approved by the Office of Management and Budget under control number 0694-0034. This action will reduce the paperwork burden imposed on the public.

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

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

5. Section 13(a) of the Export Administration Act of 1979 (EAA), as amended (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. Section 13(b) of the EAA does not require that this rule be published in proposed form because this rule does not impose a new control. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Vincent Greenwald, Regulations Branch, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of

Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects in 15 CFR Part 778

Exports, Nuclear energy, Reporting and recordkeeping requirements.

Accordingly, Part 778 of the Export Administration Regulations is amended as follows:

PART 778—[AMENDED]

1. The authority citation for Part 778 continues to read as follows:

Authority: Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97-145 of December 29, 1981, by Pub. L. 99-64 of July 12, 1985 and by Pub. L. 100-418 of August 23, 1988; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95-223 of December 28, 1977 (50 U.S.C. 1701 *et seq.*); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99-440 of October 2, 1986 (22 U.S.C. *et seq.*); and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986).

§ 778.6 [Removed and reserved]

2. Section 778.6 is removed and reserved.

Dated: May 25, 1989.

James M. LeMunyon,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 89-12946 Filed 5-31-89; 8:45 am]

BILLING CODE 3510-DT-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 529

Certain Other Dosage Form New Animal Drugs Not Subject to Certification; Isoflurane

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Anaquest, Division of BOC, Inc., providing for use of isoflurane for induction and maintenance of general anesthesia in dogs.

EFFECTIVE DATE: June 1, 1989.

FOR FURTHER INFORMATION CONTACT: Marcia K. Larkins, Center for Veterinary Medicine (HFV-112), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3430.

SUPPLEMENTARY INFORMATION: Anaquest, Division of BOC, Inc., 100 Mountain Ave., Murray Hill, NJ 07974, has filed a supplement to NADA 135-773 for AErrane™ (isoflurane), an inhalation anesthetic. The supplement is for induction and maintenance of general anesthesia in dogs. The NADA was originally approved for induction and maintenance of general anesthesia in horses. The supplemental NADA is approved and the regulations are amended in 21 CFR 529.1186(c) to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

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.

List of Subjects in 21 CFR Part 529

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 529 is amended as follows:

PART 529—CERTAIN OTHER DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR Part 529 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

2. Section 529.1186 is amended by revising paragraph (c) to read as follows:

§ 529.1186 Isoflurane.

* * * * *

(c) *Conditions of use*—(1) *Amount*—(i) *Horses:* For induction of surgical anesthesia: 3 to 5 percent isoflurane (with oxygen) for 5 to 10 minutes. For maintenance of surgical anesthesia: 1.5 to 1.8 percent isoflurane (with oxygen).

(ii) *Dogs:* For induction of surgical anesthesia: 2 to 2.5 percent isoflurane (with oxygen) for 5 to 10 minutes. For maintenance of surgical anesthesia: 1.5 to 1.8 percent isoflurane (with oxygen).

(2) *Indications for use.* For induction and maintenance of general anesthesia in horses and dogs.

(3) *Limitations.* Administer by inhalation; not for use in horses or dogs sensitive to halogenated agents; increasing depth of anesthesia may increase hypotension and respiratory depression; use less than usual amounts of nondepolarizing relaxants; use with vaporizers producing predictable percentage concentrations; not for use in horses intended for food; Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: May 23, 1989.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 89-12981 Filed 5-31-89; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 289

Availability of DoD Directives, DoD Instructions, DoD Publications, and Changes

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Final rule.

SUMMARY: This rule updates DoD procedures on the availability of DoD Directives, DoD Instructions, DoD publications, and changes. It covers revisions on the availability of DoD Directives and Instructions, and publications to the public and U.S. Government Agencies other than the Department of Defense and the increase in subscription cost.

EFFECTIVE DATE: May 1, 1989.

FOR FURTHER INFORMATION CONTACT: Ms. Linda M. Bynum, Directives Division, Correspondence and Directives Directorate, Washington Headquarters Services, Washington, DC 20301-1155, telephone (202) 697-4111.

SUPPLEMENTARY INFORMATION: On November 20, 1986, the Department of

Defense Published a revision (51 FR 41962) of 32 CFR Part 289. This revision udpates the ordering and subscription services rendered by the Navy Publishing and Printing Services.

List of Subjects in 32 CFR Part 289

DoD Directives System issuances, Availability to the public, Freedom of information.

Accordingly, Part 289 of Title 32 is revised to read as follows:

PART 289—AVAILABILITY OF DoD DIRECTIVES, DoD INSTRUCTIONS, DoD PUBLICATIONS, AND CHANGES

Sec.

Authority: 10 U.S.C. 133, 31 U.S.C. 483a

§ 289.1 Subscription services for DoD directives and instructions.

(a) DoD Directives, Instructions, and changes published in the Number Index section of DoD 5025.1–I, DoD Directives System Annual Index (except those issuances identified as classified) are available to the public and U.S. Government Agencies on a subscription basis for $16.00 a year. DoD Components must obtain DoD Directives and Instructions from their own publications channels.

(b) An annual subscription consists of one copy of each newly released and revised DoD Directive and Instruction published under the subject groups that are specified in a given subscription. Subscriptions are accepted for one or more subject groups. The subject groups are as follows:

1000 Manpower, Reserve Affairs, and Personnel
2000 International Programs and Security Assistance
3000 Planning, Research and Development, Intelligence, Space Systems and Programs
4000 Logistics, Acquisition, and Resources Management
5000 General Administration
5025.1–I DoD Directives System Annual Index
6000 Safety, Health, and Medical
7000 Comptrollership

(c) Subscription orders may be placed with the Director, Navy Publishing and Printing Service, Building 4, Section D, 700 Robbins Avenue, Philadelphia, PA 19111. Orders must be in writing, accompanied by a certified check or money order for $16.00 payable to Navy Publishing and Printing Service.

§ 289.2 Ordering individual copies of DoD Directives and Instructions.

(a) DoD Directives, Instructions, and changes published in the Number Index section of DoD 5025.1–I, DoD Directives System Annual Index (except those issuances identified as classified) are available to the public and U.S. Government Agencies without charge. DoD Components must obtain DoD Directives and Instructions from their own publications channels.

(b) Orders for individual copies are limited to five copies per line item. Written requests for individual copies should be submitted to the Commanding Officer, ATTN: Code 1053, Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, Pennsylvania 19120–5099. Urgent requests may be submitted by TELEX and telegraph. The TELEX number is 834295 and the Western Union telegraph number is (710) 670–1685. The commercial telephone number is (215) 697–3321. All requests must include personal or organization name and complete mailing address (street address or P.O. box number, city, state, zip code, and country, if applicable).

§ 289.3 Ordering complete sets of DoD directives and instructions.

This service is no longer available.

§ 289.4 Ordering individual copies of DoD Publications.

(a) Requests for DoD publications and changes listed in the Number Index section of DoD 5025.1–I (except those publications identified as classified) should be forwarded to the various sources that are identified in the Availability Column of the DoD Publications subsection of DoD 5025.1–I. A fee will be charged for DoD Publications ordered from the National Technical Information Service, Springfield, Virginia.

(b) DoD 5025.1–I, DoD Directives System Annual Index, is available at cost from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161. This publication also may be ordered from the Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA 19120–5099.

P.H. Means,

OSD Federal Register Liaison Officer, Department of Defense,

May 25, 1989.

[FR Doc. 89–12944 Filed 5–31–89; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05–89–08]

Special Local Regulations for Marine Events, American Diabetes Association, Choptank River Swim, Choptank River Bridge, Cambridge, MD

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Permanent special local regulations are adopted for the American Diabetes Association Triathlon. This event will consist of approximately 400 swimmers racing across the Choptank River. The swim course will begin at the sandy beach on the west side of the Gateway Marina entrance on the north shore of the Choptank River and end at Great Marsh Point on the opposite shore. These regulations restrict vessel navigation in the regulated area during the swim portion of the Triathlon. Notice of the precise date and times the regulations are effective will be published in the Local Notice to Mariners and by Federal Register Notice. These special local regulations are considered necessary to control vessel traffic and to provide for the safety of life and property on the navigable waters within the immediate vicinity of this event.

DATE: This rule is effective June 1, 1989.

Compliance with these regulations will be required at different dates and times. The Fifth Coast Guard District Commander will publish notices in the Local Notice to Mariners and Federal Register announcing the times and date when these regulations are in effect.

FOR FURTHER INFORMATION CONTACT: Billy J. Stephenson, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, (804) 398–6204.

SUPPLEMENTARY INFORMATION: The Coast Guard published a notice of proposed rulemaking in the Federal Register on March 13, 1989 (54 FR 10374). Interested persons were requested to submit comments. No comments were received.

Drafting Information

The drafters of this notice are Billy J. Stephenson, project officer, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and Lieutenant Commander Robin K. Kutz,

project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Comments and Final Rule

No comments were received in response to the notice of proposed rulemaking. After publication of the notice of proposed rulemaking, the sponsor advised the Coast Guard that the finish line had been changed to Great Marsh Point. The regulated area in §100.512(a)(1) has been revised to reflect this change. The swim portion of the American Diabetes Association Triathlon will consist of approximately 400 swimmers racing across the Choptank River. The swim course will begin at the sandy beach on the west side of the Gateway Marina entrance on the north shore of the Choptank River and end at Great Marsh Point on the opposite shore. It is necessary to close a portion of the Choptank River to all traffic except participants for the safety of those competing in the event.

Economic Assessment and Certification

These regulations are not considered major under Executive Order 12291 on Federal Regulation nor significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). Because closure of the waterway is not anticipated for any extended period, commercial marine traffic will not be inconvenienced significantly. The economic impact of these regulations is expected to be so minimal that a full regulatory evaluation is unnecessary. Accordingly, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rule does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Impact

This final rule has been thoroughly reviewed by the Coast Guard and it has been determined to be categorically excluded from further environmenal documentation in accordance with section 2.B.2.c of Commandant Instruction (COMDTINST) M16475.1B. A Categorical Exclusion Determination statement has been prepared and has been placed in the rulemaking docket.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Final Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 100 continues to read as follows:

PART 100—[AMENDED]

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A new § 100.512 is added to read as follows:

§ 100.512 American Diabetes Association Reach the Beach Triathlon, Choptank River, Cambridge, Maryland.

(a) *Definitions*—(1) *Regulated area.* The waters of the Choptank River between the Choptank River Bridge and a line drawn from the northern shore, at latitude 38°35'37" North, longitude 76°03'08" West, to the southwestern shore, at latitude 38°35'31" North, longitude 76°04'52" West.

(2) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Group Baltimore.

(b) *Special local regulations.* (1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the immediate vicinity of this area shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(ii) Proceed as directed by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(3) Any spectator vessel may anchor outside of the regulated area specified in paragraph (a) of this section but may not block a navigable channel.

(c) *Effective period.* The Commander, Fifth Coast Guard District, will publish a notice in the **Federal Register** and the Fifth Coast Guard District Local Notice to Mariners announcing the times and date this section is in effect.

Dated: May 18, 1989.

A.D. Breed,

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

[FR Doc. 89-12948 Filed 5-31-89; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 100

[CGD 05-89-35]

Special Local Regulations for Marine Events, American Diabetes Association, Choptank River Swim, Choptank River Bridge, Cambridge, MD

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation of 33 CFR 100.512.

SUMMARY: This notice implements 33 CFR 100.512 for the swim portion of the American Diabetes Association Triathlon. The event will be held on June 4, 1989 in the Choptank River. The swim portion of the Triathlon will consist of approximately 400 swimmers racing across the Choptank River. The course will begin at the sandy beach on the west side of the Gateway Marina entrance on the north shore of the Choptank River and end at Great Marsh Point on the opposite shore. These regulations restrict vessel navigation in the regulated area during the swim portion of the Triathlon.

EFFECTIVE DATE: The regulations in 33 CFR 100.512 are effective from 7:00 a.m. to 10:30 a.m. on June 4, 1989.

FOR FURTHER INFORMATION CONTACT: Billy J. Stephenson, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004, (804) 398-6204.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are Billy J. Stephenson, project officer, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and Lieutenant Commander Robin K. Kutz, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulations

Mr. Fletcher Hanks, Race Chairman for American Diabetes Association Choptank River swim, submitted an application on March 21, 1989 requesting permission to hold the swim portion of this Triathlon on June 4, 1989. Since a portion of the Choptank River must be closed to traffic during this portion of the event, the special local regulations in 33 CFR 100.512 are implemented.

Date: May 18, 1989.

A.D. Breed,

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

[FR Doc. 89-12949 Filed 5-31-89; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3578-4]

Approval and Promulgation of Implementation Plan, State of New Mexico, Bernalillo County; Particulate Matter (PM_{10}) Group II Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: This Federal Register notice approves a revision to the New Mexico State Implementation Plan (SIP) that commits the Albuquerque Environmental Health Department to conduct particulate matter ambient air monitoring, data analyses, reporting, and submittal of control strategies (if any necessary) for Bernalillo County which was identified as particulate matter (PM_{10}) Group II area in the Federal Register notice of August 7, 1987 (52 FR 29383). This revision is partially in response to the requirements of the PM_{10} National Ambient Air Quality Standards that were promulgated by the EPA in the Federal Register notice of July 1, 1987 (52 FR 24634). This action today only approves the Bernalillo County PM_{10} Group II SIP (committal SIP), including the City of Albuquerque. The EPA will publish its action on the remainder of PM_{10} SIP (countywide regulatory requirements) under a separate notice at a later date.

Today's notice is published to advise the public that the EPA is approving the Bernalillo County PM_{10} Group II SIP. The rationale for this approval is contained in this notice.

DATE: This action will be effective on (July 31, 1989, unless notice is received within 30 days that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Copies of the City's submittal and other information are available for inspection during normal business hours at the following locations. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least twenty-hours before the visiting day.

SIP New Source Section, Air Programs Branch, Air, Pesticides and Toxics Division, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, Telephone: (214) 655–7214.

Air Pollution Control Division, The Albuquerque Environmental Health Department, The City of Albuquerque, P.O. Box 1293, Albuquerque, New Mexico 87103, Telephone: (505) 768–2600.

FOR FURTHER INFORMATION CONTACT: Mr. J. Behnam, P.E.; SIP New Source Section, Air Programs Branch, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, telephone: (214) 655–7214.

SUPPLEMENTARY INFORMATION:

Background

The Clean Air Act requires the EPA Administrator to set and periodically reexamine national ambient air quality standards. Section 108 of the Act directs the Administrator to identify widespread pollutants that endanger public health or welfare and to issue air quality criteria for them. The intent of these air quality criteria is to reflect the latest scientific information useful in indicating the kind and extent of all identifiable effects on public health or welfare that may be expected from the presence of a pollutant in the ambient air. In addition, section 109 requires the Administrator to establish "primary" standards to protect public health and "secondary" standards to protect public welfare for pollutants identifed under section 108. Once the Federal standards have been set, section 110 of the Act requires that States submit State Implementation Plans (SIP), which contain control measures needed to attain the health based standards within specific statutory deadlines and to attain standards for welfare effects within a reasonable time.

Statutory Requirements

The Clean Air Act (amended August 1977) establishes a joint State and Federal program to control air pollution. Under sections 108 and 109 of the Act, the EPA is responsible for issuing air quality criteria and promulgating National Ambient Air Quality Standards (NAAQS). The States have primary responsibility for implementing the NAAQS. Under section 110 of the Act, each State must develop and submit to EPA a plan that provides for attainment and maintenance of each NAAQS as expeditiously as practicable within three years of the approved date of SIP. The State is required to adopt and submit a SIP revision to the EPA within nine months after the promulgation or revision of a primary NAAQS. The EPA must review each SIP and approve or disapprove its provisions. If the State fails to submit a plan, or the EPA finds the plan inadequate, a Federal program may be instituted in place.

In fulfilling the requirements of the Act, the EPA promulgated the particulate matter (PM_{10}) rules on July 1, 1987. The PM_{10} rules replaced the former standards for total suspended particulate matter (TSP) with a new indicator that includes particulate matters with the aerodynamic diameters less than or equal to a nominal 10 micrometers (PM_{10}) as measured by a reference method established by the EPA. The new 24-hour primary (health-based) standards limit PM_{10} to 150 micrograms per cubic meter of air. In addition to the 24-hour standard, a new annual standard is set at 50 micrograms per cubic meter.

PM_{10} SIP Requirements

The EPA implemented the PM_{10} NAAQS under section 110 of the Act. The States and EPA began developing a monitoring network in 1983 to determine the concentrations of PM_{10} at various locations. Initially, the network targeted areas with high concentrations of total suspended particulates (TSP). Since the quantity of good quality ambient PM_{10} data was limited, yet the States had a significant amount of TSP data, EPA developed a procedure for determining the probability that an area would violate the PM_{10} NAAQS. The EPA has placed all the counties in the nation into three groups based on their probability of violating the PM_{10} NAAQS. Under this scheme, the area of each state was classified as Group I, II, or III. The Group I areas are those areas with a high probability of not attaining the standards, Group II are those areas where existing air quality data are not sufficient to determine if they are attaining the standards, and Group III areas are those with a high probability of attaining the NAAQS without revisions to the existing control strategies. The list of PM_{10} Group I and Group II areas was published in the Federal Register notice of August 7, 1987 (52 FR 29383).

The States are required to submit SIPs for all areas in Group II within nine months of NAAQS promulgation, but these SIPs need not contain full control strategies and demonstrations of attainment and maintenance. Instead, States may submit "committal" SIPs that supplement the existing SIPs with enforceable commitments to: (a) Gather ambient PM_{10} data, at least to an extent consistent with minimum EPA requirements and guidance; (b) Analyze and verify the ambient PM_{10} data and report 24-hour PM_{10} NAAQS exceedances to the Regional Office

within 45 days of each exceedance; (c) When an appropriate number of verifiable 24-hour NAAQS exceedances becomes available or when an annual arithmetic mean above the level of the annual PM_{10} NAAQS becomes available, acknowledge that a nonattainment problem exists and immediately notify the Regional Office; (d) within 30 days of the notification referred to in (c) above, or within 37 months of promulgation, whichever comes first, determine whether the measures in the existing SIP will assure timely attainment and maintenance of the primary PM_{10} standards, and immediately notify the Regional Office; and (e) Within 6 months of the notification referred to in (d) above, adopt and submit to EPA a PM_{10} control strategy that assures attainment as expeditiously as practicable but no later than three years from approval of the committal SIP.

State Submission

The EPA has identified six Group II areas in the State of New Mexico; namely, Bernalillo, Dona Ana, Grant, Sandoval, Santa Fe, and Taos counties. The PM_{10} Group II SIP revision submitted by the New Mexico State Environmental Improvement Division included all counties listed by the EPA except for Bernalillo County for the reason described below. The New Mexico Air Quality Control Act (NMAQCA) allows, by ordinance, "A" class counties and any municipality within an "A" class county to create municipal, county, or joint air quality board to administer and enforce the provisions of the NMAQCA. The City of Albuquerque and Bernalillo County have jointly established such a board for administration and enforcement of NMAQCA because Bernalillo County is an "A" class county. The Albuquerque Environmental Health Department is the regulatory and administrative agency for implementing and enforcing the air quality control regulations of the City of Albuquerque and Bernalillo County Air Quality Control Board. Therefore, the Albuquerque Environmental Health Department has submitted a PM_{10} Group II SIP for Bernalillo County that is further discussed below.

On December 7, 1988, the Governor of New Mexico submitted a SIP revision for Bernalillo County in compliance with the requirements of the PM_{10} program (52 FR 24634) to fulfill the specific provisions of the PM_{10} Group II areas. Before the Governor's submission, the Albuquerque and Bernalillo County Air Quality Control Board adopted this plan revision on November 9, 1988. The PM_{10} Group II SIP revision contained (1) area description, (2) monitoring and quality assurance plan, (3) commitments on the procedures and milestones for meeting the Federal mandate, and (4) a letter of commitment from the Director of the Albuquerque Environmental Health Department. The Director's letter fully commits the Department to comply with the PM_{10} Group II requirements, and the content of this letter is stated below:

This letter is in reference to the PM_{10} Group II SIP requirements particularly as pertains to Bernalillo County. In response to the requirements of the July 1, 1987 **Federal Register** notice on PM_{10}, the Albuquerque Environmental Health Department has prepared a Committal SIP for all of Bernalillo County which has been classified Group II for this pollutant. As expressed in the attached SIP revision, the Department is committing to carry out all required actions such as monitoring, reporting, emission inventory development and other tasks necessary to satisfy the SIP requirements for PM_{10} Group II areas.

The specific commitments for monitoring, data analysis, and reporting of the PM_{10} Group II area are given in the SIP and quoted as follows:

Commitments for the Bernalillo County Group Area

For PM_{10} II SIP purposes the Department commits to the following actions as specified in "Requirements For Group II Areas" in the **Federal Register**, 52 FR No. 126, pp. 24681 (July 1, 1987).

A. Monitoring: As mentioned previously, the Department will monitor at Site 2ZO during every other 24 hour period. Data collection has already begun on December 1, 1987. All data are and will continue to be collected and analyzed as expeditiously as possible. All monitoring is and will continue to be performed in accordance with standard procedures delineated in 40 CFR Part 53, "Ambient Air Monitoring Reference and Equivalent Methods", and 40 CFR Part 58, "Ambient Air Quality Surveillance for Particulate Matter." In addition, as a means to assess other potential attainment problems and establish an understanding of the local PM_{10} fraction of the total TSP sites 2ZK, 2ZE, 2ZL, and 2ZN will be monitored every sixth day in accordance of the 40 CFR Part 53 Reference Methods as well as the Quality Surveillance requirements of 40 CFR Part 58 cited above for 2ZO.

B. Exceedances: The Department will analyze the data and report any exceedances of the annual or 24-hour PM_{10} NAAQS to EPA Region VI within 45 days of the exceedance.

C. Nonattainment Acknowledgement: The Department will follow the provisions of Section 2 of the *PM_{10} SIP Development Guideline* (June 1987) and subsequent supplements to determine the attainment status of the Group II area based on PM_{10} monitoring data. When it is determined per the above guideline that an area is in nonattainment of the 24-hour or annual PM_{10} NAAQS, the Department will acknowledge the nonattainment status and promptly notify EPA Region VI.

D. SIP Adequacy Determination: Within 30 days of a notification to EPA Region VI of a nonattainment determination, or by August 31, 1990, whichever comes first, the Department will determine whether the measures in the existing SIP will assure timely attainment and maintenance of the 24-hour and annual average PM_{10} NAAQS and promptly notify EPA Region VI. In making this determination, the Department will consider the following factors:

1. Air quality data will be analyzed to determine if attainment can be demonstrated in accordance with 40 CFR Part 50, Appendix K or the "Guideline on Exceptions to Data Requirements for Determining Attainment of Particulate Matter Standards" in the absence of adequate PM_{10} data.

2. The existing control strategy will be reviewed to ensure it is fully implemented and enforced. This will include a determination as to whether the provisions of AQCR No. 19—*Breakdown, Abnormal Operation Conditions, or Scheduled Maintenance* are adequate to prevent circumvention of particulate matter emission limitations.

3. Emission inventories and source limitations will be evaluated to determine if increases from actual to allowable emissions could cause exceedances of the PM_{10} NAAQS. The Department will prepare the necessary emission inventory to make this determination using the guidance provided in EPA *PM_{10} SIP Development Guidelines*, June 1987 and subsequent supplements. This will be completed by August 31, 1990 as indicated in the work schedule in Appendix C.

E. Control Strategy: The Department will adopt and submit to EPA Region VI a PM_{10} control strategy within 6 months of the SIP adequacy notification required in Item D above. The control strategy will assure attainment of the PM_{10} NAAQS as expeditiously as practicable but no later than 3 years from the date EPA approves this PM_{10} committal SIP revision. The Department may request an additional 2 years to reach attainment for any Group II site where monitoring data has demonstrated a nonattainment situation. The control strategy will be developed in accordance with *PM_{10} SIP Development Guideline*, EPA–450/2–86–001, June 1987 and subsequent supplements.

Today's action only approves the PM_{10} Group II SIP (committal SIP) for the Bernalillo County. The EPA will publish its action on the remainder of the PM_{10} SIP (Countywide regulatory requirements) under a separate notice at a later date.

Final Action

The EPA has reviewed the Department's submittal and determined that the Department commitments and procedures are adequate for monitoring, data analysis, reporting, and subsequently submitting a SIP revision (if any required) for the PM_{10} Group II area. In addition, the EPA finds that the Department commitments are in conformance with the specific

requirements of the PM_{10} Group II areas of the July 1, 1987 **Federal Register** notice (52 FR 24634). However, the EPA wants to clarify paragraph E of the Department commitments, as quoted in this notice, that refers to the possibility of Department requesting extension under section 110(e) of the Clean Air Act beyond the maximum three year period allowed in section 110(a)(2)(A) of the Act. Section 110(e) of the Act allows the Administrator of EPA to grant a two year extension to the State in certain cases if the requirements of this section of the Act are satisified by the State. The Administrator can not grant any extension solely by a request unless the conditions specified under Section 110(e) are completely and clearly supported by actual data, documentation, and other evidence that the area in question can not attain the PM_{10} NAAQS within the three year period. Therefore, the EPA, with clarification stated above, is approving the PM_{10} Group II SIP for Bernalillo County.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective 60 days from the date of publication unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted. If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. 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. If no such comments are received, the public is advised that this action will be effective on July 31, 1989.

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 July 31, 1989. This action may not be challenged later in proceedings to enforce its requirements (See section 307(b)(2)).

Under 5 U.S.C. section 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).

Incorporation by reference of the New Mexico State Implementation Plan was approved by the Director of the Federal Register on July 1, 1982.

This rulemaking is issued under the authority of section 110 of the Clean Air Act, 42 U.S.C. 7410.

Lists of Subjects in 40 CFR Part 52

Air pollution control and Particulate matter.

Date: May 19, 1989.

Joseph D. Winkle,

Acting Regional Administrator.

PART 52—[AMENDED]

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

Subpart GG—New Mexico

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

Authority: 42 U.S.C. 7401–7642.

2. A new § 52.1638 is added to read as follows:

§ 52.1638 Bernalillo County particulate matter (PM_{10}) Group II SIP commitments.

(a) On December 7, 1988, the Governor of New Mexico submitted a revision to the State Implementation Plan (SIP) for Bernalillo County that contained commitments, from the Director of the Albuquerque Environmental Health Department, for implementing all of the required activities including monitoring, reporting, emission inventory, and other tasks that may be necessary to satisfy the requirements of the PM_{10} Group II SIPs. The City of Albuquerque and Bernalillo County Air Quality Control Board adopted this SIP revision on November 9, 1988.

(b) The Albuquerque Environmental Health Department has committed to comply with the PM_{10} Group II State Implementation Plan (SIP) requirements, as articulated in the **Federal Register** notice of July 1, 1987 (52 FR 24670), for Bernalillo County as provided in the County's PM_{10} Group II SIP. In addition to the SIP, a letter from the Director of the Albuquerque Environmental Health Department, dated November 17, 1988, stated that:

(1) This letter is in reference to the PM_{10} Group II SIP requirements particularly as pertains to Bernalillo County. In response to the requirements of the July 1, 1987 **Federal Register** notice on PM_{10}, the Albuquerque Environmental Health Department has prepared a Committal SIP for all of Bernalillo County which has been classified Group II for this pollutant.

(2) As expressed in the attached SIP revision, the Department is committing to carry out all required actions such as monitoring, reporting, emission inventory development and other tasks necessary to satisfy the SIP requirements for PM_{10} Group II areas.

[FR Doc. 89–12983 Filed 5–31–89; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[FRL–3579–2; KY–037]

Approval and Promulgation of Implementation Plans; Kentucky: Stack Height Review

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA today approves a declaration by Kentucky that recent revisions to EPA's stack height regulations do not necessitate source-specific revisions to the State Implementation Plan (SIP). The State was required to review its SIP for consistency within nine months of final promulgation of the stack height regulations. The intended effect of this action is to formally document that Kentucky has satisfied its obligations under section 406 of the Clean Air Act Amendments of 1977 to review its SIP with respect to EPA's revised stack height regulations. No emission limitations were affected by stack height credit above GEP or any other dispersion technique with the possible exception of the Ashland Oil, Inc., oil refinery in Catlettsburg. The analysis for this source will be done in a subsequent notice.

EFFECTIVE DATE: This action will be effective on July 3, 1989.

ADDRESSES: Copies of the materials submitted by Kentucky may be examined during normal business hours at the following locations:

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460

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

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

FOR FURTHER INFORMATION CONTACT: Beverly T. Hudson, EPA Region IV Air Programs Branch, at the above listed address, telephone (404) 347–2864 or FTS 257–2864.

SUPPLEMENTARY INFORMATION: On February 8, 1982 (47 FR 5864), EPA promulgated final regulations limiting stack height credit and other dispersion techniques as required by section 123 of the Clean Air Act (the Act). These regulations were challenged in the U.S. Court of Appeals for the D.C. Circuit by the Sierra Club Legal Defense Fund, Inc., the Natural Resources Defense Council, Inc., and the Commonwealth of Pennsylvania in *Sierra Club* v. *EPA*, 719 F.2d 436. On October 11, 1983, the court issued its decision, ordering EPA to reconsider portions of the stack height regulations, reversing certain portions, and upholding other portions.

On February 28, 1984, the electric power industry filed a petition for a writ of certiorari with the U.S. Supreme Court. On July 2, 1984, the Supreme Court denied the petition (104 s. CT. 3571), and on July 18, 1984, the Court of Appeals formally issued a mandate implementing its decision and requiring EPA to promulgate revisions to the stack height regulations within six months. The promulgation deadline was ultimately extended to June 27, 1985.

Revisions to the stack height regulations were proposed on November 9, 1984 (49 FR 44878), and finalized on July 8, 1985 (50 FR 27892). The revisions redefine a number of specific terms, including "excessive concentration," "dispersion techniques," "nearby," and other important concepts, and modify some of the bases for determining good engineering practice (GEP) stack height.

Pursuant to section 406(d)(2) of P.L. 95–95, all states were required to (1) review and revise, as necessary, their state implementation plans (SIPs) to include provisions that limit stack height credit and dispersion techniques in accordance with the revised regulations and (2) review all existing emission limitations to determine whether any of these limitations have been affected by stack height credit above GEP or any other dispersion techniques. For any limitations so affected, states were to prepare revised limitations consistent with their revised SIPs. All SIP revisions and revised emission limits were to be submitted to EPA within 9 months of promulgation, as required by statute.

Subsequently, EPA issued detailed guidance on carrying out the necessary reviews. For the review of emission limitations, states were to prepare inventories of stacks greater than 65 m in height and sources with emissions of sulfur dioxide (SO_2) in excess of 5,000 tons per year. These limits correspond to the *de minimis* GEP stack height and the *de minimis* SO_2 emission exemption from prohibited disperson techniques. Sources were exempted from further review if they fell under the grandfathering clause (i.e., in existence before December 31, 1970), if their stack height was less than *de minimis* stack height (65m), or if their actual height was less than the calculated Good Engineering Practice (GEP) stack height.

The remaining sources were then subjected to detailed review for conformance with the revised regulations. State submissions were to contain an evaluation of each stack and source in the inventory. Kentucky has concluded that its SIP includes provisions that limit stack height credits and dispersion techniques in accordance with the revised EPA stack height regulations. They also found that no emission limitations have been affected by stack height credits above GEP or any other prohibited dispersion techniques. Kentucky has indicated that the documentation is available for review at the State office (listed above).

On March 27, 1987, Kentucky submitted for EPA's approval documentation for Good Engineering Practice (GEP) Stack Height. EPA proposed to approve the declaration on March 14, 1989 (54 FR 10567). At that time, the public was invited to submit written comments on the proposed action. However, no comments were received. EPA is therefore approving the State's declaration that no emission limitations were affected by stack height credit above GEP or any other dispersion technique with the possible exception of the Ashland Oil, Inc., oil refinery in Catlettsburg and the two sources identified below.

On January 22, 1988, the U.S. Court of Appeals for the District of Columbia issued its decision in *NRDC* v. *Thomas*, 838 F.2d 1224 (D.C. Dir. 1988), regarding the Environmental Protection Agency's (EPA's) stack height regulations (50 FR 27892, July 8, 1985); the court upheld most of the rules, but certain provisions were remanded to the EPA for further consideration. Accordingly, EPA is not acting on two sources (Big Rivers-Green #1 & 2, Kentucky Utilities-Ghent #3 & 4) because they currently receive credit under one of the provisions remanded to EPA. Kentucky and EPA will review these sources for compliance with any revised requirements when EPA completes rulemaking to respond to the *NRDC* remand.

EPA Review. EPA has reviewed Kentucky's submittal and concurs with the conclusion that no revisions to Kentucky's existing source emission limitations are necessary as a result of EPA's revised stack height regulations. Kentucky has therefore met its obligations under section 406 of P.L. 95–95 for existing source emission limitations. (EPA approved Kentucky's stack height rules for new sources on September 4, 1987 (52 FR 33592).)

Final Action. EPA approves the declaration by Kentucky that recent revisions to EPA's stack height regulations do not necessitate SIP revisions for specific sources in this State. EPA proposed to approve the declaration on March 14, 1989 (54 FR 10567). The declaration does not apply to the two sources mentioned above and the Ashland Oil, Inc., an oil refinery in Catlettsburg. The analysis for this last source will be handled in a subsequent notice. 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 July 31, 1989. This action may not be challenged later in proceedings to enforce its requirements (See 307(b)(2).)

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

List of Subject in 40 CFR Part 52

Air Pollution Control, Intergovernmental relations, Particulate matter, Sulfur oxides.

Dated: May 11, 1989.

Joe R. Franzmathes,

Regional Administrator.

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

Subpart S—Kentucky

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

Authority: 42 U.S.C. 7401–7642.

2. Section 52.933 is added to read as follows:

§ 52.933 Control Strategy: Sulfur oxides and particulate matter.

In a letter dated March 27, 1987, the Kentucky Department for Natural Resources and Environmental Protection certified that no emission limits in the State's plan are based on dispersion techniques not permitted by EPA's stack height rules. This certification does not apply to: Big Rivers-Green #1 & 2, Kentucky Utilities-Ghent #3 & 4, and Ashland Oil, Inc.-Catlettsburg.

[FR Doc. 89–12932 Filed 5–31–89; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 52

[FRL-3578-3]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Notice of denial of petition for reconsideration of the Muskingum River approval.

SUMMARY: On May 20, 1988 (53 FR 18087), the USEPA published a final notice approving a revision to the Ohio State Implementation Plan (SIP) for sulfur dioxide (SO_2) for the Ohio Power, Muskingum River Power Plant, located in Morgan and Washington Counties, Ohio. On July 18, 1988, the Natural Resources Defense Council, Inc. (NRDC) submitted to USEPA, a petition for reconsideration of that final decision. After careful review of that petition and of the D.C. Circuit Court's opinion in *Natural Resources Defense Council, Inc.* v. *Thomas*, 845 F.2d 1088 (May 3, 1988), USEPA has concluded that the petition should be denied. This conclusion is based on USEPA's judgment that the Muskingum SIP revision submitted by the State of Ohio, on the basis of block averaging SO_2 data, is consistent with the existing SO_2National Ambient Air Quality Standards (NAAQS). In addition, NRDC's petition did not present any new information warranting reconsideration of USEPA's prior decision. This response does not address NRDC's petition to conduct rulemaking regarding the proper interpretation of the existing NAAQS for sulfur oxides. That issue is being considered separately as part of the ongoing review of the SO_2 NAAQS.

ADDRESSES: Copies of the Muskingum River SIP revision and other materials relating to the SIP revision under reconsideration are available for inspection at the following addresses:

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

Public Information Reference Unit, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

Ohio Environmental Protection Agency, Office of Air Pollution Control, 1800 Watermark Drive, Columbus, Ohio 43216

FOR FURTHER INFORMATION CONTACT: Robert Miller, (312) 353–0396.

SUPPLEMENTARY INFORMATION:

Background

USEPA's May 20, 1988, notice approving revised emission limits for the Muskingum plant constituted a modification of the prior emission limitation of 6.48 pounds of SO_2 per million British Thermal Units (lb/MMBTU), and replaced that limit with two separate emission limits for the plant. That revision was submitted by the State of Ohio on April 8 and October 8, 1982, to replace the prior federally promulgated limit.

The two new emission limits are 8.6 lb/MMBTU to protect the primary standard, with a compliance date of June 17, 1980, and 7.6 lb/MMBTU to protect the secondary standard, with a compliance date of July 1, 1989. Modeling and monitoring data were submitted by the State of Ohio to demonstrate that this revision would not interfere with attainment and maintenance of the SO_2 NAAQS. The data comprising that attainment demonstration were based on the use of block averaging for the 3-hour and 24-hour standards. USEPA reviewed the revised limits and demonstration, and proposed to approve them on September 25, 1984 (49 FR 37644). Comments received on that proposal included those from NRDC arguing that USEPA could not approve the revision since it was based on block averaging data, and did not consider running average data.

After reviewing all comments, USEPA approved the revision in a notice published on May 20, 1988. On the averaging convention issue, USEPA referred to a March 28, 1986, memorandum "Block Averages in Implementing SO_2 NAAQS", signed by Gerald Emison, Director of the Office of Air Quality Planning and Standards, and concluded that Ohio's submission was adequate and consistent with the existing SO_2 standards. 53 FR 18089.

D.C. Circuit Court Decision in NRDC v. Thomas

On May 1, 1988, the Administrator of USEPA signed the **Federal Register** notice announcing the final approval of the Muskingum River SIP revision. Two days later, on May 3, 1988, the U.S. Court of Appeals for the D.C. Circuit issued its opinion in *NRDC* v. *Thomas*, 845 F.2d 1088 (D.C. Cir. 1988). That case involved a challenge by NRDC to the March 28, 1986, Emison memorandum regarding the use of block averages in implementing the SO_2 NAAQS. The memo stated that "block averages are the proper interpretation" of the standard, and reminded recipients that "States will continue to be permitted to develop requirements that are more stringent than Federal requirements".

In response to NRDC's contention that the memo was impermissible, final Agency action revising the NAAQS, the Court concluded that while the memo was, in fact, final action, the issue was not ripe for review. The case was dismissed on the basis of lack of ripeness for review, and because the petitioners failed to show any impact on their day-to-day affairs. Moreover, in dicta, the Court stated "that block averages are a proper practice". 845 F.2d at 1094.[1]

NRDC's Petition for Reconsideration

On July 18, 1988, NRDC submitted a Petition for Reconsideration to USEPA requesting that the Agency reevaluate its decision to approve the Muskingum River SIP revision. NRDC's petition focused on the use of block averages in approving the SIP revision, and argued that: (1) the existing SO_2 NAAQS are not restricted to block averages, and (2) that the decision to base approval of the Muskingum River SIP revision on block averages violates the May 3, 1988, decision of the U.S. Court of Appeals for the District of Columbia Circuit in *NRDC* v. *Thomas*.

NRDC's petition also requested that USEPA conduct rulemaking regarding whether the existing SO_2 NAAQS can properly be interpreted as a block standard. That aspect of the petition is being considered in connection with the Agency's review of the SO_2 NAAQS, and thus will not be disposed of here.[2]

Criteria for Reconsideration

NRDC seeks reconsideration of "the Agency's determination that the existing SO_2 NAAQS are block average standards" and of USEPA's "approval of the (Muskingum River) SIP revision that is premised on USEPA's 'block average' construction of the SO_2 NAAQS" (Pet. at 1).

NRDC does not specify any statutory basis for its petition. Presumably, the request for reconsideration was made pursuant to section 4(d) of the Administrative Procedure Act (APA).[3]

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[1] The Court also stated that the status quo recognized in its prior decision in *PPG Industries* v. *Costle*, 659 F.2d 1239 (1981), included allowing or even encouraging use of running averages, as well.

[2] On April 26, 1988 (53 FR 14926), EPA proposed not to revise the SO_2 NAAQS. In that notice, comment was solicited on the possibility of adding a 1-hour primary standard and on revising the Significant Harm Levels. EPA also stated that the SO_2 standards were intended to be interpreted as block standards, and an evaluation of the health data indicated no need to change that position. In September 1988, a clarifying notice was issued stating that the Agency's solicitation of comment included the question of whether it is appropriate to interpret the current standard using block averages. 53 FR 36587 (September 21, 1988).

[3] Section 4(d) of the APA, 5 U.S.C. § 553(e), states: "Each agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule."

because the Clean Air Act provision allowing for reconsideration of certain agency rules is inapplicable here.[4]

As a result, USEPA is treating it as a petition under the APA. The criteria for evaluating petitions for reconsideration under the APA provide that USEPA reconsider a rule if a person raising an objection can demonstrate (1) that it was impracticable to raise the objection during the comment period, or that the grounds for such objection arose after the comment period but within the time specified for judicial review (*i.e.*, within 60 days after publication of the final rulemaking notice in the **Federal Register**, *see* section 307(b)(1), 42 U.S.C. 7607(b)(1)); and (2) that the objection is of central relevance to the outcome of the rule. *See* Denial of Petition to Revise NSPS for Stationary Gas Turbines, 45 FR 81653–54, and decisions cited therein.

Discussion

NRDC makes two arguments in its request for reconsideration of the Muskingum River SIP revision. The first argument, discussed in more detail below, is not based on new information, and thus does not justify administrative reconsideration. NRDC's second argument, while arguably incorporating new information, is not an adequate basis for granting reconsideration. Thus, neither of the issues raised in NRDC's petition meet the criteria for reconsideration under section 4(d) of the APA.

A. NRDC argues that the existing SO_2 NAAQS are not restricted to block averages

NRDC argues first that USEPA "lacks the authority to determine compliance with the existing SO_2 NAAQS based solely on an evaluation of 'block average' air quality information." NRDC Petition at 2.

This position is contradicted by the Court's opinion in *NRDC* v. *Thomas supra*. The D.C Circuit stated that the status quo recognized in *PPG Industries, Inc.* v. *Costle*, 659 F.2d 1239 (1981), established that "block averages are a proper practice". 845 F.2d at 1094. Furthermore, the Court stated that USEPA must not act inconsistently with the D.C. Circuit's prior opinion in *PPG Industries*, which held that in order to require running averages, rulemaking would be required. 659 F.2d at 1250.

In this instance Ohio chose to submit a SIP revision based on a block average interpretation of the standard. As the court stated in *NRDC* v. *Thomas*, block averages are a proper practice for determining average SO_2 concentrations in air samples. The Agency may of course challenge any part of the submission it finds to be inadequate or unlawful, but may not specifically require running averages as a part of that evaluation. As a result, Ohio's submission here, having met all the other requirements for SIP approval, was fully approvable based on the use of block averages.

B. NRDC argues that the Muskingum River SIP revision approval violates the May 3, 1988, decision of the D.C. Circuit

NRDC's second argument in support of reconsideration is that the decision to approve the Muskingum River SIP revision on the basis of block averages is in violation of the May 3, 1988, D.C. Circuit Court's decision *NRDC* v. *Thomas*. NRDC states that the decision, which dismissed NRDC's petition for review of an internal Agency memorandum on the subject of the correct averaging time to be used in interpreting the SO_2 NAAQS, found the "declaration that 'block averages are the proper interpretation' of the SO_2 NAAQS to be an invalid departure from the USEPA practice recognized by the D.C. Circuit in *PPG Industries*." NRDC Petition at 5.

USEPA did not address the *NRDC* v. *Thomas* decision in the Muskingum River SIP revision notice, because the notice was prepared and signed by the Administrator before the D.C. Circuit opinion was issued. However, USEPA does not believe that the decision requires alteration of its approval of the SIP revision. Approval was based on longstanding Agency policy permitting use of block averages in implementing the SO_2 NAAQS.

NRDC v. *Thomas* involved a petition to review a memorandum written by a subordinate Agency official concerning the appropriate averaging method to be used in implementing the SO_2 NAAQS.[5] The Court declined to require USEPA to conduct a rulemaking on the averaging method issue. 845 F.2d 1093. The Court interpreted *PPG Industries* as establishing that the status quo regarding averaging methods allowed the use of either block or running averages until the Agency conducted a rulemaking establishing one method for exclusive use, but that without a formal relemaking USEPA could not mandate the use of running averages. Although USEPA is addressing this issue in connection with its review of the SO_2 standards, no final rulemaking has yet been issued on this question.

With regard to the Emison memorandum in particular, the Court in *NRDC* v. *Thomas* expressed concern that it may have been an attempt to change the status quo without affording the protection of notice-and-comment rulemaking procedures. However, that was not the intent of the memorandum and staff paper on which it was based. It was intended to confirm the status quo after *PPG Industries*, under which an attainment demonstration may rely on block averages. The memorandum also provided that "States will continue to be permitted to develop requirements that are more stringent than Federal requirements, as provided by Section 116 of the Act" thus specifically allowing use of running averages. The memorandum focused on (and rejected) the contention the USEPA could not approve a demonstration based on block averages alone.

Thus, under both the *NRDC* v. *Thomas* and *PPG Industries* cases, the State of Ohio was free to submit the Muskingum River SIP revision using either block or running averages. Ohio's choice of block averages, and USEPA's approval, are entirely consistent with those decisions. However, if USEPA required Ohio to resubmit the SIP revision using running averages, that would conflict with the Court's holdings.

In conclusion, USEPA does not believe that NRDC has raised any issue necessitating reconsideration of the Agency's decision approving the Muskingum River SIP revision. The petition for reconsideration is therefore denied.

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 July 31, 1989. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).) Under Executive Order 12291, today's action is not "Major". It has not been submitted to the Office of Management and Budget (OMB) for review.

List of Subject in 40 CFR Part 52

Environmental protection, Air pollution control, Sulfur oxides, Intergovernmental Offices.

Dated: May 18, 1989

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 89–12933 Filed 5–31–89; 8:45 am]

BILLING CODE 6560–50–M

[4] EPA approval of a revision to a State Implementation Plan is not governed by the rulemaking provisions of section 307(d) of the Clean Air Act, but by the provisions of the APA.

[5] The Emison memorandum at issue in *NRDC v. Thomas* could have had no effect on Ohio's SIP revision submission, as it was not issued until 4 years after Ohio had submitted the revision, and 2 years after USEPA had proposed to approve the revision.

40 CFR Part 228

[FRL-3562-1]

Ocean Dumping; Proposed Designation of Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA today designates two ocean dredged material disposal sites (ODMDS) known as the Western ODMDS and Eastern ODMDS located offshore of Nome, Alaska for the disposal of dredged material removed from the Nome channel and harbor area. This action is necessary to provide acceptable ocean dumping sites for the current and future disposal of dredged material. This site designation is for an indefinite period of time, but the sites are subject to continuing monitoring to insure that unacceptable, adverse environmental impacts do not occur.

EFFECTIVE DATE: This designation shall become effective on July 3, 1989.

ADDRESSES: John Malek, Ocean Dumping Coordinator, Region X, WD-138.

The file supporting this designation is available for public inspection at the following locations:

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

EPA Region X, 1200 Sixth Avenue, Seattle, Washington.

U.S. Army Corps of Engineers, North Pacific Division, U.S. Custom House, 220 Northwest Eighth, Portland, Oregon.

U.S. Army Corps of Engineers, Alaska District, Building 21-700, Elmendorf AFB, Alaska.

FOR FURTHER INFORMATION CONTACT: John Malek, 206/442-1286.

SUPPLEMENTARY INFORMATION:

A. Background

Section 102(c) of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 33 U.S.C. 1401 *et seq.* ("the Act"), gives the Administrator the authority to designate sites where ocean dumping may be permitted. On October 1, 1986, the Administrator delegated the authority to designate ocean dumping sites to the Regional Administrator of the Region in which the site is located. This site designation is being made pursuant to that authority.

The EPA Ocean Dumping Regulations (40 CFR Chapter I, Subchapter H, § 228.4) state that ocean dumping site will be designated by publication in Part 228. A list of "Approved and Final Ocean Dumping Sites" was published on January 11, 1977 (42 FR 2461 *et seq.*) and was last extended on August 24, 1984 (49 FR 33647 *et seq.*). That list established these sites as interim sites.

B. EIS Development

Section 102(c) of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, (NEPA) requires that Federal agencies prepare an Environmental Impact Statement (EIS) on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment. The object of NEPA is to build into agency decision-making processes careful consideration of all environmental aspects of proposed actions. While NEPA does not apply to EPA activities of this type, EPA has voluntarily committed to prepare EIS's in connection with ocean dumping site designations such as this. 39 FR 16186 (May 7, 1974).

EPA has prepared a Draft and Final EIS entitled "Environmental Impact Statement (EIS) for Nome, Alaska, Dredged Material Disposal Site Designation". Four reviewers submitted comments on the draft EIS, which EPA assessed and responded to in the final EIS. Comments that could not be appropriately treated as text changes were addressed point by point in the final EIS following the letters of comment. On May 25, 1984, a notice of availability of the Final EIS for public review and comment was published in the **Federal Register** (49 FR 22123). One reviewer submitted comments after the close of the public comment period concerning the potential effects of dredged material disposal on existing mineral leases and mining operations. The comment was considered in preparing this rulemaking notice. Because of the dynamic environment of the two proposed sites, it is unlikely that dredged material disposal would cause a significant adverse effect. Comments were also received after the close of the public comment period from the Corps of Engineers concerning the proposal to de-designate the Western ODMDS. Coordination continued with the Corps regarding this issue and resulted in this final rulemaking notice to designate both sites. Coordination has included the City of Nome.

The action discussed in the Final EIS is designation for continuing use of an ocean disposal site for dredged material. The purpose of the designation is to provide an environmentally acceptable location of ocean disposal. The appropriateness of ocean disposal is determined on a case-by-case basis as part of the process of issuing permits for ocean disposal.

The EIS discussed the need for the action and examines ocean disposal sites and alternatives to the proposed action, including land-based disposal options.

The EIS presented the information needed to evaluate the suitability of ODMDS areas for final designation and is based on a disposal site environmental study. The study and final designation process are being conducted in accordance with the Act, the Ocean Dumping Regulations, and other applicable Federal environmental legislation.

This final rulemaking notice fills the same role as the Record of Decision required under regulations promulgated by the Council on Environmental Quality for agencies subject to NEPA.

C. Site Designation

On September 23, 1988, EPA proposed designation of these sites for the continuing disposal of dredged materials from Nome harbor. The public comment period on this proposed action closed November 7, 1988. One letter of comment was received from the U.S. Department of the Interior, Minerals Management Service (MMS), on December 29, 1988. The letter noted several events that had occurred since the final EIS was filed by EPA in 1984 and requested that EPA consider updating the EIS. Specifically, MMS cited the apparently elevated concentrations of mercury in Norton Sound sediments. A response was provided to MMS by letter dated February 21, 1989. That letter acknowledged the serious concerns raised by MMS regarding the quality of sediments throughout Norton Sound. However, these concerns were judged to be more appropriately handled as a part of site management rather than site designation. As stated elsewhere in this rule, site designation does not constitute or imply approval of actual disposal of materials at sea. Accordingly, updating of the final EIS was determined to be unnecessary. On February 27, 1989, following coordination with the Corps of Engineers, a letter was sent to the District Engineer of the Alaska District advising him that sediments from Nome harbor may be unacceptable for unrestricted disposal and recommending that a sediment testing program be jointly developed to address this situation. Coordination to develop this testing plan is proceeding. Dredged sediments found to be unsuitable for unrestricted ocean disposal will not be disposed of at either Nome site.

The sites are located adjacent to shore, west and east of the entrance channel to Nome harbor and occupy a total area of about 0.67 square nautical miles. Water depths within the areas range from 1 meter along the shoreline boundary to maximum depths of 11 and 12 meters along the southern boundary of the Western and Eastern ODMDS respectively. The coordinates of the sites are as follows:

The Western ODMDS is located adjacent to the west of the entrance channel to the Nome, Alaska, harbor. It abuts the shore and extends seaward covering an area of 0.30 square nautical miles. Its corner coordinates are:

64°30'04"N., 165°25'52"W.;
64°29'18"N., 165°26'04"W.;
64°29'13"N., 165°25'22"W.;
64°29'54"N., 165°24'45"W.;

The Eastern ODMDS is located adjacent to the east of the entrance channel to the Nome, Alaska, harbor. It abuts the shore and extends seaward covering an area of 0.37 square nautical miles. Its corner coordinates are:

64°29'54"N., 165°24'41"W.;
64°29'45"N., 165°23'27"W.;
64°28'57"N., 165°23'29"W.;
64°29'07"N., 165°24'25"W.;

If at any time disposal operations at either site cause unacceptable adverse impacts, further use of the site will be restricted or terminated.

D. Regulatory Requirements

Five general criteria are used in the selection and approval of ocean disposal sites for continuing use. Sites are selected so as to minimize interference with other marine activities, to keep any temporary perturbations from the dumping from causing impacts outside the disposal site, and to permit effective monitoring to detect any adverse impacts at an early stage. Where feasible, locations off the Continental Shelf are chosen. If at any time disposal operations at an interim site cause unacceptable adverse impacts, the use of that site will be terminated as soon as suitable alternate disposal sites can be designated. The general criteria are given in § 228.5 of the EPA Ocean Dumping Regulations, and § 228.6 lists eleven specific factors used in evaluating a proposed disposal site to assure that the general criteria are met.

The sites, as discussed below under the eleven specific factors, are acceptable under the five general criteria, except for the preference for sites located off the Continental Shelf. EPA has determined, based on the information presented in the Draft and Final EIS, that a site off the Continental Shelf is not feasible and that no environmental benefit would be obtained by selecting such a site instead of this action. Historical use at the existing sites has not resulted in substantial adverse effects to living resources of the ocean or to other uses of the marine environment.

The characteristics of the sites are reviewed below in terms of the eleven factors.

1. Geographical Position, Depth of Water, Bottom Topography, and Distance From Coast. 40 CFR 228.6(a)(1)

Geographical positions and distances from the coast for each site are given above. Water depth at the sites ranges from 1 to 12 meters. Bottom topography is similar at both sites. Slope gradient is 1:120 to about —13 meters.

2. Location in Relation to Breeding, Spawning, Nursery, Feeding, or Passage Areas of Living Resources in Adult and Juvenile Phases. 40 CFR 228.6(a)(2)

Breeding, spawning, nursery, and/or passage activities of commercially important finfish and shellfish species typical of the Norton Sound all occur on a seasonal basis in or near the proposed sites. The two sites comprise a small portion of the available habitat of the Sound. No unique breeding, spawning, nursery, or passage areas for living resources occur in the sites. Feeding of Gray Whales may reach to within about 770 meters of Nome's shoreline. Anticipated disposal volumes represent about 2 percent of natural annual sediment transport for the Norton Sound area. Accordingly, any impacts would be of very short duration and minor in nature.

3. Location in Relation to Beaches and Other Amenity Areas. 40 CFR 228.6(a)(3)

Both sites adjoin the shore at their northern boundary. Thus, they are in close proximity to the beaches on either side of the entrance channel to Nome harbor.

4. Types and Quantities of Wastes Proposed To Be Disposed of, and Proposed Methods of Release, Including Methods of Packing the Waste, If Any. 40 CFR 228.6(a)(4)

Sediments from operations and maintenance dredging of the Nome harbor have been deposited annually in either site since 1923. It is expected that disposal of project sands and silts from the turning basin and entrance channel will continue to occur during summer months at an estimated annual volume of 13,000 cubic yards. The interim sites are immediately adjacent to the dredging areas and their use will minimize transport time. All dredged material disposed at the sites must comply with the requirements of EPA's Ocean Dumping Regulations.

5. Feasibility of Surveillance and Monitoring. 40 CFR 228.6(a)(5)

Surveillance and monitoring of the sites can be accomplished because of the proximity to shore and the shallow depths of the sites. Monitoring by EPA, the Corps of Engineers, and permittees, as required, will occur as long as the site is used. If evidence of significant environmental effects is found, EPA will take appropriate action to alter or terminate disposal practices at the site(s).

6. Dispersal, Horizontal Transport and Vertical Mixing Characteristics of the Area, Including Prevailing Current Direction, and Velocity. 40 CFR 228.6(a)(6)

Littoral drift will be a primary force causing dispersion of material at the sites. Except for a small portion of their outer limits in mid-summer, the sites are in a single mixed zone. Both sites are in a highly dynamic environment with an estimated 650,000 cubic yards of sediments transported annually under natural conditions. Transport direction appears to be predominantly easterly, but has been interrupted by construction of a 2,600-foot long breakwater/port facility. Plans exist to increase the length of the breakwater to a total of 3,500 linear feet in the future. Disposal at the eastern or western site would occur to complement littoral drift patterns and prevent significant build-up or erosion of sediments.

7. Existence and Effects of Current and Previous Discharges and Dumping in the Area (Including Cumulative Effects). 40 CFR 228.6(a)(7)

The sites have been used for dredged material disposal annually since 1923. There has been no indication that these disposal events have materially altered the characteristics of the sites.

8. Interference With Shipping, Fishing, Recreation, Mineral Extraction, Desalination, Fish and Shellfish Culture, Areas of Special Scientific Importance, and Other Legitimate Uses of the Ocean. 40 CFR 228.6(a)(8)

Ice forms in Norton Sound during the winter months, restricting all commercial and recreational vessel traffic. The sites lie outside the navigation channel. While there is need for navigation coordination during dredging and disposal, these operations

are not expected to interfere with commercial shipping in the area. Some restrictions on recreational activities may be necessary in the vicinity of dredging and disposal activities. The sites do not uniquely support fisheries, but commercial and subsistence shellfishing do exist. Accordingly, fishing and fish and shellfish culture could be affected at the site during and immediately after disposal operations. Significant interference with these activities is not expected. No interference with mineral extraction, desalination, areas of special scientific importance, or other legitimate uses of the ocean are anticipated.

9. The Existing Water Quality and Ecology of the Site as Determined by Available Data or By Trend Assessment of Baseline Surveys. 40 CFR 228.6(a)(9)

Evaluation of existing information indicates that disposal of dredged sediments from Nome harbor will have minimal impact on the water quality and ecology of the sites. The area is a dynamic, high-energy environment; water quality parameters (concentrations of dissolved nutrients, trace metals, dissolved oxygen, pH, etc.) and biological characteristics (planktonic and benthic communities) are not expected to be significantly altered by dredging or disposal activities. Temporary reductions in water quality and minor, temporary disruptions to biological communities within the sites during and after disposal will occur.

10. Potentiality for the Development or Recruitment of Nuisance Species in the Disposal Site. 40 CFR 228.6(a)(10)

There appears to be little, if any, potential for development or recruitment of nuisance species in the disposal sites.

11. Existence At or In Close Proximity to the Site of Any Significant Natural or Cultural Features of Historical Importance. 40 CFR 228.6(a)(11)

There are no known cultural or historic properties in close proximity of the Nome sites that could be affected by disposal activities.

E. Action

The EIS concluded that either or both of the sites may be appropriately designated for use. The sites are compatible with the general criteria and specific factors used for site evaluation. Designation of the Eastern site was specifically proposed as this site was most frequently used. Because of considerations for littoral drift, which may be affected by the current or proposed to be expanded breakwater, designation of the Western site is also proposed. Determination whether a particular year's dredged material would go to the Western or Eastern site will be made on a case-by-case basis by the Corps of Engineers, with review by EPA.

The designation of the Western and Eastern ODMDS as EPA approved Ocean Dumping Sites is being published as final rulemaking. Management of the sites will be delegated to the Regional Administrator of EPA Region X.

It should be emphasized that, when an ocean dumping site is designated, such a designation does not constitute or imply EPA's approval of actual disposal of material at sea. Before ocean dumping of dredged material at the site may commence, the Corps of Engineers must evaluate a permit application according to EPA's ocean dumping criteria. EPA will make an independent evaluation of the permit application and has the right to disapprove the actual dumping if it determines that environmental concerns under the Act have not been met.

F. Regulatory Assessments

Under the Regulatory Flexibility Act, EPA is required to perform a Regulatory Flexibility Analysis for all rules which may have a significant impact on a substantial number of small entities. EPA has determined that this action will not have a significant impact on small entities since the site designation will only have the effect of providing a disposal option for dredged material. Consequently, this does not necessitate preparation of a Regulatory Flexibility Analysis.

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

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

List of Subjects in 40 CFR Part 228

Water pollution control.

Dated: April 10, 1989.

Ralph R. Bauer,

Acting Regional Administrator for Region X.

In consideration of the foregoing, Part 228 of Subchapter H of Chapter I of Title 40 is amended as set forth below.

PART 228—[AMENDED]

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

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

2. Section 228.12 is amended by removing from paragraph (a)(3) "Nome—West Site and Nome—East Site", and adding paragraphs (b)(36) and (b)(37) to read as follows:

§ 228.12 Delegation of management authority for ocean dumping sites.

* * * * *

(b) * * *

(36) Nome—West Site—Region X.

Location: 64° 30' 04" N., 165° 25' 52" W.; 64° 29' 18" N., 165° 26' 04" W.; 64° 29' 13" N., 165° 25' 22" W.; 64° 29' 54" N., 165° 24' 45" W.

Size: 0.30 square nautical miles.

Depth: Ranges from 1–11 meters.

Primary Use: Dredged material.

Period of Use: Continuing use.

Restrictions: Disposal shall be limited to dredged material from Nome, Alaska, and adjacent areas. Use will be coordinated with the City of Nome prior to dredging. Preference will be given to placing any material in the inner third of the site to supplement littoral drift, as needed.

(37) Nome—East Site—Region X.

Location: 64° 29' 54" N., 165° 24' 41" W.; 64° 29' 45" N., 165° 23' 27" W.; 64° 28' 57" N., 165° 23' 29" W.; 64° 29' 07" N., 165° 24' 25" W.

Size: 0.37 square nautical miles.

Depth: Ranges from 1–12 meters.

Primary Use: Dredged material.

Period of Use: Continuing use.

Restrictions: Disposal shall be limited to dredged material from Nome, Alaska, and adjacent areas. Use will be coordinated with the City of Nome prior to dredging.

* * * * *

[FR Doc. 89–12988 Filed 5–31–89; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 86–29; RM–4941 and RM–5399]

Radio Broadcasting Services; Greenup, KY and Athens, OH

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration; correction.

SUMMARY: This action corrects the Final Rule/Reconsideration in MM Docket No. 87–29, 54 FR 18889, published May 3, 1989 [FR Doc. 89–10588].

A. The MM docket number was a typographical error. It should read "86–29."

B. The following information including amendments to the rules was inadvertently omitted:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended under Ohio by adding Channel 289B1 at Athens; and under Kentucky by removing Channel 289B1 and adding Channel 288A at Greenup.

FOR FURTHER INFORMATION CONTACT: J. Bertron Withers, Jr., Mass Media Bureau, (202) 632–7792.

Federal Communications Commission.

Douglas W. Webbink,

Acting Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–12965 Filed 5–31–89; 8:45 am]

BILLING CODE 6712–01–M

Proposed Rules

Federal Register
Vol. 54, No. 104
Thursday, June 1, 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 HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 109

[Docket No. 89N-0014]

RIN 0905-AC91

Lead From Ceramic Pitchers

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to establish a regulatory limit for ceramic food-service pitchers, excluding creamers, that would limit the leaching of lead from the glazes and decorations on the food-contact surface of these pitchers to no more than 0.1 microgram per milliliter (μg/mL) of test solution. FDA is also proposing to provide that decorative ceramicware that appears to be suitable for food use will be deemed to be for food use unless it bears a conspicuous, permanent label statement molded or fired onto the ceramic piece that states that the piece is not for food use, or a hole is bored through the possible food-contact surface of the piece. FDA is proposing this provision to ensure that decorative pieces are not confused with food-contact ceramicware. Finally, by means of this notice, FDA is soliciting comments and information on several other matters, including the need to decrease leachable lead from other ceramicware (flatware, cookware, and large and small hollowware other than pitchers) and appropriate measures for achieving any needed decrease.

DATES: Written comments by July 31, 1989. Proposed compliance date for all affected products initially introduced or initially delivered for introduction in interstate commerce is 6 months after date of publication of the final regulation.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Terry C. Troxell, Center for Food Safety and Applied Nutrition (HFF-312), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0229.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of August 10, 1979 (44 FR 47162), FDA announced the current action levels for lead that leaches from ceramic foodware. These action levels were based on the recommendations of the World Health Organization (WHO). FDA established different leachable lead action levels for ceramic foodware based on the capacity and probable use of the foodware. There are action levels for three different types of ceramic foodware in current Compliance Policy Guide (CPG) 7117.07 (Ref. 1):

(1) Flatware: an article with an internal depth of not more than 25 millimeters—an average of not more than 7.0 micrograms of lead per milliliter of leaching solution from six units examined;

(2) Small Hollowware: an article with a capacity of less than 1.1 liters—5.0 micrograms of lead per milliliter of leaching solution in any one unit; and

(3) Large Hollowware: an article with a capacity of 1.1 liters or more—2.5 micrograms of lead per milliliter of leaching solution in any one unit.

At the time the action levels were established, FDA was using recommended tolerable total lead intakes from all sources of not more than 100 micrograms per day (μg/day) for infants from birth to 6 months of age and not more than 150 μg/day for children from 6 months to 2 years of age (44 FR 51233 at 51234; August 31, 1979).

Recent toxicology and epidemiology studies on lead have shown adverse effects in children, including deficits in intelligence and reduced stature at lead exposure levels that were once thought not to be associated with adverse effects. Therefore, several national and international organizations have lowered their tolerable levels for lead exposure for children. FDA also believes that a lower tolerable level is appropriate. Given these reductions in the tolerable levels, the agency believes that it is necessary to reduce the exposure to lead as a contaminant of foods in situations in which current levels of exposure are high and it is practicable to reduce those levels.

In this document FDA is proposing to establish an enforcement limit for ceramic pitchers, except creamers, that is 25 to 50 times lower than the current action levels for these items. The agency has chosen to do so because these items are likely to store acidic beverages that are consumed by children in substantial amounts. The agency also believes that this proposed action will have a minimal impact on the affected industry.

Because the agency believes that reductions in lead for other types of ceramicware may also be appropriate, this notice is soliciting information on lead contamination limits for all other ceramic foodware.

II. Lead Toxicity

The primary targets for lead toxicity are the nervous system (both central and peripheral), the red blood cells and their stem cells, and the renal system. Recent information suggests significant lead toxicity at lead levels lower than those that had previously been associated with lead toxicity. For example, deficits in intelligence and behavioral dysfunction have been reported in children who have blood lead levels as low as 10 micrograms per deciliter (μg/dL) and who are otherwise asymptomatic. Several effects on heme synthesis (production of the iron-containing component of hemoglobin) have also been found at low levels. For example, the enzyme that converts protoporphyrin to heme, ferrochelatase, has been reported to be inhibited in children at blood lead levels as low as 15 μg/dL. In addition, inhibition of another heme synthetic enzyme, gamma-aminolevulinic acid dehydrase, can occur in children and adults at blood lead levels as low as 10 μg/dL. Other studies have noted that blood lead levels as low as 10 to 15 μg/dL are associated with reduced stature and weight gain and diminished chest circumference in children, and that blood lead levels as low as 25 μg/dL are associated with a reduction in circulation levels of the active form of vitamin D (Refs. 2 and 3).

Although some of the same adverse effects are found in adults at low blood lead levels, children are a particularly vulnerable population because these

adverse effects will occur in them at lower blood lead levels than in adults. In addition, children are estimated to have blood lead levels four times higher than adults from ingesting equal amounts of lead. In children, for every μg/day increase in dietary lead, blood lead has been estimated to increase 0.16 to 0.2 μg/dL (Ref. 2). Thus, because of the potential seriousness of the adverse effects, the relatively low blood lead level at which such effects occur, and the particular sensitivity of children to low ingestion levels, FDA is reviewing lead exposure from foods, with priority given to the exposure of children. This proposal is the result of the agency's reevaluation of the toxicity of, and the exposure to, lead from food served or stored in ceramic pitchers.

III. Revised Lead Exposure Standards

Four governmental and international health organizations have adopted revised guidelines or standards for total lead exposure in the last 4 years (Ref. 2). In 1985, the Office of Drinking Water of the Environmental Protection Agency (EPA) put forth a health advisory for lead exposure based on a blood lead level of 15 to 20 μg/dL in infants. In 1988 (53 FR 31516; August 18, 1988), EPA, based in part on its conclusion that blood lead levels of 10 to 15 μg/dL are of concern for health effects, proposed a revised maximum contaminant level for lead of 5 μg/L for drinking water entering the distribution system. In January 1985, the Centers for Disease Control published a revised guideline specifying that an excessive absorption of lead is that amount resulting in a blood lead level of 25 μg/dL or more (Ref. 2). In June 1986, the Joint Expert Committee on Food Additives of the Food and Agriculture Organization/World Health Organization (FAO/WHO) established a provisional tolerable weekly intake for lead of 25 micrograms per kilogram (μg/kg) of body weight for infants and children (Ref. 4). Finally, in 1986, WHO established a blood lead level of 20 μg/dL as the "exposure level of action" (Ref. 2).

FDA has converted these guidelines and standards into a common format of μg/day lead intake that is useful in considering lead intake from foods for children. In performing this conversion, FDA attributed 50 percent of the total lead intake for children to food, as the available data suggest (Ref. 2). In converting the guidelines/standards expressed as μg lead/dL blood to μg/day lead intake, a factor of 0.16 μg/dL per μg dietary lead/day was used as well as an uncertainty factor of 5. The use of an uncertainty factor is consistent with the approach used by EPA in 1985 to arrive at exposure numbers. The range of tolerable levels derived in this way is 6 to 18 μg/day for lead intake from food for a 10-kilogram (kg) (22-pound) child (Ref. 2). Having reviewed the adverse health effects information, along with recently adopted lead guidelines and standards of other health organizations, the agency has decided to use the 6 to 18 μg/day range as a provisional tolerable range for lead intake from food for a 10-kg child.

The agency is using a range and considers it "provisional" because there is presently a lack of consensus within the scientific community on the threshold for lead toxicity in children. The agency believes that this range provides an appropriate guide for concern about the health effects, even though, at this time, it is not possible to establish a threshold level for lead toxicity.

Data (unpublished) from the FDA Total Diet Studies for the period July 1986 to May 1987 show that the average dietary intake of lead is 4.7 μg/day for children 6 through 11 months old (9 kg) and 6.4 μg/day for children 2 years old (13 kg) (Ref. 5). Thus, the Total Diet Studies indicate that average dietary lead intake for children is at the low end of the provisional tolerable range and provide a strong basis for concern about any significant additional dietary intake of lead. Based on this information, the agency finds that it is important to establish regulatory limits for levels at which lead contamination may render food injurious to health whenever it is possible to do so.

IV. Ceramic Pitchers

Ceramic pitchers used as food storage vessels are one potential food source of significant lead contamination that may result in excessive dietary lead intake.[1] The present action levels for leachable lead from large and small ceramic hollowware, including pitchers, are 2.5 μg/mL and 5.0 μg/mL of leaching solution, respectively. Thus, for example, if a vessel were to leach lead into a food at the 2.5 μg/mL level, the food stored in that vessel would be contaminated with 2.5 μg of lead for each mL of fluid. Consumption of as little as 10 mL (approximately two teaspoonfuls) per day of food with this lead level would result in ingestion of 25 μg of lead per day, which is greater than the provisional tolerable range (6 to 18 μg/day) for children.

Ceramic pitchers, excluding creamers, may be used to store acidic foods, such as orange juice, that are consumed by children. Consequently, the agency has evaluated the consumption of juices by children using Market Research Corp. of America 14-day frequency of eating data (Menu Census VI, 1977 to 1978) and the U.S Department of Agriculture data on portion size (1977 to 1978). Of the various juices, frozen juices are consumed in the largest quantities. These surveys give mean and 90th percentile daily consumption of frozen juices (eaters only) as 72 grams (g) and 154 g, respectively, for children 6 through 23 months old, and 91 g and 165 g, respectively, for children 2 through 5 years old. Children consuming mean quantities of these juices stored in ceramic pitchers from which lead leached at the current action level could consume 180 to 455 μg per day of lead. This lead intake would be more than 10 times greater than the provisional tolerable range of 6 to 18 μg/day (Ref. 6). Consequently, the agency tentatively concludes that the current action level is not adequate to protect the public from excessive intake of lead from food stored in ceramic pitchers, excluding creamers.

If the level at which lead leaches into juice from these ceramic pitchers were limited to 0.1 μg lead/mL of juice, however, the daily lead intake for children consuming juice at the mean consumption rate would be 7 μg/day for children 6 through 23 months old and 9 μg/day for children 2 through 5 years old. At 90th percentile juice consumption rates, the lead intake would be 15 μg/day for children 6 through 23 months old and 16 μg/day for children 2 through 5 years old (Ref. 6).

The agency considers that these exposure levels, which are upper bound intake estimates, are within the provisional tolerable range for lead intake for food for a 10-kg child. Lead levels that exceed this level exceed the provisional tolerable range and may render the food injurious to health. Therefore, FDA is proposing to establish a binding regulatory limit of 0.1 μg lead/mL of test solution under sections 402(a)(1) and 701(a) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 342(a)(1) and 371(a)). If FDA decides to adopt this proposal, ceramic food-service pitchers, excluding creamers, that leach lead at levels that exceed 0.1 μg/mL will be adulterated as a matter of law.

The agency is proposing to use analytical method AOAC/ASTM, 14th Ed., sections 25.024–25.027, (1984) to implement the proposed regulatory limit.

[1] The agency is excluding ceramic creamers from the proposed regulatory limit because they are not normally used as storage vessels for acidic foods that are consumed by children.

This method is the regulatory method used in the action levels for ceramicware (CPG 7117.07). This analytical method has a quantitation limit of 0.1 μg/mL of leaching solution if the method's concentration step is used (Ref. 7).

The agency will continue to use this analytical method (cited in CPG 7117.07 as AOAC 12th Ed., 25.031–25.034) in enforcement actions related to the current action level guidance for leachable lead from the other ceramicware specified in CPG 7117.07 (Ref. 1).

FDA believes that a regulatory limit of 0.1 μg lead/mL of test solution is an appropriate limit, even though the upper bound intake is close to the upper limit of the provisional tolerable range. To ensure that all pieces produced will be in compliance with the proposed limit, FDA expects that manufacturers will produce pieces that, on average, leach lead at levels significantly below the limit.

Further assurance of the adequacy of this limit derives from the fact that the leaching test exaggerates leaching by acidic foods, and that the actual lead intake from juice stored in ceramic pitchers will be less than that predicted based on leaching test results. The leaching test is conducted at room temperature (22 °C) using 4 percent acetic acid, whereas products stored in ceramic pitchers, particularly acidic juices, are likely to be less acidic than 4 percent acetic acid and refrigerated at temperatures of around 5 °C. Because the amount of lead that is leached from a ceramic storage vessel decreases with decreasing acidity of the food and decreasing storage temperature, the agency expects any amount of lead leached from ceramic pitchers that comply with the proposed regulatory limit into stored food products will be less than the amount leached during testing. Therefore, the agency believes that actual lead intakes of children from lead leached from ceramic pitchers that are in compliance with the 0.1 μg/mL regulatory limit generally will be below the upper bound intake estimates of 15 and 16 μg lead/mL (Ref. 6).

V. Other Ceramic Foodware

As described above, the agency has established leachable lead action levels for ceramic large hollowware, small hollowware and flatware. It has not established a leachable lead level for ceramic cookware. The agency is evaluating the leachable lead levels and the exposure resulting from common, everyday use of these articles. This review is being made in light of the most current lead toxicity information and the provisional tolerable range of 6 to 18 μg/day for lead intake from food for a 10-kg child.

The current leachable lead action levels for ceramic flatware, small hollowware, and large hollowware were established at three different levels based on the expected level of hazard attributed to the type of ware. Because of the growing evidence of potential health hazards at much lower lead levels than those considered in the late 1970's when the current leachable lead levels were established, however, the agency believes that the current action levels for leachable lead from ceramicware (other than the pitchers addressed by this proposal) for food use may need to be reduced substantially, and that a comparable low action level may need to be established for leachable lead from ceramic cookware.

Presently, FDA has only limited data concerning the concentration of leachable lead in food, particularly hot food, stored or served in these other types of ceramic foodware. The agency is therefore requesting submission of information and data concerning the relationship between the levels of lead extracted in tests of ceramicware using the AOAC method cited above and actual food-use contamination. This correlation data should be submitted for consideration with respect to this proposal and to the review of possible hazardous lead levels from all types of ceramic foodware, including cookware.

VI. Decorative Ceramicware

Current CPG 7117.07, dated October 2, 1980 (Ref. 1), provides that ceramicware may be considered unsuitable for food use if:

> (1) [it is] made or rendered unsuitable for such purpose by some artifice such as holes bored through the potential food contact surface
>
> *or,*
>
> (2) [it bears] a label, incapable of obliteration, permanently affixed to the article's potential food contact surface; and if such label states that the article is 'not for food use' along with a statement of the hazard associated with the article if used for food purposes.

During the past few years, the agency has encountered decorative ceramicware articles that appeared to be suitable for food use and that leached excessive levels of heavy metals, particularly lead and cadmium. In addition to regulatory and administrative actions to remove the violative ceramicware from commercial channels, FDA reviewed the criteria for determining whether ceramicware is suitable for food use. As a result of this review, the agency has determined that the criteria as stated in CPG 7117.07 are too general and vague and, therefore, are subject to misinterpretation.

The agency is particularly concerned about those decorative and ornamental articles of ceramicware with lead glazes or decorations on potential food-contact surfaces that, because of their shape or design, may mistakenly be used to hold food. It also is concerned that statements that identify a product as not for food use, if not permanently affixed, will fall off. The agency reiterated these concerns in a letter issued June 24, 1988, to all known ceramicware decorators, decal producers, and trade associations. This letter emphasized that decorative and ornamental ceramicware should bear conspicuous and legible permanent labeling fired into the item stating "Not for Food Use—May Poison Food" or, as an alternative, be rendered unsuitable for holding liquid foods by some means, such as drilled holes (Ref. 8).

Because of repeated incidents involving decorative ceramicware that was mistakenly used to store food and that was found to have no permanently affixed statement advising against such use, the agency has tentatively concluded that the policy established in CPG 7117.07 concerning decorative ceramicware is not sufficient to assure that decorative articles will be distinguishable from food-service articles.

Therefore, the agency is proposing to adopt a regulation that states that all decorative or ornamental ceramicware that appears to be suitable for food use (i.e., is capable of holding food and may be assumed by a consumer to be for food use) will be deemed to be intended for food use, and thus subject to the standards of adulteration for food-contact articles, unless the fact that they are not intended for food use is established in at least one of the following ways:

(1) They bear on the external surface of the base of the article the statement "Not for Food Use—May Poison Food." The statement must be permanent, conspicuous, legible, and in a type size of not less than one eighth inch in height. The statement may be molded into the base as a part of the ceramicware or may be a decal type label fired into the surface, or;

(2) A hole is bored through the potential food-contact surface of the decorative ceramicware to make it unsuitable for food use.

While the agency believes that an effective method must be adopted to clearly make decorative ceramicware that appears to be suitable for food use and that leaches excessive amounts of lead unsuitable for food use, the agency

will consider alternative effective approaches. Therefore, FDA is interested in obtaining information concerning the most effective method, if not those proposed, of clearly and permanently distinguishing between ceramic foodware and decorative ceramicware. In evaluating the effectiveness of any approach, the agency intends to put substantial weight on the permanence of the notice that the ceramicware is not suitable for food use. This factor is particularly important because decorative ceramicware frequently is passed from generation to generation.

VII. Request for Comments and Information

By means of this proposal, the agency is requesting comment on the following specific matters as well as any other matters that may be of particular concern to the industry or consumers:

(1) Lead toxicity and the provisional tolerable intake range;

(2) Lead exposure from use of the various kinds of ceramicware for food service;

(3) Leachability of lead from ceramicware under the normal range of actual conditions of use as compared to the leachable lead recovered by the current regulatory test method;

(4) Lowest leachable lead levels routinely attainable for ceramicware, particularly fine china, that employs leadcontatning materials in the food-contact surface;

(5) The impact, including costs, of achieving these low levels;

(6) The impact, including costs, number of articles affected, and environmental effects, of the proposed regulatory limit for ceramic pitchers, excluding creamers;

(7) Availability of alternative glazes and decorations that do not contain lead, their composition, and leachability of potentially toxic substances into food or appropriate test solutions from these glazes and decorations; and

(8) The impact of the proposed requirements for decorative ceramicware that resembles foodware and contains leachable lead.

VIII. Economic Impact

In accordance with section 605(b) of the Regulatory Flexibility Act, the agency has considered the effect that this proposed rule would have on small entities including large and small businesses and has determined that the proposed action will not result in a significant impact on a substantial number of small entities. Furthermore, in accordance with Executive Order 12291, the agency has analyzed the economic effects of this regulation and has determined that the rule, if promulgated, will not be a major rule as defined by that Order. The economic threshold assessment may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

IX. Environmental Imapct

The agency has carefully considered the potential environmental effects of this action. Based on the available information, 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. The agency will reevaluate its environmental decision if new information is received suggesting that the action would have significant environmental effects.

X. Effective Date

The agency is proposing that all new ceramic food-service pitchers, excluding creamers, and all new decorative or ornamental ceramicware initially introduced or initially delivered for introduction into interstate commerce 6 months after publication in the Federal Register of any final rulemaking in this action shall comply with the regulation. The agency is also specifically requesting comment on the appropriateness of the proposed effective date for this action. All comments concerning the effective date should be accompanied by data to support or justify any change in the proposed effective date.

XI. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

(1) Compliance Policy Guide 7117.07.

(2) Memorandum of August 4, 1987, as amended January 6, 1989, by P. M. Bolger, Division of Toxicology, FDA.

(3) Agency for Toxic Substances and Disease Registry, Public Health Service, "The Nature and Extent of Lead Poisoning in Children in the United States: A Report to Congress," July 1988.

(4) Joint FAO/WHO Expert Committee on Food Additives, "Summary and Conclusions," 30th meeting, June 2 to 11, 1986.

(5) FDA's Total Diet Study for July 1986 to May 1987, unpublished.

(6) Memorandum of July 7, 1987, by G. Cramer, Division of Food Chemistry and Technology, FDA.

(7) Memorandum of June 2, 1987, by S. Capar, Division of Contaminants Chemistry, FDA.

(8) Letter of June 24, 1988, by L. R. Lake, Director, Office of Compliance, Center for Food Safety and Applied Nutrition, FDA.

Interested persons may, on or before July 31, 1989, submit to the Dockets Management Branch (address above), written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Lists of Subjects in 21 CFR Part 109

Food labeling, Food packaging, Foods, Incorporation by reference, Polychlorinated biphenyls (PCB's).

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that Part 109 be amended as follows:

PART 109—UNAVOIDABLE CONTAMINANTS IN FOOD FOR HUMAN CONSUMPTION AND FOOD-PACKAGING MATERIAL

1. The authority citation for 21 CFR Part 109 is revised to read as follows:

Authority: Secs. 201, 306, 402(a), 406, 408, 409, 701, 52 Stat. 1040–1042 as amended, 1045–1046 as amended, 1049 as amended, 1055–1056 as amended, 68 Stat. 511–518 as amended, 72 Stat. 1785–1788 as amended (21 U.S.C. 321, 336, 342(a), 346, 346a, 348, 371).

2. Section 109.16 is added to Subpart A to read as follows:

§ 109.16 Lead-containing glazes and decorations on ceramicware.

(a) Lead is a toxic heavy metal that is used as a component in glazes and decorative decals on ceramics. Under certain conditions of manufacture or use, lead may leach from the glaze or decoration into food held in the ceramicware in amounts that may result in the ingestion of toxic amounts of lead.

(b) The following provisions are necessary to preclude the ingestion of toxic amounts of lead from various types of ceramicware:

(1) Decorative or ornamental ceramicware.

(i) Ceramicware that appears to be suitable for food use will be deemed to be for food use unless:

(A) It bears a conspicuous and legible permanent statement "Not For Food Use—May Poison Food" molded or fired onto the exterior surface of the base of the ceramicware. This permanent labeling must be in a type size of not less than one-eighth inch in height; or

(B) A hole is bored through the potential food-contact surface.

(ii) [Reserved]

(2) Ceramic pitchers, excluding creamers.

(i) Ceramic pitchers, excluding creamers, for food use are deemed to be adulterated under section 402(a)(1) of the act if the amount of lead that leaches from the food-contact surface of the pitcher exceeds 0.1 microgram of lead per milliliter of test solution when the pitcher is tested by the method specified in paragraph (b)(2)(ii) of this section.

(ii) The article is analyzed, utilizing the concentration step specified, by the method of analysis for lead in "Official Methods of the Association of Official Analytical Chemists," 14th Ed. (1984), sections 25.024–25.027, "Cadmium and Lead in Earthenware: Atomic Absorption Spectrophotometric Method, Final Action, AOAC/ASTM Method," which is incorporated by reference in accordance with 5 U.S.C. 552(a). Copies are available from the Association of Official Analytical Chemists, 1111 North 19th St., Suite 210, Arlington, VA 22209, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

Dated: January 18, 1989.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 89–12929 Filed 5–31–89; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Chapter I

[FHWA Docket No. 83–7, Notice 3]

RIN 2125–AA87

Acceleration of Projects, Consolidated Rulemaking

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Withdrawal of advance notice of proposed rulemaking.

SUMMARY: The FHWA is withdrawing the advance notice of proposed rulemaking (ANPRM) on the acceleration of projects program, 48 FR 38854, August 26, 1983, and is closing Docket No. 83–7. Based on comments received and a review of current program laws and regulations, it has been determined that new regulations are unnecessary.

DATE: This withdrawal is effective June 1, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Steiner M. Silence, Special Procedures Branch, Federal-Aid Division, (202) 366–0334; or Mr. Michael J. Laska, Office of the Chief Counsel, (202) 366–1383, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: On August 26, 1983, the FHWA published an advance notice of proposed rulemaking (ANPRM) (48 FR 38854) pursuant to section 129 of the Surface Transportation Assistance Act of 1982 (STAA 1 of 1982), Pub. L. 97–424, 96 Stat. 2097, January 6, 1983, to solicit comments to assist in the development of rules and regulations that would implement timesaving procedures developed under section 141 of the Federal-Aid Highway Act of 1976, Pub. L. 94–280, 90 Stat. 425, May 5, 1976.

Pursuant to section 141 of Pub. L. 94–280, the FHWA initiated a demonstration project in Everett, Pennsylvania, in conjunction with the Pennsylvania Department of Transportation. A final report on this project entitled, "Acceleration of Highway Projects," was transmitted to the Congress on January 16, 1981. The report documented how time was saved on the project and made several recommendations which could apply to other selected highway projects. The FHWA implemented many of the findings through advisory memoranda to its operating offices. On May 13, 1982, all FHWA offices were advised of the selection of Acceleration of Projects as a special Cost Avoidance, Reduction, and Efficiency, and Effectiveness (CARE) Program effort.

The FHWA issued a new policy on May 27, 1983 (48 FR 25181, June 6, 1983), formalizing acceleration of projects as the FAST program—to Facilitate Acceleration through Special Techniques. The policy was confined to acceleration techniques permitted under existing laws and regulations. Although some significant results were anticipated through the use of FAST procedures, further wide-spread timesavings would require changes to existing policies and regulations.

The FHWA's ANPRM advised that the FHWA was considering ways to expedite the processing of Federal-aid highway projects by promoting wider use of findings and recommendations of the Everett, Pennsylvania demonstration project and was seeking ways to simplify, streamline, and consolidate requirements. The notice requested responses to nine questions of particular interest covering the scope and content of section 129 of STAA of 1982.

Discussion of Comments

Thirty-two replies were received in response to the advance notice: 20 from State highway agencies, 4 from counties, 3 from metropolitan planning organizations (1 planning organization sent 2 letters), 2 Federal agencies, and 1 each from a city, a consultant, and the Center for Auto Safety.

A majority of respondents indicated that the FHWA should develop procedures which would accelerate all Federal-aid highway processes rather than limiting them to a few selected projects in each State. Suggested procedures for accelerating projects most frequently made included ones that could be implemented under existing policies, regulations, and statutes; ones that would require revision to current regulation; and ones that would require statutory change. Both large and small bridge, bridge replacement, and Federal-aid urban system projects were identified as the most valuable type of project to try the acceleration techniques. Of the timesaving techniques set forth in the May 27, 1983, policy statement, greater delegations of authority, right-of-way plan preparation and design work authorization after identification of a preferred alternative, and concurrent reviews were mentioned most. Early, concurrent involvement by all parties; shorter advertisement periods; and continuing contact with affected property owners were all suggested. Since these procedures are all possible without regulatory change, we decided current public involvement procedures are sufficient. Suggested methods for assuring interagency cooperation included: joint coordination meetings, concurrent reviews, timely submission of comments and existing procedures are sufficient. Only a minority of respondents favored requiring States to accelerate projects, and a majority favored permitting each State to develop its own acceleration techniques. Although respondents favored the establishment of a general waiver, they gave few suggestions regarding what regulations should be waived or under what conditions.

FHWA Conclusions

Because of the wide range of comments received, an interoffice working group was formed in the Washington Headquarters to review the docket. Based upon the working group's report, a review of the comments received on the advance notice of proposed rulemaking, and input from other Headquarters offices, four courses of action were identified:

(1) Develop a document explaining the flexibility which exists in all FHWA programs. *The Flexibility Document* was printed by the FHWA in July 1986.

(2) Continue the effort to revise existing FHWA regulations to streamline the Federal-aid procedures; however, a separate "FAST regulation" was not found necessary. A number of revisions have been made, such as the "one-stop environmental processing" concept.

(3) Pursue statutory changes which would eliminate delay and duplication in the Federal-aid process.

(4) Continue the ongoing efforts of the various program offices to streamline their own procedures.

Section 129 requires a rule or regulation covering "alternative" procedures; however, the cumulative efforts falling under the above courses of action constitute conformance with the provision. Therefore, the FHWA is hereby withdrawing its advance notice of proposed rulemaking on the Acceleration of Projects and is closing Docket No. 83–7.

In consideration of the foregoing, the advance notice of proposed rulemaking published in the **Federal Register** on August 26, 1983 [48 FR 38854], (Docket No. 83–7) is hereby withdrawn.

The FHWA has determined that this document contains neither a major rule under Executive Order 12291 nor a significant rulemaking action under the regulatory policies and procedures of the Department of Transportation. Due to the nature of this withdrawal notice, a regulatory evaluation is not required since no economic impact is expected. Under the criteria of the Regulatory Flexibility Act, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the withdrawal notice does not have sufficient federalism implications to warrant the preparation of a Federalism Assesment.

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.

(Catalog of Federal Domestic Assistance Program Number 20.205. Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

(23 U.S.C. 109, 315, and 402; 49 CFR 1.48(b))

Issued on: May 23, 1989.

R. D. Morgan,

Executive Director.

[FR Doc. 89–12955 Filed 5–31–89; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 179

[Notice No. 684]

Machine Guns, Destructive Devices, and Certain Other Firearms

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is proposing to amend 27 CFR 179.25 to define the term "date of manufacture" and establish a time period of 50 years before a firearm can be classified as a collector's item and removed by the Director from the scope of the National Firearms Act (NFA). For a firearm or device to be removed from the purview of the NFA, one of the statutory characteristics ATF must use is "date of manufacture" since this term is not currently defined in the regulations, industry has had little guidance as to when a particular firearm is eligible for removal from the NFA. Accordingly, ATF has determined that a definition of the term "date of manufacture" would provide such guidance.

DATE: Written comments must be received by July 31, 1989.

ADDRESS: Send written comments to: Chief, Firearms and Explosives Operations Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 189, Washington, DC 20044–0189, ATTN: Notice No. 684.

FOR FURTHER INFORMATION CONTACT: J. Barry Fields, ATF Specialist, Firearms and Explosives Operations Branch, Bureau of Alcohol, Tobacco and Firearms, (202) 566–7591.

SUPPLEMENTARY INFORMATION: Section 5845(a), Title 26, U.S.C. defines certain categories of firearms. These firearms are subject to the registration and tax provisions of the NFA. However, the last sentence of this section provides for the removal of certain weapons from the definition of "firearm". It reads as follows:

> The term "firearm" shall not include an antique firearm or any device (other than a machinegun or destructive device) which, although designed as a weapon, the Secretary finds by reason of the date of its manufacture, value, design, and other characteristics is primarily a collector's item and is not likely to be used as a weapon.

This provision of the statute is implemented in 27 CFR 179.25 which provides that the Director, ATF, shall make determinations concerning the classification of firearms as collector's items.

In evaluating the statutory criteria for classification of a device as a collector's item, ATF is required to find by reason of the date of manufacture, value, design, and other characteristics that the device is primarily a collector's item and is not likely to be used as a weapon. Use of the conjunctive "and" indicates that a device must satisfy all of the statutory criteria in order to be removed from the NFA as a collector's item. Thus, even if a firearm meets the requirements for value, design, and other characteristics, the Secretary may not remove the device from the purview of the NFA unless it also meets the requirement for date of manufacture.

Since neither section 5845(a) nor the implementing regulation specify the age a firearm must be before it meets the date of manufacture requirement, the industry has had little guidance as to when a particular firearm is eligible for removal from the NFA. Accordingly, ATF has determined that a definition of the term "date of manufacture" would provide such guidance.

ATF interprets the term "date of manufacture" in 26 U.S.C. 5845(a) as requiring that the date of the particular device indicate that it is primarily a collector's item. ATF believes that a recent date of manufacture would not be indicative of a device which is primarily a collector's item. If Congress had intended that new firearms be eligible for removal from the NFA, date of manufacture would not have been a statutory criterion for classifying devices as collector's items.

Accordingly, ATF believes that a date of manufacture less than 50 years before the current date would not be indicative of a device which is primarily a collector's item. ATF believes that the requirement that a firearm be at least 50 years old before it can be removed from the NFA is a reasonable interpretation of the term "date of manufacture" as it is used in section 5845(a). A firearm which is at least 50 years old is not a firearm of recent manufacture and has been in existence long enough to demonstrate whether it is of interest to collectors.

A 50 year time period also conforms with the definition of "curios and relics" appearing at 27 CFR 178.11, which establishes an age of 50 years for firearms in order for them to be recognized as curios or relics under the Gun Control Act of 1968, as amended, 18 U.S.C. Chapter 44. For purposes of the Gun Control Act, firearm curios or relics are firearms that, among other things, are of special interest to collectors by reason of some quality other than those associated with firearms intended for sporting use or as offensive or defensive weapons.

Based upon the above, ATF is proposing to amend the regulations at 27 CFR 179.25 to specify that the term "date of manufacture" as used in 26 U.S.C. 5845(a) means a date at least 50 years prior to the current date.

Executive Order 12291

In compliance with Executive Order 12291, 46 FR 13193 (1981), ATF has determined that this final rule is not a "major rule" since it will not result in: (a) An annual effect on the economy of $100 million or more; (b) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (c) 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.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this proposal because the notice of proposed rulemaking, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities. The proposal will not impose, or otherwise cause, a significant increase in reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. The proposal is not expected to have significant secondary or incidental effects on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this notice of proposed rulemaking, if promulgated as a final rule, will not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 22503, attention: Desk Officer for ATF, with copies to ATF at the address previously specified. The collection of information in this regulation is in 27 CFR Part 179. This information is required by ATF to provide the public with the means to have a firearm classified as a collector's item. The respondents will be individuals who are interested in collecting firearms that are of value for reasons other than their offensive, defensive or sporting uses. Estimated total annual reporting and/or record keeping burden: 25 hours. Estimated average annual burden per respondent and/or recordkeeper: 1 hour. Estimated number of respondents and/or recordkeepers: 25. Estimated annual frequency of responses: 1.

Public Participation

ATF requests comments from all interested persons. Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date. ATF will not recognize any material as confidential. Comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure should not be included in the comment. The name of the person submitting the comment is not exempt from disclosure.

During the comment period, any person may request an opportunity to present oral testimony at a public hearing. However, the Director reserves the right, in light of all circumstances, to determine if a public hearing is necessary.

Disclosure

Copies of this notice and the written comments will be available for public inspection during normal business hours at: ATF Reading Room, Disclosure Branch, Room 4412, Ariel Rios Federal Building, 1200 Pennsylvania Avenue NW., Washington, DC.

Drafting Information

The principal author of this notice of proposed rulemaking is J. Barry Fields, ATF Specialist, Firearms and Explosives Operations Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 179

Administrative practice and procedure, Arms and munitions, Authority delegations, Claims, Customs duties and inspections, Excise taxes, Exports, Imports, Penalties, Reporting requirements, Research, Seizures and forfeitures, Transportation, and U.S. possessions.

Authority and Issuance

PART 179—MACHINE GUNS, DESTRUCTIVE DEVICES, AND CERTAIN OTHER FIREARMS

Par. 1. The authority citation for Part 179 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 2. Section 179.25 is amended by adding a sentence at the end of the section to read as follows: As used in this section, "date of manufacture" means a date at least 50 years prior to the current date.

Signed: April 24, 1989.

Stephen E. Higgins,

Director.

Approved: May 8, 1989.

Salvatore R. Martoche,

Assistant Secretary (Enforcement).

[FR Doc. 89-12830 Filed 5-31-89; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

Pennsylvania Regulatory Program

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

ACTION: Proposed rule: reopening and extension of public comment period.

SUMMARY: OSMRE is reopening and extending the public comment period on a proposed amendment to the Pennsylvania permanent regulatory program (hereinafter referred to as the Pennsylvania program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment will reduce the minimum staffing level to administer the Pennsylvania program from the previously approved 405 positions to 388 positions—a difference of 17 positions. This amendment is intended to change the approved minimum staffing levels within Pennsylvania's Department of Environmental Resources (DER) to reflect the reorganization of DER bureaus and improvements in program efficiency.

This notice sets forth the times and locations that the Pennsylvania program and the proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the amendment and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4:00 p.m. on July 3, 1989 to ensure consideration in the rulemaking process. If requested, a public hearing on the amendment will be held at 9:00 a.m. on June 26, 1989. Requests to present testimony at the hearing must be received on or before 4:00 p.m. on June 16, 1989.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand-delivered to Robert J. Biggi, Director, Harrisburg Field Office at the address listed below. Copies of the Pennsylvania program, the revised proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays.

Each requestor may receive, free of charge, one copy of the proposed revised amendment by contacting OSMRE's Harrisburg Field Office.

Office of Surface Mining Reclamation and Enforcement, Harrisburg Field Office, Harrisburg Transportation Center, Third Floor, Suite 3C, 4th and Market Streets, Harrisburg, Pennsylvania 17101, Telephone: (717) 782–4036.

Office of Surface Mining Reclamation and Enforcement, Administrative Record Office, Room 5131, 1100 "L" Street, NW., Washington, DC 20240, Telephone: (202) 343–5492.

Pennsylvania Department of Environmental Resources, Office of Environmental Energy Management, 10th Floor, Fulton Building, 3rd and Locust Streets, P.O. Box 2063, Harrisburg, Pennsylvania 17120, Telephone: (717) 787–4686.

A public hearing, if held, will be at the Penn Harris Motor Inn and Convention Center at the Camp Hill Bypass and U.S. Routes 11 and 15, Camp Hill, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: Robert J. Biggi, Director, Harrisburg Field Office, (717) 782–4036.

SUPPLEMENTARY INFORMATION:

I. Background on the Pennsylvania Program
II. Submission of Amendment
III. Public Comment Procedures

I. Background on the Pennsylvania Program

The Secretary of the Interior conditionally approved the Pennsylvania program on July 31, 1982. Information regarding general background on the Pennsylvania program including the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Pennsylvania program can be found in the July 30, 1982, **Federal Register** (47 FR 33050–33083). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 938.11, 938.12, 938.15 and 938.16.

II. Submission of Amendment

By letter dated May 7, 1985, (Administrative Record No. PA 552), the Pennsylvania DER submitted an amendment to revise the Pennsylvania program. The proposal will reduce DER's approved staffing level from 405 positions to 388 positions. OSMRE published a notice announcing receipt of this amendment and the opening of the public comment period in the June 18, 1985, **Federal Register** (50 FR 25265–25266). The public comment period ended July 18, 1985.

In November 1984, Pennsylvania combined the coal mining program which was previously housed in two bureaus (Bureau of Mining and Reclamation and Bureau of Water Quality Management) into one bureau. Pennsylvania indicated that as a result of this reorganization and other changes to improve efficiency, the State requires fewer people to administer the program.

OSMRE reviewed the proposed amendment and determined that additional information and clarification was necessary before deciding on whether to approve or disapprove the submission. In response to OSMRE's request, Pennsylvania submitted on February 20, 1986, May 1, 1986, and August 3, 1987, workload analyses, staffing charts, and detailed narratives describing functions and responsibilities under the new DER organizational structure (Administrative Record No's. PA 596, PA 604, and PA 670). OSMRE analyzed this information and held discussions with DER on significant concerns which included staffing necessary to meet the required inspection frequencies and to handle a backlog of civil penalty cases.

III. Public Comment Procedures

OSMRE is reopening and extending the public comment period for Pennsylvania's proposed amendment in order to provide the public an opportunity to reconsider the amendment's adequacy in light of the additional information submitted by DER and changes in the scope of the State's regulatory program which have occurred since the amendment was submitted. Specifically, OSMRE is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15(d). If the amendment is deemed adequate, it will become part of the Pennsylvania program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than the Harrisburg Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by 4:00 p.m. on June 16, 1989. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSMRE officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who

wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSMRE representatives to discuss the proposed amendments may request a meeting at the OSMRE office listed under "**ADDRESSES**" by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT.**" All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under "**ADDRESSES.**" A written summary of each meeting will be made part of the Administrative Record.

List of Subjects in 30 CFR Part 938

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

Carl C. Close,

Assistant Director, Eastern Field Operations.

Date: May 22, 1989.

[FR Doc. 89-12930 Filed 5-31-89; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 166 and 167

[CGD 83-032]

Traffic Separation Schemes and Shipping Safety Fairways Off the Coast of California

AGENCY: Coast Guard, DOT.

ACTION: Announcement of public hearings on proposed rule.

SUMMARY: On April 27, 1989, the Coast Guard published in the **Federal Register** a proposed rule entitled "Traffic Separation Schemes and Shipping Safety Fairways off the Coast of California" (54 FR 18258, corrected at 54 FR 20235, May 10, 1989). The rule proposes to modify the existing traffic separation schemes (TSS) in the approaches to San Francisco, in the Santa Barbara Channel and in the approaches to Los Angeles/Long Beach; establish new shipping safety fairways connecting the San Francisco TSS and the Santa Barbara TSS; and overlay the precautionary areas in the approaches to San Francisco and Los Angeles/Long Beach with new shipping safety fairways. The Coast Guard will hold public hearings on this proposal on the dates and at the locations specified below. The hearings will permit the Coast Guard to gather information and veiws on the regulatory proposal.

DATES: See **SUPPLEMENTARY INFORMATION.**

ADDRESSES: See **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Margie G. Hegy, Project Manager, Short Range Aids to Navigation Division, Office of Navigation Safety and Waterway Services (G-NSR-3), Phone (202) 267-0415.

SUPPLEMENTARY INFORMATION: The Coast Guard will hold hearings as follows:

—*Long Beach, California* Monday, July 10, 1989, 1:00-4:00 p.m. and 7:00 p.m.-12:00 a.m. at the Holiday Inn, 500 East First Street, Long Beach, CA 90802; Telephone No. (213) 435-8511.

—*Santa Barbara, California* Tuesday, July 11, 1989, 1:00-4:00 p.m. and 7:00 p.m.-12:00 a.m. at The Red Lion Inn, 633 East Cabrillo, Santa Barbara, CA 93101; Telephone No. (805) 564-4333.

—*San Francisco, California* Thursday, July 13, 1989, 7:00 p.m.-12:00 a.m. and Friday, July 14, 1989, 1:00-4:00 p.m. at the Travel Lodge, 250 Beach Street, San Francisco, CA 94133; Telephone No. (415) 392-6700.

Interested persons are invited to participate in these hearings. Those wishing to make an oral statement must register by July 7, 1989. To register, call (213) 499-5410 or write to Commander (oan), Eleventh Coast Guard District, 400 Oceangate, Long Beach, CA 90822-5399.

Oral statements by individuals without prior registration will be allowed only if time permits. The Coast Guard reserves the right to impose time limits on oral presentations. In the event that time constraints are imposed on speakers at the hearing, speakers may wish to make summary oral presentations and submit a written copy of their complete statement.

Date: May 26, 1989.

R. T. Nelson,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 89-12973 Filed 5-31-89; 8:45 am]

BILLING CODE 4910-14-M

PANAMA CANAL COMMISSION

35 CFR Part 133 and 135

RIN 3207-AA04

Tolls for Use of Canal and Rules for Measurement of Vessels

AGENCY: Panama Canal Commission.

ACTION: Advance notice of proposed rulemaking; request for comments; notice of hearing.

SUMMARY: The Panama Canal Commission proposes an increase of approximately 9.8% in the rates of tolls to become effective October 1, 1989. The Commission anticipates that in fiscal year 1990 it will experience a significant deficit created by a trend of traffic growth revenue inadequate to absorb cost increases due to inflation and other factors. The proposed increase is necessary to comply with the requirements that tolls be set to produce revenues sufficient to cover all costs of maintenance and operation of the Panama Canal, including capital for plant replacement, expansion and improvements. In addition, certain revisions to the rules of measurement of vessels for use of the Panama Canal are also proposed. This advance notice of proposed rulemaking announces the availability from the Commission of an analysis showing the basis and justification for the proposed changes, solicits written data, views, or arguments from interested parties, and sets the time and place for the public hearing.

DATES: Written comments must be received on or before June 22, 1989; a public hearing will be held on July 6, 1989, Washington, DC at 9:30 a.m.; requests to present oral testimony or notice of intention to present, at the hearing, data supplementary to any material already submitted must be received on or before June 26, 1989.

ADDRESSES: Comments and requests to testify or present supplementary data at the hearing may be mailed to: Michael Rhode, Jr., Assistant to the Chairman and Secretary, Panama Canal Commission, 2000 L Street NW., Suite 550, Washington, DC 20036-4996; copies of the Commission's analysis showing the basis and justification for the proposed changes are available from the Commission (at the above address); or from the Office of Financial Management, Panama Canal Commission, Balboa Heights, Republic of Panama (Telephone: 011-507-52-3194); the hearing will be held in The Westin Hotel, Sulgrave Room, 24th & M Streets, NW., Washington, DC 20037.

Oral presentations should be limited to 20 minutes. Regulations governing the content of the notice of appearance or intention to present supplementary data at the hearing appear in 35 CFR 70.8 and 70.10.

FOR FURTHER INFORMATION CONTACT: Michael Rhode, Jr., (202) 634-6441.

SUPPLEMENTARY INFORMATION: Section 1602 (b) of the Panama Canal Act of 1979, as amended, 22 U.S.C. 3792(b), requires that Canal tolls be prescribed at rates calculated to produce revenues to cover, as nearly as practicable, all costs of maintaining and operating the Panama Canal and the facilities and appurtenances related thereto, and capital for plant replacement, expansion, improvements, and working capital. The rates of tolls for use of the Panama Canal were last increased on March 12, 1983, also by 9.8%, the rates placed in effect at that time have proven adequate to provide, in the aggregate, sufficient revenues to cover all operating and capital costs of the Canal through 1988, but the Commission has recorded minor deficits in the last two fiscal years.

While the deficits have been minor, they point to a trend of traffic growth revenues inadequate to absorb cost increased due to inflation and other factors. Commission projections indicate that this trend will continue and, in fact, worsen despite management efforts to reduce costs and increase productivity to the maximum extent possible. This growing imbalance between inflation and traffic growth underlies the more serious loss projected for this year and the clear need for placing a toll-rate increase in effect in fical year 1990.

In addition to the toll rate increase, certain revisions are recommeded to the "Rules of Measurement of Vessels for the Panama Canal." These proposed changes are designed to simplify the Commission's measurement procedures and bring them in line with industry standards. These amendments would have a minimal impact on the amount of tolls collected annually.

The proposed changes would amend 35 CFR Parts 133 and 135 as follows:

(a) Amend § 135.285 to increase the size limitation from 30 to 34 inches on manholes serving water ballast spaces.

(b) Amend § 133.34 to eliminate the requirement that fuel carried not exceed 125 percent of the engine room for obtaining the ballast rate.

(c) Amend § 135.352 to eliminate the requirement to separately measure the portion of engine room space dedicated to propulsion power for purposes of calculating the 125 percent factor above.

Section 1604 of the Panama Canal Act of 1979, as amended, 22 U.S.C. 3794, establishes the procedures that the Panama Canal Commission must follow in proposing a toll rate increase or changes in the rules for measurement of vessels. Those procedures have been supplemented by regulations in 35 CFR Part 70, which in addition, provide interested parties with instructions for participating in the process governing changes in the rates of tolls or rules of measurement. The statute and regulations require this advance notice of proposed rulemaking in order for the Commission to announce the proposed changes and afford interested parties an opportunity to submit written data, views or arguments and participate in the public hearing on July 6, 1989. A written analysis is also made available to the public showing the basis and justification for the changes.

All pertinent data, views or arguments presented in writing, or orally at the hearing, will be considered, along with other relevant information, before the Commission publishes a notice of proposed rulemaking in the **Federal Register** and forwards a complete record and its final recommendation to the President of the United States. In considering the proposal, the President has the authority to approve, disapprove, or modify any recommendation of the Commission. The final rule, approved and published by the President, shall be effective no earlier than 30 days from the date of publication in the **Federal Register.**

This advance notice of proposed rulemaking does not constitute a "major rule" as defined in section 1(b) of Executive Order 12291, dated February 17, 1981. Analysis of the proposed toll increase indicates that it will not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign based enterprises in domestic or export markets.

A review of the environmental effect of the proposed increase in the rates of tolls and the proposed measurement rule changes concludes that the proposals are not major Federal actions which will have a significant effect on the quality of the environment of a foreign nation; therefore, pursuant to Executive Order 12114, dated January 4, 1979, an environmental analysis is not required. Furthermore, the Regulatory Flexibility Act is inapplicable, since this regulation is one relating to "rates" or "practices relating" thereto (5 U.S.C. 601 (2)).

List of Subjects in 35 CFR Parts 133 and 135

Panama Canal, Vessels.

Accordingly, it is proposed that 35 CFR Parts 133 and 135 be amended to read as follows.

PART 133—TOLLS FOR USE OF CANAL

1. The authority citation for Part 133 continues to read as follows:

Authority: Issued under authority of the President by 22 U.S.C. 3791; E.O. 12215, 45 FR 36043.

2. Section 133.1 is revised to read as follows:

§ 133.1 Rates of toll.

The following rates of toll shall be paid by vessels using the Panama Canal:

(a) On merchant vessels, yachts, army and navy transports, colliers, hospital ships, and supply ships, when carrying passengers or cargo, $2.01 per net vessel ton of 100 cubic feet each of actual earning capacity—that is, the net tonnage determined in accordance with Part 135 of this chapter.

(b) On vessels in ballast without passengers or cargo, $1.60 per net vessel ton.

(c) On other floating craft including warships, other than transports, colliers, hospital ships, and supply ships, $1.12 per ton of displacement.

3. Section 133.34 is revised to read as follows:

§ 133.34 Tolls for vessels in ballast.

In order for a vessel to secure the reduced rate of toll for vessels in ballast, it may not be carrying any passengers or cargo nor any fuel for its own consumption in a quantity which exceeds the spaces on the vessel which are available for the carriage of fuel (i.e., the actual volume of tanks or fixed compartments, including settling tanks, used for the storage of lubricating oil or fuel, which spaces cannot be used to stow cargo or stores and which have been certified by official marking to be spaces for the vessel's own fuel).

PART 135—RULES FOR MEASUREMENT OF VESSELS

4. The authority citation for Part 135 is revised to read as follows:

Authority: Issued under authority vested in the President by 22 U.S.C. 3791; E.O. 12215; 45 FR 36043.

5. Section 135.285 is revised to read as follows:

§ 135.285 Water ballast spaces, deducted.

(a) Water ballast spaces, other than spaces in the vessel's double bottom, shall be deducted if they are adapted and used only for water ballast, have for

entrance only ordinary circular or oval manholes whose greatest diameter does not exceed 34 inches (864 mm), and are not available for the carriage of cargo, stores, or fuel. Spaces that would otherwise qualify as water ballast except that they are also used for fuel for the vessel's own use shall be regarded as part of the vessel's fuel space as defined in § 135.390 of this part.

(b) Tonnage of tanks may be obtained by using liquid capacity times the conversion factor with one-sixth off for frames in case of peak tanks and one-twelfth off in case of wings or deep tanks when they cannot be readily measured.

6. Section 135.352 is revised to read as follows:

§ 135.352 Definition of phrase "space occupied by engine rooms".

The space occupied by engine rooms is defined as that occupied by the engine room itself and the boiler room, together with the spaces strictly required for the working of the engines and boilers. In addition to those, included are the spaces taken up by the shaft trunks in vessels with screw propellers, the spaces which enclose the funnels, and the casings necessary for the admission of light and air into the engine room to the extent that such spaces are located below the upper deck (as defined in §§ 135.61 through 135.63 of this part) or below a deck with openings. These are usually designated as tonnage openings, which may be so closed as to permit the carriage of cargo or stores under the deck or a portion thereof. This definition also covers donkey-engine and boiler spaces when the donkey-engine and boiler are situated within the boundary of the main engine room, or of the light and air casing above it and when they are used in connection with the main machinery for propelling the vessel. When the shafts of screw propellers pass through open spaces not enclosed within tunnels, the spaces allowed in lieu of tunnels must be of reasonable dimensions suitable for the vessel in question. When a portion of the space within the boundary of the engine or boiler room is occupied by a tank or tanks for the storage of fresh water, lubricating oil, or fuel, including settling tanks, the space considered to be within the engine room shall be reduced by the space taken up by such tanks. Installations not strictly required for working of the engines or boilers but that would otherwise qualify as a deduction under §§ 135.271 through 135.285 of this part may be left in and included in the engine room measurement.

Dated: May 23, 1989.

Michael Rhode, Jr.,

Assistant to the Chairman and Secretary.

[FR Doc. 89-12620 Filed 5-31-89; 8:45 am]

BILLING CODE 3640-04-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3597-6]

Approval and Promulgation of Implementation Plans

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Notice of proposed rulemaking; extension of the public comment period.

SUMMARY: USEPA is giving notice that the public comment period for a notice of proposed rulemaking published Februay 28, 1989 (54 FR 8354), has been extended 60 days from June 1, 1989. The rulemaking action proposed to approve certain portions and disapprove other portions of the State of Michigan's May 17, 1985, revised particulate regulations submittal, with respect to Iron and Steel sources.

During the original 30-day public comment period on this notice, USEPA received comments from the Michigan Department of Natural Resources (MDNR) on April 27, 1989, seeking a 60 day public comment period extension. In addition, MDNR's letter of April 27, 1989, withdrew portions of their particulate regulations submitted on May 17, 1985. USEPA requests that MDNR, during the extension of the public comment period, clarify on a regulation by regulation and pollutant by pollutant basis what specific portions of their May 17, 1985, submittal they are withdrawing from rulemaking at this time.

DATE: Comments are now due July 31, 1989.

FOR FURTHER INFORMATION PLEASE CONTACT: Mr. Robert B. Miller, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 353-0396.

Date: May 16, 1989.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 89-12990 Filed 5-31-89; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 82

[FRL-3597-7]

Protection of Stratospheric Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Advance notice of proposed rulemaking; extension of time.

SUMMARY: On April 17, 1989 (54 FR 15228) EPA published an Advance Notice of Proposed Rulemaking (ANPRM) notifying users and producers of methyl chloroform (1,1,1-trichloroethane) and carbon tetrachloride (CCl4) that the Agency is considering the possibility of adding these two chemicals to the list of ozone-depleting chemicals already regulated by the Montreal Protocol on Substances That Deplete the Ozone Layer and the EPA rule implementing the Protocol (53 FR 30566, August 12, 1988).

The purpose of this announcement is to notify the public that the comment period for this ANPRM has been extended to July 1, 1989. The original comment period ended May 15, 1989. EPA has however, received numerous requests to extend the deadline. This extension will allow a total of 75 days in which to comment on this ANPRM.

Anyone who submitted a comment previously may submit an addendum to that written document. Please state the date on which you submitted a previous comment when you submit these additional remarks.

DATES: Public Comment: All comments on the advance notice of proposed rulemaking published April 17, 1989 (54 FR 15228) should be received by July 1, 1989.

ADDRESSES: Written comments should be sent to Docket (A-89-09), Air Docket, First Floor-Waterside Mall, Room 1500, LE131, U.S. Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. The Docket may be inspected between 8 a.m. and 3:00 p.m. on weekdays. As provided in 40 CFR Part 2, a reasonable fee may be charged for photocopying. To expedite review, it is also requested that a duplicate copy of written comments be sent to karla Perri at the address below.

FOR FURTHER INFORMATION CONTACT: Karla Perri, Division of Global change, OAIAP, Office of Air and Radiation, (ANR-445) U.S. EPA, 401 M St. SW., Washington, DC 20460. Telephone (202) 475-7496.

Dated: May 25, 1989.

Don R. Clay,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 89-12989 Filed 5-31-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. I

[General Doc. No. 89-78; DA 89-581]

Inquiry Into Need for a Universal Encryption Standard for Satellite Programming

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of time.

SUMMARY: This action extends the deadlines for filing comments and reply comments in General Docket No. 89-78, and inquiry into the need for a universal encryption standard for satellite cable programming (54 FR 18125; April 27, 1989). The additional time for filing will enhance the ability of commenters in general and will provide a 30-day reply period originally allocated for review of command.

DATES: Comments must be submitted on or before June 19, 1989, and reply comments on or before July 19, 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 synopsis of the Commission's Order Extending Deadline for Filing Comments and Reply Comments, adopted May 23, 1989 and released May 24, 1989. The full text of this Order is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Trasncription Services, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Order Extending Deadline for Filing Comments and Reply Comments

Adopted: May 23, 1989.

Released: May 24, 1989.

By the Chief, Office of Plans and Policy.

1. The Commission has received a "Request for an Extension of Time for Filing Comments" in the above-captioned proceeding. General Instrument Corporation (GIC) filed this request on May 18, 1989, asking for an two-week extension.

2. As a preliminary matter, it should be noted that the published text of the *Notice of Inquiry* in this proceeding (released April 14, 1989, FCC 89-104) contained an erroneous reply comment deadline. An Erratum way issued on April 18, 1989. That Erratum was incorrectly captioned General Docket No. 89-79. The correct docket number is General Docket No. 89-78.

3. Good cause for an extension having been shown, *It is ordered* That the deadline for comments in General Docket No. 89-78 is extended to June 19, 1989 and the deadline for reply comments is extended to July 19, 1989. The reply comment deadline is extended in order to preserve the 30-day period originally allocated for review of comments in this proceeding by interested parties. The additional time for filing comments in granted on the basis that it will enhance the ability of commenters in general, and GIC in particular, to submit pleadings that include comprehensive analyses of the issues raised in the Commission's *Notice of Inquiry* in General Docket No. 89-78.

Action is taken pursuant to section 4(i) of the Communication Act of 1934, as amended, under authority delegated to the Chief, Office of Plans and Policy by § 0.271 of the Commission's Rules, 47 CFR 0.271.

Federal Communication Commission.

John Haring,

Chief, Office of Plans and Policy.

[FR Doc. 89-12963 Filed 5-31-89; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 54, No. 104
Thursday, June 1, 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.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Meetings

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that the Advisory Council on Historic Preservation will meet on Tuesday, June 13, 1989. The meeting will be held in Room M09 at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC, beginning at 8:30 a.m.

The Council was established by the National Historic Preservation Act of 1966 (16 U.S.C. section 470) to advise the President and the Congress on matters relating to historic preservation and to comment upon Federal, federally assisted, and federally licensed undertakings having an effect upon properties listed in or eligible for inclusion in the National Register of Historic Places. The Council's members are the Architect of the Capitol; the Secretaries of the Interior, Agriculture, and Treasury; The Chariman of the National Trust for Historic Preservation; the President of the National Conference of State Historic Preservation Officers; a Governor; a Mayor; and eight non-Federal members appointed by the President.

The agenda for the meeting includes the following:

I. Chairman's Welcome/Opening
II. Council Business
III. Executive Director's Report
IV. Section 106 Cases
V. Litigation
VI. New Business
VII. Adjourn

Note: The meetings of the Council are open to the public. If you need special accommodations due to a disability, please contact the Advisory Council on Historic Preservation, 1100 Pennsylvania Ave., NW., Room 809, Washington, DC, 202-786-0503, at least seven (7) days prior to the meeting.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the meeting is available from the Executive Director, Advisory Council on Historic Preservation, 1100 Pennsylvania Ave., NW., #809, Washington, DC 20004.

Robert D. Bush,
Executive Director.
Date: May 25, 1989.

[FR Doc. 89-12937 Filed 5-31-89; 8:45 am]
BILLING CODE 4310-10-M

Programmatic Agreement Regarding the Environmental Protection Agency's State Water Pollution Control Revolving Fund Program

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice.

SUMMARY: The Advisory Council on Historic Preservation proposes to execute a Programmatic Agreement pursuant to § 800.13 of its regulations (36 CFR Part 800) with the Environmental Protection Agency and the National Conference of State Historic Preservation Officers regarding the consideration of historic properties under the State Water Pollution Control Revolving Fund Program. The Agreement will outline State Revolving Fund Agency responsibilities for identifying, evaluating, and assessing effects of wastewater treatment facilities, non-point source pollution control projects, and estuary protection projects on historic properties in consultation with State Historic Preservation Officer. It will also establish EPA's oversight and monitoring role in certifying State programs and reviewing State activities, and the Council's role in resolving disputes and monitoring performance under the Agreement.

DATES: Comments due: July 3, 1989.

ADDRESS: Comments should be addressed to: Director, Office of Program Review and Education, Advisory Council on Historic Preservation, Old Post Office Building, 1100 Pennsylvania Avenue, NW., Room 809, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Ronald D. Anzalone, Eastern Office of Project Review, Advisory Council on Historic Preservation, Old Post Office Building, 1100 Pennsylvania Avenue, NW., Room 809, Washington, DC 20004, tel. (202) 786-0505; or John Gerba, Office of Federal Activiites, Environmental Protection Agency, 401 M Street, SW., A-104, Washington, DC 20460, tel. (202) 382-5910. Copies of the draft Agreement are available for review upon request.

Robert D. Bush,
Executive Director.
Dated: May 25, 1989.

[FR Doc. 89-12962 Filed 5-31-89; 8:45 am]
BILLING CODE 4310-10-M

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

Designation Renewal of the Enid (OK) and Erie (OH) Agencies

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

ACTION: Notice.

SUMMARY: This notice announces the designation renewal of Enid Grain Inspection Company, Inc. (Enid), and Dennis L. Boltenhouse dba Erie Grain Inspection Service (Erie), as official agencies responsible for providing official services under the U.S. Grain Standards Act, as Amended (Act).

EFFECTIVE DATE: July 1, 1989.

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

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

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

The Service announced that Enid's and Erie's designations terminate on June 30, 1989, and requested applications for official agency designation to provide official services within specified geographic areas in the January 4, 1989, Federal Register (54 FR 162). Applications were to be postmarked by February 3, 1989. Enid and Erie were the only applicants for designation in their area and each applied for designation renewal in the

entire area currently assigned to that agency. The Service announced the applicant names in the March 1, 1989, **Federal Register** (54 FR 8578) and requested comments on the applicants for designation. Comments were to be postmarked by April 17, 1989. No comments were received.

The Service evaluated all available information regarding the designation criteria in section 7(f)(1)(A) of the Act; and in accordance with section 7(f)(1)(B), determined that Enid and Erie are able to provide official services in the geographic areas for which the Service is renewing their designations. Effective July 1, 1989, and terminating June 30, 1992, Enid and Erie are designated to provide official inspection functions in their specified geographic area, as previously described in the January 4 **Federal Register**.

Interested persons may obtain official services by containing the agencies at the following telephone numbers: Enid at (405) 233–1121 and Erie at (419) 483–5366.

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

Date: May 17, 1989.

J. T. Abshier,

Director, Compliance Division.

[FR Doc. 89–13032 Filed 5–31–89; 8:45 am]

BILLING CODE 3410-EN-M

Request for Comments on Designation Applicants in the Geographic Area Currently Assigned to the Fostoria (OH) Agency and the States of Louisiana and North Carolina

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

ACTION: Notice.

SUMMARY: This notice requests comments for interested parties on the applicants for official agency designation in the geographic area currently assigned to Robert B. Whitta dba Fostoria Grain Inspection (Fostoria), Louisiana Department of Agriculture (Louisiana), and North Carolina Department of Agriculture (North Carolina).

DATE: Comments must be postmarked on or before July 17, 1989.

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

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

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

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

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

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

The Service requested applications for official agency designation to provide official services within specified geographic areas in the April 1, 1989, **Federal Register** (54 FR 13394). Applications were to be postmarked by May 3, 1989. Fostoria, Louisiana, and North Carolina were the only applicants for designation in those areas and each applied for designation renewal in the entire area currently assigned to that agency.

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

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

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

Date: May 17, 1989.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 89–13033 Filed 5–31–89; 8:45 am]

BILLING CODE 3410-EN-M

Request for Designation Applicants To Provide Official Services in the Geographic Area Currently Assigned to the Amarillo (TX) Agency and the State of Wisconsin

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

ACTION: Notice.

SUMMARY: Pursuant to the provisions of the U.S. Grain Standards Act, as Amended (Act), official agency designations shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act. This notice announces that the designation of two agencies will terminate, in accordance with the Act, and requests applications from parties interested in being designated as the official agency to provide official services in the geographic area currently assigned to the specified agencies. The official agencies are Amarillo Grain Exchange, Inc. (Amarillo) and the Wisconsin Department of Agriculture, Trade and Consumer Protection (Wisconsin).

DATE: Applications must be postmarked on or before July 3, 1989.

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

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

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

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

Amarillo, located at 1300 South Johnson St. Amarillo, TX, 79101 and Wisconsin located at 801 W. Badger Road, Madison, WI, 53713, were designated under the Act as official agencies on December 1, 1986. Amarillo was designated to provide official inspection functions and Wisconsin was designated to provide official inspection and weighing functions.

The official agencies' designations terminate on November 30, 1989. Section 7(g)(1) of the Act states that designations of official agencies shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act.

The geographic area presently assigned to Amarillo, in the States of

Oklahoma and Texas, pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation is as follows:

In Texas

Bounded on the North by the Texas-Oklahoma State line;

Bounded on the East by the eastern Red River County line; the southern Red River and Lamar County lines; the eastern, southern, and western Hunt County lines; the southern Collin County line; the eastern Dallas, Ellis, Hill, Limestone, Falls, and Milam County lines;

Bounded on the South by the southern Williamson County line; the western Bell and McLennan County lines; the southern Bosque; Hamilton, Comanche, and Brown County lines; the southern and western Coleman County line; the southern Taylor, Nolan, Mitchell, Howard, Martin, and Andrews County lines;

Bounded on the West by the western Andrews, Gaines, Yoakum, and Cochran County lines; the northern Cochran County line; the northern Hockley County line east to FM 303; FM 303 north to U.S. Route 84; U.S. Route 84 (including Sudan), southeast to FM 37; FM 37 east to FM 179; FM 179 north to FM 1914; FM 1914 east (not including Hale Center), to FM 400; FM 400 south to FM 37; FM 37 east to the Hale County line; the eastern Hale County line; the northern Crosby and Dickens County lines; the western Cottle and Childress County lines north to U.S. Route 287; U.S. Route 287 northwest to Donley County; the southern Donley and Armstrong County lines west to Prairie Dog Town Fork of the Red River; Prairie Dog Town Fork of the Red River northwest to State Route 217; State Route 217 west to FM 1062; FM 1062 west to U.S. route 385; U.S. Route 385 north to Oldham County; the southern Oldham County line; the western Oldham, Hartley, and Dallam County lines.

In addition, the area includes El Paso County.

In Oklahoma Beaver, Cimarron, and Texas Counties.

The geographic area presently assigned to Wisconsin, pursuant to Section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation, is the entire State of Wisconsin, except those export port locations within the State.

Interested parties, including Amarillo and Wisconsin, are hereby given opportunity to apply for official agency designation to provide the official services in the geographic area, as specified above, under the provisions of Section 7(f) of the Act and § 800.196(d) of the regulations issued thereunder. Designation in the specified geographic area is for the period beginning December 1, 1989, and ending November 30, 1992. Parties wishing to apply for designation should contact the Review Branch, Compliance Division, at the address listed above for forms and information.

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

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

Date: May 17, 1989.

J. T. Abshier,

Director, Compliance Division.

[FR Doc. 89-13034 Filed 5-31-89; 8:45 am]

BILLING CODE 3410-EN-M

Forest Service

Recreation Residence Authorizations

AGENCY: Forest Service, USDA.

ACTION: Notice of policy revision.

SUMMARY: The Forest Service hereby gives notice that it is modifying its policy for administering privately-owned recreation residences on National Forest System lands. The modifications are necessary to implement the decision of the Assistant Secretary of Agriculture for Natural Resources and Environment on an administrative appeal of the policy which was adopted on August 16, 1988 (53 FR 30924).

EFFECTIVE DATE: This modification of policy is effective June 1, 1989.

FOR FURTHER INFORMATION CONTACT: Single copies of the implementing directives may be obtained from the Program Support Section, Information Systems Staff, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090-6090, (202) 447-6101.

SUPPLEMENTARY INFORMATION: On August 16, 1988 (53 FR 39024), the Forest Service adopted final policy and procedures for administering special use permits that authorize privately-owned recreation residences on National Forest System lands. This policy was appealed to the Secretary of Agriculture on September 15, 1988. The appellants alleged that the process by which this policy was developed was flawed that provisions of the policy exceeded statutory limitations on recreation residence use of the National Forests, and that the appellants and the public were adversely affected by the policy.

In a decision dated February 15, 1989, the Assistant Secretary of Agriculture for Natural Resources and Environment remanded the policy to the Forest Service for restudy and reformulation and stayed the implementation of certain provisions of the policy, as follows: (1) Those nonrenewal provisions relating to or requiring a showing of higher public purpose; (2) those requiring automatic permit renewal 10 years prior to expiration unless nonrenewal has been established; (3) those requiring the offering of "in-lieu" lots to permittees who have received notice of nonrenewal or termination; and (4) those weighted against consideration of commercial uses for sites when nonrenewal of the recreation residence use is contemplated. In addition, the Assistant Secretary required that the remaining features of the final policy be designated as interim pending its reformulation following all applicable process requirements. The reformulation period was established by the decision as 18 months.

The policy adopted August 16, 1988, was issued as direction to Forest Service personnel through amendments and interim directives to Forest Service Manual Chapters 2340 and 2720 and Forest Service Handbook 2709.11—Special Uses Handbook. In compliance with the Assistant Secretary's decision, the agency is revising that direction in FSM 2340 and 2720 specifically identified and/or affected by the decision, removing section 33.2 of the Interim Directive to Chapter 30 of FSH 2709.11 which deals with calculation of annual fees where nonrenewal has been established, removing the Interim Directive to Chapter 40 of FSH 2709.11 which gave direction on continuing recreation residence use, and revising Exhibit 1 of Chapter 50 of FSH 2709.11 which displayed the term special use permit (FS-2700-18) to delete those provisions concerning renewal and nonrenewal of permits and the offering of in-lieu sites in cases of nonrenewal of permits.

As of the date of this notice, the policy and procedures governing recreation residence use that remain in effect are deemed to be interim policy and shall not remain in effect beyond September 30, 1990. As directed by the Assistant Secretary, the Forest Service has begun restudy and reformulation of the overall policy. The Agency will publish in the Federal Register about July 1, 1989, an Advance Notice of Proposed Policy, seeking the advice of the public on revisions to the interim policy. With this advice, the Agency will prepare and

publish for public review and comment a draft reformulated policy by October 31, 1989. Following analysis of public comment on the draft policy, a final policy will be prepared and will be published in the Federal Register with a notice of its adoption by July 1, 1990. Copies of the Federal Register notices containing the draft and final policies will be mailed to each recreation residence permittee and to individuals and organizations known to have an interest in this policy.

Date: May 22, 1989.

James C. Overbay,

Acting Chief.

[FR Doc. 89-13035 Filed 5-31-89; 8:45 am]

BILLING CODE 3410-01-M

CIVIL RIGHTS COMMISSION

District of Columbia 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 a meeting of the District of Columbia Advisory Committee to the Commission will convene at 2:00 p.m. and adjourn at 5:00 p.m. on Thursday, June 15, 1989, at 1121 Vermont Avenue NW., 5th floor conference room, Washington, DC 20425. The Committee will conduct planning for future activities and orientation for new members.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson James G. Banks or John I. Binkley, Director, Eastern Regional Division at (202) 523-5264, TDD (202) 376-8117. Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Eastern Regional Division 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, May 22, 1989.

Melvin L. Jenkins,

Acting Staff Director.

[FR Doc. 89-13009 5-31-89; 8:45 am]

BILLING CODE 6335-01-M

Ohio 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 a planning meeting of the Ohio Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 4:00 p.m., on Tuesday, June 13, 1989, at the John Weld Peck Federal building, Room 5411, 550 Main Street, Cincinnati, Ohio. The purpose of the meeting is to discuss the status of current projects and make program plans for activities in FY '90.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Donald G. Prock, or Farella E. Robinson, Civil Rights Analyst of the Central Regional Division (816) 426-5253, (TDD 816/426-5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division 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 Washingotn, DC, May 22, 1989.

Melvin L. Jenkins,

Acting Staff Director.

[FR Doc. 89-13010 Filed 5-31-89; 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 Census
Title: 1990 Census of Agriculture for American Samoa and the Commonwealth of the Northern Mariana Islands
Form Number: 90-A1(AS), 90-A1(NM)
Burden: 625 Hours
Number of Respondents: 2,500
Avg. Hours per Response: 15 Minutes
Needs and Uses: Data are used by farmers, their representatives, the government, and private organizations concerned with agriculture production. The census provides the only known source of periodic, comparable, and detailed data about production, inventories and sales. The census provides benchmark data for evaluating agricultural programs and developing by territory and smaller geographic regions
Affected Public: Farms
Frequency: One time only
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 Office Building, Washington, DC 20503.

Dated: May 25, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89-12938 Filed 5-31-89; 8:45 am]

BILLING CODE 3510-07-M

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: Interview and Quality Control Verification Check, Post Enumeration Survey, 1990 Decennial Census
Form Number: D-1300, D-1315
Type of Request: New
Burden: 39,575 hours
Number of Respondents: 175,000
Avg. Hours Per Response: 13.6 minutes
Needs and Uses: The Census Bureau uses data from the Post Enumeration Survey to evaluate the completeness of the 1990 decennial census for subgroups of the population and for substate areas
Affected Public: Individuals or households
Frequency: One time only
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 Office Building, Washington, DC 20503.

Dated: May 25, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89-12939 Filed 5-31-89; 8:45 am]

BILLING CODE 3510-07-M

Bureau of Export Administration

[8103-01; 8103-02]

Export Privileges; Hon Kwan Yu

Order

In the matter of: Hon Kwan Yu, individually and doing business as, Seed H.K. Ltd., 7/F Cheung Kong Building, 661 Kings Road, North Point, Hong Kong, Respondents.

On March 10, 1989, Paul Freedenberg, then-Under Secretary for Export Administration, United States Department of Commerce, issued a final Decision and Order (final order) in the above-captioned matter. 54 FR 11427 (March 20, 1989). The final order denied the U.S. export privileges of Hon Kwan Yu, individually and doing business as Seek H.K. Ltd. (Yu), for a two-year period and imposed a $35,000 civil penalty.

In accordance with the final order, the name Hon Kwan Yu, individually and doing business as Seek H.K. Ltd., was placed on the Table of Denial Orders. *See* Export Administration Bulletin, 261 (March 1989).

The final order provided that the denial period would be suspended from the time the $35,000 civil penalty is paid until the two-year denial period ends, provided that neither Yu nor Seed H.K., Ltd. commits violations of the Export Administration Act of 1979 (50 U.S.C. app. 2401–2420 (1982 and Supp. III 1985), as amended by Pub. L. 100–418, 102 Stat. 1107 (August 23, 1988)), the Export Administration Regulations (currently codified at 15 CFR Parts 768–799), or the final order during the two-year period.

On April 10, 1989, Yu paid the $35,000 civil penalty. Accordingly, pursuant to the final order, I hereby suspend the balance of the denial period imposed against Hon Kwan Yu, individually and doing business as Seed H.K. Ltd., effective April 10, 1989, and order that the name of Hon Kwan Yu, individually and doing business as Seek H.K. Ltd., be removed from the Table of Denial Orders.

Date: May 22, 1989.

Joan M. McEntee,

Acting Under Secretary, Bureau of Export Administration.

Summary

Pursuant to the February 9, 1989 Recommended Decision and order of the Administrative Law Judge, which Decision and Order is attached hereto and affirmed in principal part by me, Hon Kwan Yu, individually and doing business as Seed H.K. Ltd., both with an address of 7/F Cheung Kong Building, 661 Kings Road, North Point, Hong Kong, is, and the Respondents are collectively, assessed a civil penalty in the amount of $35,000, to be paid within 30 days of the date hereof, and denied for a period two years from the date hereof all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States, in whole or in part, or to be exported, or that are otherwise subject to the regulations (14 CFR Parts 768 through 700); provided, however, that commencing from the date of the payment of the civil penalty herein assessed the denial of export privileges set forth shall be suspended for the balance of the two year term, and shall be terminated at the end of such period, provided that Respondents have committed no further violations of the Act, the Regulations, of the Final Order entered in this proceeding.

Discussion

In the Recommended Decision and order of February 9, 1989, the Administrative Law Judge (ALJ) apparently inadvertently misspoke himself in paragraph III of his order. In that Paragraph, the ALJ provided that the two year denial period provided for in Paragraph II would be suspended for three years. This provision is not in keeping with the general suspension provisions and is inconsistent with the rational advanced for the penalty by the ALJ on page 12 of his Recommended Decison and Order. This final Decision and Order modifies the ALJ's Order in that respect.

Paragraph III of the ALJ's Recommended Decision and Order also provides that the suspension of the denial of export privileges shall commence upon the date of this final action. In view of the fact that a civil fine has been assessed and that the ALJ has held that the suspension will be in affect only so long as, *inter alia*, there is no violation of the final Order entered in this proceeding, it is more appropriate for the suspension to begin upon payment of the fine by the Respondents. This final Order reflects this modification of the ALJ's Recommended Order.

One further issue must be disposed of in this case. That issue involves the Department's contention—raised by brief in this proceeding and by Motion for Reconsideration in *In re Behar*, 53 FR 48666 (Dec. 2, 1988)—that in a matter submitted to the ALJ for resolution pursuant to a consent agreement between the Department and the Respondent, it is inappropriate for the Administrative Law Judge to make a finding of violation of the Export Administration Act before imposing penalties for past action. In *Behar* this office held, as quoted in full on page 3 of the attached Recommended Decision and Order of the ALJ, that while a Respondent may be free to maintain in a consent pleading that the imposition of penalties does not necessarily maintain an admission of a violation of the Act, where there is to be a penalty imposed, whether a denial period with respect to export privileges, a fine, or both, there must be some finding by the Under Secretary—and hence the ALJ—of a violation of the Act to support the imposition of that penalty. In challenging that holding, the Department cites section II(i)(2) of the Export Administration Act which provides that "nothing in subsections (c), (d), (f), (h), or (h) limits * * * the authority to compromise and settle administrative proceedings with respect to violations of [the] Act or any regulation, order, or license issued under [the] Act * * *." The Departmental also cites some general authorities on compromise and settlement of claims, and relies specifically on *United States* v. *ITT Continental Baking Company*, 420 U.S. 160 (1975). In that case, the court made the general observation that consent degrees are like contracts, "are arrived at by negotiations between the parties and often admit no violation of law * * *." *Id* at 236. Counsel also cites *Ford Motor Company* v. *Federal Trade Commission*, 547 F2d 954 (6th Cir. 1976)—for the proposition that the principal purpose of a consent order is to avoid fact-finding and the ajudicatory process—and Coch, *Administrative Law and Practice*, West Publishing Company, 1985, section 5.81—for the proposition that an agency in accepting a consent degree by the parties need not support the order by any fact-finding or conclusions of law.

The Department's arguments are correct insofar as they go, but superficial with respect to the real issue. To take Department's authority in reverse order, the Coch treatise does not stand for the proposition that the agency must not support an order by fact-finding or conclusions of law. With respect to *Ford Motor Company* v. *Federal Trade Commission*, *supra*, there are many purposes for a consent order, only one of which is the avoidance of fact-finding and the ajudicatory process.

Finally, *United States* v. *ITT Continental Baking Company, supra*, is certainly correct that consent agreements between parties often admit to no violation of law. However, that simple statement is not dispositive of the issue of whether or not a tribunal, whether judicial or administrative, may impose penalties absent a finding of violation of a particular law or regulation.

The principal starting point for a discussion of the law as it relates to consent decrees is the Meat Packers Consent Decree of 1920. That consent decree related to alleged violations of the Sherman Anti-Trust Act and the Clayton Act. In *Swift & Company* v. *the United States*, 276 U.S. 311 (1927), one of the Respondents attempted to vacate the consent decree entered into in 1920 by itself and others. The consent decree had been entered on the same day as the filing of the original complaint by the Government and general denials by the Respondents. The consent decree expressly provided that the Respondents did not admit to violation of either of the Acts involved, but did provide that the Government's allegations were sufficient to state a cause of action under the two Acts. The decree then went on to enjoin the Respondents, by consent, from certain future actions. In the Motion to Vacate, Swift attacked the decree upon several grounds, the main one being that the court lacked jurisdiction to render an enforceable injunction because there was no case or controversy within the meaning of Article III, Section 2 of the Constitution. The argument advanced was that since there had been no proof of facts constituting a violation to overcome the Respondent's general denial, indeed since the consent decree had specifically stipulated that there would be no such finding, technically the Court and Government petitioner had abandoned all charges that the Respondents had violated the law. Thus, Swift argued that the decree was null and void for want of adjudication.

In rejecting the Respondent's claim, a unanimous court, by Brandeis J., held that the Respondent's argument "ignores the fact that a suit for an injunction deals primarily, not with past violations, but with threatened future ones; and that an injunction may issue to prevent future wrong, although no rights had been violated." *Id* at 326. The court implicitly accepted the claim of the petitioners that an imposition of a penalty for past acts must be based upon a finding of wrongdoing. Since the consent decree that the Department has advanced in both *Behar* and the case at bar would have imposed penalties based on past acts rather than the approval of an injunctive order relative to future action, the Department's claim falls under the rationale of *Swift*. Section 11(i)(2) of the Export Administration Act merely gives the Department the right to compromise and settle administrative proceedings, it does not mandate that the *Swift* rationale be rejected. Indeed, as in anti-trust litigation, the Department might conceivably enter into a consent agreement with a Respondent which would call for the Department's abandonment of claims relative to past action in return for an injunctive agreement with the Respondents relative to future action.

A case which relies on *Swift* is *Securities and Exchange Commission* v. *Dennett*, 429 F2d 1303, 10th Circuit 1970. In that case a defendant had challenged not a penalty for past action, and not even the general terms of the injunction to which he had agreed relative to future activity, but rather, he had challenged the wording of the final order of the court which apparently implied misconduct on his part. The Court held as follows at 1304:

> We gleen from defendant's brief that he is agreeable to the general injunction requiring him to obey the law but objects to the specifics of the injunction granted because it implies misconduct. The judgment granted the relief sought in the complaint. It says that the defendant does not admit to the allegations of the complaint. In affect, we have a plea of *nolo contendre* and a judgment pursuant thereto. If the defendant is innocent of the charges, as he insists, he had full opportunity to contest them. He chose not to do so and is in no position to object on the grounds that the injunction was specific rather than general.

Thus, even in a case where under the *Swift* doctrine there need not have been a finding a misconduct, the court was free to find the same. The parties to a consent agreement can always go forward on the merits if they do not like this risk. There are many reasons in an Export Administration case for agreeing to a penalty, even if it involves a finding by the Under Secretary of a violation in order to impose that penalty. Recently a Respondent has been denied export privileges for 35 years. In the face of that possibility, a future Respondent might feel that it is in his or her best interest to agree to a stipulated finding upon an agreement by Departmental counsel to recommend the imposition of a lesser penalty.

Finally, *Janus Films, Inc.* v. *Miller*, 801 F2d 578 (2nd Cir. 1986) explains that one must differentiate between suits involving the public interest and those involving only private interests in dealing with consent agreements. It is axiomatic that in a suit between private litigants the parties are free to frame consent decrees in whatever form is agreeable to themselves, subject only to the limitation of contracting for illegal purposes. In cases involving the public interest that is not the case. "The court must be satisfied of the fairness of the settlement." *Id* at 582. In dealing with a national security program, the violation of the statute and regulations relating thereto carrying with them not only the possibility of administrative sanction but criminal penalty as well, it is incumbent upon this office to have some showing by Departmental counsel of what its case was based on, and to impose a penalty for past action only if a fair reading of the unchallenged submission constitutes a violation of the Act or Regulations. While a Respondent is free to agree that the evidence submitted to support the settlement between the parties need not be tested by the ajudicatory process, the evidence is necessary if the Under Secretary is asked to impose a penalty based on past action. Thus the holding of this office in the *Behar* decision is reaffirmed.

Finally, in this case the ALJ recommends imposition of a penalty which had apparently been agreed to by the parties before the consent process broke down. The Department complains that the penalty is not severe enough given the fact that it has been imposed pursuant to a default proceeding rather than a consent proceeding. The argument lacks merit. Presumably, the Department would not have agreed to propose an unreasonably lenient penalty to the ALJ in the consent proceeding, thus it can hardly complain now that the penalty it had agreed to propose is in fact unreasonable. That being the case, and the penalty not appearing unreasonble on its face, this Office is not inclined to modify the same.

Order

A. The decision in *In re Behar*, 53 FR 48666 (December 2, 1988), is reaffirmed.

B. On February 9, 1989 the Administrative Law Judge (ALJ) entered his Recommended Decision and Order in the captioned matter. That Decision and Order, a copy of which is attached hereto and made a part hereof has been referred to me for final action. Subject to the following modifications, I hereby affirm the Recommended Decision and Order of the ALJ:

1. Suspension of the two year denial period shall begin only after the payment in full of the $35,000 fine assessed in this case; and

2. The suspension of the denial period shall begin upon the payment of the $35,000 fine as above and shall be in effect for the balance of the two year period of denial provided the Respondents, or either of them, commit no further violations of the Act, the Regulations, or this final Order in this proceeding.

This constitutes final agency action in this matter.

Date March 10, 1989.

Paul Freedenberg,

Under Secretary Bureau of Export Administration.

Appearance for Respondent Stanley J. Marcuss, Esq., Arthur R. Watson, Esq., Milbank, Tweed, Hadley & McCloy, International Square Building, 1825 Eye Street NW., Washington, DC 20006. Appearance for Agency Anthony K. Hicks, Esq., Office of Chief Counsel, for Export Administration, U.S. Department of Commerce, Room H–3329, 14th & Constitution Ave. NW., Washington, DC 20230.

Preliminary Statement

This proceeding against Respondent Hon Kwan Yu, individually and doing business as Respondent Seed H.K. Ltd, began with the issuance February 9, 1988 of a charging letter by the Office of Export Enforcement ("the Agency"), Bureau of Export Administration, U.S. Department of Commerce. This charging letter was issued under the authority of the Export Administration Act of 1979 (50 U.S.C.A. app. 2401–2420), as amended (the Act"), and the Export Administration Regulations ("the Regulations") [1]

The charging letter alleged that Respondents had violated Sections 387.4 and 387.6 of the Regulations in 1982–84 by reexporting six U.S.-origin computers from Hong Kong to the People's Republic of China (P.R.C.) without the required U.S. authorization. [2] On May 16, 1988 the original February 9, 1988 charging letter was amended by increasing from six to seven the number of such alleged anauthorized reexports.

An Order of September 30, 1988 declared Respondents to be in default since, although they had been granted two extensions for filing an answer, they had not filed any. Accordingly, the Order of September 30 directed the Agency to make the submission provided for default cases by § 388.8 of the Regulations.

The Agency instead submitted a Consent Agreement, under § 388.17 of the Regulations, signed on behalf of Respondents by their Counsel (Agency's October 28, 1988 Response). In the Consent Agreement, the parties agreed to settle this matter by Respondent's paying a $35,000 civil penalty and accepting a two-year denial of U.S. export privileges that would be suspended.

By an Order of December 7, 1988, this Tribunal directed the Agency to submit evidence that would support its charge that Respondents had violated the Regulations, citing *Behar*, 53 FR 48666 (December 2, 1988). In *Behar*, which also concerned a consent agreement under the Act and the Regulations, the Under Secretary for Export Administration stated as follows (53 FR 48666, 48667).

> [I]n the imposition of civil penalties under the Export Administration Act and Regulations, a respondent may admit to certain facts for the purposes of accepting the imposition of a penalty which will bring the matter to a close, while maintaining that the admitted facts do not necessarily constitute violation of the act of [sic] the regulations. However, the ALJ, as in the case of a plea of *nolo contendere*, is free to find that the facts thus admitted constitute violations of the Export Administration Act or Regulations. Indeed, the Under Secretary's authority for imposing civil penalties in such cases is based on the finding of a violation * * *. For Export Administration Act cases in which there will be the imposition of a penalty, whether a denial period with respect to export privileges, a fine, or both, there must be some finding by the Under Secretary of a violation to support the imposition of the penalty.

In reply to the Order of December 7, the Agency stated that it had filed a motion with the Under Secretary for reconsideration of that part of *Behar* pertinent to this case (Agency's December 28, 1988 Response 3). The Agency argued that, until it obtains a ruling on that motion in *Behar*, it would be "premature for it to file the requested evidence" in this case (*id.*), and accordingly it requested a stay in the Order of December 7 until it obtains such a ruling (*id.* 4).

This Tribunal, in an Order of January 9, 1989, denied the requested stay, and instead scheduled a January 17, 1989 informal hearing. The nature and purpose of this hearing, and the reason for directing that it be a step in resolving this case, were explained as follows (January 17 Order 1–2).

> For this case, and future consent submissions, the following policy and practice is adopted. This approach is essentially similar to that which existed under Hearing Commissioner Levinson and which were followed * * * in the 1973 and 1974 era.
>
> Upon receipt of consent agreements, an informal, tape recorded, hearing will be scheduled, usually within 10–15 days, at which the representatives of both parties may be present. It is not expected that testimony will normally be taken, however, a "paper case" consisting of documents, diagrams, records, statements and the like, along with the explanations of the representatives will be received and made a part of the record. Following receipt of these materials, the Administrative Law Judge's action, with the record, will be forwarded to the Under Secretary for the 30-day statutory review and final Agency action.
>
> The history of review of settlement proposals by this Office reflects almost unanimous concurrence with those submissions. It is not expected that this will change. On the other hand, this Office and the Under Secretary each have the statutory responsibility to take informed actions. Not merely rubber stamp * * *. The review should be meaningful. Without some record * * * it cannot be. (footnote omitted)

Counsel for Respondents filed a letter stating that Respondents had instructed Counsel not to attend the January 17 hearing, indicating that "budgetary constraints" were the reason (Respondents' January 17, 1989 Letter). Respondents have not participated in this proceeding since the filing of that letter.

Agency Counsel did appear at the January 17 informal hearing, but declined to present evidence of Respondents' alleged violations. Agency Counsel filed a written statement setting forth its position as follows (Agency's January 17, 1989 Statement 3).

> As agreed to by both the Department and Yu, the Consent Agreement does not address the issue of whether Yu in fact violated the Regulations. Accordingly, in the context of the review of the Consent Agreement in this matter and as a matter of law, the Department does not believe that that issue should be the subject of further discussion.

Based upon Agency Counsel's declining to present evidence of the alleged violations, this Tribunal issued an Order of January 19, 1989 rejecting the proposed settlement between the parties. The Order of January 19 further reinstated the Order of September 30, which had declared Respondents to be in default, and again directed the Agency to make the submission provided for default cases.

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[1] The Act was reauthorized and amended by the Export Administration Amendments Act of 1985, Pub. L. 99–64, 99 Stat. 120 (July 12, 1985), and amended by the Omnibus Trade and Competitiveness Act of 1988, Pub. L. 100–418, 102 Stat. 1107 (August 23, 1988).

The Regulations, formerly codified at 15 CFR Parts 368–399, were redesignated as 15 CFR Parts 768–799, effective October 1, 1988 (53 FR 37751, September 28, 1988).

[2] As the charging letter noted (at 1 n.l), the 1982–84 period during which the alleged violations occurred included a time during 1983 when the Act had lapsed and the Regulations were maintained in effect pursuant to the authority of the International Emergency Economic Powers Act, 50 U.S.C. 1701–1706 (1982)).

The Agency then filed a motion for default that set forth evidence to support its allegations against Respondents and proposed a ten-year denial of Respondents' U.S. export privileges (Agency's January 30, 1989 Motion). In filing this motion, the Agency expressly stated that the Agency in no way conceded any concurrence with this Tribunal's basis for rejecting the Consent Agreement (*id.* 4).

Discussion

The Agency' evidence documented its charges that in 1982–84 Respondents obtained seven computers from their U.S. manufacturer and reexported them to the P.R.C. without the required U.S. authorization. Five computers were of one type, and two of another.

For the five computers, the Agency's evidence included Respondent Yu's March 14, 1983 order for them from their U.S. manufacturer (Agency Exhibit (hereinafter "Exh.") 4), and the manufacturer's shipping document for them, dated April 7, 1983, from the United States to Hong Kong (*id.*). The manufacturer shipped these computers to Respondents under a distribution license (Agency Exh. 11, 12, 13).

From April 1983 through January 1984, according to the Agency's presentation, Respondents reexported these five computers to five different P.R.C. end users. Here the Agency's evidence consisted of the U.S. manufacturer's reports of its investigation of the situation (Agency Exh. 11, 13) and of parts of applications for U.S authorizations, made after the reexports, in which each of the P.R.C. and users apparently affirmed its possession of one of these computers (Agency Exh. 6–10). The Agency showed that each of the five reexports required U.S. authorization for national security reasons (although a properly filed application would have benefited from a presumption of approval) (Agency Exh. 5), and showed that Respondents had not obtained the required authorization (Agency Exh. 14).

The Agency argued that each of these five reexports violated § 387.6 of the Regulations, which proscribes unauthorized exports and reexports. The Agency contended that in making each of these five reexports Respondents violated also Section 387.4, which proscribes participating in an export or reexport knowing, or having reason to know, that it is unauthorized. To show Respondents' knowledge, or reason to know, that the reexports were unauthorized, the Agency cited the invoices billing Respondents for the five computers; each invoice stated that the computer was licensed by the United States for ultimate destination in Hong Kong, and diversion contrary to U.S. law was prohibited (Agency Exh. 6–10). The Agency cited also the certification that Respondents signed in order to become a consignee on the U.S. manufacturer's distribution license under which the five computers were shipped to Respondents; in the certification, Respondents agreed to comply with the Regulations (Agency Exh. 12).

As to the first of the remaining two computers of the other type that were the subject of the charging letter, the Agency introduced Respondents' order, dated September 10, 1982 and addressed to the U.S. manufacturer (Agency Exh. 2(a)). The Agency presented also a manufacturer's shipping document, dated October 1, 1982, showing that the order was filled by a shipment to Respondents from a West European facility of the manufacturer (Agency Exh. 2(b)).

To prove that Respondents subsequently reexported the computer to the P.R.C. at some point after December 4, 1982 (Agency Exh. 2(c)) and before some time in January 1984 (Agency Exh. 13), the Agency introduced two documents. The first was a manufacturer's report of its investigation of the situation (Agency Exh. 13); and the second was part of an application for U.S. authorization, made after the reexport, in which the P.R.C. end user apparently affirmed its possession of the computer (Agency Exh. 2(d)).

The Agency showed that reexport of the computer from Hong Kong to the P.R.C. required a U.S. authorization for national security reasons (although a properly filed application would have benefited from a presumption of approval) (Agency Exh. 3), and showed that Respondents did not obtain the required authorization (Agency Exh. 14). Therefore the Agency asserted that Respondents' reexport violated §§ 387.4 and 387.6 of the Regulations, the same two sections it named for the five reexports discussed above. To indicate that Respondents knew, or had reason to know, that the reexport was unauthorized, the Agency cited a statement on the manufacturer's invoice to Respondents to the effect that the United States had licensed the computer, ultimate destination Hong Kong, and diversion contrary to U.S. law was prohibited (Agency Exh. 2(b)).

The last of the reexports raised by the charging letter concerned the other one of this second type of computer. According to a manufacturer's report of its investigation of the situation that the Agency introduced (Agency Exh. 11), Respondents had obtained this computer from the manufacturer pursuant to a validated license authorizing its reexport to a particular P.R.C. end user, but in 1984 had instead reexported it to a different P.R.C. end user. Apparently the originally intended end user had decided against buying the computer (*id.*).

The Agency again cited its evidence that reexport of this computer to the P.R.C. required U.S. authorization for national security reasons (although, as before, a properly filed application would have benefited from a presumption of approval) (Agency Exh. 3). Further, the Agency cited the manufacturer's report to show that no authorization had been obtained for reexporting the computer to that P.R.C. end user to which it was actually shipped (Agency Exh. 11). As with the other six reexports, the Agency charged a violation of both Sections 387.4 and 387.6.

To show Respondents' knowledge, or reason to have knowledge, that the reexport was unauthorized, the Agency noted that Respondents had received the computer initially pursuant to a validated license, which indicated that at least up to that point the computer had been subject to the Regulations. Then the Agency cited the evidence it advanced for its Section 387.4 charge for the other six reexports, and argued that Respondents therefore knew, or had reason to know, that this reexport also required U.S. authorization, expecially since the computer was the same type as the computer that was involved in one of these other reexports.

Conclusion

The evidence of record sustains the allegations of the May 16, 1988 amended charging letter that Respondents during 1982–84 reexported seven U.S.-origin computers from Hong Kong to the P.R.C. without the U.S. authorization that was required. The record shows both that Respondents made these seven reexports, and also that Respondents knew, or had reason to know, that they lacked a U.S. authorization that was required. Thus each of these seven unauthorized reexports violated Section 387.4 and Section 387.6 of the Regulations.

For a sanction, the settlement arrived at in the parties' Consent Agreement—a $35,000 civil penalty and a suspended two-year denial of U.S. export privileges—is reasonable. The violations that Respondents committed are serious; but the sanction proposed by the Agency in its default motion—ten years denial of U.S. export privileges with no suspension—seems unduly severe. The sanction arrived at through the

bargaining that produced the Consent Agreement is appropriate to serve the interests of justice here.

Order

I. Respondent Hon Kwan Yu, individually and doing business as Respondent Seed H.K. Ltd., is assessed a civil penalty of $35,000, to be paid within thirty days of the date of the final Agency action.

II. For a period of two years from the date of the final Agency action, as modified by the suspension set forth in paragraph III below, Respondents

Hon Kwan Yu, individually and doing business as Seed H.K. Ltd., 7/F Cheung Kong Building, 661 King's Road, North Point, Hong Kong

and all successors, assignees, officers, partners, representatives, agents, and employees hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the Regulations.

III. Commencing from the date that this Order becomes effective, the denial of export privileges set forth above shall be suspended, in accordance with § 388.16 of the Regulations, for a period of three years commencing from the date that this Order becomes effective, and shall be terminated at the end of such period, provided that Respondents have committed no further violation of the Act, the Regulations, or the final Order entered in this proceeding. During the three-year suspension period, Respondents may participate in transactions involving the export of U.S.-origin commodities or technical data from the United States or abroad in accordance with the requirements of the Act and the Regulations. The provisions of Paragraphs IV to VII of this Order shall also be suspended during the three-year period.

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

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

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

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

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

(v) In the financing, forwarding, transporting, or other servicing of such commodities or technical data. Such denial of export privileges shall extend to those commodities and technical data which are subject to the Act and the Regulations.

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

VI. All outstanding individual validated export licenses in which Respondents appear or participate, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Respondents' privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

VII. No person, firm, corporation, partnership, or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Licensing, shall, with respect to commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with any Respondent or any related person, or whereby any Respondent or any related person may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly:

(i) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to, or for any Respondent or related person denied export privileges, or

(ii) Order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance or otherwise service or participate in any export, reexport, transshipment or diversion of any commodity or technical data exported or to be exported from the United States.

VIII. This Order as affirmed or modified shall become effective upon entry of the Secretary's final action in this proceeding pursuant to the Act (50 U.S.C.A. app. 2412(c)(1)).

Date: February 9, 1989.

Thomas W. Hoya,

Administrative Law Judge.

To be considered in the 30 day statutory review process which is mandated by section 13(c) of the Act, submissions must be received in the Office of the Under Secretary for Export Administration, U.S. Department of Commerce, 14th and Constitution Avenue NW., Room 3898B, Washington, DC 20230, within 12 days. Replies to the other party's submission are to be made within the following 8 days. 15 CFR 388.23(b), 50 FR 53134 (1985). Pursuant to section 13(c)(3) of the Act, the final order of the Under Secretary may be appealed to the U.S. Court of Appeals for the District of Columbia within 15 days of its issuance.

Attachment to Administrative Law Judge Order

Instruction for Payment of Civil Penalty

1. The civil penalty check should be made payable to: U.S. Department of Commerce.

2. The check should be mailed to: U.S. Department of Commerce, Office of the Assistant General Counsel, for Export Administration, Room H-3845, 14th Street and Constitution Avenue NW., Washington, DC 20230. Attn: Pamela P. Breed, Esq.

[FR Doc. 89-13006 Filed 5-31-89; 8:45 am]

BILLING CODE 3510-DT-M

Automated Manufacturing Equipment Technical Advisory Committee; Closed Meeting

A meeting of the Automated Manufacturing Equipment Technical Advisory Committee will be held June 15, 1989, 9:30 a.m. in the Herbert C. Hoover Building, Room 1617F, 14th Street & Constitution Avenue NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions that affect the level of export controls applicable to automated manufacturing equipment and related technology.

The Committee will meet only in Executive Session to discuss matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on January 10, 1988, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended,

that the series of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act.

The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC 20230. For further information, contact Lee Ann Carpenter on 202/377–2583.

Date: May 25, 1989.

Betty Anne Ferrell,

Director, Technical Advisory Committee Unit, Office of Technology and Policy Analysis.

[FR Doc. 89–12977 Filed 5–3–89; 8:45 am]

BILLING CODE 3510-DT-M

International Trade Administration

Export Trade Certificates of Review

AGENCY: Department of Commerce.

ACTION: Notice of application.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which Certification is sought and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: George Muller, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Expoprt Trading Company Act of 1982 (Pub. L. 97–290) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from State and Federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a Certificate should be issued. An original and five (5) copies should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1223, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 89–00010." A summary of the applicant follows.

Summary of the Application

Applicant: Airconditioning and Refrigeration Institute (ARI), 1501 Wilson Boulevard, Suite 600, Arlington, Virginia 22209, Contact: Renee S. Hancher, Managaer of International Trade, Telephone: (703) 524–8800.

Application No.: 89–00010.

Date Deemed Submitted: May 16, 1989.

Members (in addition to applicant): Aerofin Corporation; Airguard Industries, Inc.; Airmax, Inc.; Artesian Building Systems, Inc.; Aspen Manufacturing, Inc.; Baltimore Aircoil Company, a subsidiary of Amsted Industries, Inc.; Barber-Colman Company, Environmental Contols Division; Bard Manufacturing Company; Brookside Group, Inc.; Carnes Company, Inc.; Carrier Corporation; The Coleman Company, Inc.; Copeland Corporation; Crystal Tips, Inc.; Dunham-Bush, Inc.; Elmwood Sensors, Inc.; Furnas Electric Company; Goodman Manufacturing Corporation; Halsey Taylor Divsion, Household International; Heatcraft Inc.; Honeywell Inc.; Hupp, Inc.; Typhoon Air Conditioning Co.; Johnson Controls, Inc., Control Products Division; Kysor-Warren, Sherer Division; Lake Air International Inc.; Lau Industries; Lennox International, Inc.; Mommoth, A Nortek Company; Marvair Company; Miller-Picking Corporation; Morrison Products, Inc.; NIBCO, Inc.; NORDYNE, A Nortek Company; Pennwalt Corporation, Isotron Department; Phillips Industries, Inc.; Ranco; Revcor, Inc.; Rheem Manufacturing Company; SnyderGeneral Corporation; Standard Refrigeration Company; Sterling Radiator Division, Reed National Corp.; Sundstrand Heat Transfer, Inc., Sundstrand Corp.; Superior Valve, Division of Amcast Industrial Corp.; Titus Products, Division of Phillips Industries, Inc.; Trion, Inc.; Turbotec Products, Inc.; Vilter Manufacturing Corp.; Virginia KMP Corp.; WaterFurnace International, Inc.; York International Corp.; A.D. Auriema Inc.; and Win-Tron Electronics Ltd.

Export Trade

1. Products

Air-conditioning and refrigeration equipment, including unitary air conditioners, heat pumps (unitary, packaged terminal and water-source), packaged terminal air conditioners, liquid chillers, compressors and condensing units for air conditioners and refrigeration applications, heat exchangers, water-cooled condensers, liquid receivers and liquid coolers, unit coolers, drinking water coolers, mobile refrigeration systems, automatic commercial ice makers, commercial humidifiers, air-cooled and evaporative condensers, automatic controls for air conditioning and refrigeration equipment, flow control valves, valves and accessories, air filters, electronic air cleaners, air control/distribution devices, central station air handlers, fans and blowers and fan guards and grilles, room fan coils, room air-induction air conditioner units, air cooling and heating coils, and chemicals (refrigerants, lubricating oils, desiccants and other chemicals) used in conjunction with the refrigerating system.

2. Services

Engineering and architectural services related to Products and to turn-key contracts that substantially incorporate Products; servicing of Products; training with respect to the use of Products.

3. Technology Rights

Patents, trademarks, service marks, trade names, copyrights (including neighboring rights), trade secrets, know-how, semiconductor mask works, utility models, industrial designs, petty patents, appellations of origin, plant breeders rights and *sui generis* forms of computer software protection associated with Products or Services.

4. Export Trade Facilitation Services (as they relate to the Export of Products, Services, and Technology Rights)

Consulting; international market research; marketing and trade promotion; trade show participation; insurance; legal assistance; services related to compliance with customs requirements; transportation; trade

documentation and freight forwarding; communication and processing of export orders and sales leads; warehousing; foreign exchange; financing; and liaison with U.S. and foreign government agencies, trade associations, and banking institutions; and taking title to goods.

Export Markets

The Export Markets include all parts of the world except: (a) The United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands); and (b) Canada.

Export Trade Activities and Methods of Operation

1. ARI and/or one or more of its Members may:

a. Engage in joint bidding or other joint selling arrangements for Products and Services in Export Markets and allocate sales resulting from such arrangements;

b. Establish export prices for sales of Products and Services by the Members in Export Markets, with each Member being free to deviate from such prices by whatever amount it sees fit;

c. Discuss and reach agreements relating to the interface specifications and engineering requirements demanded by specific potential customers of Products for Export Markets;

d. Refuse to quote prices for, or to market or sell in, Export Markets with respect to Products and Services;

e. Solicit non-member Suppliers to sell their Products and/or Services or offer their Export Trade Facilitation Services through the certified activities of ARI and/or its Members; provided, however, that non-member Suppliers will not participate in the full range of certified export trade activities and methods of operation under this Certificate; rather, their participation shall be limited to those activities typically associated with subcontractors;

f. License associated Technology Rights in Export Markets:

(1) *Unilateral Licensing.* ARI and/or its Members (for purposes of this section, "Licensors") may license and sub-license Technology Rights in Export Markets. Such licenses and sub-licenses may: convey exclusive or non-exclusive rights in Export Markets; impose requirements as to the prices at which Products or Services incorporating, or manufactured or produced using, Technology Rights may be sold or leased in Export Markets; impose requirements as to pricing and other terms and conditions of sub-licenses of Technology Rights in Export Markets; restrict licensees and sub-licensees as to fields of use, or maximum sales or operations, in Export Markets; impose territorial restrictions (relating to any part of the world) on foreign licensees and sub-licensees; require the assignment back or exclusive or non-exclusive grantback of rights (in Export Markets) to all improvements in Technology Rights, whether or not such improvements fall within the field of use authorized in such license; require package licensing of Technology Rights; and require products or services (including, but not limited to, Products and Services) to be used, sold, or leased as a condition of the license of Technology Rights.

(2) *Joint and Coordinated Licensing.* Licensors may jointly establish the price and other terms and conditions upon which each Licensor's Technology Rights will be licensed or sub-licensed in Export Markets, including, without limitation, jointly determining whether such licenses or sub-licenses will include provisions specified in subparagraph (1) above. Licensors may coordinate their efforts to license or sub-license Technology Rights in Export Markets, including, without limitation, coordination of licensing for specific foreign projects, and coordination and allocation of licensing for particular foreign customers or particular Export Markets.

(3) *Cross-Licensing.* Licensors may grant cross-licenses among themselves for purposes of engaging in licensing or sub-licensing of Technology Rights in Export Markets; may jointly set the prices and other terms and conditions upon which cross-licensed Technology Rights are licensed or sub-licensed in Export Markets, including, without limitation, jointly determining whether such licenses or sub-licenses will include provisions specified in subparagraph (1) above; and may allocate among themselves all rights in Export Markets to improvements in cross-licensed Technology Rights that are to be assigned back or granted back to Licensors.

g. Engage in joint promotional activities, such as advertising and trade shows, aimed at developing existing or new Export Markets;

h. Bring together from time to time groups of Members to plan and discuss who to fulfill the technical Product and Service requirements of specific export customers or particular Export Markets;

i Coordinate with respect to the installation and servicing of Products in Export Markets, including the establishment of joing warranty, service, and training centers in such markets; and

j. Operate and establish jointly owned subsidiaries or other joint venture entities, owned exclusively by Members, to export Products to Export Markets, operate warranty, service, and training centers in Export Markets, and provide Export Trade Facilitation Services, to Members.

2. ARI and/or its Members may enter into agreements wherein they agree to act in certain countries or markets as the Members' exclusive or nonexclusive Export Intermediary for Products and/or Services in that country or market. In exclusive Export Intermediary agreements, (i) ARI or the Member(s) acting as an exclusive Export Intermediary may agree not to represent any other Supplier for sale in the relevant country or market, and (ii) Members may agree that they will export for sale in the relevant country or market only through ARI or the Member(s) acting as exclusive Export Intermediary, and that they will not export independently to the relevant country or market, either directly or through any other Export Intermediary. ARI and/or any Member when acting as an exclusive Export Intermediary shall not unreasonably refuse to supply its services on non-discriminatory terms to those Members that are parties to the exclusive arrangement and which request such services.

3. ARI and/or its Members may exchange and discuss the following types of information solely about Export Markets:

a. Information that is already generally available to the trade or public;

b. Information about sales or marketing efforts for Export Markets; activities and opportunities for sales of Products and Services in Export Markets; selling strategies for Export Markets; pricing in Export Markets; projected demand in Export Markets; customary terms of sale in Export Markets; the types of Products available from competitors for sale in particular Export Markets, and the prices for such Products; and customer specifications for Products in Export Markets;

c. Information about the export prices, quality, quantity, sources, and delivery dates of Products available from Members for export, provided, however, that exchanges of information and discussins as to Product quantity, sources, and delivery dates must be on a transaction-by-transaction basis only and involve only those Members which are participating or have a genuine

interest in participating in such transaction;

d. Information about terms, conditions, and specifications of particular contracts for sale in Export Markets to be considered and/or bid on by ARI and its Members;

e. Information about joint bidding, selling, or servicing agreements for Export Markets and allocation of sales resulting from such arrangements among the Members;

f. Information about expenses specific to exporting to and within Export Markets, including, without limitation, transportation, intermodal shipments, insurance, inland freight to port, port storage, commission, export sales, documentation, financing, customs, duties, and taxes;

g. Information about U.S. and foreign legislation and regulations affecting sales in Export Markets; and

h. Information about ARI's or its Members' export operations, including without limitation sales and distribution networks established by ARI or its Members in Export Markets, and prior export sales by Members (including export price information).

4. ARI may provide its Members or other Suppliers the benefit of any Export Trade Facilitation Service to facilitate the export of Products to Export Markets. This may be accomplished by ARI, or by agreement with Members or other parties.

5. ARI and/or its Members may meet to engage in the activities described in paragraphs one through four above.

6. ARI and/or its Members may forward to the appropriate individual Member requests for information received from a foreign government or its agent (including private pre-shipment inspection firms) concerning that Member's domestic or export activities (including prices and/or costs), and if such individual Member elects to respond, it shall respond directly to the requesting foreign government or its agent with respect to such information.

Definitions

1. "Export Intermediary" means a person who acts as a distributor, sales representative, sales or marketing agent or broker, or who performs similar functions, including providing or arranging for the provision of Export Trade Facilitation Services.

2. "Members" means the member companies of ARI and parent companies, and export management or export trading companies representing member companies of ARI and parent companies, as listed in this notice, and subject to the provisions of this paragraph. New Members may, from time to time, be incorporated in the Certificate pursuant to the abbreviated amendment procedure described below. An abbreviated amendment shall consist of an annual written notification to the Secretary of Commerce and the Attorney General stating changes in Membership, identifying all new Members that desire to become a Member under this Certificate pursuant to the abbreviated amendment procedure, and certifying for each new Member so identified its sales of Products in its prior fiscal year. Notice of new Members so identified shall be published in the **Federal Register**. However, ARI may withdraw one or more individual Members from the application for the abbreviated amendment. If 30 days or more following publication in the **Federal Register**, the Secretary of Commerce, with the concurrence of the Attorney General, determines that the incorporation in the Certificate of the new Members through the abbreviated amendment procedure is consistent with the standards of the Act, the Secretary of Commerce shall amend the Certificate of Review to incorporate such new Members, effective as of the date on which the application for amendment is deemed submitted. If the Secretary of Commerce does not within 60 days of publication in the **Federal Register** so amend the Certificate of Review, such amendment must be sought through the nonabbreviated amendment procedure. This same procedure may be utilized by ARI to delete one or more Members from the Certificate.

3. "Supplier" means a person who produces, provides, or sells a Product, Service, and/or Export Trade Facilitation Services, whether a Member or nonmember.

Date: May 25, 1989.

George Muller,

Acting Director, Office of Export Trading, Company Affairs.

[FR Doc. 89-12960 Filed 5-31-89; 8:45 am]

BILLING CODE 3510-DR-M

Cornell University; Disposition of Application for Duty-Free Entry of Scientific Instruments

We have discontinued processing of Docket Number 88-226, an application for duty-free entry of a small grain thresher. The instrument was liquidated as dutiable on May 20, 1984, and no protest was filed within the one-year period allowed for protesting the liquidation. A decision on the application would therefore serve no purpose.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 89-12940 Filed 5-31-89; 8:45 am]

BILLING CODE 3510-DS-M

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufacturered in the United States.

Comments must comply with subsections 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. in Room 2841, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket Number: 89-144. *Applicant:* Cornell University, New York State College of Veterinary Medicine, Ithaca, New York 14853-6401. *Instrument:* Variable Area Gas Flowmeter-Rotameter, Model Series 2100. *Manufacturer:* KDG Flowmeters, United Kingdom. *Intended Use:* The instrument will be used for accurate measurement of respiratory gas flow rates that will allow the study of respiratory function in horses worked at varying respiratory frequencies and flow rates. Specific research will involve relation of translaryngeal pressures to airflow rate in standing and exercising horses to permit the degree of resistance to airflow of the larynx to be measured. Another example of the research concerns the study of pulmonary function in anesthetized or exercising horses. *Application Received by Commissioner of Customs:* April 27, 1989.

Docket Number: 89-145. *Applicant:* California Institute of Technology, Mail Code 315-6, Pasadena, CA 91125. *Instrument:* Primary Beam Transport System. *Manufacturer:* Cameca Instruments, France. *Intended Use:* The instrument will be attached to an ion microprobe and used for the isotopic and trace chemical analysis of geological and extraterrestrial materials. These studies are directed toward a better understanding of the formation of solid bodies at the earliest times in the

solar system and of the chemical and isotopic evolution of the earth's mantle. In addition, the instrument will be used for teaching graduate students in the Division of Geological and Planetary Sciences use of the instrument as part of their exposure to modern analytical techniques. *Application Received by Commissioner of Customs:* April 28, 1989.

Docket Number: 89-146. *Applicant:* U.S. Department of Agriculture, Agricultural Research Service, W-321 Turner Hall, 1102 S. Goodwin, Urbana, IL 61801. *Instrument:* Juice Extraction Press. *Manufacturer:* Erich Pollahne, West Germany. *Intended Use:* The instrument will be used for research involving mechanisms of resistance, dynamics of intrafield virus spread, and diagnosis and serotyping of plant viruses. Cereal breeding lines and plants from epidemiology field studies will be evaluated for the presence and concentration of plant viruses in projects to evaluate resistant and tolerant varieties and to track the incidence of virus and the rate and pattern of spread within large wheat and oat fields. This research is focused on improving the method for evaluating germ plasm response to plant virus infections and on the epidemiology of plant viruses. *Application Received by Commissioner of Customs:* May 1, 1989.

Docket Number: 89-147. *Applicant:* University of Hawaii, Hawaii Institute of Geophysics, 2525 Correa Road, Honolulu, HI 96822. *Instrument:* FTIR Spectrometer System, Model DA3. *Manufacturer:* BOMEM, Inc., Canada. *Intended Use:* The instrument will be used to identify and quantify a variety of geochemical, oceanographic, biochemical, and synthetic materials. Specific research projects include: Studies of marine biofouling and corrosion by examining adsorption of organic materials, such as proteins and carbohydrates, and microbes onto clean metal surfaces from seawater, and development of new methods to measure important inorganic and organic nutrients in seawater using remote, in situ techniques. In addition, the instrument will be used for educational purposes in courses in geology and geophysics. *Application Received by Commissioner of Customs:* May 1, 1989.

Docket Number: 89-148. *Applicant:* University of Arizona, College of Medicine, Department of Anatomy, 1501 North Campbell Avenue, Tucson, AZ 85724. *Instrument:* Electron Microscope, Model CM12/STEM. *Manufacturer:* N.V. Philips, The Netherlands. *Intended Use:* The instrument will be used for ultrastructural studies of a variety of biological materials. These studies will be conducted to elucidate the ultrastructural changes in cells and tissues due to experimental procedures to host animals, e.g., surgery, drugs, toxins, etc. *Application Received by Commissioner of Customs:* May 5, 1989.

Docket Number: 89-149. *Applicant:* Knox College, E. South Street, Galesburg, IL 61401. *Instrument:* Stopped-Flow Spectrophotometer, Model SF-1B. *Manufacturer:* Hi-Tech Scientific, United Kingdom. *Intended Use:* The instrument will be used in the course Chemistry 322A Chemical Laboratory, Principles II to teach students how to gather and treat quantitative data using modern instrumentation; and how to conduct kinetic and spectroscopic experiments using modern methods and modern equipment. *Application Received by Commissioner of Customs:* May 8, 1989.

Docket Number: 89-150. *Applicant:* Michigan Molecular Institute, 1910 W. St. Andrews Drive, Midland, MI 48640. *Instrument:* Temperature-Pulsed Light Scattering Photometer. *Manufacturer:* DSM, The Netherlands. *Intended Use:* The instrument will be used for studies of various mixtures of polymers and solvents (e.g., polystyrene and cyclohexane, polyethylene and diphenylether, ethylene—vinyl acetate copolymer and diphenylether). Experiments will be conducted to gain knowledge about phase behavior of polymeric systems and to test various theories of it. *Application Received by Commissioner of Customs:* May 8, 1989.

Docket Number: 89-151. *Applicant:* University of Colorado, Institute for Arctic and Alpine Research, Boulder, Campus Box 450, Boulder, CO 80309-0450. *Instrument:* Two (2) Mass Spectrometers, Model SIRA Series II. *Manufacturer:* VG Isogas, United Kingdom. *Intended Use:* The instrument will be used to measure the stable isotope ratios of hydrogen, oxygen, carbon, nitrogen and sulfur. Initially, the instrument will be used to measure isotope ratios in ice cores, atmospheric carbon dioxide and methane, and organic materials in lake sediments. The objectives of these studies are, respectively, to reconstruct climate (temperature-using hydrogen isotopes, and evaporation conditions—using a combination of hydrogen and oxygen isotope ratios) over the past 200,000 years from a new ice core which is being recovered in Central Greenland; to help determine the magnitude of fluxes of carbon dioxide and methane to the atmosphere from the oceans and the terrestrial biota; and to use carbon isotope ratios in lake sediment cores to reconstruct past growing conditions for aquatic and terrestrial plants in the area. In addition, the instrument will be used in teaching the following courses: Environmental Issues in the Geosciences, Isotope Geology, Isotope Hydrology and Environmental Isotope Geochemistry. *Application Received by Commissioner of Customs:* May 9, 1989.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 89-12941 Filed 5-31-89; 8:45 am]

BILLING CODE 3510-DS-M

University of Chicago; Cancellation

This cancels our decision to deny Docket Number 88-095 for the reason that the applicant had failed to resubmit its application within the specified time period (54 FR 11991, March 23, 1989). We have received satisfactory evidence from the postal authorities that the applicant did not receive our original denial without prejudice to resubmission.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 89-12942 Filed 5-31-89; 8:45 am]

BILLING CODE 3510-DS-M

University of Kentucky; Decision of Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 2841, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington DC.

Docket Number. 88-234.

Applicant: University of Kentucky, Lexington, KY 40536-0084

Instrument: Electron Microscope, Model S-2300-1.

Manufacturer: Hitachi Scientific, Japan.

Intended Use: See notice at 53 FR 31077, August 17, 1988.

Comments: None received.

Decision: Approved. No domestic manufacturer was both "able and willing" to manufacture an instrument or apparatus of equivalent scientific value to the foreign instrument for such purposes as the instrument was intended to be used, and have it available to the applicant without unreasonable delay in accordance with subsection 301.5(d)(2) of the regulations, at the time the foreign

instrument was ordered (March 31, 1988).

Reasons: The foreign instrument provides a resolution of 45 angstroms. The capability is pertinent to the applicant's intended purposes. We know of no domestic manufacture both able and willing to provide an instrument with the required features at the time the foreign instrument was ordered.

As to the domestic availability of instruments, subsection 301.5(d)(2) of the regulations provides that, in determining whether a U.S. manufacturer is able and willing to produce an instrument, and have it available without unreasonable delay, "the normal commercial practices applicable to the production and delivery of instruments of the same general category shall be taken into account, as well as other factors which in the Director's judgment are reasonable to take into account under the circumstances of a particular case." This subsection also provides that, if "a domestic manufacturer was formally requested to bid an instrument, without reference to cost limitations and within a leadtime considered reasonable for the category of instrument involved, and the domestic manufacturer failed formally to respond to the request, for the purposes of this section the domestic manufacturer would not be considered willing to have supplied the instrument."

The regulations require that domestic manufacturers be both "able and willing" to produce an instrument for the purposes of comparison with the foreign instrument. Where an applicant, as in the case, received no response to a formal request for quotation sent to a domestic manufacturer it is apparent that the domestic manufacturer was either not able or not willing to produce an instrument of equivalent scientific value to the foreign instrument for such purposes as the foreign instrument was intended to be used at the time the foreign instrument was ordered.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 89-12943 Filed 5-31-89; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Mid-Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Mid-Atlantic Fishery Management Council's Surf Clam and Ocean Quahog Committee will meet on June 2, 1989, at the Ramada Inn, 76 Industrial Highway, Essington, PA (telephone: 215-521-9600). As a result of public hearings and written comments, the Committee will meet at 10 a.m., to consider possible adjustments to Amendment #8 to the Surf Clam and Ocean Quahog Fishery Management Plan.

For more information contact John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19901; telephone: (302) 674-2331.

Date: May 25, 1989.

Richard H. Schaefer,

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

[FR Doc. 89-12993 Filed 5-31-89; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment of Export Visa and Exempt Certification Requirements for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the People's Republic of Bangladesh

May 25, 1989.

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

ACTION: Issuing a directive to the Commissioner of Customs amending export visa and exempt certification requirements.

EFFECTIVE DATE: June 1, 1989.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

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).

The existing export visa and exempt certification arrangement between the Governments of the United States and the People's Republic of Bangladesh is being amended to include certain part-category designations.

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 46484, published on November 17, 1988.

May 25, 1989

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 25, 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 November 14, 1988, by the Chairman, Committee for the Implementation of Textile Agreement. This directive directed you to prohibit entry of certain cotton, wool and man-made fiber textile products, produced or manufactured in Bangladesh which were not properly visaed by the Government of the People's Republic of Bangladesh.

Effective on June 1, 1989 for goods produced or manufactured in Bangladesh and exported from Bangladesh on and after June 1, 1989, you are directed to amend the existing export visa and exempt certification requirements established in the directive of November 4, 1988 to include the following part-category designations:

Category	HTS numbers
340/640	All HTS numbers in Categories 340/640 except those in Categories 340-Y/640-Y.
340-Y/640-Y	Only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2046, 6205.20.2050 and 6205.20.2060 in Category 340-Y; and 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060 in Category 640-Y.
341	All HTS numbers in Category 341 except those in Category 341-Y.
341-Y	Only HTS numbers 6204.22.3060, 6206.30.3010 and 6206.30.3030.
647/648	All HTS numbers in Categories 647/648 except those in Categories 647-T/648-T.
647-T/648-T	Only HTS numbers 6103.23.0040, 6103.29.1020, 6103.43.1520, 6103.43.1540, 6103.49.1020, 6103.49.3014, 6112.12.0050, 6112.19.1050, 6112.20.1060, 6113.00.0045, 6203.23.0060, 6203.29.2030, 6203.43.2500, 6203.43.3500, 6203.43.4010, 6203.43.4020, 6203.49.1500, 6203.49.2010, 6203.49.2030, 6203.49.3030, 6210.40.1030, 6211.20.1525, 6211.20.3030 and 6211.33.0030 in Category 647-T; and 6104.23.0032, 6104.29.1030, 6104.29.2038, 6104.63.2010, 6104.63.2025, 6104.69.2010, 6104.69.3026, 6112.12.0060, 6112.19.1060, 6112.20.1070, 6113.00.0050, 6117.90.0046, 6204.23.0040, 6204.29.2020, 6204.29.4038, 6204.63.2000, 6204.63.3000, 6204.63.3510, 6204.63.3530, 6204.69.2510, 6204.69.2530, 6204.69.3030, 6204.69.9030, 6210.50.1030, 6211.20.1555, 6211.20.6030, 6211.43.0040 and 6217.90.0060 in Category 648-T.

Shipments entered or withdrawn from warehouse according to this directive which are not accompanied by an appropriate export visa shall be denied entry and a new visa or visa waiver must be obtained.

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 Implementaiton of Textile Agreements.

[FR Doc. 89-12974 Filed 5-31-89; 8:45 am]

BILLING CODE 3510-DR-M

COMMODITY FUTURES TRADING COMMISSION

Chicago Board of Trade: Proposed Recommencement of Trading and Proposed Amendments Relating to the Two-Year Treasury Note Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed contract market rule changes.

SUMMARY: The Chicago Board of Trade ("CBT" or "Exchange") has submitted a proposal to recommence trading in the two-year Treasury note futures contract, which now is dormant within the meaning of Commission Regulation 5.2. In addition, the CBT has submitted proposed amendments to this Treasury note futures contract. The amendments would change the eligibility standards for deliverable Treasury notes so that only three recently issued two-year notes would be deliverable, decrease the contract size to $200,000 from $400,000 face value, allow for futures trading during an evening session, and increase the speculative limits for the contract to 5,000 contracts from 1,000 contracts in the spot month and in all futures combined. The amendments also would increase the daily price limit to one point from three-fourths of a point, change the delivery procedures to conform to those currently in effect for the CBT's actively traded Treasury bond and Treasury note futures contracts, and revise the trading month listing provisions. Finally, the CBT proposes to change the name of the contract to "Short Term Treasury Notes (2 years)."

In accordance with section 5a(12) of the Commodity Exchange Act and acting pursuant to the authority delegated by Commission Regulation 140.96, the Acting Director of the Division of Economic Analysis of the Commodity Futures Trading Commission ("Commission") has determined, on behalf of the Commission, that the proposal is of major economic significance and that, accordingly, publication of the proposal is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATE: Comments must be received on or before July 3, 1989.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Reference should be made to the amendments to the CBT short term Treasury Note futures contract.

FOR FURTHER INFORMATION CONTACT: Richard A. Shilts, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581 (202) 254-7304.

SUPPLEMENTARY INFORMATION: The Chicago Board of Trade two-year Treasury note futures contract is not currently listed for trading and is dormant under Commission Regulation 5.2. Under Regulation 5.2, an exchange must submit for Commission review and approval, pursuant to section 5a(12) of the Commodity Exchange Act (Act) and CFTC Regulation 1.41(b), an appropriate by law, rule, regulation or resolution to recommence trading in a dormant contract. Accordingly, the Exchange has submitted, pursuant to section 5a(12) of the Act and Commission Regulation 1.41(b), a proposal to list additional months in the contract.

With regard to the proposal to recommence trading in the contract, the CBT noted that:

> * * * the level of issuance of (two-year) Treasury notes has been consistently high over the past few years. The dealers and investors in these issues would be well served by the availability of a viable and liquid hedging and price discovery vehicle.

The re-launched contract will become a reliable and useful hedging and pricing instrument, with the potential to serve the financial markets as the present bond and medium and long term note futures contracts already do. Almost 66% of the long open interest and 55% of the short open interest in CBOT Treasury bond futures at the end of November 1988 was held by commercial traders. In long term Treasury notes, 82% and 63% of the long and short open interests, respectively, were held by commercials. Similarly, in 5-year note futures both long and short open interest held by commercials exceeded 85%. The relaunched contract is likely to develop the same high level of commercial hedging interest.

In addition, as noted above, the Exchange has submitted for Commission approval proposed changes to the standards for deliverable notes, the contract size, speculative limits, daily price limits, delivery procedures, trading months, and the name of the contract. With respect to the proposal to specify that only recently issued two-year Treasury notes (the three most recent issues) be deliverable, rather than allowing the delivery of any Treasury note or bond with a remaining maturity of not less than one year, nine months and not more than two years, the CBT stated:

> The proposed changes * * * will alter the essential nature of the contract by focusing the futures contract on the two year issue. The earlier incarnation of this contract was subject to variable pricing because other issues of longer term maturities were permitted in deliveries. With a wide selection of issues * * * each with its own conversion factor, the contract was susceptible to pricing an otherwise little followed older note or bond. The proposed changes will eliminate that problem. * * *
>
> As a hedging vehicle with distinct pricing, two year note futures will be an important hedging tool not only for the large issuances of two year notes that also for old longer maturity Treasury instruments. Likewise, corporate borrowings in this maturity range will be easily hedged in the short term Treasury note futures contract. Additionally, with its generally low implied duration, short term Treasury note futures will at times be an attractive hedging tool for dealers and holders of seasoned securities of all types.

The Commission is seeking comment on the CBT's proposal to recommence trading in the contract and with respect to the proposed amendments.

The materials submitted by the Exchange in support of the proposed amendments may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR 145 (1987)). Requests for copies of such materials should be made to the FOIA, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitted written data, views or arguments on the proposed amendments should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC by the specified date.

Issued in Washington, DC on May 25, 1989.

John R. Mielke,

Acting Director, Division of Economic Analysis.

[FR Doc. 89-12934 Filed 5-31-89; 8:45 am]

BILLING CODE 6351-01-M

New York Cotton Exchange and New York Mercantile Exchange Proposed Futures Contracts

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures contracts.

SUMMARY: The New York Cotton Exchange ("NYCE") has applied for designation as a contract market in frozen concentrated orange juice-2 (FCOJ-2) futures. The New York Mercantile Exchange ("NYMEX") has applied for designation as a contract market in residual fuel oil futures. The Acting Director of the Division of Economic Analysis ("Division") of the Commission, acting pursuant to the authority delegated by Regulation 140.96, has determined that publication of the proposals for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATE: Comments must be received on or before July 3, 1989.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Reference should be made to the NYCE FCOJ-2 futures contract or the NYMEX residual fuel oil futures contract.

FOR FURTHER INFORMATION CONTACT: Fred Linse, for the NYCE FCOJ-2 contract or Richard Shilts, for the NYMEX residual fuel oil contract, in the Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, (202) 254-7303.

SUPPLEMENTARY INFORMATION: Copies of the terms and conditions of the proposed futures contracts will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254-6314.

Other materials submitted by the NYCE and NYMEX in support of the applications for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any persons interested in submitting written data, views or arguments on the terms and conditions of the proposed futures contracts, or with respect to other materials submitted by the NYCE or NYMEX in support of the applications, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581 by the specified date.

Issued in Washington, DC on May 25, 1989.

John R. Mielke,

Acting Director, Division of Economic Analysis.

[FR Doc. 89-12935 Filed 5-31-89; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

Action: Notice.

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

Title, Applicable Form, and Applicable OMB Control Number: Telephone Survey of CHAMPUS Beneficiary households; No Form; and No OMB Control Number.

Type of Request: New.

Average Burden Hours/Minutes Per Response: .4 hours.

Frequency of Response: One-time.

Number of Respondents: 900.

Annual Burden Hours: 360.

Annual Responses: 900.

Needs and Uses: ABT Associates, Inc., under a contract with the Office of the Assistant Secretary of Defense (Health Affairs), will use a telephone survey of 800 CHAMPUS beneficiary households to determine the effects of the Contracted Provider Arrangement (CPA) Demonstration of mental health benefits delivery in the Norfolk, Virginia area. Results of this survey will assist in assessing the operational effectiveness and medical efficacy of the CPA Demonstration project.

Affected Public: Individuals or households of CHAMPUS beneficiaries.

Frequency: One-time.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Dr. J. Timothy Sprehe.

Written comments and recommendations on the proposed information collection should be sent to Dr. J. Timothy Sprehe at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison.

Written request for copies of the information collection proposal should be sent to Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Dated: May 25, 1989.

[FR Doc. 89-12945 Filed 5-31-89; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

May 22, 1989.

The USAF Scientific Advisory Board Arnold Engineering Development Center Advisory Group will meet on 26-27 June, 1989 at Arnold Air Force Base, Tennessee.

The purpose of this meeting will be to acquaint the new AEDC members with a mission briefing and tours of selected ground test facilities. 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. 89–13007 Filed 5–31–89; 8:45 am]

BILLING CODE 3910–01–M

USAF Scientific Advisory Board; Meeting

May 22, 1989.

The USAF Scientific Advisory Board Engineering & Advisory Group will meet on 27–28 June, 1989 at University of New Mexico, Albuquerque, New Mexico.

The purpose of this meeting will be to acquaint the new E&S members with a mission briefing and to request their advice on specific AF/LEE items of interest. 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. 89–13008 Filed 5–31–89; 8:45 am]

BILLING CODE 3910–01–M

DEPARTMENT OF EDUCATION

Meeting of the National Advisory Committee on Accreditation and Institutional Eligibility

AGENCY: National Advisory Committee on Accreditation and Institutional Eligibility.

ACTION: Notice of public meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a meeting of the National Advisory Committee on Accreditation and Institutional Eligibility. This notice also describes the functions of the Committee. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of its opportunity to attend.

DATES: June 27, 8:30 a.m until 5:30 p.m. and June 28, 8:30 a.m. until 5:00 p.m.

LOCATION: The Embassy Square Suites Hotel, 2000 N Street, NW., Washington, DC 20036, 202–659–9000.

FOR FURTHER INFORMATION CONTACT: Dr. W. Stanley Kruger, National Advisory Committee on Accreditation and Institutional Eligibility, U.S. Department of Education 400 Maryland Avenue, SW. Room 3082, ROB–3, Washington, DC 20202–5152, 202–732–5661.

SUPPLEMENTARY INFORMATION: The National Advisory Committee on Accreditation and Institutional Eligibility is authorized under section 1205 of the Higher Education Act as amended by Pub. L. 96–374 (20 U.S.C. 1145). The Committee advises the Secretary of Education regarding his responsibility to publish a list of nationally recognized accrediting agencies and associations, State agencies recognized for the approval of public postsecondary vocational education, and State agencies recognized for the approval of nurse education.

The Committee also advises the Secretary of Education regarding policy concerning recognition of accrediting and State approval bodies, and concerning institutional eligibility for participation in Federally funded programs.

Agenda

The meeting on June 27–28 will be open to the public. The Advisory Committee will review petitions and interim reports by the following accrediting agencies and State approval bodies relative to continued recognition by the Secretary of Education. The Committee also will hear presentations by representatives of thse petitioning agencies and any interested third parties. The following petitions and interim reports will be reviewed.

Petitions for Recognition as Nationally Recognized Accrediting Agencies and Associations

A. Petitions for Renewal of Recognition

Accrediting Commission on Education for Health Services Administration.

Accrediting Council for Continuing Education and Training, Accrediting Commission.

American Association for Marriage and Family Therapy, Commission on Accreditation for Marriage and Family Therapy Education.

American Dental Association, Commission on Dental Accreditation.

American Osteopathic Association, Bureau of Professional Education.

Foundation for Interior Design and Educational Research, Committee on Accreditation.

National Council for Accreditation of Teacher Education.

National Accrediting Commission of Cosmetology Arts and Sciences [hair removal educational programs].

Society of American Foresters.

Southern Association of Colleges and Schools, Commission on Occupational Education Institutions.

B. Interim Reports

American Bar Association.

American Council of Construction Education.

Association of Theological Schools in the United States and Canada.

Commission on Opticianry Accreditation.

Middle States Association of Colleges and Schools, Commission on Higher Education.

New York State Board of Regents.

Northwest Association of Schools and Colleges, Commission on Colleges.

Southern Association of Colleges and Schools, Commission on Colleges.

Petition for Recognition as a State Agency for the Approval of Public Postsecondary Vocational Education

A. Interim Report

New York State Board of Regents.

Petition for Recognition as a State Agency for the Approval of Nurse Education

A. Petition for Renewal of Recognition

Iowa Board of Nursing.

Request by the Department of the Navy

The Advisory Committee will consider a request to the Secretary of Education by the Department of the Navy to recommend authorization by the Congress of the United States for the Naval War College, Newport, Rhode Island, to award a Masters of Science Degree in National Security and Strategic Studies.

Third Parties

The Department urges third parties interested in commenting on any of the scheduled agencies and assocations to submit their comments in writing by June 12, 1989, to Mr. Steven Pappas, Chief, Accrediting Agency Evaluation Office of Postsecondary Education, U.S. Department of Education, 400 Maryland Avenue, SW. (Room) 3036, ROB–3) Washington, DC 20202.

While the Committee is required to accept any written materials up through the date of its meeting, the Committee strongly urges that written comments be submitted by June 12 to facilitate the work of the Committee by providing for advance review and analysis of third party positions. All petitions, interim

reports and third party comments received in advance of the meeting will be available for public inspection at the address noted above between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday.

Also, requests for oral presentations before the Advisory Committee should be submitted in writing to Mr. Pappas, (address above), by June 19, 1989. Requests should include the names of all persons seeking an appearance, the organization they represent and the purpose for which the presentation is requested. Time constraints may limit oral presentations.

The acceptance of written and oral third party comments is limited to issues relevant to an accrediting or State agency's compliance with the Secretary's recognition regulations (Criteria for Recognition).

A record will be made of the proceedings of the meeting and, on or before July 15, 1989, will be available for public inspection at the Office of Postsecondary Education, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 3036, ROB–3) Washington, DC between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday.

Signed in Washington, DC on May 19, 1989.

James B. Williams,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 89–13025 Filed 5–31–89; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Morgantown Energy Technology Center Cooperative Agreement; Financial Assistance Award to Ohio Power Co.

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

ACTION: Notice of intent to award a non-competitive financial assistance cooperative agreement.

SUMMARY: Pursuant to Pub. L. 100–446, 102 Stat 1774, at 1811, and as indicated in HR Rep No 100–862, 100th Congress, 2nd Sess 61 (1988), the Department of Energy (DOE) is giving notice of its intention to make a noncompetitive financial assistance award of approximately $2 million to the Ohio Power Company (OPCO), 1 Riverside Plaza, Columbus, OH 43215, for the initial phases of a 5-year research project, "Pressurized Fluidized Bed Combustion (PFBC) Hot Gas Cleanup Test Program." OPCO is one of eight operating electric utility companies that make up the American Electric Power System (AEP). The American Electric Power Service Corporation (AEPSC) is the central management and engineering arm of AEP and is functioning as an agent for OPCO for purposes of this project. The proposed award is based on AEPSC's unsolicited proposal to design, procure, install, and test a hot gas clean up (HGCU) system at the OPCO 70 MW Tidd PFBC Demonstration Plant in Brilliant, Ohio. The Tidd Demonstration Plant is being supported, in part, under a DOE cooperative agreement awarded in 1987 under the Department's Clean Coal Technology Program.

In its unsolicited proposal, AEPSC proposed conducting a 5-year testing effort, estimated to cost approximately $20 million, to evaluate up to three advanced particle control technologies on a slipstream at the Tidd Demonstration Plant. Although only $2 million is available in Fiscal Year 1989, the proposed award to OPCO will have a 5-year project period and will include the entire proposed testing project. The FY 1989 appropriation will cover only those costs incurred during the first budget period (approximately 1 year). Thus, continuation of the project after the first budget period will depend upon the availability of future appropriated research and development funds.

The Tidd Demonstration Plant is the only available facility of adequate size in the United States where the testing AEPSC has proposed can be done. Accordingly, as authorized by 10 CFR 600.7(b)(2)(i)(d), the DOE has determined that AEPSC "has exclusive domestic capability to perform the activity successfully based upon unique equipment, proprietary data, technical expertise, or other such unique qualifications."

FOR FURTHER INFORMATION CONTACT: Clara L. Foster, I07, U.S. Department of Energy, Morgantown Energy Technology Center, P.O. Box 889, Morgantown, West Virginia 26507–0880, Telephone: (304) 291–4315, Cooperative Agreement No. DE–FC21–89MC26042.

Date: May 24, 1989.

Louie L. Calaway,

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

[FR Doc. 89–13036 Filed 5–31–89; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ID–2401–000 et al.]

H. Peter Burg et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

May 26, 1989.

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

1. H. Peter Burg

[Docket No. ID–2401–000]

Take notice that on April 12, 1989, H. Peter Burg tendered for filing an Informational Report for Automatic Authorization to hold the following interlocking positions:

Ohio Edison, Senior Vice Presdient
Ohio Edison, Director
Penn Power, Director
Society National Bank, Director

Comment date: June 12, 1989, in accordance with Standard Paragraph E at the end of this notice.

2. Consolidated Edison Company

[Docket No. ER89–433–000]

Take notice that on May 15, 1989, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing, as an initial rate schedule, an agreement to transmit power and energy for Long Island Lighting Company (LILCO). The agreement provides for the transmission of 50 MW between LILCO and the Blenheim-Gilboa Pumped storage station of the Power Authority of the State of New York at a rate of $84.50 per megawatt per day, yielding Con Edison $1,542,125 in annual revenues.

Con requests waiver of the notice requirements so that the Rate Schedule can be made effective as of April 1, 1989.

Con Edison states that a copy of this filing has been served by mail upon LILCO.

Comment date: June 12, 1989, in accordance with Standard Paragraph E at the end of this notice.

3. Westchester, RESCO Company, L.P.

[Docket No. ER89–436–000]

Take notice that on May 15, 1989, Westchester Resco Company, L.P. (Westchester Resco) tendered for filing (1) a proposed rate schedule change (designated Westchester Resco Rate Schedule FERC No. 2) consisting of a Capacity Purchase Addendum (the Capacity Addendum), dated as of March 31, 1989, providing for the sale of electric energy generating capacity by Westchester Resco to Consolidated

Edison Company of New York, Inc. (Con Ed) of a biomass fueled small power production facility (the facility) a located at Peekskill, Westchester County, New York and (2) a petition for waiver of the Commission's regulations regarding the submission of cost-of-service data and the submission of a rate change schedules not less than 60 days prior to the date on which the proposed change is to become effective.

The proposed changes would increase revenues from jurisdictional sales by $3,300,000 for the 12 month period ending March 31, 1990. The rate schedule change modifies Westchester Resco Rate Schedule FERC No. 1 (Letter Order, Docket No. ER82-669-000 (November 18, 1982)) by providing for the purchase by Con Ed of capacity from the Facility. Under Westchester Resco Rate Schedule FERC No. 2, Con Ed is currently purchasing all of the electric energy output of the Facility net of in-plant usage.

The principal reason for the proposed change is that Westchester Resco has agreed to provide Con Ed with capacity from the Facility, and Con Ed has agreed to purchase the capacity on the terms and conditions set forth in the rate schedule change.

Comment date: June 12, 1989, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protect 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. 89-13013 Filed 5-31-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER89-421-000 et al.]

Florida Power & Light Company et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

May 18, 1989.

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

1. Florida Power & Light Company

[Docket No. ER89-421-000]

Take notice that on May 8, 1989, Florida Power & Light Company (FP&L) tendered for filing the system average transmission loss percentage determination effective May 1, 1989 for use in connection with the transmission service agreements between FP&L and other electric utilities. FP&L states that these agreements provide for the annual updating of the transmission loss percentage.

Comment date: June 1, 1989, in accordance with Standard Paragraph E at the end of this notice.

2. Arkansas Power & Light Company

[Docket No. ER89-417-000]

Take notice that on May 8, 1989, Arkansas Power & Light Company (AP&L) tendered for filing an Agreement between AP&L and the Louisiana Energy and Power Authority (LEPA). The Agreement describes the procedure to be followed with respect to certain transmission service provided to LEPA by AP&L.

AP&L requests that the Commission waive any requirements with which AP&L has not already complied.

Comment date: June 1, 1989, in accordance with Standard Paragraph E at the end of this notice.

3. Iowa Public Service Company

[Docket No. ER89-411-000]

Take notice that on May 8, 1989, Iowa Public Service Company (IPSC) tendered for filing a Letter Agreement, dated October 12, 1989, for purchase of energy by Western Area Power Administration (Western) from IPSC.

IPSC requests that the agreement be approved retroactive to November 1, 1988, so that Western can at the earliest possible date obtain the services it is seeking pursuant to the arm's length negotiated agreements.

Comment date: June 1, 1989, in accordance with Standard Paragraph E at the end of this notice.

4. Puget Sound Power & Light Company

[Docket No. ER89-410-000]

Take notice that on May 2, 1989, Puget Sound Power & Light Company (Puget Sound) tendered for filing documents to the calculation of Average System Cost (ASC) for Puget Sound for the exchange period effective October 1, 1988, through January 31, 1989. Puget Sound further states that this filing is pursuant to the revised ASC methodology which was approved by the Commission effective October 1, 1984.

Comment date: June 1, 1989, in accordance with Standard Paragraph E at the end of this notice.

5. Portland General Electric Company

[Docket No. ER89-412-000]

Take notice that Portland General Electric Company (PGE) on May 8, 1989, tendered for filing an Interim Agreement with the City of Pasadena which provides for the firm sale of 10 MW and the capacity/energy exchange of 10 MW during the period of November 1, 1987 through July 1, 1988. The contract capacity and energy rates are based upon PGE's incremental cost of production plus an additional amount for fixed charges (not exceeding fully distributed fixed charges) plus the costs of transmission.

PGE states the reason for the proposed Interim Agreement is to allow it to recover a portion of its fixed charges applicable to certain of its thermal generating resources during a period of time those resources are not required to serve its system load.

PGE requests an effective date of November 1, 1876, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing have been served upon the City of Pasadena and the Oregon Public Utility Commission.

Comment date: June 1, 1989, in accordance with Standard Paragraph end of this notice.

6. Portland General Electric Company

[Docket No. ER89-413-000]

Take notice that Portland General Electric Company (PGE) on May 8, 1989 tendered for filing an Interim Agreement with the City of Glendale which provides for the firm sale of 20 MW and the capacity/energy exchange of 20 MW during the period of July 1, 1987 through September 15, 1988. The contract capacity and energy rates are based upon PGE's incremental cost of production plus an additional amount for fixed charges (not exceeding fully distributed fixed charges) plus the costs of transmissions.

PGE states the reason for the proposed Interim Agreement is to allow it to recover a portion of its fixed charges applicable to certain of its thermal generating resources during a period of time those resources are not required to serve its system load.

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 City of Glendale and the Oregon Public Utility Commission.

Comment date: June 1, 1989, in accordance with Standard Paragraph E at the end of this notice.

7. Portland General Electric Company

[Docket No. ER89-414-000]

Take notice that Portland General Electric Company (PGE) on May 8, 1989 tendered for filing an Interim Agreement with the City of Burbank which provides for the firm sale of 10 MW and the capacity/energy exchange of 10 MW during the period of November 1, 1987 through September 15, 1988. The contract capacity and energy rates are based upon PGE's incremental cost of production plus an additional amount for fixed charges (not exceeding fully distributed fixed charges) plus the costs of transmission.

PGE states the reason for the proposed Interim Agreement is to allow it to recover a portion of its fixed charges applicable to certain of its thermal generating resources during a period of time those resources are not required to serve its system load.

PGE requests an effective date of November 1, 1987, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing have been served upon the City of Burbank and the Oregon Public Utility Commission.

Comment date: June 1, 1989, in accordance with Standard Paragraph E at the end of this notice.

8. American Electric Power Service Corporation

[Docket No. ER89-415-000]

Take notice that American Electric Power Service Corporation on May 8, 1989, tendered for filing Addendum IV on behalf of its affiliates, Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, and Ohio Power Company (AEP Parties, which are all affiliated operating subsidiaries of the American Electric Power Company.

This addendum increases the AEP Parties demand rate ceilings for (1) Limited Term Power to "up to" $16.50 per kW-month, (2) Short Term Power to "up to" $3.25 per kW-week ("up to" $0.65 per kW-day), and (3) Non-Displacement Power to "up to" 40 mills per kWH. The purpose of Addendum IV is to update the peak demand rates for voluntary sales to reflect the cost of the most recent major generating unit placed in service on the AEP System.

AEP has requested an effective date of July 9, 1989.

Copies of the filing were served upon the Kentucky Public Service Commission, the Indiana Utility Regulatory Commission, the Michigan Public Service Commission, the Public Utilities Commission of Ohio, the State Corporation Commission of Virginia, the Public Service Commission of West Virginia, and the appropriate utilities interconnected with the AEP Parties.

Comment date: June 1, 1989, in accordance with Standard Paragraph E at the end of this notice.

9. Illinois Power Company

[Docket No. ER89-416-000]

Take notice that on May 1, 1989, Illinois Power Company tendered as an informational filing data concerning a change in the Compensation Fee received by Illinois Power Company from Soyland Power Cooperative, Inc.

Comment date: June 1, 1989, in accordance with Standard Paragraph E at the end of this notice.

10. Delmarva Power & Light Company

[Docket No. ER89-418-000]

Take notice that Delmarva Power & Light Company (Delmarva) on May 8, 1989, tendered for filing proposed Supplement No. 8 to its FERC Rate Schedule No. 62. This supplement, filed at the request of the City of Seaford (Seaford), cancels the present Parallel Operation Service Agreement for one (1) 69 kV delivery point, presently located at High Street, known as "Central" substation and incorporates all service into one (1) existing 69 kV delivery point presently located at Pine Street, known as "Pine" substation.

Copies of the filing were served upon Seaford and the Delaware Public Service Commission.

Comment date: June 1, 1989, in accordance with Standard Paragraph E at the end of this notice.

11. Niagara Mohawk Power Corporation

[Docket No. ER89-419-000]

Take notice that on May 8, 1989, Niagara Mohawk Power Corporation filed as a supplement to Niagara Mohawk Rate Schedule No. 142, a letter agreement between Niagara Mohawk and the Long Island Lighting Company (LILCO), under which Niagara Mohawk agreed to wheel for LILCO certain additional loads ranging from a low of 125 MW to a high of 225 MW over a six-month period starting April 30, 1989 and ending October 29, 1989. No changes to the rates charged under Rate schedule No. 142 will occur, nor are any terms and conditions affected.

Niagara Mohawk states that a copy of the filing was served on LILCO and the New York Public Service Commission.

Comment date: June 1, 1989, in accordance with Standard Paragraph E at the end of this notice.

12. Florida Power & Light Company

[Docket No. ER89-420-000]

Take notice that on May 8, 1989, Florida Power & Light Company (FP&L) tendered for filing the system average distribution loss percentage determination effective May 1, 1989 for use in connection with Docket No. ER86-363, Section D.4 of Attachment D to the Amended Agreement to Provide Specified Transmission Service between FP&L and Seminole Electric Cooperative, Inc. (Rate Schedule FERC No. 78).

FP&L states that Seminole has been served with a copy of this filing.

Comment date: June 1, 1989, in accordance with Standard Paragraph end of this notice.

13. Green Mountain Power Corporation

[Docket No. ER89-425-000]

Take notice that on May 9, 1989, Green Mountain Power Corporation (GMP) tendered for filing an Agreement for the purchase of power between Green Mountain and Fitchburg Gas and Electric Light Company (FG&E) for the period November 1, 1988, through October 31, 1991.

GMP requests that the Commission waive the notice requirements in order to permit the rate schedule to become effective retroactive to November 1, 1988.

Comment date: June 1, 1989, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

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. 89–12987 Filed 5–31–89; 8:45 am]

BILLING CODE 6717–01–M

[Project Nos. 6310–000 et al.]

Hydroelectric Applications (Gull Industries, Inc. et al.); Applications Filed With the Commission

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1 a. *Type of Application:* Amended Application for Major License

b. *Project No.: 6310–000.*

c. *Date Filed:* October 7, 1988.

d. *Applicant:* Gull Industries, Inc.

e. *Name of Project:* Barclay Creek Hydroeletric.

f. *Location:* On Barclay Creek, partially within Mt. Baker-Snoqualmie National Forest in Snohomish County, Washington.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:*

Mr. William True, Gull Industries, Inc., 3404 Fourth Avenue South, P.O. Box 24687, Seattle, WA 98124, 206–624–5900.

Mr. Michael D. Kuntz, Foster, Pepper and Shefelman, 1111 3rd Avenue, Suite 3400, Seattle, WA 98101, 206–447–4400.

Mr. Harry P. Hosey, Hosey and Associates Engineering Company, 2820 Northup Way, Suite 190, Bellevue, WA 98004, 206–827–8661.

i. *Commission Contact:* Mr. James Hunter, 202–376–1943.

j. *Comment Date:* June 30, 1989.

k. *Description of Project:* The proposed project would consist of: (1) a 6-foot-high, 60-foot-long reinforced concrete diversion weir impounding water at elevation 2,211 feet: (2) A concrete intake structure on the left bank adjacent to the weir; (3) A 40-inch-diameter, 11,000-foot-long penstock, including both buried and above-ground sections; (4) a powerhouse at elevation 810 feet containing one generating unit rated at 6.8 MW; (5) a tailrace beneath the powerhouse discharging over riprap into the creek; (6) A switchyard 250 feet south of the powerhouse; and (7) A 0.2-mile-long, 115-kV transmission line. This amendment eliminates an 800-foot-long tailrace pipe that would have crossed an active earth slide area and moves the powerhouse 250 feet upstream, limiting the bypassed anadromous reach to 200 feet. The total estimated project cost as of December 1988 is $14,020,790, which includes the cost of recreation facilities and side channel mitigation.

l. *Purpose of Project:* Project output would be sold to a local utility.

m. *This notice also consists of the following standard paragraphs: B, C, and D1.*

2 a. *Type of Application:* Surrender of License

b. *Project No.:* 6681–004.

c. *Date Filed:* April 24, 1989.

d. *Applicant:* F & T Services Corporation.

e. *Name of Project:* Jonesville Lock and Dam Hydro Project.

f. *Location:* On the Black River, in Catahoula and Concordia Parishes, Louisiana.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Ralph L Laukhuff, Jr., F & T Services Corporation, P.O. Box 64844, Baton Rouge, LA 70896, (504) 927–9321.

i. *FERC Contact:* Mary Nowak—(202) 376–9634.

j. *Comment Date:* June 28, 1989.

k. *Description of Project:* The license for this project was issued on March 31, 1986, for an installed total capacity of 6 megawatts. The licensee states that it has determined that the project would be economically infeasible. No construction has commenced at the project site.

l. This notice also consists of the following standard paragraphs: B, C, and D2.

3 a. *Type of Application:* Surrender of License.

b. *Project No.:* 6682–004.

c. *Date Filed:* April 24, 1989.

d *Applicant:* F & T Services Corporation.

e. *Name of Project:* Ouachita River Hydro Project.

f. *Location:* On Ouachita River, in Caldwell Parish, Louisiana.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Ralph L. Laukhuff, Jr., F & T Services Corporation, P.O. Box 64844, Baton Rouge, LA 70896, (504) 927–9321.

i. *FERC Contact:* Mary Nowak–(202) 376–9634.

j. *Comment Date:* June 28, 1989.

k. *Description of Project:* The license for this project was issued on March 31, 1986, for an installed total capacity of 6 magawatts. The licensee states that it has determined that the project would be economically infeasible. No construction has commenced at the project site.

l. This notice also consists of the following standard paragraphs: B, C, and D2.

4 a. *Type of Application:* Surrender of License.

b. *Project No.:* 6947–004.

c. *Date Filed:* March 4, 1988.

d. *Applicant:* F. & T. Services Corporation.

e. *Name of Project:* Lake Claiborne Dam.

f. *Location:* At the lake Claiborne Dam on Bayou D'Arbonne in Claiborne Parish, Louisiana.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Vincent A. Forte, 9107 Interline Ave., Baton Rouge, LA 70896, (504) 927–9321.

i. *FERC Contact:* Charles T. Raabe—(202) 376–9778.

j. *Comment Date:* June 28, 1989.

k. Description of Project: The project would have consisted of: (1) The existing Lake Claiborne Dam owned by the State of Louisiana, an approximately 5,500-foot-long, 52-foot-high earthfill structure; (2) an existing reservoir approximately 6,400 acres in surface area and having a storage capacity of approximately 99,500 acre-feet at the normal pool elevation of 185 (m.s.l.); (3) a proposed siphon intake structure; (4) a proposed penstock, 6 feet in diameter and approximately 250 feet long; (5) a proposed powerhouse containing a single 600-kW generating unit; (6) a proposed tailrace channel, approximately 20 feet wide and 150 feet long; (7) a proposed 200-foot-long 29-kV transmission line; and (8) appurtenant facilities.

Licensee has requested that its license be terminated due to the present economic viability of the project. The license was issued December 23, 1986 and would have expired on November 30, 2026. The licensee has not commenced construction of the project.

1. This notice also consists of the following standard paragraphs: B, C, and D2.

5 a. *Type of Application:* Surrender of License.

b. *Project No.:* 7232–004.

c. *Date Filed:* April 24, 1989.

d. *Applicant:* Aero Construction Incorporated.

e. *Name of Project:* Columbus Lock and Dam Hydro Project.

f. *Location:* On the Tombigbee River, near Columbus, Lowndes County, Mississippi.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a)–525(r).

h. *Applicant Contact:* Ralph L. Laukhuff, Jr., Aero Construction Incorporated, P.O. Box 64844, Baton Rouge, LA 70896, (504) 927–9321.

i. *FERC Contact:* Mary Nowak—(202) 376–9634

j. *Comment date:* June 28, 1989.

k. *Description of Project:* The license for this project was issued on March 28, 1986, for an installed total capacity of 3,600 kilowatts. The licensee states that it has determined that the project would be economically infeasible. No construction has commenced at the project site.

l. This notice also consists of the following standard paragraphs: B, C, and D2.

6 a. *Type of Application:* Surrender of License.

b. *Project No.:* 7233–004.

c. *Date Filed:* April 24, 1989.

d. *Applicant:* Aero Construction Inc.

e. *Name of Project:* Aberdeen Lock and Dam Hydro Project.

f. *Location:* In Monroe County, Mississippi, on the Tombigbee River.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Ralph L. Laukhuff, Jr., Aero Construction Incorporated, P.O. Box 64844, Baton Rouge, LA 70896, (504) 927–9321.

i. *FERC Contact:* Mary Nowak—(202) 376–9634.

j. *Comment Date:* June 28, 1989.

k. *Description of Project:* The license for this project was issued on April 22, 1986, for an installed total capacity of 3,600 kilowatts. The licensee states that it has determined that the project would be economically infeasible. No construction has commenced at the project site.

l. This notice also consists of the following standard paragraphs: B, C, and D2.

7 a. *Type of Application:* Surrender of license.

b. *Project No.:* 8391–005.

c. *Date filed:* April 21, 1989.

d. *Applicant:* PRODEK, Inc.

e. *Name of Project:* Silver Jack Dam.

f. *Location:* At the Bureau of Reclamation's Silver Jack Dam, on the Cimarron River, in Gunnison County, Colorado.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Richard O. Newman, PRODEK, Inc., 2431 E. 61st Street, Suite 318, Tulsa, OK 74136.

i. *FERC Contact:* Michael Spencer at (202) 376–1669.

j. *Comment Date:* June 29, 1989.

k. *Description of Proposed Action:* The Licensee seeks to surrender its license for the proposed run-of-the-river project that would have utilized the U.S. Bureau of Reclamation's Silver Jack Dam. The licensee states that it is not possible to complete the design and construction prior to the time when tax benefits for the project will expire.

The Licensee further states that no construction has been done.

l. This notice also consists of the following standard paragraphs: B, C, and D2.

8 a. *Type of Application:* Minor License.

b. *Project No.:* 9156–002.

c. *Date Filed:* September 1, 1988.

d. *Applicant:* Silver Star Hydro Ltd.

e. *Name of Project:* Sonora Peak Water Power Project.

f. *Location:* On Silver Creek in Mono County, California within Toiyabe National Forest.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Dr. Roy McDonald, 1121 L Street, Suite 1000, Sacramento, California 95814, (916) 447–1423.

i. *Commission Contact:* Nanzo T. Coley, (202) 376–9416.

j. *Comment Date:* June 29, 1989.

k. *Description of Project:* The applicant proposes to utilize National Forest lands under the jurisdiction of the Forest Service. The proposed project would consist of: (1) A proposed 36-inch-high, 100-foot-long diversion dam; (2) a proposed 160-foot-long, 24-inch-diameter conduit that conveys the diverted water to a proposed storage pond; (3) a proposed 400-foot-long, 20-foot-high earthen dike that would create a storage pond with a surface area of 1.3 acres and a storage capacity of 10-acre-feet at elevation 8,425 feet m.s.l.; (4) a proposed 11,140-foot-long, 24-inch-diameter penstock that would extend from the storage pond to the powerhouse; (5) a proposed powerhouse containing two generating units rated at 750 kW each; (6) a proposed 16.5-kV, 100-foot-long transmission line; and (7) appurtenant facilities. The applicant estimates that the average annual energy output would be 6,000,000 kWh.

l. *Purpose of Project:* Energy produced at the project would be sold to the Southern California Edison Company.

m. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

9 a. *Type of Application:* Major License (greater than 5 MW).

b. *Project No.:* 9423–001.

c. *Date filed:* January 31, 1989.

d. *Applicant:* Summit Energy Storage, Inc.

e. *Name of Project:* Summit Pumped Storage Hydroelectric Project.

f. *Location:* On South Run near Norton and Wadsworth, Summit and Medina Counties, Ohio.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Ms. Carol Cunningham, Project Manager, Cunningham Corporation, 21 Benedict Place, Greenwich, CT 06830, (203) 625–0503.

i. *FERC Contact:* Michael Dees, (202) 376–9414.

j. *Comment Date:* June 29, 1989.

k. *Description of Project:* The unconstructed Summit Pumped Storage Hydroelectric Project will consist of: (1) An upper storage reservoir with maximum normal water level at 1,106.5 feet above m.s.l., a gross volume of 8,264 acre-feet, and a water surface area of 195 acres (at maximum normal water level); (2) a compacted fill embankment a maximum of 75 feet high and about 11,000 feet long with a 6-foot-high chain link fence above the crest; (3) a reinforced concrete intake/outfall structure located on the southeastern side of the upper reservoir equipped with coarse racks and a bulkhead gate; (4) a diversion channel, located partly around the periphery of the upper reservoir, which will divert existing streams and keep the reservoir isolated from surface run-off; (5) a water treatment plant and pumping station, located adjacent to the upper reservoir, used for treatment of purchased water; (6) a lower reservoir, which will be an existing limestone mine with initial mine floor level at 2,252 feet below ground, floor area of approximately 225 acres, total mine volume of 7,760 acre-feet, a normal maximum water surface elevation at 1,125 feet below m.s.l., and gross storage capacity of 7,760 acre-feet; (7) an underground powerhouse 335 feet long, 53 feet wide, and 35 feet high (which will be excavated in rock adjacent to the southeast corner of the existing mine) and associated shafts and chambers, housing six 250-MW reversible generation/pumping units with a total installed capacity of 1,500 MW, and a generator floor level at 1,402 feet below m.s.l.; (8) a 28-foot-diameter, 7,000-foot-long reinforced concrete power tunnel, two 17.5-foot-diameter and 2,400-foot-long concrete lined penstock shafts, and six 6.5-foot-diameter, 200-foot-long steel lined penstocks, all used for transfer of water between the powerhouse and the upper reservoir; (9) surface structures, access road, lower reservoir vent stack, heavy hoist and personnel access hoist, head frames and housing, cable shaft head frames, surge shaft, switchyard and associated relay building, main control and administration building, maintenance and storage building, and visitor center; (10) recreation facilities including picnic areas, trails, for hiking, jogging and bicycling, and observation docks; (11) For 345-kV transmission lines each approximately 3 miles long;

and (12) appurtenant mechanical and electrical equipment and facilities.

The project energy storage capacity is 15,000 MWH.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, D1.

10 a. *Type of Application:* Amended Application for Minor License.

b. *Project No.:* 10502-000.

c. *Date Filed:* April 25, 1989.

d. *Applicant:* Garkane Power Association, Inc.

e. *Name of Project:* Lower Boulder Creek.

f. *Location:* On Boulder Creek within the Dixie National Forest in T33S, R4E, near Boulder in Garfield County, Utah.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 781(a)–825(r).

h. *Applicant Contact:* Mr. Glen P. Willardson, P.O. Box 790, Richfield, UT 84701, (801) 896–5403.

i. *FERC Contact:* Ms. Julie Bernt, (202) 376–1936.

j. *Comment Date:* June 29, 1989.

k. *Description of Project:* The modified project would consist of: (1) A 1,500-foot-long, 26-inch-diameter steel pipeline extending from the end of the existing tailrace of the existing upstream Boulder Creek Project (Project No. 2219); (2) a powerhouse at elevation 7,500 feet msl containing two generating units each with a rated capacity of 350 kW; and (3) an 8,650-foot-long transmission line. This amendment provides for taking water from the tailrace of the existing upstream Boulder Creek Project No. 2219 instead of taking water from an open canal downstream through which water flows as it cascades from the tailrace down the mountain before returning to Boulder Creek. As a consequence of this change, the steel pipeline is 1,481 feet shorter, the generating units are rated at 350 kW instead of 450 kW each, and the transmission line is 3,370 feet longer. The average annual energy production is estimated to be 4,429 MWh and the estimated cost of the project is $1,210,500.

l. *Purpose of Project:* The power produced will be consumed by the applicant or sold to local power companies.

m. This notice also consists of the following standard paragraphs: B, C and D1.

11 a. *Type of Filing:* Preliminary Permit.

b. *Project No.:* 10756-000.

c. *Date Filed:* March 21, 1989.

d. *Applicant:* Blue Diamond South Pumped Storage Power Company, Inc.

e. *Name of Project:* Blue Diamond South Water Power Project.

f. *Location:* In Clark County, Nevada.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* R. Steave Creamer, Creamer and Noble, Inc., 435 East Tabernacle, St. George, Utah 84770, (801) 673–4677.

i. *Commission Contact:* Nanzo T. Coley, (202) 376–9416.

j. *Comment Date:* June 28, 1989.

k. *Description of Project:* The proposed project would utilize, in part, lands under the jurisdiction of the Bureau of Land Management. The proposed pumped storage project would consist of: (1) A proposed storage pond that would function as a forebay with a surface area of 52 acres and a storage capacity of 1,010 acre-feet at elevation 4,750 feet m.s.l.; (2) a proposed 144-inch-diameter, 9,300-foot-long penstock that would extend from the forebay, through the powerhouse, to the afterbay at elevation 3,350 feet, which is the same size as the forebay; (3) a proposed powerhouse with a generating capacity of 100 MW and a pumping capacity of 145 MW; (4) a proposed 5.9-mile-long, 132-kV transmission line; and (5) appurtenant facilities. The estimated average annual energy output for the project for peaking power is 219,000 MWh and the pumping power needed is 317,550 MWh. The applicant estimates that the cost of the work to be performed under the preliminary permit would be $150,000.

l. *Purpose of Projects:* Power produced at the project would be sold to the Nevada Power Company.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

12 a. *Type of Application:* Declaratory Order.

b. *Project No.:* EL89-28-000.

c. *Date Filed:* April 18, 1989.

d. *Applicant:* Jerald V. Schwefel.

e. *Name of Project:* Sugar River Project (WI).

f. *Location:* Sugar River, Green County, Brownsville, Wisconsin.

g. *Filed Pursuant to:* Section 23(b) of the Federal Power Act, 16 U.S.C. 817(b).

h. *Applicant Contact:* Jerald V. Schwefel, Post Office Box 154, Brownsville, Wisconsin 53006, (414) 583–4363.

i. *FERC Contact:* Etta Foster, (202) 376–9064.

j. *Comment Date:* June 30, 1989.

k. *Description of Project:* The proposed Sugar River Project, a run-of-river project, would consist of: (1) A reservoir with a surface area of 47 acres; (2) two 33.6 6-foot-long penstocks, one 16-foot-wide, the second 8-foot-wide; (3) a foot-high, 160-foot-long dam, with 1-foot flashboards; (4) a headgate, controlling water in a 3-mile raceway to the powerhouse; (5) a 6,100-foot raceway from powerhouse to Sugar River; (6) a powerhouse containing an 188-kilovoltamperes (kVA) generator and a 140-kVA generator; (7) a transmission line interconnected with the Wisconsin Power and Light Company; and (8) appurtenant facilities.

When a Declaratory Order is filed with the Federal Energy Regulatory Commission the Federal Power Act requires the Commission to investigate and determine if the interests of interstate of foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. *Purpose of Projects:* Applicant intends to sell energy to the Brodhead Water and Light Commission.

m. This notice also consists of the following standard paragraphs: B, C, and D2.

13 a. *Type of Application:* Transfer of License.

b. *Project No.:* 2411-003.

c. *Date filed:* May 2, 1989.

d. *Applicant:* STS Hydropower, Ltd. (licensee) and STS Hydropower, Ltd. and Dan River, Inc. (transferees).

e. *Name of Project:* Schoolfield.

f. *Location:* On the Dan River in the City of Danville, Virginia.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Peter J. Bulandr, Vice President, STS Hydropower, Ltd., 111 Pfingsten Road, Northbrook, IL 60062, (312) 272–6520. Michael P. Regan, Associate General Counsel, Assistant Secretary, P.O. Box 261, Danville, VA 24543, (804) 799–7000.

i. *FERC Contact:* Michael Dees, (202) 376–9414.

j. *Comment Date:* June 30, 1989.

k. *Description of Transfer:* On May 2, 1989, Dan River, Inc., and STS Hydropower, Ltd. filed a joint application for transfer of the license for the Schoolfield Project No. 2411 from STS Hydropower, Ltd. to STS Hydropower, Ltd. and Dan River, Inc. The proposed transfer will not result in

any change in the project. The transferees state that they would comply with all the terms and conditions of the license. The purpose of the transfer is to better protect certain riparian rights of Dan River, Inc., and the City of Danville, Virginia.

1. This notice also consists of the following standard paragraphs: B and C.

Standard Paragraphs

A3. Development Application—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Dean Shumway, Director, Division of Project Review, Federal Energy Regulatory Commission, Room 203–RB, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. Agency Comments—States, agencies established pursuant to federal law that have the authority to prepare a comprehensive plan for improving, developing, and conserving a waterway affected by the project, federal and state agencies exercising administration over fish and wildlife, flood control, navigation, irrigation, recreation, cultural or other relevant resources of the state in which the project is located, and affected Indian tribes are requested to provide comments and recommendations for terms and conditions pursuant to the Federal Power Act as amended by the Electric Consumers Protection Act of 1986, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88–29, and other applicable statutes. Recommended terms and conditions must be based on supporting technical data filed with the Commission along with the recommendations, in order to comply with the requirement in section 313(b) of the Federal Power Act, 16 U.S.C. section 8251(b), that Commission findings as to facts must be supported by substantial evidence.

All other Federal, state, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the statutes listed above. No other formal requests will be made. Responses should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the applicant. If an agency does not respond to the Commission within the time set for filing, it will be presumed to have no comments. One copy of an agency's response must also be sent to the Applicant's representatives.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: May 25, 1989, Washington, DC

Lois D. Cashell,

Secretary.

[FR Doc. 89–13012 Filed 5–31–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP89-1424-000 et al.]

Stingray Pipeline Co. et al.; Natural Gas Certificate Filings

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

1. Stingray Pipeline Co.

[Docket No. CP89-1424-000]

May 24, 1989.

Take notice that on May 17, 1989, Stingray Pipeline Company (Stingray), Post Office Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-1424-000 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 Pennzoil Gas Marketing Company (Pennzoil), a shipper and marketer of natural gas, under the blanket certificate issued by the Commission's Order No. 509, pursuant to section 7 of the Natural Gas Act, corresponding to the rates, terms and conditions filed in Docket No. RP89-70-000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Stingray would perform the proposed interruptible transportation service for Pennzoil, pursuant to a transportation service agreement dated March 27, 1989. The transportation agreement is effective for a primary term of one month from the initial date of service and month-to-month thereafter until terminated by either party upon at least 30 days prior notice. Stingray proposes to transport 180,000 Dekatherms (Dth) of natural gas on a peak day; 150,000 Dth on an average day; and on an annual basis 54,750,000 Dth of natural gas for Pennzoil. Stingray proposes to receive the subject gas at various existing points of receipt on its offshore Louisiana system. Stingray will then transport and redeliver the gas less fuel used and unaccounted for line loss to Holly Beach and OXY-NGL Plant located in Cameron Parish, Louisiana and Stingray-HIOS Exchange (EHI-A330) located offshore Texas. 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. Stingray commenced such self-implementing service on April 1, 1989, as reported in Docket No. ST89-3325-000.

Comment date: July 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

2. Transcontinental Gas Pipe Line Corp.

[Docket No. CP89-1373-000]

May 24, 1989.

Take notice that on May 15, 1989, Transcontinental Gas Pipe Line Company (Transco), Post Office Box 1396, Houston, Texas 77251, filed in Docket No. CP89-1373-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to transport gas for Industrial Energy Services Company (Shipper) under Transco's blanket certificate issued in Docket No. CP88-328-000 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 for public inspection.

Transco states that the total volume of gas to be transported for Shipper on a peak day will be 30,000 dt equivalent of natural gas, on an average day will be 10,000 dt equivalent of natural gas, and on an annual basis will be 3,650,000 dt equivalent of natural gas, pursuant to a service agreement dated April 1, 1989. It is stated that Transco will receive the gas at points of receipt in offshore and onshore Louisiana, offshore Texas, and onshore Mississippi and will deliver the gas at an existing point of interconnection in Clinton County, Pennsylvania. It is stated that Transco will construct no new facilities to provide this transportation service, utilizing instead existing facilities. It is stated that there is no agency relationship under which a local distribution company or an affiliate of Shipper will receive gas on behalf of Shipper. Transco states that service for Shipper commenced April 12, 1989, pursuant to the 120-day automatic authorization provided for in § 284.223(a) of the Regulations, as reported in Docket No. ST89-3389.

Comment date: July 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

3. Texas Gas Transmission Corp.

[Docket No. CP89-1379-000]

May 24, 1989.

Take notice that on May 15, 1989, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89-1379-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for PPG-Industries, Inc.-Greensburg (PPG-Greenburg), under Texas Gas' blanket certificate issued in Docket No. CP88-686-000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Pursuant to a gas transportation agreement dated November 21, 1988, Texas Gas requests authorization to transport up to 3,000 MMBtu of natural gas per day for PPG-Greensburg under its IT Rate Schedule. Texas Gas states that the agreement provides for it to receive the gas at various existing points of receipt along its system and deliver the gas to existing points of delivery located in Warren County, Ohio. PPG-Greensburg estimates that the average day and annual transportation quantities would be 650 MMBtu and 237,250,000 MMBtu, respectively. Texas Gas advises that the service commenced April 1, 1989, as reported in Docket No. ST89-3015-000, under § 284.223(a) of the Commission's Regulations.

Comment date: July 10, 1989 in accordance with Standard Paragraph G at the end of the notice.

4. Texas Gas Transmission Corp.

[Docket No. CP89-1406-000]

May 24, 1989.

Take notice that on May 16, 1989, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89-1406-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for System Supply for End-Users, Inc. (System Supply), under Texas Gas' blanket certificate issued in Docket No. CP88-686-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Pursuant to a gas transportation agreement dated November 11, 1988, Texas Gas requests authorization to transport up to 30,000 MMBtu of natural gas per day for System Supply under its IT Rate Schedule. Texas Gas states that the agreement provides for it to receive the gas at various existing points of receipt along its system and deliver the gas to existing points of delivery located in Kentucky and Tennessee. System Supply estimates that the average day and annual transportation quantities would be 20,000 MMBtu and 7,300,000 MMBtu, respectively. Texas Gas advises that the service commenced April 15, 1989, as reported in Docket No. ST89-3337-000, under § 284.223(a) of the Commission's Regulations.

Comment date: July 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

5. EL Paso Natural Gas Co.

[Docket No. CP89–1384–000]

[Docket No. CP89–1386–000]

[Docket No. CP89–1388–000]

[Docket No. CP89–1390–000]

May 24, 1989.

Take notice that on May 15, 1989, EL Paso Natural Gas Company (EL Paso), P.O. Box 1492, EL Paso, TX, 79978, filed in Docket Nos. CP89–1384–000, CP89–1386–000, CP89–1388–000, and CP89–1390–000,[1] requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act, to provide interruptible transportation service under its blanket certificate issued in Docket No. CP88–433–000, for Independents Gas Services, Meridian Oil Trading Inc., Enron Gas Marketing, Inc. and Natural Gas Processing Company, respectively (shippers), all as more fully set forth in the requests on file with the Commission and open to public inspection.

In Docket No. CP89–1384–000, EL Paso proposes to transport up to a maximum daily quantity of 52,750 MMBtu on a peak day, on an average day approximately 5,275 MMBtu and 11,925,375 MMBtu on an annual basis.

In Docket No. CP89–1386–000, EL Paso proposes to transport up to a maximum daily quantity of 94,950 MMBtu on a peak day, on an average day approximately 52,750 MMBtu and 19,253,750 MMBtu on an annual basis.

In Docket No. CP89–1388–000, EL Paso proposes to transport up to a maximum daily quantity of 3,720 MMBtu on a peak day, 1,369 MMBtu on an average day and approximately 499,610 MMBtu on an annual basis.

In Docket No. CP89–1390–000, EL Paso proposes to transport up to a maximum daily quantity of 211,000 MMBtu, 79,125 MMBtu on an average day, and approximately 288,880,625 MMBtu on an annual basis.

EL Paso explains that service commenced pursuant to § 284.223(a) of the Commission Regulations April 1, 1989, and is reported in Docket No. ST89–3274–000 for Docket No. CP89–1384–000; April 2, 1989, as reported in Docket ST89–3269–000 for Docket No. CP89–1386–000; April 2, 1989, as reported in Docket No. ST89–3268–000 for Docket No. CP89–1388–000; and April 1, 1989, as reported in Docket No. ST89–3267–000 for Docket No. CP89–1390–000.

[1] These dockets are not consolidated.

Comment date: July 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

6. United Gas Pipe Line Co.

[Docket No. CP89–1419–000]

May 24, 1989.

Take notice that on May 17, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP89–1419–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to provide an interruptible transportation service on behalf of Catamount Natural Gas, Inc. (Catamount), a marketer, under its blanket certificate issued in Docket No. CP88–6–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United states that it proposes to transport natural gas on behalf of Catamount from points of receipt located in offshore Louisiana and Louisiana to points of delivery located in Louisiana and Mississippi.

United further states that the maximum daily, average daily and annual quantities that it would transport on behalf of Catamount would be 51,500 MMBtu equivalent, 51,500 MMBtu equivalent and 18,797,500 MMBtu equivalent of natural gas, respectively.

United indicates that in Docket No. ST89–3404, filed with the Commission on May 5, 1989, it reported that transportation service for Catamount had begun under the 120-day automatic authorization provisions of § 284.223(a).

Comment date: July 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

7. United Gas Pipe Line Co.

[Docket No. CP89–1425–000

May 24, 1989.

Take notice that on May 17, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478; filed in Docket No. CP89–1425–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to provide an interruptible transportation service on behalf of Arkla Energy Marketing Company (Arkla), a marketer, under its blanket certificate issued in Docket No. CP88–6–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United states that it proposes to transport natural gas on behalf of Arkla from points of receipt located in offshore Louisiana, Louisiana, Texas and Mississippi to points of delivery located in Mississippi, Louisiana, Texas and Alabama.

United further states that the maximum daily, average daily and annual quantities that it would transport on behalf of Arkla would be 206,000 MMBtu equivalent, 206,000 MMBtu equivalent and 75,190,000 MMBtu equivalent of natural gas, respectively.

United indicates that in Docket No. ST89–3405, filed with the Commission on May 5, 1989, it reported that transportation service for Arkla had begun under the 120-day automatic authorization provisions of § 284.223(a).

Comment date: July 10, 1989 in accordance with Standard Paragraph G at the end of the notice.

8. Stingray Pipeline Co.

[Docket No. CP89–1426–000]

May 24, 1989.

Take notice that on May 17, 1989, Stingray Pipeline Company (Stingray), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP89–1426–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Century Offshore Management Corporation (Century or Shipper), a shipper and producer of natural gas, under the blanket certificate issued by the Commission's Order No. 509, pursuant to section 7 of the Natural Gas Act, corresponding to the rates, terms and conditions filed in Docket No. RP89–70–000, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Stingray states that pursuant to a transportation agreement dated March 27, 1989, under its Rate Schedule ITS, it proposes to transport up to 75,000 dekatherms (dt) per day equivalent of natural gas for Century. Stingray states that it would transport the gas from various receipt points on its system as shown in Exhibit "A" of the transportation agreement and would deliver the gas, less fuel used and unaccounted for line loss, to Holly Beach and OXY–NGL plant, both located in Cameron Parish, Louisiana, and Stingray-HIOS Exchange (EHI–A330) located offshore Texas.

Stingray advises that service under § 284.223(a) commenced April 1, 1989, as reported in Docket No. ST89–3209. Stingray further advises that it would transport 75,000 on an average day and 27,375,000 dt annually.

Comment date: July 10,1989, in accordance with Standard Paragraph G at the end of this notice.

9. Stingray Pipeline Co.

[Docket No. CP89–1427–000]

May 24, 1989.

Take notice that on May 17, 1989, Stingray Pipeline Company (Stingray), P.O. Box 1642, Houston, Texas 77251, filed in Docket No. CP89–1427–000 a request pursuant to §§ 157.205 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued by the Commission's Order No. 509, pursuant to section 7 of the Natural Gas Act, corresponding to the rates, terms, and conditions filed in Docket No. RP89–70–000, all as more fully set forth in the request on file with the Commission and open to public inspection.

Stingray proposes to transport natural gas on an interruptible basis for Associated Natural Gas, Inc. (Associated). Stingray explains that service commenced April 1, 1989, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89–3206. Stingray explains that the peak day quantity would be 100,000 Dt, the average daily quantity would be 100,000 Dt, and that the annual quantity would be 36,500,000 Dt. Stingray explains that it would receive natural gas for Associated's account at various receipt points on its offshore Louisiana system. Stingray states that it would redeliver the gas to Holly Beach and OXY-NGL Plant located in Cameron Parish, Louisiana and Stingray-HIOS Exchange located offshore Texas.

Comment date: July 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

10. Stingray Pipeline Co.

[Docket No. CP89–1428–000]

May 24, 1989.

Take notice that on May 17, 1989, Stingray Pipeline Company (Stingray), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP89–1428–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an iterruptible transport service for Loutex Energy, Inc. (Loutex), a marketer, under the blanket certificate issued by the Commission's Order No. 509, pursuant to section 7 of the Natural Gas Act, corresponding to the rates, terms, and conditions filed in Docket No. RP89–70–000, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Stingray states that pursuant to a transportation agreement dated March 27, 1989, under its Rate Scheudle ITS, it proposes to transport up to 50,000 dekatherms (dt) per day equivalent of natural gas for Loutex. Stingray states that it would transport the gas from various receipt points on its system as shown in Exhibit "A" of the transportation agreement and would deliver the gas, less fuel used and unaccounted for line loss, to Holly Beach and OXY–NGL plant, both located in Cameron Parish, Louisiana, and Stingray–HIOS Exchange (EHI–A330) located offshore Texas.

Stingray advises that service under § 284.223(a) commenced April 1, 1989, as reported in Docket No. ST89–3324. Stingray further advises that it would transport 20,000 dt on an average day and 7,300,000 dt annually.

Comment date: July 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

11. Stingray Pipeline Co.

[Docket No. CP89–1429–000]

May 24, 1989.

Take notice that on May 17, 1989, Stingray Pipeline Company (Stingray), P.O. Box 1642, Houston, Texas 77251, filed in Docket No. CP89–1429–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued by the Commission's Order No. 509, pursuant to section 7 of the Natural Gas Act, corresponding to the rates, terms, and conditions filed in Docket No. RP89–70–000, all as more fully set forth in the request on file with the Commission and open to public inspection.

Stingray proposes to transport natural gs on an interruptible bsis for Apache Corporation (Apache). Stingray explains that service commenced April 1, 1989, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89–3200. Stingray explains that the peak day quantity would be 75,000 Dt, the average daily quantity would be 75,000 Dt, and that the annual quantity would be 27,375,000 Dt. Stingray explains that it would receive natural gas for Apache's account at various receipt points on its Offshore Louisiana system. Stingray states that it would redeliver the gas to Holly Beach and OXY-NGL Plant located in Cameron Parish, Louisiana and Stingray-HIOS Exchange located offshore Texas.

Comment date: July 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

12. ANR Pipeline Co.

[Docket No. CP89–1443–000]

May 24, 1989.

Take notice that on May 18, 1989, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP89–1443–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Loutex Energy, Inc. (Loutex), a marketer, under the blanket certificate issued in Docket No: CP88–532–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

ANR states that pursuant to a transportation agreement dated February 6, 1989, under its Rate Schedule ITS, it proposes to transport up to 120,000 dekatherms (dt) per day equivalent of natural gas for Loutex. ANR states that it would transport the gas from receipt points in Michigan and Wisconsin, as shown in Exhibit "A" of the transportation agreement, and would deliver the gas to multiple delivery points in Louisiana, as shown in Exhibit "B" of the agreement.

ANR advises that service under § 284.223(a) commenced April 4, 1989, as reported in Docket No. ST89–3369–000. ANR further advises that it would transport 120,000 dt on an average day and 43,800,000 dt annually.

Comment date: July 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

13. Gas Gathering Corp.

[Docket No. CP89–1445–000]

May 24, 1989.

Take notice that on May 19, 1989, Gas Gathering Corporation (GGC), P.O. Box 519, Hammond, Louisiana 70404, filed in Docket No. CP89–1445–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Sonat Marketing Company (Sonat), a marketer, under the blanket certificate issued in Docket No. CP86–129–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

GGC states that pursuant to a transportation agreement dated May 1, 1989, under its Rate Schedule IT–1, it proposes to transport up to 10,000 MMBtu per day equivalent of natural gas for Sonat. GGC states that it would

transport the gas from a receipt point in St. Martin Parish, Louisiana, as shown in Exhibit "A" of the transportation agreement, and would deliver the gas to a delivery point in Pointe Coupee Parish, Louisiana, which is also shown in Exhibit "A" of the agreement.

GGC advises that service under § 284.223(a) commenced May 3, 1989, as reported in Docket No. ST89–3497–000. GGC further advises that it would transport 3,000 MMBtu on an average day and 1,950,000 MMBtu annually.

Comment date: July 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

14. Stingray Pipeline Co.

[Docket No. CP89–1363–000]

May 25, 1989.

Take notice that on May 12, 1989, Stingray Pipeline Company (Stingray), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP89–1363–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Arco Natural Gas Marketing, Inc. (Arco), a marketer of natural gas, under the blanket certificate issued by the Commission's Order No. 509, pursuant to section 7 of the Natural Gas Act, corresponding to the rates, terms and conditions filed in Docket No. RP89–70–000, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Stingray requests authorization to transport, on an interruptible basis, up to a maximum of 150,000 dekatherms of natural gas per day for Arco from various receipt points on Stingray's system as shown on Exhibit "A" of the March 28, 1989, transportation agreement to Holly Beach and OXY–NGL plant, both located in Cameron Parish, Louisiana and Stingray–HIOS Exchange (EHI–A330) located offshore Texas. Stingray anticipates transporting, on an average day 100,000 dekatherms and an annual volume of 36,500,000 dekatherms. Stingray advises that service under § 284.223(a) commenced April 1, 1989, as reported in Docket No. ST89–3147.

Comment date: July 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

15. Stingray Pipeline Co.

[Docket No. CP89–1367–000]

May 25, 1989.

Take notice that on May 12, 1989, Stingray Pipeline Company (Stingray), P.O. Box 1642, Houston, Texas, filed in Docket No. CP89–1367–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for PSI, Inc. (PSI), a marketer, under the blanket certificate issued by the Commission's action Order No. 509, pursuant to section 7 of the Natural Gas Act, corresponding to the rates, terms and conditions filed in Docket No. RP89–70–000, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Stingray states that pursuant to a Transportation Agreement dated March 27, 1989 between Stingray and PSI (Transportation Agreement) it proposes to transport up to 200,000 dt per day on an interruptible basis on behalf of PSI. The Transportation Agreement provides for Stingray to receive gas from various existing points of receipt on its system. Stingray states that it will then transport and redeliver subject gas, less fuel used and unaccounted for line loss, to Holly Beach and OXY–NGL Plant located in Cameron Parish, Louisiana and Stingray-HIOS Exchange (EHI–A330) located offshore Texas.

Stingray advises that service under § 284.223(a) commenced April 7, 1989, as reported in Docket No. ST90–3149. Stingray further states that it would transport on an average day 100,000 dt and 36,500,000 dt annually.

Comment date: July 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

16. El Paso Natural Gas Co.

[Docket No. CP89–1385–000]

May 25, 1989.

Take notice that on May 15, 1989, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas 79978, filed in Docket No. CP89–1385–000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of Trigen Resources Corporation (Trigen), under El Paso's blanket certificate issued in Docket No. CP88–433–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

El Paso requests authorization to transport, on an interruptible basis, up to a maximum of 5,275 MMBtu of natural gas per day for Trigen from any receipt point located in Arizona. El Paso anticipates transporting, on an average day 1,266 MMBtu and an annual volume of 462,000 MMBtu.

El Paso states that the transportation of natural gas for Trigen commenced April 1, 1989, as reported in Docket ST89–3270–000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to El Paso in Docket No. CP88–433–000.

Comment date: July 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

17.Panhandle Eastern Pipe Line Co.

[Docket No. CP89–1392–000]

May 25, 1989.

Take notice that on May 15, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77152–1642, filed in Docket No. CP89–1392–000 an application 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 the Town of Paris (Paris), a local distribution company 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 proposes to transport, on a firm basis, up to 1,047 Dt. equivalent of natural gas per day for Paris. Panhandle states that construction of facilities would not be required to proivde the proposed service.

Panhandle further states that the maximum day, average day, and annual transportation volumes would be approximately 1,047 Dt. equivalent, 1,047 Dt. equivalent and 382,155 Dt. equivalent respectively.

Panhandle advises that service under §284.223(a) commenced April 1, 1989, as reported in Docket No. ST89–3197.

Comment date: July 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

18. Panhandle Eastern Pipe Line Co.

[Docket No. CP89–1394–000]

May 25, 1989.

Take notice that on May 15, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77152–1642, filed in Docket No. CP89–1394–000 an application 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 the city of Shelbina (Shelbina), a local distribution company 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 proposes to transport, on a firm basis, up to 811 Dt. equivalent of natural gas per day for Shelbina. Panhandle states that construction of facilities would not be required to provide the proposed service.

Panhandle further states that the maximum day, average day, and annual transportation volumes would be approximately 811 Dt. equivalent, 811 Dt. equivalent and 296,015 Dt. equivalent respectively.

Panhandle advises that service under § 284.223(a) commenced April 1, 1989, as reported in Docket No. ST89–3162.

Comment date: July 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

19. Trunkline Gas Co.

[Docket No. CP89–1414–000]

May 25, 1989.

Take notice that on May 17, 1989, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas, 77251–1642, filed in Docket No. CP89–1414–000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of Bethlehem Steel Corporation (Bethlehem), an end user, under Trunkline's blanket certificate issued in Docket No. CP86–586–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Trunkline requests authorization to transport, on a firm basis, up to a maximum of 15,385 dekatherms of natural gas per day for Bethlehem from a receipt point located in Jim Wells, County, Texas, to a delivery point located in Douglas County, Illinois. Trunkline anticipates transporting an annual volume of 5,615,525 dekatherms.

Trunkline states that the transportation of natural gas for Bethlehem commenced April 1, 1989, as reported in Docket No. ST89–3156–000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to Trunkline in Docket No. CP86–586–000.

Comment date: July 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

20. Panhandle Eastern Pipe Line Co.

[Docket No. CP89–1447–000]

May 25, 1989.

Take notice that on May 19, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77152–1642, filed in Docket No. CP89–1447–000 an application 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 the city of Roodhouse (Roodhouse), a local distribution company 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 proposes to transport, on a firm basis, up to 1361 Dt. equivalent of natural gas per day for Roodhouse. Panhandle states that construction of facilities would not be required to provide the proposed service.

Panhandle further states that the maximum day, average day, and annual transportation volumes would be approximately 1361 Dt. equivalent, 1361 Dt. equivalent and 496,765 Dt. equivalent respectively

Panhandle advises that service under § 284.223(a) commenced April 1, 1989, as reported in Docket No. ST89–3169.

Comment date: July 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

21. Natural Gas Pipeline Co. of America

[Docket No. CP89–1430–000]

May 25, 1989.

Take notice that on May 17, 1989, Natural Gas Pipeline Company of America (Natural) 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP89–1430–000 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 Santa Fe International Corporation (Sante Fe), under its blanket authorization issued in Docket No. CP86–582–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Natural would perform the proposed interruptible transportation service for Sante Fe, a producer of natural gas, pursuant to an interruptible transportation service agreement dated September 30, 1988 (#IGP–1467). The term of the transportation agreement is from the date of the contract and shall continue for a primary term ending November 30, 1988, and shall continue month to month thereafter unless cancelled by five days prior notice by either party. Natural proposes to transport on a peak day up to 125,000 MMBtu per day; on an average day up to 75,000 MMBtu; and on an annual basis 27,375,000 MMBtu of natural gas for Santa Fe. Natural further states that consistent with its Rate Schedule ITS, Sante Fe may request and Natural may agree to accept additional quantities as overrun gas. Natural proposes to receive the subject gas at points located in Louisiana, offshore Louisiana, and offshore Texas for delivery to points located in Louisiana and offshore Texas. Natural 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. Natural commenced such self-implementing service on March 29, 1989, as reported in Docket No. ST89–3556–000.

Comment date: July 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

22. ANR Pipeline Co.

[Docket No. CP89–1435–000]

May 25, 1989.

Take notice that on May 18, 1989, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243 filed in Docket No. CP89–1435–000 a request pursuant to § 157 205 of the Commission's Regulations (18 CFR 157.205) for authorization to transport natural gas on behalf of Marathon Oil Company, (Marathon), a marketer of natural gas, under ANR's blanket certificate issued in Docket No. CP88–532–000 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.

ANR proposes to transport on an interruptible basis up to 12,000 dt equivalent on a peak day for Marathon, 12,000 dt equivalent on an average day and 4,380,000 dt equivalent on an annual basis. It is stated that ANR would receive the gas at designated points on ANR's system in Michigan and would deliver equivalent volumes at designated points on ANR's system in Michigan. It is asserted that the transportation would be effected using existing facilities and that no construction of additional facilities would be required. It is explained that

the transportation service commenced April 1, 1989, under the self-implementing authorization of § 284.223 of the Commission's Regulation, as reported in Docket No. ST89–3363.

Comment date: July 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

23. ANR Pipeline Co.

[Docket No. CP89–1436–000]

May 25, 1989.

Take notice that on May 18, 1989, ANR Pipeline Company, (ANR), 500 Renaissance Center, Detroit, Michigan 48243, Filed in Docket No. CP89–1436–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to perform an interruptible transportation service for Williams Gas Marketing Co. (Williams) a marketer, under ANR's blanket certificate issued in Docket No. CP88–532–000, pursuant to section 7(c) 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.

ANR states that pursuant to an interruptible agreement dated September 22, 1988, it proposes to receive up to 1,000 dt equivalent of natural gas per day from specified points located onshore and offshore Texas and Louisiana, as well as in the states of Illinois, Indiana, Wisconsin, Kentucky, Oklahoma, Michigan and Kansas and redeliver the gas at a specified point located in Harrison County, Missouri. ANR estimates that the peak day and average day volumes would be 1,000 dt equivalent of natural gas and that the annual volumes would be 365,000 dt equivalent of natural gas. It is stated that on April 1, 1989, ANR commenced a 120-day transportation service for Williams under § 284.223(a) as reported in Docket No. ST89–3361–000.

ANR also states that no facilities need be constructed to implement the service. It is indicated that ANR would provide the service for a primary term expiring September 30, 1989, but would continue the service on a month to month basis until terminated by either party upon thirty days prior written notice to the other party. ANR proposes to charge the rates and abide by the terms and conditions of its Rate Schedule ITS.

Comment date: July 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

24. Panhandle Eastern Pipe Line Co.

[Docket No. CP89–1449–000]

May 25, 1989.

Take notice that on May 19, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77152–1642, filed in Docket No. CP89–1449–000 an application 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 the village of Rossville (Rossville), a local distribution company 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 proposes to transport, on a firm basis, up to 990 Dt. equivalent of natural gas per day for Rossville. Panhandle states that construction of facilities would not be required to provide the proposed service.

Panhandle further states that the maximum day, average day, and annual transportation volumes would be approximately 990 Dt. equivalent, 990 Dt. equivalent and 361,350 Dt. equivalent respectively.

Panhandle advises that service under § 284.223(a) commenced April 1, 1989, as reported in Docket No. ST89–3181.

Comment date: July 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

25. Panhandle Eastern Pipe Line Co.

[Docket No. CP89–1484–000]

May 25, 1989.

Take notice that on May 22, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP89–1484–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for American Central Gas Marketing Company (American), a marketer, under the 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 that is on file with the Commission and open to public inspection.

Panhandle states that pursuant to a transportation agreement dated March 30, 1989, under its Rate Schedule PT, it proposes to transport up to 200,000 dekatherms (dt) per day equivalent of natural gas for American. Panhandle states that it would transport the gas from various receipt points on its system and deliver such gas, less fuel used and unaccounted for line loss, to Haven Pool in Reno County, Kansas.

Panhandle advises that service under § 284.223(a) commenced April 1, 1989, as reported in Docket No. ST89–3177. Panhandle further advises that it would transport 75,000 dt on an average day and 27,375,000 dt annually.

Comment date: July 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

26. ANR Pipeline Co.

[Docket No. CP89–1437–000]

May 25, 1989.

Take notice that on May 18, 1989, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP89–1437–000 a request pursuant to § 157.205 of the Commission's Regulations (18 CFR 157.205) for authorization to transport natural gas on behalf of Meridian Oil Trading, Inc. (Meridian), a marketer of natural gas, under ANR's blanket certificate issued in Docket No. CP88–532–000 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.

ANR proposes to transport on an interruptible basis up to 20,000 dt equivalent on a peak day for Meridian, 20,000 dt equivalent on an average day and 7,300,000 dt equivalent on an annual basis for Meridian. It is stated that ANR would receive the gas at designated points on ANR's system in Oklahoma, Kansas, Texas, Louisiana, offshore Louisiana and offshore Texas, and would deliver equivalent volumes at designated points on ANR's system in Illinois. It is asserted that the transportation would be effected using existing facilities and that no construction of additional facilities would be required. It is explained that the transportation service commenced April 1, 1989, under the self-implementing authorization of § 284.223 of the Commission's Regulation, as reported in Docket No. ST89–3365.

Comment date: July 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

ANR Pipeline Co.

[Docket No. CP89–1438–000]

May 25, 1989.

Take notice that on May 18, 1989, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP89–1438–000 a request pursuant to § 157.205 of the

Commission's Regulations for authorization to provide transportation service on behalf of NML Development Corp. (NML), under ANR's blanket certificate issued in Docket No. CP88–532–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

ANR requests authorization to transport, on an interruptible basis, up to a maximum of 50,000 dt of natural gas per day for NML from receipt points located in offshore Louisiana to deliver points located in Louisiana. ANR anticipates transporting, on an average day 50,000 dt and an annual volume of 18,250,000 dt.

ANR states that the transportation of natural gas for NML commenced April 1, 1989, as reported in Docket No. ST89–3373–000, for a 120-day period pursuant to § 284.233(a) of the Commission's Regulations and the blanket certificate issued to ANR in Docket No. CP88–532–000.

Comment date: July 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

28. ANR Pipeline Co.

[Docket No. CP89–1439–000]

May 25, 1989.

Take notice that on May 18, 1989, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP89–1439–000 a request pursuant §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued in Docket No. CP88–532–000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

ANR proposes to transport gas on an interruptible basis for Cornerstone Production Corp. (Cornerstone). ANR Explains that service commenced April 1, 1989 under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89–3372–000. ANR further explains that the peak day quantity would be 150,000 dekatherms, the average daily quantity would be 150,000 dekatherms, and that the annual quartity would be 54,750,000 dekatherms. ANR explains that it would receive natural gas at existing points of receipt in the Offshore Louisiana Gathering area. ANR states that it would deliver the gas to cornerstone at existing interconnections located in the State of Louisiana.

Comment date: July 10, 1989, in accordance with Standard Paragraph G at the end of this notice

29. ANR Pipeline Co.

[Docket No. CP89–1440–000

May 25, 1989.

Take notice that on May 18, 1989, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP89–1440–000 a request pursuant §§ 157.205 and 284.223 (2)(b) of the Commission's Regulations under the Natural Gas Act for authorization to provide an interruptible transportation service for Unifield Natural Gas Group, L.P. (Unifield), a marketer, under AMR's blanket certificate issued in Docket No. CP88–532–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and.open for public inspection.

ANR states that it would transport, on an interruptible basis, up to a maximum of 6,000 dt equivalent of natural gas per day for Unifield. ANR states that it would receive the gas at existing points of receipt located in the states of Illinois, Louisiana and Oklahoma and the offshore Louisiana gathering area and redeliver the gas at existing interconnections located in the state of Michigan. ANR indicates that the total volume of gas to be transported for Unifield on a peak day would be 6,000 dt; on an average day would be 6,000 dt; and on an annual basis would be 2,190,000 dt. ANR indicates it would perform the proposed transportation service for Unifield pursuant to a service agreement dated March 3, 1989, between ANR and Unifield.

ANR states that it commenced the transportation of natural gas for Unifield on April 1, 1989, at Docket No. ST89–3374–000 for a 120-day period pursuant to § 284.223(a)(1) of the Commission's Regulations. ANR indicates that it proposes no new facilities in order to provide this transportation service.

Comment date: July 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

30. ANR Pipeline Co.

[Docket No. CP89–1441–000]

May 25, 1989.

Take notice that on March 18, 1989, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP89–1441–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued in Docket No. CP88–532–000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

ANR proposes to transport gas on an interruptible basis for Coastal Gas Marketing Company (Coastal). ANR explains that service commenced April 1, 1989 under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89–3371–000. ANR further explains that the peak day quantity would be 150,000 dekatherms, the average daily quantity would be 150,000 dekatherms, and that the annual quantity would be 54,750,000 dekatherms. ANR explains that it would receive natural gas at existing points of receipt in the State of Louisiana, offshore Louisiana and offshore Texas. ANR states that it would deliver the gas to Coastal at existing interconnections located in the State of Louisiana.

Comment date: July 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

31. United Gas Pipe Line Co.

[Docket No. CP89–1454–000]

May 25, 1989.

Take notice that on May 19, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP89–1454–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Victoria Gas Corporation (Victoria), a marketer, under the blanket certificate issued in Docket No. CP88–6–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

United states that pursuant to a transportation agreement dated July 14, 1988, as amended, under its Rate Schedule ITS, it proposes to transport up to 103,000 MMBtu per day equivalent of natural gas for Victoria. United states that it would transport the gas from multiple receipt points as shown in Exhibit "A" of the transportation agreement and would deliver the gas to multiple delivery points shown in Exhibit "B" of the agreement.

United advises that service under § 284.223(a) commenced March 29, 1989, as reported in Docket No. ST89–3456 (filed May 10, 1989). United further advises that it would transport 103,000 MMBtu on an average day and 37,595,000 MMBtu annually.

Comment date: July 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

32. United Gas Pipe Line Co

[Docket No. CP89-1456-000]

May 25, 1989.

Take notice that on May 19, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-1456-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Texaco Gas Marketing (Texaco), a marketer, under the blanket certificate issued in Docket No. CP88-6-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

United states that pursuant to a transportation agreement dated July 14, 1988, as amended, under its Rate Schedule ITS, it proposes to transport up to 206,000 MMBtu per day equivalent of natural gas for Texaco. United states that it would transport the gas from multiple receipt points as shown in Exhibit "A" of the transportation agreement and would deliver the gas to multiple delivery points shown in Exhibit "B" of the agreement.

United advises that service under § 284.223(a), commenced March 30, 1989, as reported in Docket No. ST89-3458 (filed May 10, 1989). United further advises that it would transport 206,000 MMBtu on an average day and 75,190,000 MMBtu annually.

Comment date: July 19, 1989, in accordance with Standard Paragraph G at the end of this notice.

33. United Gas Pipe Line Co.

[Docket No. CP89-1457-000]

May 25, 1989.

Take notice that on May 19, 1989, United Gas Pipe Line Company, (United) P.O. Box 1478, Houston, Texas, 77251-1478 filed in Docket No. CP89-1457-000 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 Texas Eastern Gas Service Company (TEGSC), under its blanket authorization issued in Docket No. CP88-6-000 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.

United would perform the proposed interruptible transportation service for TEGSC, a marketer of natural gas, pursuant to a gas transportation service agreement dated February 28, 1989 (Contract No. T1-21-2114). The term of the transportation agreement is for a primary term of one month from the first delivery of gas and shall continue in effect for successive one month terms thereafter until terminated upon 30 days written notice. United proposes to transport on a peak day up to 10,300 MMBtu; on ar average day up to 10,300 MMBtu; and on an annual basis 3,759,500 MMBtu for TEGSC. It is stated that the receipt point is the existing interconnection between United and production facilities in West Cameron block 487, offshore Louisiana. It is further stated that the point of delivery is the existing interconnection between United and TEGSC's 20 inch line at subsea tap, West Cameron block 505, offshore Louisiana. The proposed rate to be charged is 22.75 cents per Mcf pursuant to Rate Schedule ITS. United indicates that it would be using existing facilities to provide the proposed transportation service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's Regulations. United commenced such self-implementing service on March 8, 1989, as reported in Docket No. ST89-3495-000.

Comment date: July 10, 1989 in accordance with Standard Paragraph G at the end of the notice.

Standard Paragraph

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. 89-13017 Filed 5-31-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER89-432-000]

Florida Power & Light Co.; Filing

May 25, 1989.

Take notice that on May 11, 1989, Florida Power & Light Company (FPL) tendered for filing Amendment Number Two To The Transmisson Service Agreement Between FPL and The Florida Municipal Power Agency (Rate Schedule FERC No. 84).

Under Amendment Number Two, FPL and Florida Municpal Power Agency (FMPA) have agreed to revise and amend the Agreement such that FPL may provide transmission service from an additional FMPA resource to such City's delivery point in accordance with the provisions of the Agreement.

FPL requests a waiver of the Commission's regulations be granted and Amendment Number Two be made effective on June 1, 1989.

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, 385.214). All such motions or protests should be filed on or before June 8, 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. 89-12985 Filed 5-31-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. MT89-7-000]

Nora Transmission Co.; Proposed Changes in FERC Gas Tariff Pursuant To Order No. 497

May 25, 1989.

Take notice that on May 17, 1989, Nora Transmission Company tendered the following tariff sheets for filing in the captioned docket pursuant to Order No. 497 and § 250.16 of the Commission's Regulations as part of its FERC Gas Tariff, Original Volume No. 2:

Substitute Original Sheet No. 4, Superseding Original Sheet No. 4
Substitute Original Sheet No. 5, Superseding Original Sheet No. 5
First Revised Sheet No. 11, Superseding Original Sheet No. 11

Any person desiring to be heard or to protest the subject filing should file a motion to intervene or a protest with the Federal Energy Regulation Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211. All such motions or protests should be filed by June 8, 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. 89-13018 Filed 5-31-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-177-000]

Northern Natural Gas Co. Division of Enron Corp.; Filing

May 25, 1989

Take Notice that on May 19, 1989, Northern Natural Gas Company, Division of Enron Corp. (Northern), tendered for filing the following tariff sheets to become a part of Northern Natural Gas Company's (Northern) FERC Gas Tariff, Third Revised Volume No. 1:

Sixth Revised Sheet No. 17
Third Revised Sheet No. 24b

Northern proposes to extend the availability period in which a customer may utilize the operational zone transfer to make such service available year round.

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 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 June 2, 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. 89-13019 Filed 5-31-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP85-206-044 and RP89-136-002]

Northern Natural Gas Co. Division of Enron Corp.; Proposed Changes in FERC Gas Tariff

May 25, 1989

Take notice that Northern Natural Gas Company, Division of Enron Corp., (Northern), on May 22, 1989, tendered for filing revised changes in its FERC Gas Tariff to correct pagination sequence errors.

The Company states that copies of the filing have been mailed to each of its customers purchasing gas and receiving transportation and gathering services under its FERC Gas Tariff and to interested State Commissions. Any person desiring to be heard or to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such protests should be filed on or before June 2, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-13020 Filed 5-31-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-262-000]

Panhandle Eastern Pipe Line Co.; Informal Settlement Conference

May 24, 1989.

Take notice that an informal settlement conference will be convened in the above proceeding on Tuesday, June 7, 1989, at 10:00 a.m. at the office of the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426.

Any party, as defined by 18 CFR 385.102(c), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact John J. Keating (202) 357-5762 or Paul Biancardi (202) 357-8517.

Lois D. Cashell,

Secretary.

[FR Doc. 89-12986 Filed 5-31-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-256-002]

West Texas Gas, Inc.; Filing

May 25, 1989

Take notice that on May 18, 1989, West Texas Gas, Inc. (WTG) filed Fifteenth Revised Sheet No. 3a to its FERC Gas Tariff, Original Volume No. 1, proposed to be effective April 1, 1989. This tariff sheet was filed by WTG to place in effect a proposed increased base tariff rate suspended by Commission order dated October 28, 1988, in Docket Nos. RP88-256-000 and 001.

Copies of the filing were served upon WTG's customers and interested state commissions.

Any persons desiring to be heard or to protest said filing should file a motion to intervene 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 (1988)). All such motions or protests should be filed on or before June 2, 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. 89-13021 Filed 5-31-89; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OW-FRL-3597-5]

Water Quality Criteria; Request for Comments

AGENCY: Environmental Protection Agency.

ACTION: Notice of request for comments on ambient aquatic life water quality criteria document for tributyltin.

SUMMARY: EPA announces a proposed ambient aquatic life water quality criteria document for tributyltin, now available for public comment. When published in final form, following review of public comments, water quality criteria may form the basis for enforceable State water quality standards. These criteria are published

pursuant to section 304(a)(1) of the Clean Water Act and section 9 of the Organotin Antifouling Paint Control Act of 1988.

DATES: Written comments should be submitted to the person listed directly below by July 31, 1989.

FOR FURTHER INFORMATION CONTACT: Dr. Suzanne K.M. Marcy, U.S. Environmental Protection Agency, Office of Water Regulations and Standards, Criteria and Standards Division (WH–585), 401 M Street SW., Washington, DC 20460, Telephone #: (202) 382–7144.

Availability of Document: This notice provides a summary (see Appendix A) and requests comments on the proposed ambient water quality criteria document for tributyltin which contains proposed criteria for the protection of aquatic life and its uses. Copies of the complete criteria document may be obtained upon request, and material used to develop the criteria document may be reviewed at the office listed above. This document is also available for public inspection and copying during normal business hours at: Public Information Reference Unit, U.S. Environmental Protection Agency, Room 2404 (rear), 401 M Street SW., Washington, DC 20460. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services. Copies of this document are also available for review in the EPA Regional Office libraries.

SUPPLEMENTARY INFORMATION:

Background

Section 304(a)(1) of the Clean Water Act [33 U.S.C. 1314(a)(1)] requires EPA to publish and periodically update ambient water quality criteria. These criteria are to reflect the latest scientific knowledge on the identifiable effects of pollutants on public health and welfare, aquatic life and recreation.

EPA has periodically issued ambient water quality criteria, beginning in 1973 with publication of the "Blue Book" (Water Quality Criteria 1972). In 1976, the "Red Book" (Quality Criteria for Water) was published. On November 28, 1980 (45 FR 79318), EPA announced the publication of 64 individual ambient water quality criteria documents for pollutants listed as toxic under section 307(a)(1) of the Clean Water Act. A criteria document for 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD) was published on February 15, 1984 (49 FR 5831), completing the coverage of the 65 toxic pollutants listed under Section 307(a)(1).

EPA issued nine individual water quality criteria documents on July 29, 1985 (50 FR 30784) which updated or revised criteria previously published in the "Red Book" or in the 1980 water quality criteria documents. A revised version of the "National Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and Their Uses" was announced at the same time. A bacteriological ambient water quality criteria document was published on March 7, 1986 (51 FR 8012). A water quality criteria document for dissolved oxygen was published on June 24, 1986 (51 FR 22978). All of the publications cited above were summarized in "Quality Criteria for Water, 1986" which was released by the Office of Water Regulations and Standards on December 3, 1986 (51 FR 43665). Final water quality criteria documents for chlorpyrifos, nickel, pentachlorophenol, parathion, and toxaphene were also issued by EPA on December 3, 1986 (51 FR 43665). On March 2, 1987, (52 FR 6213), EPA announced the publication of revised ambient water quality criteria for zinc which updated criteria previously published in the 1980 ambient water quality document. On January 5, 1988, (53 FR 177), EPA announced the publication of revised ambient water quality criteria for selenium which also updated criteria previously published in 1980. Final documents were issued for chloride on May 26, 1988 (53 FR 19028) and for aluminum on August 30, 1988 (53 FR 33177). No previous guidance had been issued for these substances.

Proposed Criteria Document

Today EPA is announcing the proposed tributyltin (TBT) water quality criteria document for the protection of aquatic organisms; the document is now available for public comment. Tributyltin is an organotin compound that is used as an active ingredient in antifouling coatings to reduce the growth of sessile aquatic organisms on surfaces submerged in water, such as ship hulls. On January 8, 1986, EPA issued a notice of Special Review, under the Federal Insecticide, Fungicide, and Rodenticide Act, on certain pesticide products containing tributyltin used as antifoulants (51 FR 778). On October 4, 1988, EPA issued a partial conclusion of the Special Review and notice of intent to cancel registrations and deny applications for all pesticide products containing TBT as an active ingredient for use as antifoulants unless the registrations/applications comply with the specific terms and conditions provided in the notice (53 FR 39022). Specific terms and conditions established under the Act include an interim release rate restriction and certification program; this program will expire when a final Special Review decision regarding the release of organotin into the aquatic environment is issued and takes effect. The Act also requires EPA to issue a final water quality criteria document concerning organotin compounds by March 30, 1989. The Agency chose to propose a document addressing TBT specifically because it is the most toxic form of organotin used in antifouling paints and is used in 99 percent of antifouling formulations now on the market. It is the only organotin with sufficient data available to calculate criterion values.

EPA previously issued a water quality advisory for tributyltin in September 1987. Subsequent to the last literature search cited in the criteria document, EPA continued to collect publications on the effects of tributyltin. These publications, and others identified by the public during the public comment period, will be considered during review of the document. Particular attention will be directed toward data indicating that some species of marine snails may be sensitive to concentrations of TBT which are lower than the concentration published in the advisory and the criterion continuous concentration (CCC) proposed in this criteria document. Information relevant to this sensitivity is particularly requested. EPA will review all information submitted to determine if the proposed criteria should remain as proposed or be modified.

Dated: May 19, 1989.

William A. Whittington,

Acting Assistance Administrator for Water.

Appendix A—Summary of Proposed Water Quality Criteria for Tributyltin

Freshwater Aquatic Life

The procedures described in the "Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and Their Uses" indicate that, except possibly where a locally important species is very sensitive, freshwater aquatic organisms and their uses should not be affected unacceptably if the four-day average concentration of tributyltin does not exceed 0.026 μg/L more than once every three years on the average and if the one-hour average concentration does not exceed 0.149 μg/L more than once every three years on the average.

Saltwater Aquatic Life

The procedures described in the "Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and Their Uses" indicate that, except possibly where a locally important species is very sensitive, saltwater aquatic organisms and their uses should not be affected unacceptably if the four-day average concentration of tributyltin does not exceed 0.010 μg/L more than once every

three years on the average and if the one-hour average concentration does not exceed 0.266 μg/L more than once every three years on the average.

Implementation

As discussed in the Water Quality Standards Regulation a water quality criterion for aquatic life has regulatory impact only after it has been adopted in State water quality standards. Such a standard specifies a criterion for a pollutant that is consistent with a particular designated use. With the concurrence of the U.S. EPA, States designate one or more uses for each body of water or segment thereof and adopt criteria that are consistent with the use(s). In each standard a State may adopt the national criterion, if one exists, or if adequately justified, a site-specific criterion. (If the site is an entire State, the site-specific criterion is also a State-specific criterion). Site-specific criteria may include not only site-specific criterion concentrations, but also site-specific, and possibly pollutant-specific, durations of averaging periods and frequencies of allowed excursions. The averaging periods of "one hour" and "four days" were selected by the U.S. EPA on the basis of data concerning how rapidly some aquatic species react to increases in the concentrations of some pollutants.

Three years is the Agency's best scientific judgment of the average amount of time aquatic ecosystems should be provided between excursions. However, various species and ecosystems react and recover at greatly differing rates. Therefore, if adequate justification is provided, site-specific and/or pollutant-specific concentrations, durations, and frequencies may be higher or lower than those given in national water quality criteria for aquatic life.

Use of criteria, which have been adopted in state water quality standards, for developing water quality-based permit limits and for designing waste treatment facilities requires selection of an appropriate wasteload allocation model. Although dynamic models are preferred for the application of these criteria limited data or other considerations might require the use of a steady-state model. Guidance on mixing zones and the design of monitoring programs is also available through the U.S. EPA.

[FR Doc. 89-12991 Filed 5-31-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Requirement Approval by Office of Management and Budget

May 24, 1989.

The following information collection requirements have been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). For further information contact Doris Benz, Federal Communications Commission, telephone (202) 632-7513.

OMB No.: 3060-0040
Title: Application for Aircraft Radio Station License and Temporary Aircraft Radio Station Operating Authority
Form No.: FCC 404/404-A. The approval on form FCC 404/404-A has been extended through 4/30/92. The March 1987 edition with a previous expiration date of 3/31/89 will remain in use until updated forms are available.

OMB No.: 3060-0136
Title: Temporary Permit To Operate a General Mobile Radio Service System
Form No.: FCC 574-T. The approval on form FCC 574-T has been extended through 4/30/92. The May 1986 edition with a previous expiration date of 3/31/89 will remain in use until updated forms are available.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89-12964 Filed 5-31-89; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Intent To Cancel Inactive Domestic Offshore Tariffs

The Federal Maritime Commission has on file numerous tariffs of firms which appear to be inactive or no longer operating as common carriers in the domestic offshore trades. For the purpose of this Notice, a carrier is deemed to be inactive or no longer operating if it has: (1) No active phone listing at the carrier's last known address or failed to respond to telephone inquiries regarding the status of its tariffs, and (2) failed to amend its tariffs during the past twelve months.

Inactive tariffs reflect inaccurate information and they not only fail to serve the purpose for which tariffs are intended, but also operate to mislead the shipping public. Accordingly, in the absence of a showing of good cause why such action should not be taken, the Commission proposes to cancel all domestic offshore tariffs of the carriers listed in the attached appendix.

Now, Therefore It Is Ordered, That the carriers included on the attached appendix advise the Director, Bureau of Domestic Regulation, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573, in writing, within 30 days after the publication of this Notice in the **Federal Register**, of any reason why the Commission should not cancel their respective domestic offshore tariffs;

It Is Further Ordered, That a copy of this Notice be sent by certified mail to the last known address of the carriers listed in the attachment;

It Is Further Ordered, That the tariffs of all carriers named in the attached appendix who fail, within the time allotted, to provide good cause for maintaining these tariffs in an active status be cancelled;

It Is Further Ordered, That this Notice be published in the **Federal Register**.

This Notice is issued pursuant to authority delegated to the Director, Bureau of Domestic Regulation by section 9.04 of Commission Order No. 1 (Revised) dated November 12, 1981.

Robert G. Drew,

Director, Bureau of Domestic Regulation.

Inactive Tariffs Listed by Acronym and Name Number

Acronym: **AALCO Forwarding, Inc.**
DBA Name: NA
Person Type: Household Goods Carrier
Street: 10983 Granada Lane
City: Overland Park
State: KS 66211
Country: United States of America
License No.: NA
Name No.: 007393

Acronym: **AGRO Steamship Line, Inc.**
DBA Name: NA
Person Type: Ocean Common Carrier (Vessel Operating)
Street: 555 N.E. 15th Street, Suite PH B
City: Miami
State: FL 33142
Country: United States of America
License No.: NA
Name No.: 006619

Acronym: **Alaskan & Hawaiian Transport, Inc.**
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: 7123 So. 188th Street
City: Kent
State: WA 98032
Country: United States of America
License No.: NA
Name No.: 006886

Acronym: **American Caribbean Transport, Inc.**
DBA Name: NA

Person Type: Non-Vessel-Operating Common Carrier
Street: P.O. Box 3399
City: Humble
State: TX 77347
Country: United States of America
License No.: NA
Name No.: 006991

Acronym: **Andrews Forwarders, Inc.**
DBA Name: NA
Person Type: Household Goods Carrier
Street: P.O. Box 1609
City: Norfolk
State: NE 70011
Country: United States of America
License No.: NA
Name No.: 008208

Acronym: **Aquatran, Inc.**
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: 1801 Kingwood Drive
City: Kingwood
State: TX 77339
Country: United States of America
License No.: NA
Name No.: 000266

Acronym: **Bekins International Lines, Inc.**
DBA Name: NA
Person Type: Household Goods Carrier
Street: 320 Pine Avenue, Suite 800
City: Long Beach
State: CA 90801
Country: United States of America
License No.: NA
Name No.: 000358

Acronym: **Burlington Northern Worldwide, Inc.**
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: 1420 E. Rochelle Blvd., Suite 200
City: Irving
State: TX 75039
Country: United States of America
License No.: NA
Name No.: 008213

Acronym: **Caribbean Best Services, Inc.**
DBA Name: CBS
Person Type: Non-Vessel-Operating Common Carrier
Street: G.P.O. Box 4811
City: San Juan
State: PR 00936
Country: United States of America
License No.: NA
Name No.: 000703

Acronym: **Caribbean Pacific Lines, Inc.**
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: 22673 S. Wilmington Avenue
City: Carson
State: CA 90745
Country: United States of America
License No.: NA
Name No.: 002853

Acronym: **Clipper Group Company.**
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: 5716 West Manchester Avenue
City: Los Angeles
State: CA 90045
Country: United States of America
License No.: NA
Name No.: 007439

Acronym: **Cooperativa Camioneros de Arrastre Del Muelle.**
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: Gildita Street—Building #5, La Ceramica Industrial Park
City: Carolina
State: PR 00628
Country: United States of America
License No.: NA
Name No.: 006827

Acronym: **Crescent City Marine Ways & Dry Dock Co., Inc.**
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: Suite 1480, 700 N.E. Multnomah St.
City: Portland
State: OR 97232
Country: United States of America
License No.: NA
Name No.: 000839

Acronym: **Damco International Transportation & Dist. Inc.**
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: 168–01 Rockaway Boulevard, Suite 203–204
City: Jamaica
State: NY 11430
Country: United States of America
License No.: NA
Name No.: 008458

Acronym: **Davidson Forwarding Company.**
DBA Name: NA
Person Type: Ocean Freight Forwarder (Independent) Household Goods Carrier
Street: 6600 Frankford Avenue
City: Baltimire
State: MD 21206
Country: United States of America
License No.: 1086
Name No.: 000919

Acronym: **Diamond Freight Consolidators, Inc.**
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: 8432 N.W. 66th Street
City: Miami
State: FL 33166
Country: United States of America
License No.: NA
Name No.: 006756

Acronym: **E & C Trucking Corporation of New Jersey.**
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: 98 Poiner Street
City: Newark
State: NJ 07114
Country: United States of America
License No.: NA
Name No.: 006836

Acronym: **Express Marine Transportation Company, Inc.**
DBA Name: NA
Person Type: Ocean Common Carrier (Vessel Operating)
Street: 699 N.W. 41st
City: Seattle
State: WA 98107
Country: United States of America
License No.: NA
Name No.: 006829

Acronym: **F.W. Myers & Co., Inc.**
DBA Name: Myers Maritime Division
Person Type: Ocean Common Carrier (Vessel Operating) Non-Vessel-Operating Common Carrier
Street: C/O The Myers Group 14909 183rd Street, Second Floor
City: Jamaica
State: NY 11434
Country: United States of America
License No.: NA
Name No.: 005984

Acronym: **Florida International Forwarders, Inc.**
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: 8725 N.W. 18th Terrace
City: Miami
State: FL 33172
Country: United States of America
License No.: NA
Name No.: 007299

Acronym: **Foreign Trade Export Packing Co.**
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier Ocean Freight Forwarder (Independent)
Street: 1350 Lathrop St
City: Houston
State: TX 77020
Country: United States of America
License No.: 1344
Name No.: 004620

Acronym: **Four Stars Forwarding**
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: P.O. Box 26046
City: San Diego
State: CA 92126
Country: United States of America
License No.: NA
Name No.: 008725

Acronym: **Four Winds Forwarding, Inc.**
DBA Name: NA
Person Type: Household Goods Carrier
Street: 4275 Campus Point Court
City: San Diego
State: CA 92138
Country: United States of America
License No.: NA
Name No.: 000428

Acronym: **G.F.C. Enterprises, Inc.**
DBA Name: G.F.C. Intermodal Container Line
Person Type: Non-Vessel-Operating Common Carrier
Street: 144–29 156th Street
City: Jamica
State: NY 11434
Country: United States of America
License No.: NA
Name No.: 008204

Acronym: **Gieno-Hutchinson Incorporated**
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: 13737 Artesia Blvd., Suite 204
City: Cerritos

State: CA 90701
Country: United States of America
License No.: NA
Name No.: 006832

Acronym: **Gunilla Express, Inc.**
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: 7318 N.W. 79th Terrace
City: Miami
State: Fl 33166
Country: United States of America
License No.: NA
Name No.: 005895

Acronym: **Hawaii American Shipping Company**
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: P.O. Box 218
City: Saugus
State: CA 91350
Country: United States of America
License No.: NA
Name No.: 002597

Acronym: **Hoyer (USA) Inc.**
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: 136 Central Ave.
City: Clark
State: NY 07066
Country: United States of America
License No.: NA
Name No.: 006889

Acronym: **IML Freight, Inc.**
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: P.O. Box 30277
City: Salt Lake
State: UT 84125
Country: United States of America
License No.: NA
Name No.: 008206

Acronym: **Interstate International Inc.**
DBA Name: NA
Person Type: Ocean Freight Forwarder (Independent) Household Goods Carrier, Non-Vessel-Operating Common Carrier
Street: 5801 Rolling Road
City: Springfield
State: VA 22152
Country: United States of America
License No.: 2924
Name No.: 006461

Acronym: **Island Express**
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: G.P.O. Box 3433
City: San Juan
State: PR 00936
Country: United States of America
License No.: NA
Name No.: 006840

Acronym: **Island Shipping Lines, Ltd.**
DBA Name: NA
Person Type: Ocean Common Carrier (Vessel Operating)
Street: 1026 Cabras Highway, Suite 110
City: Piti
State: GU 96925
Country: United States of America
License No.: NA
Name No.: 006084

Acronym: **J.J. Systems**
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: Quintas DE H–55
City: Dorado
State: PR 00646
Country: United States of America
License No.: NA
Name No.: 006841

Acronym: **Jilly Worldwide**
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: 814 6th Street
City: West Babylon
State: NY 11704
Country: United States of America
License No.: NA
Name No.: 007453

Acronym: **Jupiter Steamship Corp.**
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: P.O. Box 1080
City: San Juan
State: PR 00902
Country: United States of America
License No.: NA
Name No.: 006842

Acronym: **Kwik Serv Foods, Inc.**
DBA Name: C & H Foods Co.
Person Type: Non-Vessel-Operating Common Carrier
Street: 9821 California Avenue
City: South Gate
State: CA 90280
Country: United States of America
License No.: NA
Name No.: 006845

Acronym: **La Flor de Mayo Express, Inc.**
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier Ocean Freight Forwarder (Independent)
Street: 311 Bruckner Blvd
City: Bronx
State: NY 10454
Country: United States of America
License No.: 2662
Name No.: 001585

Acronym: **Lawton Overseas, Inc.**
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: 809 West Street
City: Union City
State: NJ 07087
Country: United States of America
License No.: NA
Name No.: 006846

Acronym: **Linea Marlago, S.A.**
DBA Name: Linea Marlago
Person Type: Ocean Common Carrier (Vessel Operating)
Street: Av. Francisco de Miranda, Chacaito, Edif, Easo, Piso 4, Ofic 4–E, Apartado 60794
City: Carracas 1060
Country: Venezuela
License No.: NA
Name No.: 005923

Acronym: **Lyon Worldwide Shipping, Inc.**
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: P.O. Box 4167
City: Bellevue
State: WA 98009
Country: United States of America
License No.: NA
Name No.: 006742

Acronym: **Mobel International, Inc.**
DBA Name: NA
Person Type: Household Goods Carrier
Street: 2165 5th Avenue South
City: St. Petersburg
State: FL 33733
Country: United States of America
License No.: NA
Name No.: 008203

Acronym: **N.T. Cargo Service**
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: 1390 E. Burnett Street, Suite, E.
City: Signal Hill
State: CA 90806
Country: United States of America
License No.: NA
Name No.: 007076

Acronym: **NYMARC Trading Corporation**
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: Fortaleza 353, No. 3–B
City: San Juan
State: PR 00901
Country: United States of America
License No.: NA
Name No.: 006848

Acronym: **P.R. Caribbean Consolidators, Inc.**
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: P.O. Box 13401
City: Santurce
State: PR 00908
Country: United States of America
License No.: NA
Name No.: 006851

Acronym: **P.R. Container Line Inc.**
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: 2500 83rd Street
City: North Bergen
State: NJ 07047
Country: United States of America
License No.: NA
Name No.: 006852

Acronym: **Pan American Express Inc.**
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: 2612 W. Division Street
City: Chicago
State: IL 60622
Country: United States of America
License No.: 000985

Acronym: **PB Marine Transport, Inc.**
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: LA Ceramica Industrial Park Calle Rosarito EF–1, P.O. Box 4837
City: Carolina
State: PR 00928

Country: United States of America
License No.: NA
Name No.: 007131

Acronym: **Polynesia Line, Ltd.**
DBA Name: NA
Person Type: Ocean Common Carrier (Vessel Operating)
Street: C/O Interocean Steamship Corporation, 465 California Street
City: San Francisco
State: CA 94104
Country: United States of America
License No.: NA
Name No.: 001026

Acronym: **Power Consultants International, Inc.**
DBA Name: P.C.I.
Person Type: Non-Vessel-Operating Common Carrier
Street: 222 Grand Avenue
City: Englewood
State: NJ 07631
Country: United States of America
License No.: NA
Name No.: 007115

Acronym: **Priority Transport, Inc.**
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: 152–32 B Rockaway Blvd.
City: Jamaica
State: NY 11430
Country: United States of America
License No.: NA
Name No.: 006888

Acronym: **Puerto Rico Express Freight Inc.**
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: P.O. Box 6622
City: Hackensack
State: NJ 08818
Country: United States of America
License No.: NA
Name No.: 006855

Acronym: **Puerto Rico Express, Inc.**
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: P.O. Box 4099, Garden Station
City: Bayanion
State: PR 00620
Country: United States of America
License No.: NA
Name No.: 002599

Acronym: **Puerto Rico Freight Systems, Inc.**
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: P.O. Box 9081
City: Santurce
State: PR 00905
Country: United States of America
License No.: NA
Name No.: 006313

Acronym: **Quality Transportation Company**
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: G.P.O. Box 202
City: San Juan
State: PR 00936
Country: United States of America
License No.: NA
Name No.: 006343

Acronym: **S.D.C. Ocean Line, Inc.**
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: 6040 N.W. 84th Avenue
City: Miami
State: FL 33166
Country: United States of America
License No.: NA
Name No.: 006859

Acronym: **Sam's Vans, Inc.**
DBA Name: NA
Person Type: Household Goods Carrier
Street: 1948 Marina Blvd.
City: San Leandro
State: CA 94577
Country: United States of America
License No.: NA
Name No.: 008216

Acronym: **San Juan Freight Forwarders, Inc.**
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: P.O. Box 3386
City: Carolina
State: PR 00630
Country: United States of America
License No.: NA
Name No.: 001068

Acronym: **San Lorenzo Express Corporation**
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: 2556 W. Fullerton Avenue
City: Chicago
State: IL 60647
Country: United States of America
License No.: NA
Name No.: 001069

Acronym: **Sea Trailers Express, Inc.**
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: 4715 N.W. 72nd Avenue
City: Miami
State: FL 33166
Country: United States of America
License No.: NA
Name No.: 007824

Acronym: **Seaway Express Corporation**
DBA Name: NA
Person Type: Ocean Common Carrier (Vessel Operating)
Street: 7814 Eighth Avenue South
City: Seattle
State: WA 98108
Country: United States of America
License No.: NA
Name No.: 001123

Acronym: **T.A.R.R. Transportation, Inc.**
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: P.O. Box 13914
City: Santurce Station
State: PR 00908
Country: United States of America
License No.: NA
Name No.: 007799

Acronym: **Tagship Sales International, Inc.**
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: P.O. Box 350627
City: Fort Lauderdale
State: FL 33335
Country: United States of America
License No.: NA
Name No.: 006371

Acronym: **Trans-Caribbean Moving & Shipping Inc.**
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: 4466 Park Avenue
City: Bronx
State: NY 10457
Country: United States of America
License No.: NA
Name No.: 002233

Acronym: **Transcaribe Freight Corp**
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: Metropolitan Ind. Park Max St. Bldg. 3, 65th Infantry, K.M.13.1
City: Carolina
State: PR 00630
Country: United States of America
License No.: NA
Name No.: 000573

Acronym: **Unico Shipping Company**
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: 2724 N.W. 72 Avenue
City: Miami
State: FL 33122
Country: United States of America
License No.: NA
Name No.: 007281

Acronym: **Unicold Corporation**
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: 3140 Ualena Street
City: Honolulu
State: HI 96819
Country: United States of America
License No.: NA
Name No.: 008162

Acronym: **V.I. Package Express**
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: G.P.O. BOX 3433
City: San Juan
State: PR 00936
Country: United States of America
License No.: NA
Name No.: 000002

Acronym: **Valley Freight Systems, Inc.**
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: 925 Market Street
City: Patterson
State: NJ 07513
Country: United States of America
License No.: NA
Name No.: 006701

Acronym: **Viking Freight System, Inc.**
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: 411 East Plumeria Drive, Suite 100
City: San Jose
State: CA 95134
Country: United States of America

License No.: NA
Name No.: 000018
Acronym: **Waterborne Marine Services**
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: P.O. Box 40175 Minillas Station
City: San Juan
State: PR 00940
Country: United States of America
License No.: NA
Name No.: 002598
Acronym: **Westpac Freight**
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: 1031 98th Avenue
City: Oakland
State: CA 94603
Country: United States of America
License No.: NA
Name No.: 000102

[FR Doc. 89-12931 Filed 5-31-89; 8:45 am]
BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Capital Reserves Group, Inc.; Application To Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 CFR 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo,* either directly or through a subsidiary, in a nonbanking activity that is listed in §225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated on the offices of the Board of Governors not later than June 23, 1989.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Capital Reserves Group, Inc.,* College Station, Texas; to engage *de novo* through its subsidiary, Reed, Seymour & Associates, Inc., College Station, Texas, in providing management services to depository institutions pursuant to § 225.25(b)(11) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 25, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-12969 Filed 5-31-89; 8:45 am]
BILLING CODE 6210-01-M

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Co.

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).

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 no later than June 14, 1989.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *March L. Dubin,* and Charlotte Dubin, Baltimore, Maryland; to acquire 26.2 percent of the voting shares of ENB Financial Corporation, Elkridge, Maryland, and thereby indirectly acquire Elkridge National Bank, Elkridge, Maryland.

B. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *The Paul E. Broadhead Revocable Trust,* Meridian, Mississippi; to acquire 99.59 percent of the voting shares of Southeast Mississippi Corporation, Quitman, Mississippi, and thereby indirectly acquire Southeast Mississippi Bank, Quitman, Mississippi.

2. *Edward Franklin Giunta,* Tampa, Florida; to acquire an additional 61.97 percent of the voting shares of Commerce Bank of Tampa, Tampa, Florida, for a total of 62.91 percent.

C. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *James Hall,* Yorkville, Illinois; to acquire an additional 4.17 percent of the voting shares of B.O.Y. Bankcorp. Inc., Yorkville, Illinois, for a total of 24.13 percent, and thereby indirectly acquire The Bank of Yorkville,Yorkville, Illinois.

D. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Peter J. Fiene,* Gladstone, Missouri, and Patrick R. Fiene, Overland Park, Kansas; to each acquire an additional 13.7 percent of the voting shares of Gardner Bancorp, Inc., Gardner, Kansas, for a respective total of 25.9 percent, and thereby indirecly acquire First Kansas Bank & Trust Company, Gardner, Kansas.

E. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Joseph A. Burke,* Orange, Texas, to acquire 11.98 percent; Peter F. Cloeren, Jr., Orange, Texas, to acquire 7.98 percent; Anton Dal Sasso, Orange, Texas, to acquire 7.98 percent; Michael M. Lucia, Jr., Orange, Texas, to acquire 7.98 percent; Mary Lou Mott, Beaumont, Texas, to acquire 15.97 percent; Lew C. Sheffler, Orange, Texas, to acquire 7.98 percent; William P. Sterling, Jr., Orange, Texas, to acquire 7.98 percent; Carlos Ray Vacek, Orange, Texas, to acquire 11.98 percent; and Earl C. Wright, Jr., Orange, Texas, to acquire 11.98 percent of the voting shares of Unicorp Bancshares-Texas, Inc., Orange, Texas, and thereby indirectly acquire Orange-Bank, Orange, Texas.

2. *First National Bank of Artesia Employee Stock Option Plan,* Artesia, New Mexico; to acquire 20.49 percent of the voting shares of First Artesia Bankcshares, Inc., Artesia, New Mexico, and thereby indirectly acquire The First National Bank of Artesia, Artesia, New Mexico.

3. *Frank D. Yturria,* Brownsville, Texas; to acquire an additional 24.84 percent of the voting shares of TB&T Bancshares, Inc., Brownsville, Texas, for

a total of 32 percent, and thereby indirectly acquire Texas Bank and Trust of Brownsville, Brownsville, Texas.

F. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Ernest L. Go*, Hillsborough, California; to acquire 24.9 percent of the voting shares of Orient Bancorporation, San Francisco, California, and thereby indirectly acquire Bank of the Orient, San Francisco, California.

Board of Governors of the Federal Reserve Sysem, May 24, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-12970 Filed 5-31-89; 8:45 am]

BILLING CODE 6210-01-M

First Commercial Holding Corp. et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Co.

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 June 21, 1989.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *First Commercial Holding Corporation*, Asheville, North Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of First Commercial Bank, Asheville, North Carolina.

2. *Unity Bancorp, Inc.*, Rocky Mount, North Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of Unity Bank & Trust Company, Rocky Mount, North Carolina, a *de novo* bank.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *State Savings Bancorp, Inc.*, Caro, Michigan; to become a bank holding company by acquiring 100 percent of the voting shares of State Savings Bank of Caro, Caro, Michigan.

C. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Mission Bancshares, Inc.*, Mission, Kansas; to acquire 7.19 percent of the voting shares of CNB Financial Corporation, Kansas City, Kansas, and thereby indirectly acquire City National Bank, Atchinson, Kansas; Commercial National Bank of Kansas City, Kansas City, Kansas; and The First National Bank of Overland Park, Overland Park, Kansas. The banks currently engage in the sale of credit-related life, accident, and health insurance.

2. *Mission Bancshares, Inc.*, Mission, Kansas; to merge with One Security, Inc., Kansas City, Kansas, and thereby indirectly acquire Security Bank of Kansas City, Kansas City, Kansas; and Industrial Bancshares, Inc., Kansas City, Kansas, and thereby indirectly acquire Industrial State Bank, Kansas City, Kansas. The banks currently engage in the sale of credit-related life, accident, and health insurance.

3. *Valley View Bancshares, Inc.*, Overland Park, Kansas; to increase its nonvoting equity investment from 27.3 percent to 38.0 percent of Mission Bancshares, Inc., Mission, Kansas, and thereby indirectly acquire The Mission Bank, Mission, Kansas, which currently engages in the sale of credit-related life insurance, and discount brokerage activities.

Board of Governors of the Federal Reserve System, May 25, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-12971 Field 5-31-89; 8:45 am]

BILLING CODE 6210-01-M

Jerry G. Jackson, Trust; Correction

This notice corrects a previous **Federal Register** notice (FR Doc. 89-9574) published at page 16163 of the issue for Friday, April 21, 1989.

Under the Federal Reserve Bank of Kansas City, the entry for Jerry G. Jackson, Trust is amended to read as follows:

1. *Jerry G. Jackson, Trust*, (Jerry G. Jackson, Grantor and Trustee), Stigler, Oklahoma; to acquire 86.07 percent of the voting shares of Stigler Bancorporation, Inc., Stigler, Oklahoma, and thereby indirectly acquire The First National Bank, Stigler, Oklahoma.

Comments on the application must be received by June 15, 1989.

Board of Governors of the Federal Reserve System, May 25, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-12966 Filed 5-31-89; 8:45 am]

BILLING CODE 6210-01-M

N. Dale Martin et. al.; correction

This notice corrects a previous **Federal Register** notice (FR Doc. 89-11553) published at page 20920 of the issue for Monday, May 15, 1989.

Under the Federal Reserve Bank of Kansas City, the entry for H. Dale Martin is amended to read as follows:

1. *H. Dale & Flora E. Martin*, Omaha, Nebraska; to acquire an additional 6.37 percent of the voting shares of Nebraska National Corporation, Omaha, Nebraska, for a total of 16.0 percent, and thereby indirectly acquire Nebraska National Bank, Omaha, Nebraska.

Comments on this application must be received by June 15, 1989.

Board of Governors of the Federal Reserve System, May 25, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-12967 Filed 5-31-89; 8:45 am]

BILLING CODE 6210-01-M

[Docket No. R-0664]

Metrocorp, Inc., East Moline, IL; Supplemental Information Regarding Hearing on Armored Car Services

On May 4, 1989, the Board ordered a formal and public administrative hearing with respect to the application of Metrocorp, Inc., East Moline, Illinois, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843 (c)(8)) and § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)), to engage *de novo* through its subsidiary, Metro Armored Courier, Inc., East Moline, Illinois, in armored car services. Notice of the hearing was given by publication in the **Federal Register** (54 FR 20200 (1989)) and by release to the press.

The Board ordered that the hearing be held within 45 days from the date of the

Order. The time and location of the hearing were to be set by an Administrative Law Judge assigned to preside at the hearing.

The United States Office of Personnel Management, pursuant to 5 U.S.C. 3344 and 5 CFR 930.213, and with the consent of the Interstate Commerce Commission, has selected Administrative Law Judge Paul J. Clerman to conduct the proceeding. Judge Clerman has ordered the hearing to be held on Friday, June 16, 1989, at the offices of the Board, 20th and C Streets, NW., Washington, DC, commencing at 9:30 a.m.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89–13080 Filed 5–30–89; 8:45 pm]

BILLING CODE 6210–01–M

Edwin F. Wambsganss; Correction

This notice corrects a previous Federal Register notice (FR Doc. 89–11553) published at page 20920 of the issue for Monday, May 15, 1989.

Under the Federal Reserve Bank of Kansas City, the entry for Edwin F. Wambsganss is amended to read as follows:

1. *Edwin F. Wambsganss*, Longmont, Colorado; to acquire an additional 5.80 percent of the voting shares of Green Mountain Bancorporation, Inc., Lakewood, Colorado, for a total of 23.97 percent, and thereby indirectly acquire Green Mountain Bank, Lakewood, Colorado.

Comments on this application must be received by June 15, 1989.

Board of Governors of the Federal Reserve System, May 25, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89–12968 Filed 5–31–89; 8:45 am]

BILLING CODE 6210–01–M

Vallicorp Holdings, Inc., et al.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has 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 company has 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 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 June 14, 1989.

A. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President), 101 Market Street, San Francisco, California 94105:

1. *ValliCorp Holdings, Inc.*, Fresno, California; to become a bank holding company by acquiring 100 percent of the voting shares of Fresno Bancorp, Fresno, California, and thereby indirectly acquire Bank of Fresno, Fresno, California; and Western Commercial, Inc., Fresno, California, and thereby indirectly acquire Fresno Bank of Commerce, Fresno, California, and Merced Bank of Commerce, N.A., Merced, California.

In connection with this application, Applicant proposes to acquire Western Commercial Leasing Company, Fresno, California, and thereby engage in the leasing of commercial, industrial and agricultural equipment which is considered personal property pursuant to § 225.25(b)(5) of the Board's Regulation Y. These activities will be conducted in the Fresno-Clovis metropolitan area and four California counties of Fresno, Madera, Kings, and Tulare.

Board of Governors of the Federal Reserve System, May 25, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89–12972 Filed 5–31–89; 8:45 am]

BILLING CODE 6210–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control; Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HC (Centers for Disease Control) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–67776, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 53 FR 46944, November 21, 1988) is amended to reflect organizational changes within the Training and Laboratory Program Office. Specifically, the name is changed to Public Health Practice Program Office, and the mission statement is revised.

Section HC–B, Organization and Functions, is hereby amended as follows:

Delete in its entirety the heading and mission statement for the *Training and Laboratory Program Office (HCH)* and substitute the following:

Public Health Practice Program Office (HCH). Through the Assistant Director for Public Health Practice, CDC: (1) Advises the Director, CDC, on matters related to public health systems, laboratory systems, and training; (2) serves as the focal point for implementing the CDC Memorandum of Understanding with the Health Care Financing Administration in its regulation of clinical laboratories; (3) promotes the development, evaluation, approval, and implementation of National Standards for laboratory practice to ensure that the quality of laboratory services is consistent with requirements for the implementation of high priority prevention and control programs; (4) fosters the development and/or improvement of methods by which the partnership of Federal, State, and local public health agencies can assure the coordinated and effective establishment of priorities and responses to public health problems; (5) serves as a CDC focus for training technology by assisting CDC components and other clients in designing, developing, delivering, and

evaluating the effectiveness of training; (6) maintains a forum for communication, coordination, collaboration, and consensus among the Centers, Institute, and Offices of CDC, public agencies, and private organizations concerned with ensuring the quality of public health practice; (7) works collaboratively with academic institutions, especially schools of public health and departments of preventive medicine, to develop and evaluate prevention practices; (8) provides a central service for consultation and the design, production, and evaluation of media and instructional services to support CDC's delivery of public health messages; (9) assists other nations in improving the training and performance of health agencies and workers; (10) in carrying out the above functions, works collaboratively with other Centers, Institute, and Offices of CDC, and where another Center, Institute, or Office has the lead responsibility, provides support to and works in conjunction with the other Center, Institute, or Office.

Effective Date: May 22, 1989.

Louis W. Sullivan,

Secretary.

[FR Doc. 89-13026 Filed 5-31-89; 8:45 am]

BILLING CODE 4160-18-M

Health Care Financing Administration; Statement of Organization, Functions, and Delegations of Authority

Part F. of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Health Care Financing Administration (HCFA), **Federal Register**, Vol. 48, No. 198, pp. 46434-46448 dated Wednesday, October 12, 1983) is amended to reflect organizational title and updated functional statement changes within the Office of the Associate Administrator for Program Development, for the Bureau of Eligibility, Reimbursement and Coverage. The Bureau of Eligibility, Reimbursement and Coverage is retitled the Bureau of Policy Development. The functional statement for the Bureau is basically unchanged, however the term "reimbursement" has been replaced by the term "payment" to more accurately reflect the actual nature of the Bureau's responsibilities.

The specific changes to Part F. are described below:

- Section FQ.20.A., the title Bureau of Eligibility, Reimbursement and Coverage (FQA) is deleted. The new title is Bureau of Policy Development, and the functional statement is revised as follows:

A. Bureau of Policy Development (FQA)

Reviews existing policy and develops new policy concerning eligibility, coverage of benefits, utilization effectiveness of providers of services, payment, limits to the costs of health care, and other administrative and technical matters for the Medicare and Medicaid programs. Develops regulations and other policy issuances for these areas. In cooperation with the Office of General Counsel, coordinates litigation affecting these programs, represents HCFA before the Office of Hearings and Appeals, Social Security Administration and the Provider Reimbursement Review Board and conducts Medicare and Medicaid hearings on behalf of the Secretary or Administrator that are not within the jurisdiction of OHA, SSA or the States.

Date: May 22, 1989.

Louis W. Sullivan,

Secretary, Department of Health and Human Services.

[FR Doc. 89-13027 Filed 5-31-89; 8:45 am]

BILLING CODE 4120-01-M

Social Security Administration; Statement of Organization, Functions and Delegation of Authority

Part S of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (HHS) covers the Social Security Administration (SSA). Notice is hereby given that Chapter S5 is being amended to redesignate the current Office of Governmental Affairs (OGA) as the Office of Public Affairs (OPA). This amendment to Chapter S5 is being made to strengthen and focus SSA's public affairs program in a single organizational entity. Because of the recent relocation of the Congressional Relations Staff from the Office of Governmental Affairs to the Office of Legislation and Congressional Affairs, the redesignation of the Office of Governmental Affairs to the Office of Public Affairs is appropriate to more accurately reflect the primary function and mission of this organizational entity. The changes to be made to the **Federal Register** are as follows:

Chapter S5

Office of the Deputy Commissioner, Policy and External Affairs

S5.00 Mission
S5.10 Organization
S5.20 Functions

Section S5.10 *The Office of the Deputy Commissioner, Policy and External Affairs*—(Organization):

Change C to read:

C. The Office of Public Affairs (S5E).

Section S5.20 *The Office of the Deputy Commissioner, Policy and External Affairs—(Functions):*

Change C to read:

C. The Office of Public Affairs (S5E).

Subchapter S5E *The Office of Governmental Affairs* Change the organizational title from the Office of Governmental Affairs to the Office of Public Affairs.

Section S5E.00 *The Office of Governmental Affairs*—(Mission):

Change the organizational title from the Office of Governmental Affairs to the Office of Public Affairs.

Section S5E.10 *The Office of Governmental Affairs*—(Organization):

Change the Section and Subsection A., B. and C. to read:

Section S5E.10 *The Office of Public Affairs*—(Organization):

OPA, under the leadership of the Associate Commissioner for Public Affairs, includes:

A. The Associate Commissioner for Public Affairs (S5E).

B. The Deputy Associate Commissioner for Public Affairs (S5E).

C. The Immediate Office of the Associate Commissioner for Public Affairs (S5E). Section S5E.20 *The Office of Governmental Affairs*—(Functions):

Change the Section and Subsections A, B, C and G to read:

Section S5E.20 *The Office of Public Affairs*—(Functions):

A. The Associate Commissioner for Public Affairs (S5E) is directly responsible to the Deputy Commissioner, Policy and External Affairs (DCPEA), for carrying out OPA's mission and provides managerial direction to the major components of OPA.

B. The Deputy Associate Commissioner for Public Affairs (S5E) assists the Associate Commissioner in carrying out his/her responsibilities and performs other duties as the Associate Commissioner may prescribe.

C. The Immediate Office of the Associate Commissioner for Public Affairs (S5E) provides the Associate Commissioner and Deputy Associate Commissioner with staff assistance on the full range of their responsibilities.

G. The Office of External Affairs (S5EM)—Change the reference in Subsection G.4.b line 4 from OGA to OPA.

Section S5R.20 *The Office of Policy*—(Functions):

F. *The Office of International Policy:* Change Line 6 of Section F to read "SSA's OPA, with other public and * * *"

G. *The Office of Regulations:* Change Line 12 of Section G to read "SSA's OPA, negotiates with other * * *."

Dated: May 22, 1989.

Louis W. Sullivan,

Secretary of Health and Human Services.

[FR Doc. 89-13028 Filed 5-31-89; 8:45 am]

BILLING CODE 4190-11-M

Alcohol, Drug Abuse, and Mental Health Administration

Curent List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: National Institute on Drug Abuse.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (53 FR 11986). A similar notice listing all currently certified laboratories will be published bi-monthly, and updated to include laboratories which subsequently apply and complete the certification process. If any listed laboratory fails to maintain its certification, it will be omitted from updated lists until such time as it is restored to full certification under the Guidelines.

FOR FURTHER INFORMATION CONTACT: Division of Applied Research (formerly the Office of Workplace Initiatives), National Institute on Drug Abuse, Room 10A-53, 5600 Fishers Lane, Rockville, Maryland 20857.

SUPPLEMENTARY INFORMATION: Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Pub. L. 100-71. Subpart C of the Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification a laboratory must participate in an every-other-month performance testing program plus periodic, on-site inspections. In accordance with Subpart C of the Guidelines, the following laboratories meet the standards set forth in the Guidelines:

(Submitted for publication in the **Federal Register** on June 1, 1989.)

American BioTest Laboratories, Inc., 3350 Scott Boulevard, Building 15, Santa Clara, CA 95054, 408-727-5525

American Medical Laboratories, 11091 Main Street, P.O. Box 188, Fairfax, VA 22030, 703-691-9100

Bio-Analytical Technologies, 2356 North Lincoln Ave., Chicago, IL 60614, 312-880-6900

Center For Human Toxicology, 417 Wakara Way, Rm. 290, University Research Park, Salt Lake City, UT 84108, 801-581-5117

Chem-Bio Corporation, 140 E. Ryan Road, Oak Creek WI 53154, 800-365-3840

CompuChem Laboratories, Inc., Western Division, 600 West North Market Boulevard, Sacramento, CA 95834, 916-923-0840, (name changed: formerly ChemWest, Analytical Laboratories, Inc.)

CompuChem Laboratories, Inc., 3308 Chapel Hill/Nelson Hwy., P.O. Box 12652, Research Triangle Park, NC 27709, 919-549-8263

Doctors and Physicians Laboratory, 801 E. Dixie Ave., Leesburg, FL 32748, 904-787-9006

Laboratory of Pathology of Seattle, Inc., 1229 Madison Street, Suite 500, Nordstrom Medical Tower, Seattle, WA 98104 206-386-2672

Med Arts/South Community Hospital, 1001 Southwest 44th Street, Oklahoma City, OK 73109, 405-636-7041

MetPath, Inc., 1355 Mittel Boulevard, Wood Dale, IL 60191, 313-595-3888

MetPath, Inc., One Malcolm Ave., Teterboro, NJ 07608, 201-393-5000

MedTox Laboratories, Inc., 402 West County Road D, St. Paul, MN 55112, 612-636-7466

National Center for Forensic Science, A Division of Maryland Medical Laboratory, Inc., 1901 Sulphur Spring Road, Baltimore, MD 21227, 301-247-9100, (name changed: formerly Maryland Medical Laboratories, Inc.)

Nichols Institute, 7323 Engineer Road, San Diego, CA 92111, 619-278-5900

Northwest Toxicology, Inc., 1141 East 3900 South, Salt Lake City, UT 84124, 800-322-3361

PharmChem Laboratories, Inc., 3925 Bohannon Drive, Menlo Park, CA 94025, 415-328-6200

Poisonlab, Inc., 7272 Clairemont Mesa Road, San Diego, CA 92111, 619-279-2600

Roche Biomedical Laboratories, 6370 Wilcox Road, Dublin, OH 43017, 614-889-1061

SmithKline Bio-Science Laboratories, 2201 W. Campbell Park Drive, Chicago, IL 60612, 312-885-2010, (name changed: formerly International Toxicology Laboratories, Inc.)

SmithKline Bio-Science Laboratories, 8000 Sovereign Row, Dallas, TX 75247, (name changed: formerly International Clinical Laboratories), 214-638-1301

South Bend Medical Foundation, Inc., 530 North Lafayette Blvd., South Bend, IN 46601, 219-234-4176

Southgate Medical Laboratory, Inc., 21100 Southgate Park Boulevard, Cleveland, OH 44137, 800-338-0166

Richard A. Millstein,

Deputy Director, National Institute on Drug Abuse.

[FR Doc. 89-12982 Filed 5-31-89; 8:45 am]

BILLING CODE 4160-20-M

Advisory Committee Meeting in June

AGENCY: Alcohol, Drug Abuse, and Mental Health Administration, HHS.

ACTION: Correction of meeting notice.

SUMMARY: Public notice was given in the **Federal Register** on May 15, 1989, Volume 54, No. 92, on page 20924 that the Drug Abuse Epidemiology and Prevention Research Review Committee would meet on June 19-22. The meetings will take place June 19-23.

Date: May 25, 1989.

Peggy W. Cockrill,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 89-12976 Filed 5-31-89; 8:45 am]

BILLING CODE 4160-20-M

Advisory Committee Meeting in June

AGENCY: Alcohol, Drug Abuse, and Mental Health Administration, HHS.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of the forthcoming meeting of one of the agency's initial review committees in the month of June 1989. This committee will be performing initial 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: Biochemistry Research Subcommittee of the Drug Abuse Biomedical Research Review Committee, NIDA

Date and Time: June 13–14: 8:30 a.m.

Place: Rockville Room, Crowne Plaza Holiday Inn, 1750 Rockville Pike, Rockville, MD 20852

Status of Meeting: Open—June 13: 8:30–9:00 a.m. Closed—Otherwise.

Contact: Rita Liu, Room 10–42, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–2620

Purpose: The committee is charged with the initial review of applications for assistance from the National Institute on Drug Abuse for support of research and research training activities and makes recommendations to the National Advisory Council on Drug Abuse for final review.

Substantive information, summary of the meeting, and roster of committee members may be obtained as follows: Ms. Camilla Holland, NIDA Committee Management Officer, Room 10–42, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–2620.

Date: May 25, 1989.

Peggy W. Cockrill,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 89–12975 Filed 5–31–89; 8:45 am]

BILLING CODE 4160–20–M

Food and Drug Administration

[Docket No. 89F–0157]

Ciba-Geigy Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration is announcing that Ciba-Geigy Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of 2-methyl-4,6-bis[(octylthio)methyl] phenol as a stabilizer for polymers used as adhesives, gaskets, cements, repeat-use rubber articles and paper additives in contact with food.

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

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (section 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 9B4144) has been filed by Ciba-Geigy Corp., 7 Skyline Drive, Hawthorne, NY 1052–2188, proposing that § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) be amended to provide for the safe use of 2-methyl-4,6-bis[(octylthio)methyl] phenol as a stabilizer for polymers used as adhesives, gaskets, cements, repeat-use rubber articles and paper additives in contact with food.

The potential environemntal impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regualtion in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: May 19, 1989.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89–12979 Filed 5–31–89; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 89F–0167]

Michelman, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Michelman, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of the partial sodium salt of ethlene-acrylic acid copolymer as an adhesive component in laminates that contact dry food.

FOR FURTHER INFORMATION CONTACT: Edward J. Machuga, 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: Under the Federal Food, Drug, and Cosmetic Act (section 409(b)(5) (21 U.S.C. 348(b)(5)), notice is given that a petition (FAR 9B4146) has been filed by Michelman, Inc., Cincinnati, OH 45236, proposing that § 175.105 *Adhesives* be amended to provide for the safe use of the partial sodium salt of ethylene-acrylic acid copolymer as an adhesive component in laminates that contact dry food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: May 19, 1989.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied, Nutrition.

[FR Doc. 89–12980 Filed 5–31–89; 8:45 am]

BILLING CODE 4160–01–M

Health Care Financing Administration

[BERC–394–FN]

Medicare Program; Additions and Deletions From the Current List of Covered Surgical Procedures for Ambulatory Surgical Centers

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final notice.

SUMMARY: This final notice announces additions and deletions to the current list of surgical procedures for which facility services are covered when the procedures are performed in an ambulatory surgical center (ASC). We are adding one procedure and deleting 48 procedures. The changes contained in this final notice result from our consideration of the public comments received in response to a proposed notice published on August 11, 1987 and from analysis of more recent data and subsequent consultation with medical organizations and professional societies.

This notice implements section 1833(i)(1) of the Social Security Act, as amended by section 9343 of the Omnibus Budget Reconciliation Act of 1986 that requires, in part, that the list of covered ASC procedures be reviewed and updated every 2 years.

EFFECTIVE DATES: For ASC procedures that are being removed from the current list, the effective date is August 30, 1989. The effective date for procedures being added to the list is July 3, 1989.

FOR FURTHER INFORMATION CONTACT: Rita McGrath, (301) 966–4635.

SUPPLEMENTARY INFORMATION:

I. Background

Section 934 of Pub. L. 96–499, the Omnibus Reconciliation Act of 1980, amended Title XVIII of the Social Security Act (the Act) to authorize Medicare Part B coverage for facility services furnished in connection with certain surgical procedures performed in an ambulatory surgical center (ASC).

With respect to the surgical procedures covered under this provision, section 1833 (i)(1) of the Act requires the Secretary to specify, in consultation with appropriate medical organizations, surgical procedures that, although appropriately performed in an inpatient hospital setting, can also be performed safely on an ambulatory basis. The report accompanying the legislation (Report of the Committee on the Budget to Accompany H.R. 7765, H.R. Rep. No. 96–1167, 96th Cong., 2d Sess. 390 (1980)) explained that Congress intended that procedures currently performed on an ambulatory basis, especially in physicians' offices, that do not generally require the more elaborate facilities of an ASC, should not be included on the list of covered procedures.

In line with this Congressional intent, our current regulations specify the following four requirements regarding the range of covered services:

1. Procedures on the list are to be those commonly performed on an inpatient basis but which also may be safely performed in an ambulatory surgical facility (42 CFR 416.65(a)(1)).

2. The list is to exclude procedures that are commonly performed, or that may be safely performed, in physicians' offices (§ 416.65(a)(2)).

3. Procedures are limited to those requiring a dedicated operating room and generally not requiring an overnight stay (§ 416.65(a)(3)).

4. The list may not contain procedures excluded from Medicare coverage (§ 416.65(a)(4)).

The list of covered procedures merely indicates procedures for which payment may be made if performed in the ASC. It does not require that these procedures be performed in an ASC, nor is any special review or justification required if listed procedures are performed on a hospital inpatient basis. The choice of operating site remains a matter for the professional judgment of the patient's physician who appropriately may decide that a procedure on the list may be safety performed only on an inpatient basis.

Section 1833(i)(2)(A) of the Act, as amended by section 9343 of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99–509), provides that by July 1, 1987, and annually thereafter, the Secretary must review and update ASC payment rates. In addition, section 1833(i)(1) provides that the list of procedures must have been reviewed and updated every 2 years. Since the current list of covered procedures was published April 21, 1987, we must update that list by April 21, 1989.

Currently, ASC covered procedures are classified according to a four group payment classification system, as follows:

Group 1—$274
Group 2—$326
Group 3—$351
Group 4—$399

The ASC facility payment for all procedures in each group is at a single rate adjusted for geographic variation. This prospectively determined facility group rate does not include physicians' fees and other medical items and services (for example, prosthetic devices, except intraocular lenses) for which separate payment is authorized under other provisions of the Medicare program. Rather, the rate is a standard overhead amount which covers the cost of services such as nursing, supplies, equipment and use of the facility.

As required by section 1833(i) of the Act, we reviewed the ASC payment rates and proposed revisions to the rates and reimbursement methodology in the August 18, 1988 **Federal Register** (53 FR 31468).

Also, in accordance with section 1833(i) of the Act, the latest update to the list of covered ASC procedures was published in the **Federal Register** on April 21, 1987 (52 FR 13176). The update supplemented the original list of covered ASC procedures published on August 5, 1982 (47 FR 34099). Further, on August 11, 1987, we published a proposed notice (52 FR 29729) that announced proposed additions to and deletions from the list.

II. Provisions of the Proposed Notice

In the proposed notice, we announced proposed additions and deletions to the current list of surgical procedures for which facility services are covered when the procedures are performed in an ASC. The proposed deletions were based on analysis of new data that showed that some of the surgical procedures on the existing ASC list did not meet the criteria that they be commonly performed on an inpatient basis in hospitals or not be commonly performed in physicians' offices. In the notice, we also solicited public comments on additional procedures to be added to the current list of approved ASC procedures and specifically invited comments on extracorporeal shock wave lithotripsy.

We evaluated the usual site of service surgical procedures considered for coverage under the ASC benefit based on the Part B Medicare Data files (BMAD), which are maintained centrally as a component of the Medicare statistical system. One of the BMAD files is the procedure file, from which source data are extracted to create an array of every procedure code used by each carrier in processing Medicare claims. The procedure file includes such data elements as frequency, submitted charges, allowed charges, and denied services. These variables can be arrayed for each procedure code by site of service (for example, physician's office, ASC, inpatient hospital, outpatient hospital) and by type of service (for example, surgical service).

The procedure file is constructed from 100 percent of the bills processed annually by carriers reporting procedures using the HCFA Common Procedure Coding System (HCPCS). The source data that we used in assessing site of service were claims processed in calendar year 1984. The 1984 file excluded claims processed by carriers servicing Texas, Utah, Michigan, Georgia, and New Jersey because in that year those carriers did not report using HCPCS codes.

When we arrayed currently covered ASC services by site of service, we found that many of them were not commonly furnished on an inpatient basis or were furnished in physicians' offices a majority of the time. Based on these data, it would be contrary to our regulations and program objectives to continue to cover them when performed in an ASC. We decided that if a procedure is performed on an inpatient basis 20 percent of the time or less, or in physicians' offices 50 percent of the time or more, it should not be covered in an ASC. Subsequently, we identified 70 procedure codes that we proposed to delete.

III. Discussion of Public Comments on the Proposed Notice

We received 927 pieces of timely correspondence, most of which expressed opposition to the deletion of one or more of the procedures from the list. Many of the general comments expressed support for ASCs.

Approximately 400 comments were deleted from urologists and their patients, all opposed to the deletion of CPT code 52000, cystourethroscopy. The next largest group writing in opposition to the deletions were practicing podiatrists and podiatric medical students, the latter sending a signed petition. The remaining comments were spread among plastic surgeons, orthopedic surgeons, ophthalmologists, otolaryngologists, thoracic surgeons, hand surgeons, obstetricians/gynecologists, pathologists, and dentists. In addition, ASCs, hospitals and a lithotripsy center submitted comments.

The commenters' objections to many of our proposed deletions were supported by our subsequent analysis of

Medicare claims data processed in calendar year 1986. As a result of the analysis of this more recent complete billing data, we are retaining 22 of the 70 CPT–4 codes originally proposed for deletion. A summary of the comments, and our responses to them, follow:

A. Impact on Rural Areas

Comment: Several commenters expressed concern that the proposal would adversely affect rural health care because (1) elderly patients would be required to travel long distances to receive services that would no longer be available locally; (2) rural hospitals would lose income which would affect their ability to provide comprehensive care; and (3) the availability of health care in rural areas would be decreased if facilities for these procedures were unavailable. Also, it was suggested that the increased cost of providing the services in an urban area would negate any advantage gained.

Response: We believe the commenters overestimate the impact of the proposed deletions on ASCs and, to some extent, misunderstand the effect of deleting the procedures. First, the deletion of 48 procedures, mostly of the integumentary system, will not have a significant financial impact on an individual ASC. This is a small number of procedures to be deleted, especially in light of the approximate 1300 procedures that were added to the list of covered ASC procedures on April 21, 1987 (52 FR 13176). Second, since the deletion of a given procedure from HCFA's list does not mean that it may no longer be performed in an ASC (although the ASC would receive no facility fee for the procedure's performance) or in a hospital outpatient department, it is incorrect to assume that elderly patients will need to travel to urban areas to receive care.

B. Impact on Hospitals

Comment: Several commenters expressed concern that if a procedure was deleted from the ASC list, then no reimbursement would be made for the procedure in the hospital outpatient department since the outpatient department is paid for ASC listed procedures using ASC reimbursement guidelines. Others believed that rural hospitals would be forced to create a separate and distinct ASC in order to be reimbursed.

Response: As noted in our response to comments on the impact of our proposal on rural areas, we believe that the commenters misunderstand the effect of deleting a procedure from the list. The deletion of a procedure simply means that an ASC will no longer receive a facility fee for the performance of that procedure. It does not mean that hospitals will not be paid for performing the procedure in their outpatient departments. Payment for the performance of deleted procedures will be made to hospital outpatient departments on a reasonable cost basis. Hospitals do not need to build distinct and separate ASCs in order to be paid for performing procedures on the list.

C. Impact on Physicians' Offices

Comment: Some physicians expressed concern that the performance of several of the procedures proposed for deletion would be inappropriate if performed in an office setting because office surgical facilities are totally unregulated.

Response: We believe that the commenters are expressing concern that procedures performed in physicians' offices are not subject to the same quality of care and medical necessity reviews as are procedures performed in hospitals and ASCs. While that is true, we note that the deletion of a procedure from the ASC list does not mean it must be performed in a physician's office. We expect physicians to select the appropriate setting for the performance of any procedure, taking into account the circumstances of a particular patient.

Comment: Several physicians expressed concern that the performance of a procedure under general or spinal anesthesia in the office would require extensive equipping and additional special staff and that monitored anesthesia would be an additional liability.

Response: As noted above, we are not mandating that these procedures be performed in the office setting. Further, we are not precluding their performance in an ASC. The deletion of a procedure from the list simply means that the ASC will not be paid a facility fee for the performance of the procedure. The physician would continue to be paid on a reasonable charge basis regardless of the setting in which the procedure was performed (office, ASC, or hospital).

Comment: Several commenters noted that there is no additional facility fee paid to a physician's office and that the cost incurred for the performance of a procedure deleted from the ASC list would be borne directly by the physician and would result in a substantial loss each time a Medicare patient is treated. Commenters alleged that if the proposed deletions occurred, physicians would incur expenditures to (1) remodel and redesign areas in their offices; (2) maintain emergency supplies and equipment; (3) hire trained personnel; and (4) purchase sterile equipment and supplies. It was argued that this would lead to an unnecessary duplication of services already available at ASCs.

Response: First, as noted above, HCFA does not mandate that any surgery be performed in the office. Second, our billing data indicate that most of the procedures we are deleting from the list are routinely performed in physicians' offices. Although there are undoubtedly additional costs associated with the performance of these procedures in the office, we do not believe that they result in substantial losses given the extent to which physicians already perform them without additional payments over and above their professional fees.

D. Threshold Rule

Comment: Many commenters objected to our decision to delete from the ASC list any procedure that is performed on an inpatient basis 20 percent of the time or less or in physicians' offices 50 percent of the time or more. It was argued that the threshold rule is arbitrary and that its application would reduce the cost savings associated with ASCs.

Response: We acknowledge that the threshold levels are, to some extent, judgmental and that other levels (higher or lower) could have been selected. We decided that the fairest and least arguable level for "commonly performed in physicians' offices" would be 50 percent or higher. We rejected the application of a 50 percent level for "commonly performed on an inpatient basis" because that level would have led to a much greater number of deletions and because we recognized that in the past few years, more and more procedures that had been done on an inpatient basis are now being done on an outpatient basis. We recognize that the deletion of procedures from the list will have some effect on ASCs. However, to be consistent with Congressional intent and our regulations, we are obliged to assure that the list excludes procedures that are commonly performed in physicians' offices or not commonly performed on an inpatient basis.

We note that the threshold levels are intended to be general guidelines rather than absolute cut-off points. In some situations, we have made exceptions and not deleted procedures that would have been deleted by a strict application of the threshold rule. Such exceptions have been made in cases where the high level of ASC utilization has itself depressed the inpatient rate below the 20 percent level. In addition, some

procedures have remained on the approved list in order to maintain a clinically consistent approach. In some other cases, with borderline data, we accepted the comments of those arguing that quality of care could be threatened if the procedures were deleted from the ASC approved list.

E. Billing Data—(Deletions)

Comment: Several commenters questioned the validity of the BMAD file noting that the "place of service" indicator on a billing form may not be correctly completed since it does not affect payment. Others questioned the appropriateness of analyzing 1984 data that did not include information from all carriers.

Response: We acknowledge that the place of service indicator in the 1984 BMAD file was not validated. However, it was the best available information at the time the proposed notice was published and, to a large extent, contained information provided by physicians or their staff. Therefore, we are reasonably confident that it contained accurate information. Since the publication of the proposed notice, more recent and complete information has become available. We analyzed the 1985 and 1986 BMAD files which include information from all the carriers, and found that several of the procedures that we had proposed for deletion were not performed as frequently in physicians' offices as the 1984 BMAD file data suggested. Where these more current data were consistent with the comments we received, we retained the procedures on the list. We provide an analysis of the data and our response to comments for each of the proposed deletions in the following sections. We did not receive specific comments on every individual procedure code. However, since many of the commenters objected, in general, to the deletion of any procedures, we will provide the basis of our final decision for each of the individual procedures.

1. Integumentary System

a. *Excision of skin tags (procedure codes 11200 and 11201):* No specific comments were received on these procedures. BMAD data for 1986 indicate that these procedures are performed over 90 percent of the time in physicians' office. Therefore, they are deleted.

b. *Excision of benign lesions (procedure codes 11401, 11402, 11403, 11404, 11421, 11422, 11423, 11441, 11442, 11443, and 11444):* Several commenters objected to the proposed deletion of excisions of lesions of greater than 2.0 cm diameter. In particular, concern was expressed over the removal of larger lesions of the face and genitalia in an office setting. MVAD data for 1986 indicate that all of the proposed deletions are performed less than 5 percent of the time on an inpatient basis and more than 60 percent of the time in physicians' offices. Therefore, they are deleted. It is possible that the commenters' views that larger lesions of the genitalia and face should not be removed in an office setting would be supported if the data were based on more precise CPT–4 codes. For instance, procedure code 11444 includes lesions of the eyelids, ears, nose, lips and mucus membranes in addition to the face. At the present time, we have no means of distinguishing the specific site of the lesions that are excised. We will explore other methods to distinguish these procedures (for example, link narrative diagnosis and procedure codes). In the interim, however, the procedures will be deleted from the list based on BMAD data for 1986.

c. *Excision of malignant lesions (procedure codes 11600, 11601, 11602, 11603, 11604, 11620, 11621, 11622, 11623, 11624, 11640, 11641, 11642, 11643, and 11644):* The most frequently received comments were from urologists who expressed opposition to the deletion of excisions of malignant lesions of the scalp, neck, hands, feet and genitalia (procedure codes 11620 through 11624) because of their concern that malignant lesions of the male genitalia cannot be easily or safety performed in an office setting. Other commenters felt that skin lesions of any size that might be malignant should remain on the list because a frozen section diagnosis might be required. BMAD data for 1986 indicate that malignant lesions are excised more frequently on an inpatient basis than are benign lesions. All of the proposed deletions are performed 55–85 percent of the time in physicians' offices. As with benign lesions, we note the difficulty in distinguishing the location of lesions through the procedure codes that combine several locations in a single code. We will explore other methods of distinguishing the precise location of the lesions. In the interim, however, the procedures will be deleted from the list based on BMAD data for 1986. We note again that the deletion of these procedures from the ASC list does not mean that they must be performed in an office setting. If a physician believes that his office is not adequately equipped or staffed to perform a given procedure safely, the physician should arrange to perform the procedure in a setting appropriate to the patient's needs.

d. *Excision of nail and nail matrix, partial or complete, for permanent removal (procedure code 11750):* No specific comments were received on this procedure. BMAD data for 1986 indicate that it is performed over 80 percent of the time in physicians' offices. Therefore, it is deleted.

2. Musculoskeletal System

a. *Treatment of closed or open nasal fracture without manipulation (procedure code 21310):* No specific comments were received on this procedure. BMAD data for 1986 indicate that although it is performed 16 percent of the time on an inpatient basis, it is performed less than 50 percent of the time in physicians' offices. Therefore, it will not be deleted from the list.

b. *Tenotomy, hand or finger (procedure codes 26060 and 26460):* No specific comments were received. BMAD data for 1986 indicate that these procedures are perfomed more than 20 percent of the time on an inpatient basis and less than 50 percent of the time in physicians' offices. Therefore, they will not be deleted from the list.

c. *Tenotomy procedures, foot or toe (procedure codes 28010, 28011, 28230, 28232, 28234, and 28240):* For these and the other foot and toe procedures discussed below, many comments were received expressing concern that deleting the procedures would adversely affect quality of care. In particular, podiatrists were concerned that the deletion of a procedure from the list would force podiatrists to attempt the procedure in their offices where the appropriate staff and equipment might not be available. Commenters stated that ASCs would not permit podiatrists to use their facilities if a facility payment was not available and that many podiatrists do not have the option of using hospital outpatient departments since surgical privileges are not available to podiatrists in many parts of the country. Several orthopedic surgeons also objected to the deletion of the procedures but for different reasons. They claimed that the data were skewed by the podiatrists who frequently perform the procedures in their offices. They also indicated that for reasons of quality this was inappropriate and that the procedures can be performed safely only in an ASC or hospital. We acknowledge that podiatrists in some areas of the country may be unable to obtain surgical privileges at their local hospital, although we believe that this problem is diminishing with time. In response to the concern that the podiatrists are skewing the data, we performed a special analysis that confirmed that podiatrists perform in their offices the foot and toe procedures

proposed for deletion more frequently than other practitioners. However, we have no evidence that the quality of care provided in an office setting (by podiatrists or some orthopedic surgeons) is less than that provided in an ASC or hospital outpatient department. Also, BMAD data for 1986 indicate that all the tenotomies proposed for deletion are performed in an office setting between 54–77 percent of the time. Therefore, they are deleted.

d. *Osteotomy procedures (procedure codes 26567, 28306, 28308, 28310, and 28312):* The comments received on the proposed deletion of osteotomy procedures were comparable to those received on tenotomies. Unlike tenotomies, however, the more recent BMAD data for 1986 indicate that, with the exception of an osteotomy of the proximal phalanx of the first toe (procedure code 28310) and osteotomy of other phalanges, any toe (procedure code 28312), all the osteotomy procedures proposed for deletion are performed more than 20 percent of the time on an inpatient basis and less than 50 percent of the time in physicians' offices. Data on procedure codes 28310 and 28312 indicate that they are performed 18 and 25 percent of the time on an inpatient basis and 54 and 51 percent of the time in physicians' offices, respectively. In light of the comments received, the more recent data, and for the sake of clinical consistency, all of the osteotomy procedures that had been proposed for deletion will be retained on the list.

e. *Fasciotomy, plantar and/or toe, subcutaneous (procedure code 282008):* No specific comments were received on this procedure. BMAD data for 1986 indicate that it is performed more than 20 percent of the time on an inpatient basis and less than 50 percent of the time in physicians' offices. Therefore, it will not be deleted from the list.

f. *Repair of suture of tendon, foot, flexor, single (procedure code 28200):* No specific comments were received on this procedure. BMAD data for 1986 indicate that it is performed more than 20 percent of the time on an inpatient basis and less than 50 percent of the time in physicians' offices. Therefore, it will not be deleted from the list.

g. *Capsulotomy, midtarsal (Heyman type procedure) (procedure code 28264):* No specific comments were received on this procedure. BMAD data for 1985 indicate that it is performed more than 20 percent of the time on an inpatient basis and less than 50 percent of the time in physicians' offices. Therefore, it will not be deleted from the list.

h. *Capsulotomy for contracture, metatarsophalangeal joint (procedure code 28270) and interphalangeal joint (procedure code 28272):* No specific comments were received on this procedure. BMAD data for 1986 indicate that these procedures are performed over 70 percent of the time in physicians' offices. Therefore, they are deleted.

i. *Hammertoe procedures (procedure code 28285 and 28286):* No specific comments were received on this procedure. BMAD data for 1986 indicate that these procedures are performed more than 20 percent of the time on an inpatient basis and less than 50 percent of the time in physicians' offices. Therefore, they will not be deleted from the list.

3. Respiratory System

a. *Repair nasal septal perforations (procedure code 30630):* Several commenters objected to the deletion of this procedure which, in their opinion, should not be performed in an office setting. BMAD data for 1986 support the comments, indicating that this procedure is performed more than 20 percent of the time on an inpatient basis and less than 50 percent of the time in physicians' offices. Therefore, it will not be deleted from the list.

b. *Laryngoscopy procedures (procedure code 31505, 31510, and 31525):* Several commenters objected to the deletion of these procedures, which in their opinion, are rarely performed as office procedures and are invariably done in a surgical setting. BMAD data for 1986 indicate that laryngoscopy, indirect; with biopsy (procedure code 31510) is commonly performed on an inpatient basis and not commonly performed in physician's offices. Therefore, (procedure code 31510) will not be deleted from the list. BMAD data for 1986 indicate that direct laryngoscopies, diagnostic (procedure code 31525) are performed 53 percent of the time in physicians' offices. However, in light of the comments received and in view of the fact that comparable procedures (for example, procedure codes 31526 and 31527) will not be deleted from the list, procedure code 31525 will not be deleted. Because the data indicate that indirect diagnostic laryngoscopies (procedure code 31505) are performed more than 79 percent of the time in physicians' offices, procedure code 31505 will be deleted from the list.

4. Digestive System

a. *Biopsy of Tongue (procedure code 41100):* No specific comments were received on this procedure. BMAD data for 1986 indicate that it is performed less than 20 percent of the time on an inpatient basis and less than 66 percent of the time in physicians' offices. Therefore, it will be deleted from the list.

b. *Dialation of rectal stricture under anesthesia other than local (procedure code 45910)* Several commenters objected to the deletion of this procedure noting that anesthesia is required and that physicians' ofices are not equipped to provide this service. BMAD data for 1986 support the comments, indicating that this procedure is performed more than 20 percent of the time on an inpatient basis and less than 50 percent of the time in physicians' offices. Therefore, it will not be deleted from the list.

5. Urinary System

a. *Cystourethroscopy (procedure code 52000):* Objections to the proposed deletion of this procedure were received from more than 400 commenters who indicated that the procedure is inappropriate (particularly for male patients) for the office setting. Specifically cited reasons for opposition were (1) quality of care could not be assured in an office setting; (2) anesthesia is frequently required and should not be administered in a physician's office; and (3) greater expense to the Medicare program as a result of a shift from the ASCs to hospital outpatient departments. BMAD data for 1986 indicate that cystourethroscopy is performed more than 20 percent of the time on an inpatient basis. Although it is performed 52 percent of the time in physicians' offices, in light of the comments received, it will not be deleted from the list.

b. *Urethral dilation procedures (procedure codes 53600, 53601, 53620, 53621, 53660, 53661, and 53665):* Many commenters objected to the deletion of these procedures claiming that our proposal was arbitrary, capricious, and inconsistent with the practice of quality medicine. Several commenters noted that the performance of procedure code 53665 required general or spinal anesthesia that would be inappropriate in an office setting. We accept that comment since it is supported by the BMAD data for 1986 and will retain procedure code 53665 on the list. However, we have not accepted the other comments since the BMAD data for 1986 indicate that between 69 percent and 98 percent of the other procedures are performed in physicians' offices. Therefore, procedure codes 53600, 53601, 53620, 53621, 53660 and 53661 are deleted from the list.

6. Female Genital System

Dilation of vagina under anesthesia (procedure code 57400): Several commenters objected to the deletion of this procedure noting that anesthesia is required and that physicians' offices are not equipped to provide this service. BMAD data for 1986 support the comments indicating that this procedure is performed more than 20 percent of the time on an inpatient basis and less than 50 percent of the time in physicians' offices. Therefore, it will not be deleted from the list.

7. Eye and Ocular Adnexa

a. *Discussion of lens capsule (procedure code 66800):* No specific comments were received on this procedure. BMAD data for 1986 indicate that it is performed less than 20 percent of the time on an inpatient basis and less than 50 percent of the time in physicians' offices. However, although it is not commonly performed on an inpatient basis, the data indicate that it is performed 30 percent of the time in an ASC. Therefore, it will not be deleted from the list.

b. *Excision of chalazion (procedure code 67801):* One commenter objected to the deletion of this procedure and noted that the occurrence of a multiple lesions in an infant or child would require general anesthesia that could not be provided in a physician's office. BMAD data for 1986 indicate that this procedure is preformed 87 percent of the time in physicians' offices. Therefore, it will be deleted from the list. We note that the proper procedure code for the case described by the commenter is not procedure code 67801, but procedure code 67808 (excision of chalazion under general anesthesia and/or requiring hospitalization, single or multiple). This procedure code (67808) is on the list of covered ASC procedures.

c. *Plastic repair of canaliculi (procedure code 68700):* No specific comments were received on this procedure. BMAD data for 1986 indicate that it is performed less than 20 percent of the time on an inpatient basis and approximately 50 percent of the time in physicians' offices. Although it is not commonly performed on an inpatient basis, the data indicate that it is performed 10 percent of the time in an ASC. Therefore, it will not be deleted from the list.

d. *Probing of nasolacrimal duct with insertion of tube or stent (procedure code 68830):* No specific comments were received on this procedure. BMAD data for 1986 indicate that it is performed 7 percent of the time on an inpatient basis and 68 percent of the time in physicians' offices. Therefore, it will be deleted from the list.

8. Auditory System

Myringotomy including aspiration and/or eustachian tube inflation (procedure code 69420): Two commenters objected to the proposed deletion because it would then be performed as an inpatient procedure where costs would be higher. They noted that the procedure is not properly done in a physician's office, since a biopsy of the nasopharynx should be done before placing a tube in the ear of an elderly patient. It was argued that unilateral hearing loss in an elderly patient should be considered an indication of malignancy until proven otherwise. Another commenter noted that two different procedures are included under procedure code 69420 (Myringotomy and/or eustachian tube inflation) and that the former is an operating room procedure and the latter an office procedure. We believe that procedure 69420 is being performed for other indications in addition to that of hearing loss since the BMAD data for 1986 indicate that more than 84 percent are performed in physicians' offices. Also, as we noted in our response under the integumentary system, we are unable to distinguish between two procedures that are included in the description of a single CPT–4 code. In view of the high physician office frequency, this procedure will be deleted from the list.

F. Additions

In addition to the list of proposed deletions that was included in our proposed notice, we specifically requested comments on additions to the ASC list. In particular, we sought comments on the addition of extracorporeal shock wave lithotripsy (ESWL) because we had received several requests for the addition of this procedure after the close of the comment period for our proposed notice published on February 16, 1984 (49 FR 6023) on which we based our April 21, 1987 (52 FR 13176) expansion of the list of covered procedures.

1. Extracorporeal Shock Wave Lithotripsy

Comment: Commenters were divided in their recommendations for ESWL (procedure code 50590). Many of those in favor of adding the procedure to the list did not provide a specific rationale for their recommendation. On the other hand, those opposed, while fewer in number, provided specific objections to adding the procedure to the list. A State urological association indicated that the procedure carries with it the dangers of hemorrhage and infection and that it should be considered an inpatient procedure. Another commenter indicated that the procedure should be done on an inpatient basis and an overnight stay required because of the possibility of complications and the need of close monitoring. Another indicated that ESWL was appropriate for outpatient use in younger patients with small stones.

Response: We agree with the commenters who believe that the outpatient utilization of ESWL (procedure code 50590) is only safe with a carefully selected patient population, and that it will continue to be an inpatient procedure for the majority of Medicare patients. In view of the concerns over safety that were raised by several commenters and in considering our data, which indicate that ESWL is still most often an inpatient procedure, we have decided not to add it to the list at this time. As more information and data on the safety of ESWL become available, we will continue to evaluate the appropriateness of adding this procedure to the ASC list. In addition to our concerns about safety based on the comments received, we are not yet convinced that ESWL can be categorized as a "surgical" procedure. We note that this decision does not mean that ESWL can be covered only when performed on an inpatient basis. For certain patients, ESWL can be performed safely on an outpatient basis. The choice of site remains a matter for the professional judgment of the patient's physician.

2. Dental Procedures

Comment: One commenter suggested that dental cases requiring general anesthesia should be added to the list.

Response: Section 1862(a)(12) of the Act excludes from coverage any services in connection with the care, treatment, filling, removal, or replacement of teeth or structures directly supporting the teeth. The ASC regulations at § 416.65 prohibit the inclusion of noncovered services on the list of covered services. Therefore, dental cases requiring general anesthesia cannot be added to the list.

3. Laser Procedures

Comment: Two commenters recommended adding procedures to the list that required the use of a surgical laser and specifically recommended the addition of retinal detachment repair (procedure code 67105) and prophylaxis of retinal detachment (procedure code 67145).

Response: A laser may be used for any surgical procedure on the ASC list provided that the Food and Drug Administration (FDA) has approved the use of the laser for that particular procedure. With a few exceptions, the procedures contained in CPT–4 do not specify the use of a laser. Procedure codes 67105 and 67145 are two of those exceptions. We reviewed BMAD data for 1986 that indicate that procedure code 67105 (retinal detachment repair) is performed more than 20 percent of the time on an inpatient basis and less than 50 percent of the time in physician offices. Therefore, it will be added to the list. On the other hand, procedure code 67145 (prophylaxis of retinal detachment) is performed less than 10 percent of the time on an inpatient basis and over 50 percent of the time in physician's offices. Therefore, it will not be added to the list.

4. Arthroscopy

Comment: One commenter recommended adding procedure codes 23356, 23357, and 23358 to the list.

Response: These three codes describe arthroscopic procedures of the shoulder. They were deleted from the CPT–4 in 1986 and replaced by procedure codes 29815 through 29825. Because there is not a one-to-one correlation with the new codes and we will not have a full year of data to review until BMAD data for 1987 are available, we will not add these procedures at this time. They will be considered when the list is next updated.

IV. Provisions of the Final Notice

This notice is being issued to finalize the list of proposed additions and deletions that we published on August 11, 1987. Additionally, this notice fulfills the requirements of section 1833(i)(1)(A) of the Act that the list of ASC procedures be reviewed and updated no less than every 2 years.

A. Deletions

The following 48 codes will be deleted from the current ASC list:

Integumentary System

11200 Excision (including simple closure or ligature strangulation), skin tags, multiple fibrocutaneous tags, any area: up to 15
11201 each additional ten lesions
11401 Excision, benign lesion, except skin tag (unless listed elsewhere), trunk, arms or legs; lesion diameter 0.6 to 1.0 cm
11402 lesion diameter 1.1 to 2.0 cm
11403 lesion diameter 2.1 to 3.0 cm
11404 lesion diameter 3.1 to 4.0 cm
11421 Excision, benign lesion, except skin tag (unless listed elsewhere), scalp, neck, hands, feet, genitalia, lesion diameter 0.6 to 1.0 cm
11422 lesion diameter 1.1 to 2.2 cm
11423 lesion diameter 2.1 to 3.0 cm
11441 Excision, other benign lesion (unless listed elsewhere), face, ears, eyelids, nose, lips, mucous membrane; lesion diameter 0.6 to 1.0 cm
11442 lesion diameter 1.1 to 2.0 cm
11443 lesion diameter 2.1 to 3.0 cm
11444 lesion diameter 3.1 to 4.0 cm
11600 Excision, malignant lesion, trunk, arms, or legs; lesion diameter up to 0.5 cm
11601 lesion diameter 0.6 to 1.0 cm
11602 lesion diameter 1.1 to 2.0 cm
11603 lesion diameter 2.1 to 3.0 cm
11604 lesion diameter 3.1 to 4.0 cm
11620 Excision, malignant lesion, scalp, neck, hands, feet, genitalia; lesion diameter up to 0.5 cm
11621 lesion diameter 0.6 to 1.0 cm
11622 lesion diameter 1.1 to 2.0 cm
11623 lesion diameter 2.1 to 3.0 cm
11624 lesion diameter 3.1 to 4.0 cm
11640 Excision, malignant lesion, face, ears, eyelids, nose, lips; lesion diameter up to 0.5 cm
11641 lesion diameter 0.6 to 1.0 cm
11642 lesion diameter 1.1 to 2.0 cm
11643 lesion diameter 2.1 to 3.0 cm
11644 lesion diameter 3.1 to 4.0 cm
11750 Excision of nail and nail matrix, partial or complete, (eg, ingrown or deformed nail) for permanent removal

Musculoskeletal

28010 Tenotomy, subcutaneous, toe; single
28011 multiple
28230 Tenotomy, open, flexor; foot, single or multiple (separate procedure)
28232 toe, single (separate procedure)
28234 Tenotomy, open, extensor, foot or toe
28240 Tenotomy lengthening, or release, abductor hallucis muscle
28270 Capsulotomy for contracture; metatarsophalangeal joint, with or without tenorrhaphy, single each joint (separate procedure)
28272 interphalangeal joint, single, each joint (separate procedure)

Respiratory System

31505 Laryngoscopy, indirect (separate procedure); diagnostic

Digestive System

41100 Biopsy of tongue

Urinary System

53600 Dilation of urethral stricture by passage of sound or urethral dilator, male; initial
53601 subsequent
53620 Dilation of urethral stricture by passage of filiform and follower, male; initial
53621 subsequent
53660 Dilation of female urethra including suppository and/or instillation, initial
53661 subsequent

Eye and Ocular Adnexa

67801 Excision of chalazion; multiple, same lid
68830 Probing of nasolacrimal duct, with or without irrigation, unilateral or bilateral; with insertion of tube or stent

Auditory System

69420 Myringotomy including aspiration and/or eustachian tube inflation

B. Addition

The following will be added to the ASC list under payment Group 4:

Eye and Ocular Adnexa

67105 Repair of retinal detachment, photocoagulation (lasar of xenon arc, one or more sessions) with drainage of subretinal fluid

V. Regulatory Impact Statement

A. Executive Order 12291

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any final notice that will produce effects meeting one of the E.O. criteria for a "major rule"; that is, that will be likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This final notice does not meet the $100 million criterion nor do we believe that it meets the other E.O. 12291 criteria. Therefore, this final notice is not a major rule under E.O. 12291, and a final regulatory impact analysis is not required.

B. Regulatory Flexibility Act

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a final notice will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all physicians, ASCs and hospitals are treated as small entities.

Although some commenters believed that the deletion of some procedures from the list of approved ASC procedures would have an adverse effect on some ASCs and hospitals, we pointed out in our responses to these commenters that dropping the procedures does not remove coverage for these procedures. It means only that we will not pay the facility amount that had been associated with the procedure (that is, the facility payment amount for one of the four payment groups into which the procedure had been classified.

Furthermore, in almost all instances of a procedure being deleted from the list of approved ASC procedures, fewer than one percent of the procedures were being performed in an ASC. The majority of cases involving deleted procedures were being treated in a physician's office. Thus, the effect of deleting the procedures listed in this document is expected to have only a slight economic effect on ASCs.

Although the effect of deleting the procedures listed in this notice is expected to be small, there may be a slight benefit to hospital outpatient departments. Approved ASC procedures performed in a hospital outpatient setting are subject to a payment limitation of the lower of the hospital's cost or charges, or a blend of the applicable ASC facility payment amount and the lower of the hospital's costs or charges. For procedures removed from the list of approved ASC procedures, the hospital will be subject only to the lower of costs or charges. In most cases, hospital outpatient costs or charges are higher than the applicable ASC facility payment amount. The benefit to hospitals, however, is expected to be very small. First, the difference between the payment amount hospitals receive under the blend of 50 percent of the hospital's facility costs and 50 percent of the standard ASC facility amount that is in effect now and the amounts they will be paid is negligible for the procedures being deleted. Second, since most of the procedures being deleted are already performed either in a hospital outpatient setting or in a physician's office, we do not expect a significant transfer of cases and payments from ASCs to hospital outpatient settings to occur.

For these reasons, we have determined, and the Secretary certifies, that this notice will not have a significant effect on a substantial number of small entities. Therefore, we have not prepared a regulatory flexibility analysis.

Section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a final notice may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 50 beds located outside of a Metropolitan Statistical Area.

We received some comments expressing concern about the effect on rural hospitals of deleting some procedures from the list of approved ASC procedures. However, as explained in our response to these comments and in the preceding discussion, we do not expect a significant effect on any small entities to follow from this notice. Therefore, we are not preparing a rural impact statement since we have determined, and the Secretary certifies that this final notice will not have a significant economic impact on the operations of a substantial number of small rural hospitals.

VI. Paperwork Reduction Act

This final notice contains no information collection requirements. Therefore, it does not come under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501.)

(Sec. 1833(i)(1) of the Social Security Act (42 U.S.C. 1395(i)(1); 42 CFR 416.65))

Catalog of Federal Domestic Assistance Program No. 13.774, Medicare—Supplementary Medical Insurance Program)

Dated: April 5, 1989.

Louis B. Hays,

Acting Administrator, Health Care Financing Administration.

[FR Doc. 89-13029 Filed 5-31-89; 8:45 am]

BILLING CODE 4120-01-M

[BPO-087-N]

Medicare Program; Meeting of the Supplemental Health Insurance Panel

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a meeting of the Supplemental Health Insurance Panel for the purpose of reviewing State Medicare supplemental health insurance programs. The Panel will determine whether such programs meet the minimum standards contained in section 1882 of the Social Security Act, as amended by the Omnibus Budget Reconciliation Act of 1987 (OBRA 87) and the Medicare Catastrophic Coverage Act of 1988 (MCCA). The meeting will be open to the public. Attendees will be seated on a first come, first served basis.

DATE: The meeting will be held on June 7, 1989 from 2:00 to 4:00 p.m., EDT.

ADDRESS: The meeting will be held at the Hyatt Regency Hotel, Cincinnati, Ohio. The room assigned is Section C.

FOR FURTHER INFORMATION CONTACT: Theresa DeGrange, (301) 966-7449.

SUPPLEMENTARY INFORMATION:

I. Purpose

The Supplemental Health Insurance Panel (Panel) was established in 1980 by section 507 of the Social Security Disability Amendments of 1980, Pub. L. 96-265, which added section 1882 to Title XVIII of the Social Security Act (the Act). This law established minimum standards for Medicare supplemental health insurance or "Medigap" policies in order to protect Medicare beneficiaries from abuses found to be prevalent in the marketing of such policies. The Panel is comprised of four State Insurance Commissioners and a chairperson. The chairperson is the Director, Bureau of Program Operations, HCFA (by delegation of authority from the Secretary of Health and Human Services). Panel meetings are open to the public. Initially, under section 1882(b)(2)(A) of the Act, State Commissioners were appointed to the Panel by the President. However, section 221(f) of the Medicare Catastrophic Coverage Act of 1988 (MCCA), Pub. L. 100-360, authorizes the Secretary to make these appointments.

The primary responsibility of the Panel is to review the States' legislative and regulatory requirements for Medicare supplemental health insurance policies to determine whether the individual State standards are equal to or more stringent than certain Federal requirements described in section 1882(b)(1) of the Act. States with Panel-approved programs are not subject to the Federal Voluntary Certification Program (VCP) for Medigap policies. There are at present 49 jurisdictions, including 46 States, that are not subject to VCP for Medigap policies. Also as specified in section 1882 of the Act, the VCP allows individual insurers in States with programs not approved by the

Panel to submit Medicare supplemental policies to the Secretary for review. Those policies found to meet or exceed the Federal minimum standards can be certified as such and bear a Federal emblem when marketed in a nonapproved State.

The initial identification of complying and noncomplying State programs was completed in 1982. Since that time the Panel's principal legal responsibility has been to assure that approved States continue to maintain programs meeting Federal standards and to review changes made by States.

Section 1882 of the Act requires the Panel to review all State Medicare supplemental health insurance regulatory programs to determine whether they meet the minimum standards contained in section 1882 of the Act as amended. The States have been asked to submit to the Panel: A description of the State's plan to incorporate the revised minimum standards under section 1882 of the Act, including timetables for both OBRA 87 and MCCA provisions; a copy of the State statute(s) to regulate health insurance policies designed to supplement Medicare; a copy of any State regulations that implement the statute(s); a copy of any material that interprets the State's statute(s) and regulations governing such policies; a copy of any pending legislation that affects such policies; and a copy of any draft State regulations that would affect this area together with an indication of the expected date of final publication of such regulation. The Panel will compare the States' submitted materials with the Federal law and the National Association of Insurance Commissioners (NAIC) Model Regulation for Medicare Supplements, formally adopted on September 20, 1988.

The Panel began making its determinations as to the status of individual State programs in a December 13, 1988 meeting. At that time 5 States were granted conditional approval. On March 21, 1989 the Panel met to continue the review process. On that occasion 8 States were granted conditional approval.

II. Agenda

The major agenda item for the meeting is the review of State programs. Agenda items are subject to change as priorities dictate.

(Catalog of Federal Domestic Assistance Program No. 13,774; Medicare-Supplementary Medical Insurance)

Dated: May 17, 1989.

Louis B. Hays,

Acting Administrator, Health Care Financing Administration.

[FR Doc. 89-13030 Filed 5-31-89; 8:45 am]

BILLING CODE 4120-03-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT-050-09-4132-12]

Comment Period

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of comment period.

SUMMARY: The Environmental Assessment (EA) and proposed decision are being prepared for mining exploration on the Pennell/Wolverton property that is within the Mt. Pennell Wilderness Study Area (WSA). This action is proposed under the Grandfathered Uses for the WSA. The EA will be available June 2, 1989. The comment period will end July 1, 1989. For further information, contact Roy Edmonds at (801) 896-8221. Copies of the EA will be available at the Richfield District Office, 150 East 900 North, Richfield, Utah 84701.

May 23, 1989.

Sam Rowley,

Acting District Manager, Richfield District Office.

[FR Doc. 89-13024 Filed 5-31-89; 8:45 am]

BILLING CODE 4310-DQ-M

[NV-050-09-4410-08]

Availability of the Draft Nellis Air Force Range Resource Plan and Environmental Impact Statement, NV

May 23, 1989.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of the draft Nellis Air Force range resource plan and environmental impact statement.

SUMMARY: Notice is hereby given that the Bureau of Land Management has released, for a 90-day public review and comment period, the Draft Nellis Air Force Range Resource Plan and Environmental Impact Statement (DRP/EIS).

The DRP/EIS was prepared as a result of the Military Lands Withdrawal Act of 1986 (Pub. L. 99-606) and as amended on June 17, 1988 (Pub. L. 100-338). This plan describes and analyzes the options for management of natural resources on approximately 2,209,326 acres of withdrawn public lands in Nye, Lincoln, and Clark Counties, Nevada. These lands have been withdrawn for use as a high-hazard military weapons training and testing area. Resource management options are therefore limited and the DRP/EIS reflects those limitations imposed by military use of the planning area.

The DRP/EIS does not address military uses or impacts within the planning area. Those uses and impacts were addressed in two separate EISs prepared in 1981 and 1986.

DATES: Written comments on the DRP/EIS must be submitted and postmarked no later than September 1, 1989. Oral and/or written comments may also be presented at three public meetings to be held at the following times and locations:

July 18, 1989, 7:00 p.m., Lincoln County Annex, 100 South 1 West, Alamo, Nevada.

July 19, 1989, 7:00 p.m., Tonopah Convention Center, 301 Brougher, Tonopah, Nevada.

July 20, 1989, 7:00 p.m., Las Vegas District Office, 4765 Vegas Drive, Las Vegas, Nevada.

ADDRESS: Written comments should be addressed to: Curtis Tucker, Area Manager, Caliente Resource Area, P.O. Box 237, Caliente, NV 89008.

FOR FURTHER INFORMATION CONTACT: Roger Alexander, Las Vegas District Office, P.O. Box 26569, Las Vegas, NV 89126; (702) 646-8800.

SUPPLEMENTAL INFORMATION: The DRP/EIS analyzes two alternatives to resolve the following issues: Management of vegetation, wildlife habitat, wild horses and burros, and cultural resources. The two alternatives are the No-Action Alternative and BLM's Preferred Alternative.

BLM's preferred alternative focuses on wild horse management. Constraints imposed by the military use of the area restrict options for management of wildlife habitat, vegetation, and cultural resources. Wild horse numbers on the planning area would be reduced to 1,000 in an attempt to restrict wild horses to the Nevada Wild Horse Range and lessen impacts to wildlife habitat and vegetation. If monitoring indicates that the reduction in numbers is not successful in meeting management objectives, fencing is proposed to protect sensitive wildlife habitat and vegetation and to decrease military-wild horse conflicts. Protection of cultural resources is mandated by law, therefore no changes are proposed for the management of cultural resources. No

additional measures are proposed in this plan.

In addition to the issues identified above, the DRP/EIS examines the proposed designation of the Timber Mountain Caldera National Natural Landmark as an area of critical environmental concern (ACES). BLM's preferred alternative proposes the designation of 110,720 acres within the planning area as an ACEC. The proposed ACEC is already withdrawn from all forms of public land entry and BLM would not authorize or initiate any surface-disturbing activities within the ACEC. Access to the proposed ACEC is restricted and subject to Air Force authorization. This will not change if the ACEC is designated. This notice meets the requirements of 43 CFR 1610.702 for designation of ACECs.

Copies of the DRP/EIS are available for review at the following BLM offices:

Las Vegas District Office, 4765 Vegas Drive, P.O. Box 26569, Las Vegas, NV 89126.

Caliente Resource Area, P.O. Box 237, Caliente, NV 89008.

Tonopah Resource Area, P.O. Box 911, Bldg. 102, Military Circle, Tonopah, NV 89049.

Public Room, Nevada State Office, BLM, 850 Harvard Way, Reno, NV 89520.

Copies of the DRP/EIS can also be examined at public libraries throughout Las Vegas and Clark County, Beatty, Tonopah, Pioche, the Washoe County Library in Reno, the State Library in Carson City, and the libraries at the University of Nevada-Las Vegas and the University of Nevada-Reno.

Edward F. Spang,

State Director, Nevada.

[FR Doc. 89-13016 Filed 5-31-89; 8:45 am]

BILLING CODE 4310-HC-M

[WY-920-09-4111-15; WYW99761]

Proposed Reinstatement of Terminated Oil and Gas Lease; Wyoming

May 22, 1989.

Pursuant to the provisions of Pub. L. 97-451, 96 Stat. 2462-2466, and Regulation 43 CFR 3108.2-3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW99761 for lands in Campbell County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The leassee has agreed to the amended lease terms for rentals and royalties at rates of $5 per acre, or fraction thereof, per year and 16-2/3 percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** Notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW99761 effective February 1, 1989, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

David A. Pomerinke,

Acting Chief, Leasing Section.

[FR Doc. 89-12936 Filed 5-31-89; 8:45 am]

BILLING CODE 4310-22-M

[ID-060-09-4212-14]

Coeur d'Alene District, ID Noncompetitive Sale of Public Lands

AGENCY: Bureau of Land Management, Idaho.

ACTION: Notice of realty action, direct sale of public lands in Shoshone County, Idaho.

SUMMARY: The following public lands have been examined and found suitable for disposal by direct sale under section 203 of the Federal Land Policy and Management Act of 1976 (FLPMR) at not less than the appraised fair market value:

Parcel No.	Legal description	Acres	Proponent
	Boise Meridian, T. 48 N., R. 4 E., sec. 26,		
I-25844 B	Lot 18	0.90	George Bangart.
I-25498 B	Lot 19	0.70	Warren Van Zandt.
I-25502 B	Lot 29	0.39	Owen Bailey.
I-25500 B	Lot 22	0.86	Geraldine Bair.
I-25501 B	Lot 23	0.19	Del Enquist.
	T. 48 N., R. 5 E., sec. 9,		
I-25761 B	Tract 47	0.50	Undetermined at this time.

Publication of this notice in the **Federal Register** Segregates the above lands from the operation of the public land laws and the mining laws except for a direct sale pursuant to section 203 of FLPMA. The segregative effect will end upon issuance of patents or 270 days from the date of publication, whichever occurs first.

Sale Procedures

The lands are proposed to be offered for sale to the parties listed above who have occupied the area inadvertently in trespass for several years. Direct sale procedures are being used since competitive sales would not be appropriate and the public interest would best be served by direct sale to the parties involved. Benefits of direct sales will be to resolve potential claims to title and to give consideration to the parties involved who have significant interests in the subject properties.

The sale proposal is consistent with the Bureau of Land Management's planning system. The lands are not needed for any resource program and are difficult and uneconomical to manage and are not suitable for management by another Federal department or agency.

Conveyance of the available mineral interests under section 209 of FLPMA will occur simultaneously with the sale of each parcel. Acceptance of the direct sale offer and payment of a $50.00 filing fee will constitute an application for conveyance of those mineral interests.

The patents, when issued, will contain a reservation to the United States for ditches and canals and will be subject to any other existing rights of record.

SUPPLEMENTARY INFORMATION: Detailed information concerning the conditions of the sales can be obtained by contacting Eric Thomson, Realty Specialist, at (208) 756-1511. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Bureau of Land Management.

1808 North Third Street, Coeur d'Alene, Idaho 83814. Objection will be reviewed by the State Director who may sustain, vacate, or modfy this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Dated: May 23, 1989.

Mert Lombard,

Acting District Manager.

[FR Doc. 89-13015 Filed 5-31-89; 8:45 am]

BILLING CODE 4310-GG-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Advisory Committee on Construction Safety and Health Full Committee Meeting

Notice is hereby given that the Advisory Committee on Construction Safety and Health, established under section 107(e)(1) of the Contract Work Hours and Safety Standard Act (40 U.S.C. 333) and section 7(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656) will meet on June 14 and 15 in Room S-4215 of the Francis Perkins Building, Department of Labor, Washington, D.C. The meeting is open to the public and will begin at 9:00 a.m.

The agenda for this meeting includes reports from the National Institute for Occupational Safety and Health (NIOSH), workgroup reports and agency staff updates on California's state job safety and health program, cadmium and construction safety response team activity. Written data, views or comments may be submitted, preferably with 20 copies, to the Division of Consumer Affairs. Any such submissions received prior to the meeting will be provided to the members of the Committee and will be included in the record of the meeting. Anyone wishing to make an oral presentation should notify the Division of Consumer Affairs before the meeting. The request should state the amount of time desired, the capacity in which the person will appear and a brief outline of the content of the presentation.

For additional information contact: Tom Hall, Division of Consumer Affairs, Occupational Safety and Health Administration, Room N-3647, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone 202-523-8615. An official record of the meeting will be available for public inspection at the Division of Consumer Affairs.

Signed at Washington, DC this 25th day of May, 1989.

Alan C. McMillan,

Acting Assistant Secretary.

[FR Doc. 89-12999 Filed 5-31-89; 8:45 am]

BILLING CODE 4510-26-M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Theater Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Theater Advisory Panel (National Resources Section) to the National Council on the Arts will be held on June 21, 1989, from 9:30 a.m.-6:30 p.m. in Room M07 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on June 21, 1989 from 9:30 a.m.-10:00 a.m. and from 5:30 p.m.-6:30 p.m. The topics for discussion will be guidelines and policy issues.

The remaining portion of this meeting on June 21, 1989, from 10:00 a.m.-5:30 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5433.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 89-13011 Filed 5-31-89; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-313 and 50-368]

Arkansas Power and Light Co.; Arkansas Nuclear One, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to the Operating Licenses for Arkansas Nuclear One, Units 1 and 2 (ANO-1&2), located in Russellville, Arkansas.

Environmental Assessment

Identification of Proposed Action

The action is in response to the licensee's applications for amendment dated March 20 and 24, 1985, which requested the deletion of Appendix "B" to the Technical Specifications (TSs) for both ANO-1&2. The Appendix B Environmental Technical Specifications currently contain no radiological specifications but contain only a section, 3.5 for ANO-1 and 5.9 for ANO-2, entitled, "Special Requirements." These sections discuss vegetation and erosion control of the plant site and transmission line right-of-way corridors constructed for the distribution of energy generated by ANO-1&2. The information provided in these sections was required by the NRC staff evaluations included in the ANO-1 "Environmental Report" and in NUREG-0254, "Final Environmental Statement Related to Operation of Arkansas Nuclear One, Unit 2," both of which discussed the potential for severe erosion along the proposed transmission corridors.

The Need for The Proposed Action

The amendments are proposed because the licensee considers Appendix B as currently written to be primarily descriptive in nature, discussing the environmental control of the right of way corridors related to the construction of the plant. The landscaping and planting described in the land use management section were completed during the initial construction of Unit 1. There are no "action statements" or reporting requirements, and no items in NRC regulations are addressed. Significant surveillance has been performed in the past several years to conclude that there has been no environmental damage to those areas addressed in this section. In summary, these TSs are not needed to ensure protection of the environment.

Environmental Impacts of the Proposed Action

The proposed amendments would not result in any modification of plant systems, components or procedures. Consequently, the probability of accidents has not been increased and the post-accident radiological releases will not be greater than previously determined, nor do the proposed amendments otherwise affect radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed amendments.

With regard to potential non-radiological impacts, the proposed amendments would eliminate a listing of requirements which have already been adequately met. NRC surveys have been conducted which have verified that the licensee has constructed, planted and maintained the properties identified in Appendix B in compliance wth previous commitments. The corridors, in particular, have adequate ground cover with only two slightly eroded areas, which pose no threat to either the environment or the transmission tower foundations. These surveys also revealed no indication of herbicide use. The amendments do not affect non-radiological plant effluents and have no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed amendments.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation and would result in reduced operational flexibility

Alternative Use of Resources

This action involves no use of resources not previously considered in the Final Environmental Statements (construction permit and operating license) for ANO–1&2.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, we conclude 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 amendment.

For further details with respect to this action, see the applications for amendments dated March 20 and 25, 1985 which are available for public inspection at the Commission's Public Document Room 2120 L Street, NW., Washington, DC, and at the Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801.

Dated at Rockville, Maryland this 25th day of May, 1989.

For The Nuclear Regulatory Commission.

George Dick,

Acting Director, Project Directorate—IV, Division of Reactor Projects—III, IV, and V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89–12994 Filed 5–31–89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–263]

Northern States Power Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an amendment to Facility Operating License No. DPR–22 granted to the Northern States Power Company (the licensee) for operation of the Monticello Nuclear Generation Plant, located at the licensee's site in Wright County, Minnesota.

Environmental Assessment

Indentification of the Proposed Action

The proposed action would revise the plant Technical Specifications to extend the Maximum Average Planar Linear Heat Generation Rate (MAPLHGR) for fuel type P8DRB265L and BP8DRB265L, and permit the plant to operate beyond the current MAPLHGR exposure limit of 40,000 MWd/MTU, to 45,000 MWd/MTU

The proposed action is in accordance with the licensee's application dated January 31, 1989, as amended February 3, 1989

The Need for the Proposed Action

The proposed amendment is needed so that the licensee can extend the length of the current plant operating cycle (Cycle 13) through to August 1989, and meet expected power demands during the peak load summer months of 1989.

Environmental Impact of the Proposed Action

The Commission's staff has evaluated the safety consideration associated with the proposed amendment, including the methodology used by the licensee to analyze the impact of extending the MAPLHGR, and the results of that analysis. The staff has concluded from this evaluation that reactor operation with the proposed MAPLHGR extension is acceptable in that: (1) The thermal and mechanical considerations for increasing MAPLHGR to the 45,000 MWd/MTU limit were calculated using conservative NRC-approved methodology; (2) the licensee's analytical results showed that the fuel peak clad temperature is less than 1 percent under loss-of-coolant-accident (LOCA) conditions; and (3) the proposed exposure increase (8.3 kW/ft at 45,000 MWd/MTU) meets the requirements set forth in 10 CFR 50.46 of the Commission's regulations.

The proposed amendment will have no adverse effect on the probability of any accident; does not involve any increase in fuel burnup rate or change the mix of fission products that might be released in the event of serious accident; and thus will not significantly affect the consequences of serious accidents. No changes are being made in the types or amounts of any radiological effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure.

With regard to potential nonradiological impacts of reactor operation with the requested MAPLHGR increase, the proposed change involves systems located within the restricted area, as defined in 10 CFR Part 20 of the Commission's regulations. The proposed change does not affect nonradiological plant effluents and has no other environmental impact.

The "Notice of Consideration of Issuance of Amendment and Opportunity for Hearing" in connection with this action was published in the **Federal Register** on February 22, 1989 (54 FR 7621). No request for hearing or petition for leave to intervene was filed following publication of this notice.

Alternative to the Proposed Action

Since the Commission has concluded there are no significant environmental effects that would result from the proposed action, any alternative with equal or greater environmental impacts need not be evaluated.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the Final Environmental Statement related to the operation of the Monticello Nuclear Generating Plant, dated, November 1972.

Agencies and Persons Contacted

The Commission's staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this proposed action, see the application for amendment dated January 31, 1989 and supplement thereto dated February 3, 1989, which are available for public inspection at the Commission's Public Document Room, Gelman Building, 2120 L Street NW., Washington, DC, and at the Minneapolis Public Library, Technology and Science Department 300 Nicollet Mall, Minneapolis, Minnesota.

Dated at Rockville, Maryland this 25th day of May 1989.

For the Nuclear Regulatory Commission.

Lawrence Yandell,

Acting Director, Project Directorate III–1, Division of Reactor Projects—III, IV, V & Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89–12995 Filed 5–31–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–397; Nuclear Project No. 2]

Washington Public Power Supply System; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendment to Facility Operating License No. NPF–21 issued to Washington Public Power Supply System (the licensee), for operation of Nuclear Project No. 2, located in Benton County, Washington.

Environmental Assessment

Identification of Proposed Action

The proposed amendment revises the battery load profiles shown in Technical Specification 3/4.8.2.1, "D.C. Sources—Operating." The surveillance requirement includes a table showing the minimum amperage which each battery must be capable of delivering as a function of time when called upon to deliver emergency loads. The licensee has recalculated these emergency loads and the resulting battery profiles to account for current safety equipment configurations. The amendment inserts currently applicable values into the table.

In making the calculation, the licensee used a different aging factor for the 250 volt batteries than for the 24 volt and 125 volt batteries. The surveillance requirement is revised to include separate criteria applicable to the 250 volt batteries for the periodic performance discharge tests.

The proposed action is in accordance with the licensee's application for amendment dated March 18, 1988, as supplemented by letter dated April 12, 1989.

The Need for the Proposed Action

The proposed amendment is required to ensure that the batteries are capable of providing emergency loads. The periodic surveillance required by the technical specifications is intended to show that the batteries are capable of meeting the actual expected loads. The licensee has recently reevaluated emergency loads and has recomputed the battery requirements for these loads. The amendment will place these up-to-date values into the technical specifications.

Environmental Impacts of the Proposed Action

This action does not involve a change to equipment or to operating procedures. It is limited to a revision to the calculated emergency battery loads. An existing license requirement would be amended to reflect the new calculations. The staff has completed its safety evaluation of the proposed amendment and finds the change acceptable.

The proposed action does not involve a significant change in the probability or consequences of any accident previously evaluated, nor does it involve a new or different kind of accident. Consequently, any radiological releases resulting from an accident would not be significantly greater than previously determined. The proposed amendment does not otherwise affect routine radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed amendment. The Commission also concludes that the proposed action will not result in a significant increase in individual or cumulative occupational radiation exposure.

With regard to nonradiological impacts, the proposed amendment does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

Alternatives to the Proposed Action

Because the Commission has concluded that there are no significant environmental impacts associated with the proposed action, there is no need to examine alternatives to the proposed action.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in connection with the Final Environmenal Statement related to operation of Nuclear Project No. 2, dated December 1981.

Agencies and Persons Consulted

The NRC staff has reviewed the licensee's request that supports the proposed amendment. The NRC staff did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed amendment.

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will have not significant adverse effect on the quality of the human environment.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on May 18, 1988 (53 FR 17810). No request for hearing or petition for leave to intervene was filed following this notice.

For further details with respect to this action, see the application for amendment dated March 18, 1988 and supplement dated April 12, 1989, which are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555, and at the Richland City Library, Swift and Northgate Streets, Richland, Washington 99352.

Dated at Rockville, Maryland, this 25th day of May 1989.

For the Nuclear Regulatory Commission.

George W. Knighton,

Director, Project Directorate V, Division of Reactor Projects III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89–12997 Filed 5–31–89; 8:45 am]

BILLING CODE 7590–01–M

Applied Radiant Energy Corp; Receipt of Petition for Director's Decision Under 10 CFR 2.206

Notice is hereby given that by letter dated March 23, 1989, the National Coalition to Stop Food Irradiation (NCSFI) requested the Nuclear Regulatory Commission (NRC or Commission) to initiate enforcement action involving Applied Radiant Energy Corporation (AREC) in Lynchburg, Virginia. AREC holds an NRC license to possess and use cesium sealed sources to irradiate wood impregnated with a plastic monomer to produce a polymer. The petitioner requested that the NRC suspend the use of cesium sealed sources by AREC. The basis the Petition asserts for its request is that the cesium sealed sources used by AREC are the same type of sources that are alleged to have leaked at Radiation Sterilizers Inc. in Decatur, Georgia.

The request is being treated pursuant to 10 CFR 2.206 of the Commission's regulations. The NRC will take appropriate action on NCSFI's request within a reasonable time.

A copy of the request is available for inspection in the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555.

Dated at Rockville, Maryland this 23 day of May, 1989.

For the U.S. Nuclear Regulatory Commission.

Robert M. Bernero, Director,

Office of Nuclear Material Safety and Safeguards.

[FR Doc. 89–12998 Filed 5–31–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–263]

Northern States Power Co.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–22 issued to the Northern States Power Company (the licensee), for operation of the Monticello Nuclear Generating Plant located in Wright County, Minnesota.

The proposed amendment would change the Monticello Technical Specifications to: (1) Revise pressure-temperature limit curves to meet the requirements of Regulatory Guide 1.99, Revision 2, "Radiation Embrittlement of Reactor Vessel Materials" issued by NRC Generic Letter 88–01; (2) add a new requirement for augmented inspection of piping susceptible to intergranular stress corrosion cracking as required by NRC Generic Letter 88–11; and (3) permit the use of the "mass point" method, for Type A containment leakage rate testing, as approved by the Commission in a recent change to Appendix J of 10 CFR Part 50.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By June 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 request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 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 that 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 limitation in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene 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, 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 Lawrence A. Yandell: (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 Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained

absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)-(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated March 31, 1989, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Dated at Rockville, Maryland, this 19th day of May 1989.

For The Nuclear Regulatory Commission.

Lawrence A. Yandell,

Acting Director, Project Directorate III-1 Division of Reactor Projects III, IV, V & Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89-12996 Filed 5-31-89; 8:45 am]

BILLING CODE 7590-01-M

PROSPECTIVE PAYMENT ASSESSMENT COMMISSION

Meetings

Notice is hereby given of meetings of the Prospective Payment Assessment Commission on Tuesday and Wednesday, June 13-14, 1989, at the Omni Shoreham Hotel, 2500 Calvert Street NW., Washington, DC.

The Subcommittee on Diagnostic and Therapeutic Practices will be meeting in the Executive Room at 1:30 p.m. on June 13, 1989. The Subcommittee on Hospital Productivity and Cost-Effectiveness will convene its meeting also at 1:30 p.m. on June 13, 1989 in the Congressional Room.

The Full Commission will convene at 9:00 a.m. on June 14, 1989 in the Diplomat Room.

All meetings are open to the public.

Donald A. Young,

Executive Director.

Schedule and Location of Meetings

Omni Shoreham, 2500 Calvert Street NW., Washington, DC., 202/234-0700.

	Room
Tuesday, June 13, 1989:	
8:30 a.m.-12:15 p.m. Full Commission Executive Session.	Executive.
12:30 p.m.-1:30 p.m. Lunch/ Executive Session.	Cabinet.
1:30 p.m.-5:00 p.m. Hospital Productivity and Cost-Effectiveness Subcommittee Meeting.	Congressional.
1:30 p.m.-5:00 p.m. Diagnostic and Therapeutic Practices Subcommittee Meeting.	Executive.
Wednesday, June 14, 1989:	
7:30 a.m.-8:45 a.m. Data Development and Research Subcommittee.	Cabinet.
9:00 a.m.-12:30 p.m. Full Commission Meeting.	Diplomat.
12:30 pm-1:30 p.m. Lunch/ Executive Session.	Cabinet.
1:30 p.m.-3:30 p.m. Full Commission Meeting.	Diplomat.

[FR Doc. 89-12642 Filed 5-31-89; 8:45 am]

BILLING CODE 6820-BW-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Northwest Conservation and Electric Power Plan Revisions to the Model Conservation Standards for New Commercial Buildings and Utility Programs

AGENCY: Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of change in hearing schedule.

SUMMARY: This document changes a hearing date and time contained in document published in the **Federal Register** on May 4, 1989 at 54 FR 19273. The hearing originally scheduled in Seattle, Washington on June 12 at 1:30 p.m. is rescheduled for June 13 at 1:30 p.m. at The Edgewater, Pier 67, Seattle, Washington as part of the Council's regularly scheduled monthly meeting.

For a full copy of the proposed amendments, or for further information: Contact Judi Hertz at 851 S.W. Sixth Avenue, Suite 1100, Portland, Oregon, 97204, or at (503) 222-5161, toll free 1-800-222-3355 in Idaho, Montana, and Washington or 1-800-452-2324 in Oregon.

Edward Sheets,

Executive Director.

[FR Doc. 89-12961 Filed 5-31-89; 8:45 am]

BILLING CODE 0000-00-M

SECURITIES AND EXCHANGE COMMISSION

[Rel No. 34-26865; File No. SR-DTC-89-08]

Self-Regulatory Organizations; Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change; Fee Schedule

May 23, 1989.

Pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act"), notice is hereby given that on April 27, 1989, the Depository Trust Company ("DTC") files with the Securities and Exchange Commission a proposed rule change. The proposal amends DTC's underwriting service fee schedule. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

The proposal revises DTC fees for the distribution of securities offered in underwritings of corporate and municipal issues. Prior to the proposal, DTC charged managing underwriters $219 for each corporate issue distributed through DTC and $419 for each registered municipal issue distributed through DTC.[1] Under the proposal, DTC will charge $219 for distribution of a corporate or registered municipal issue that has only one CUSIP number and $419 for distribution of a corporate or registered municipal issue that has more than one CUSIP number. DTC believes this fee change is warranted by the lower processing costs associated with providing underwriting services for issues not having multiple CUSIP numbers. Accordingly, DTC believes the fee change is consistent with section 17A(b)(3)(D) of the Act, which requires a clearing agency to provide for the equitable allocation of reasonable dues, fees, and other charges among its participants.

The proposal also revises DTC's underwriting consultation fee. Prior to the proposal, DTC's fee for assisting managing underwriters in structuring new issues was $500. The proposal eliminates this $500 fee cap and permits DTC to charge consultation fees necessary to cover DTC costs in providing those services. DTC believes this change is consistent with section 17A(b)(3)(D) of the Act, because, according to DTC, its consultation

[1] DTC also charged additional fees based upon the size of the issue and to cover any "unusual expenses." DTC also attached a $350 surcharge to issues with a put option feature. These components remain unchanged by the proposal. *See* DTC underwriting service fee schedule attached as Appendix A.

services often justify a charge in excess of $500.

The foregoing change has become effective, pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Interested persons are invited to submit written data, views, and arguments concerning the submission within 21 days after the date of publication in the **Federal Register.** Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Reference should be made to File No. SR–DTC–89–8.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC. Copies of the filing (SR–DTC–89–8) and of any subsequent amendments also will be available for inspection and copying at DTC's principal office.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. 17 CFR 200.30–3.

Jonathan G. Katz,

Secretary.

Appendix A

(a) The Depository Trust Company ("DTC") is filing herewith the following changes in the fee schedule for DTC services: [1]

[1] Deletions are in [brackets]; additions are italicized

Service	Fee
31. Underwritings (billed to managers of underwritings)	
a. (Corporate Issues) *Issues having 1 CUSIP number*	$219.00 plus $3.00 per million with a total maximum fee of $2,000.00* and any unusual expenses.
Book-entry-only isues	$219.00* and any unusual expenses.
b. (Registered municipal issues) *Issues having more than 1 CUSIP number*	$419.00 plus $3.00 per million with a *total* maximum *fee* of $2,000.00* and any unusual expenses.
Book-entry-only isues	$419.00* and any unusual expenses.
c. Certificates of deposit	$105.00* and any unusual expenses.

*A surcharge of $350.00 applies to issues with a put option feature to cover the costs associated with reviewing the official statement and establishing a data base through which put periods are monitored. Issues requiring consultation and special development efforts are charged an additional surcharge [of $500.00] *to cover DTC's additional costs.*

[FR Doc. 89–13003 Filed 5–31–89; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–26867; File No. MCC–89–03]

Self-Regulatory Organizations: Filing and Immediate Effectiveness of Proposed Rule Change by Midwest Clearing Corporation Relating to the Transfer of Residual Credit Positions via MCC's Automated Customer Account Transfer Service (ACATS)

May 23, 1989.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on April 26, 1989, the Midwest Clearing Corporation filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. 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

The proposed rule change authorizes the Midwest Clearing Corporation (MCC) to transfer residual credit positions through MCC's Automated Customer Account transfer Service (ACATS).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization 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 self-regulatory organization 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

The proposed rule change enhances the existing ACATS by introducing a new facility to allow a delivering MCC Participant to initiate the transfer of residual credit positions, for both cash and securities, that have accrued to an account after the account has been transferred via ACATS.

Residual credit positions tend to be created when a Record Date for a dividend or other distribution occurs before the account transfer process has been started or before it is complete. The receiving firm then obtains the dividend or interest payment after the transfer has been completed.

The ACATS enhancements allows the delivering firm to initiate the transfer of residual credit positions in a more automated format. The delivering firm will be able to stop issuing and mailing checks which might be lost in the mail or mis-routed at the receiving firm.

The proposed rule changes and

procedures also specify input and output data, as well as revised record layouts

The proposed rule change also clarifies MCC's rules regarding both ACATS and the transfer of residual credit positions. The clarification clarifies that in cases where a Delivering Participant has made adjustments on the second business day after the Receiving Participant's receipt of the report detailing the customer account asset data to an account containing options positions, the receiving Participant does not have an additional two day review process. The proposed rule is intended to reduce risks related to the delay of the transfer of options positions.

The proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act") in that it promotes the accurate clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

MCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Participants were advised of ACATS enhancements in March, 1989. To date, no comments have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of the Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities & 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 Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to File Number SR–MCC–89–3 and should be submitted by June 22, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–13001 Filed 5–31–89; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–26866; File No. MCC–89–02]

Self-Regulatory Organizations; Filing of Proposed Rule Change by Midwest Clearing Corporation Relating to the Limitation or Elimination of a Director's Liability in Certain Instances.

May 23, 1989.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on April 11, 1989, the Midwest Clearing Corporation filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement on the Terms of Substance of the Proposed Rule Change

The Midwest Clearing Corporation ("MCC"), pursuant to Rule 19b–4 of the Securities Exchange Act of 1934 (the "Act"), proposes the following changes to its Certificate of Incorporation and By-Laws:

Additions Italicized

Certificate of Incorporation, Article 8:

* * * as the same may be amended from time to time. *To the fullest extent that the General Corporation Law of the State of Delaware, as it exists on the date hereof or as it may hereafter be amended, permits the limitation or elimination of the liability of Directors, no Director of the Corporation shall be liable to the Corporation or its shareholders for monetary damages for breach of fiduciary duty as a Director, except where such liability arises directly or indirectly as a result of a violation of the federal securities laws. No amendment to or repeal of this Article shall apply to or have any effect on the liability of any Director of the Corporation for or with respect to any acts or omissions of such Director occurring prior to such amendment or repeal.*

By-Laws, Article 6, Section 6.1

"* * * in connection with such action, suit or proceeding."

To the fullest extent that the General Corporation Law of the State of Delaware, as it exists on the date hereof or as it may hereafter be amended, permits the limitation or elimination of the liability of Directors, no Director of the Corporation shall be liable to the Corporation or its shareholders for monetary damages for breach of fiduciary duty as a Director, except where such liability arises directly or indirectly as a result of a violation of the federal securities laws. No amendment to or repeal of this Article shall apply to or have any effect on the liability of any Director of the Corporation for or with respect to any acts or omissions of such Director occurring prior to such amendment or appeal.

II. Self-Regulatory Organization's Statement on the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization 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 self-regulatory organization 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 on the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed change is based on Section 102 (b)(7) of the General Corporation Law of the State of Delaware, under which MCC is organized, which allows corporations to adopt provisions in their Certificates of Incorporation limiting or eliminating the potential monetary liability of directors under certain circumstances.

The amendment does not eliminate a Director's duty of care, which requires Directors to exercise informed business judgment in discharging their duties. Rather, the personal liability of MCC's Directors to MCC or its shareholders will be limited should they fail, through negligence or gross negligence to satisfy this duty. Under Delaware law, such limitations do not apply in the following circumstances:

(1) Breach of the duty of loyalty to MCC or its shareholders; i.e., the responsibility to conduct business in good faith and in the honest belief that the action taken is in the best interest of MCC.

(2) Acts or omissions that are not performed in good faith, or which involve intentional misconduct or violation of law.

(3) Unlawful payment of dividends or unlawful purchase or redemption of stock.

(4) Transactions from which the director derived improper personal benefits.

In addition, an provision has been included at the request of the SEC staff to expand the circumstances where the limitations do not apply to instances where liability would arise directly or indirectly as a result of a violation(s) of the Federal securities laws.

The amendment does not eliminate other equitable legal remedies, such as rescission or injunctive actions and in no way limits or eliminates a Director's direct liability under Federal securities laws. In addition, it does not eliminate the liability of officers of MCC for actions taken in the capacity, even if that individual is also a Director. This amendment does not apply to the liability of a Director for acts or omissions which may have occurred prior to its approval.

MCC believes the amendment is a necessary measure in order to help assure its ability to recruit and retain competent Directors. Without the protections offered by the proposed change, MCC believes there will be a deterrent effect upon the entrepreneurial decision-making of its Directors. In addition, due to the increased numbers and magnitude of lawsuits against directors, many other Delaware corporations have already adopted similar provisions.

The proposed rule change is consistent with section 17A of the Securities Exchange Act of 1934 in that the protections offered by the amendment help to remove impediments to attracting competent directors and thus will help assure the fair representation of shareholders in the selection of directors and administration of the affairs of MCC and will help attract directors which are representative of participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Midwest Clearing Corporation does not believe that any burdens will be placed on competition as a result of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

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 the appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will: (A) by order approve the 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 foregoing. Persons making written submissions should file six copies thereof with the 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 Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to File No. MCC–89–2 and should be submitted by June 22, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–13000 Filed 2–31–89; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–24895]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

May 25, 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 June 19, 1989 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 or 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.

CSW Credit, Inc. et al. (70–7113 and 70–7218)

Central and South West Corporation ("CSW"), a registered holding company and CSW Credit, Inc. ("Credit"), its nonutility subsidiary, both located at 2121 San Jacinto Street, Suite 2400, Dallas, Texas 75201, have filed a post-effective amendment to their application-declaration pursuant to sections 6(a), 7, 9(a), 10 and 12(b) of the Act and Rules 45 and 50(a)(5) thereunder.

By prior Commission orders dated July 19, 1985, July 31, 1986 and February 8, 1988 (HCAR No.s 23767, 21457 and 24575), CSW was authorized to form Credit for the purpose of factoring the accounts receivable of CSWs subsidiaries and nonassociated utilities. Credit's ratio of debt to equity was to be maintained at approximately 80% debt to 20% equity. CSW and Credit are now seeking to change such requirement to a

requirement that the equity ratio be not more than 20%.

Arkansas Power & Light Company (70–7571)

Arkansas Power & Light Company ("Arkansas"), Capital and Broadway, Little Rock, Arkansas 72201, a subsidiary of Entergy Corporation, which until May 19, 1989 was known as Middle South Utilities, Inc., and which is a registered holding company, has filed a post-effective amendment to its application pursuant to sections 9(a) and 10 of the Act.

Pursuant to authority granted in prior Commission orders, Arkansas leased a portion of the nuclear fuel, including facilities incident to its use ("Nuclear Fuel"), required for use at its Arkansas Nuclear One Generating Station ("ANO") from Russell Energy, Inc. ("Russell") (HCAR No. 21938, February 27, 1981), and from Ozark Fuel Corporation ("Ozark") (HCAR Nos. 22272, 24239, and 24502, November 13, 1981, November 19, 1986, and November 17, 1987, respectively) ("Lease Agreemnent"). Subsequently, in order to restructure its leasing arrangement, Arkansas was authorized to and did enter into a Fuel Lease ("Lease"), dated December 22, 1988, for its Nuclear Fuel with River Fuel Trust #1 ("Trust") (HCAR No. 24787, December 20, 1988) ("Order"). The Trust was formed under the laws of the State of New York pursuant to a Trust Agreement among Morgan Guaranty Trust Company of New York, as trustor ("Trustor"), United States Trust Company of New York, not in its individual capacity, but solely as trustee ("Trustee") and Arkansas, as beneficiary. The Trust was specifically created for this restructuring by the Trustor.

The Trust acquired the Nuclear Fuel owned by Russell and Ozark along with certain Nuclear Fuel owned by Arkansas. Promptly after such acquisiton, Arkansas terminated its Lease Agreement with Russell and its Lease Agreement with Ozark. Russell then terminated its Credit Agreement with Bank of America National Trust and Savings Association, and Ozark terminated its Credit Agreement with Swiss Bank Corporation, New York Branch.

Under the terms of the Lease, the Trust makes payments to suppliers, processors and manufacturers necessary to provide Nuclear Fuel for both units of ANO, or Arkansas will make such payments and will be reimbursed by the Trust. The maximum obligation of the Trust to make payments for Nuclear Fuel initially Arkansas will not exceed $250 million.To the extent that the cost of Nuclear Fuel required by Arkansas exceeds the $65 million Commitment under the Credit Agreement and the $130 million of Secured Notes currently outstanding, as authorized in the Order, or Additional Secured Notes issued in replacement thereof, as proposed above, it is further proposed that the Trust may issue up to $55 million of Additional Secured Notes. Additional Secured Notes are expected to be issued with the assistance of a placement agent, which is contemplated to be Merrill Lynch Capital Markets.

Pursuant to the terms of the Lease, the Trust may only issue Additional Secured Notes with the consent of Arkansas. Authorization is requested for Arkansas to consent to the issuance of Additional Secured Notes from time to time in an aggregate amount at any one time outstanding not to exceed $185 million, as provided by the Order in all material respects, and provided that the interest rate on Additional Secured Notes and the fees paid to the placement agent in connection with the issuance thereof not be in excess of those generally obtained on the date of pricing on sales of similar notes with similar terms and conditions, including securities with the same maturity and by companies with comparable credit quality. In addition, to the extent requested by the Trustee, Arkansas would execute Supplemental Instructions to the Trustee, with respect to the issuance of the Additional Secured Notes.

System Energy Resources, Inc. (70–7604)

System Energy Resources, Inc. ("SERI"), Echelon One, 1340 Echelon Parkway, Jackson, Mississippi 39213, a subsidiary of Entergy Corporation, which until May 19, 1989 was known as Middle South Utilities, Inc., and which is a registered holding company, has filed a post-effective amendment to its application pursuant to sections 9(a) and 10 of the Act.

Pursuant to authority granted in prior Commission orders, SERI leased a portion of the nuclear fuel, including facilities incident to its use ("Nuclear Fuel"), required for use at Unit No. 1 of SERI's Grand Gulf Nuclear Generating Station ("Grand Gulf") from Port Gibson Energy, Inc. ("Gibson") (HCAR No. 24697, August 18, 1988), and from Prulease Inc. ("Prulease") (HCAR No. 24591, February 29, 1988) ("Lease Agreements"). Subsequently, in order to restructure its leasing arrangements, SERI was authorized to and did enter into a Fuel Lease ("Lease"), dated February 24, 1989, for its Nuclear Fuel for Grand Gulf with River Fuel Funding Company #3, Inc. ("Lessor"), a Delaware corporation, all of the capital stock of which is held by United States Trust Company of New York, as trustee ("Trustee"), for River Fuel Trust #3 ("Trust"). The Trust was formed under and is governed by the laws of the State of New York, except to the extent that the General Corporation Law of the State of Delaware governs the Lessor's relationship with the Trust as its sole stockholder, pursuant to a Trust Agreement among Morgan Guaranty Trust Company of New York, as trustor ("Trustor"), the Trustee and SERI, as beneficiary. The Trust was specifically created for this restructuring by the Trustor (HCAR Nos. 24825 and 24827, February 21, 1989 and February 23, 1989, respectively) ("Orders").

Pursuant to the Orders, the Lessor acquired the Nuclear Fuel owned by Gibson and Prulease, except for certain Nuclear Fuel acquired by SERI. Promptly after such acquisition, SERI terminated its Lease Agreement with Gibson and its Lease Agreement with Prulease. Gibson then terminated its related Restated and Amended Credit Agreement with Union Bank of Switzerland, Houston Agency, and certain other banks.

Under the terms of the Lease, the Lessor makes payments to suppliers, processors and manufacturers necessary to provide Nuclear Fuel for Grand Gulf, or SERI will make such payments and will be reimbursed by the Lessor. The maximum obligation of the Lessor to make payments for Nuclear Fuel initially is $180 million at any one time outstanding, although the Lessor may make such payments of up to $185 million.

Pursuant to the terms of the Orders, SERI consented to allow the Lessor to finance its obligations under the Lease by entering into (i) a Credit Agreement, dated as of February 24, 1989 ("Credit Agreement"), with Union Bank of Switzerland, Houston Agency and (ii) certain secured note agreements, each dated as of February 24, 1989 ("Secured Note Agreements"), with certain institutional lenders. The Orders authorized an initial bank commitment ("Commitment") under the Credit Agreement of $70 million, which remains unchanged under this proposal, and the initial issuance by the Lessor of $115 million of secured notes ("Secured Notes") under the Secured Note Agreements. The Secured Notes were issued by the Lessor on February 24, 1989 in a total principal amount of $115 million, but they mature on various dates, the final maturity date being February 15, 1997.

It is now proposed that in order to continue to finance Nuclear Fuel

required by SERI, additional secured notes ("Additional Secured Notes") would be issued by the Lessor in replacement of the Secured Notes or Additional Secured Notes which had matured. Additional Secured Notes would be issued pursuant to additional Secured Note Agreements.

In addition, the amount of Nuclear Fuel which is required to be leased by SERI may fluctuate based on the rate of burn-up of the Nuclear Fuel and the market costs of Nuclear Fuel. It is currently estimated that the total cost of Nuclear Fuel required by SERI will not exceed $250 million. To the extent that the cost of Nuclear Fuel required by SERI exceeds the $70 million Commitment under the Credit Agreement and the $115 million of Secured Notes currently outstanding, as authorized by the Orders, or Additional Secured Notes issued in replacement thereof, as proposed above, it is further proposed that the Lessor may issue up to $65 million of Additional Secured Notes. Additional Secured Notes are expected to be issued with the assistance of a placement agent, which is contemplated to be Merrill Lynch Capital Markets.

Pursuant to the terms of the Lease, the Lessor may only issue Additional Secured Notes with the consent of SERI. Authorization is requested for SERI to consent to the issuance of Additional Secured Notes from time to time in an aggregate amount at any one time outstanding not to exceed $180 million, as provided by the Orders in all material respects, and provided that the interest rate on Additional Secured Notes and the fees paid to the placement agent in connection with the issuance thereof not be in excess of those generally obtained on the date of pricing on sales of similar notes with similar terms and conditions, including securities with the same maturity and by companies with comparable credit quality. In addition, to the extent requested by the Trustee, SERI would execute Supplemental Instructions to the Trustee, with respect to the issuance of the Additional Secured Notes.

Entergy Corporation (70–7606)

Entergy Corporation ("Entergy"), 225 Baronne Street, New Orleans, Louisiana 70112, which until May 10, 1989 was known as Middle South Utilities, Inc., and which is a registered holding company, has filed a declaration pursuant to section 12(b) of the Act and Rule 45 thereunder.

System Energy Resources, Inc. ("SERI"), a subsidiary of Entergy, was authorized by orders in a companion filing (HCAR Nos. 24825 and 24827, February 21, 1989 and February 23, 1989, respectively) to enter into a fuel lease agreement, dated February 24, 1989, ("Lease") with River Fuel Funding Company #3, Inc. ("Lessor"), a Delaware corporation, all of the capital stock of which is owned by River Fuel Trust #3. Under the Lease SERI would lease from the Lessor nuclear fuel and facilities incident to its use ("Nuclear Fuel"), in amounts of up to $185 million. The Nuclear Fuel will be used in Unit No. 1 of SERI's Grand Gulf Nuclear Generating Station. By post-effective amendment to that filing SERI proposed to lease, under the same terms and conditions, additional Nuclear Fuel in amounts of up to $250 million. This matter was the subject of a notice issued by the Commission on May 25, 1989, the same date herein, and is to be granted on the same date as the date of an order herein, as a companion filing (S.E.C. File No. 70–7604).

In order to induce the Lessor to enter into the initial Lease, it was necessary for Entergy to guarantee, to the Lessor, the performance by SERI of its obligations under the Lease. Entergy was authorized to and did enter into a guaranty ("Guaranty"), dated February 24, 1989, under which Entergy guaranteed to the Lessor that SERI would perform its various obligations and covents under the Lease. Entergy agreed that its obligations under the Guaranty would be unconditional and not subject to any set-off, counterclaim, offset or recoupment whatsoever, and that the Lessor's rights under the Guaranty would be assignable (HCAR No. 24824, February 21, 1989). Entergy now proposes to guarantee to the Lessor, on the same basis as previously approved, that SERI will perform all of its obligations under the lease in amounts of up to $250 million, and to consent to the further assignment of the Lessor's rights under the Guarantee.

Southwestern Electric Power Company (70–7656)

Southwestern Electric Power Company ("SWEPCO"), P.O. Box 21106, Shreveport, Louisiana 71156, an electric utility subsidiary of Central and South West Corporation, a registered holding company, has filed an application under sections 9(a) and 10 of the Act.

SWEPCO requests authority to lease its railcars to nonassociated third parties from time-to-time on a short-term basis when not in use by SWEPCO through June 1, 1994. The railcars are used by SWEPCO to transport coal to its Welsh Power Plant located near Cason, Texas, and its Flint Creek Power Plant located near Gentry, Arkansas.

Lease terms will cover periods that SWEPCO does not need the railcars for its operations. Such periods will generally range from as short as the time it takes to make one trip from the locations of SWEPCO's coal sources to its generating plants to as long as two months; however, if SWEPCO were to shut down one of its generating plants, either for scheduled maintenance or for some other unforeseen reason, such periods could extend up to four months. Any leases will provide for lease rates at or near the market rates at the time of entry into such leases.

Alabama Power Company (70–7658)

Alabama Power Company ("Alabama"), 600 North 18th Street, Birmingham, Alabama 35291, a wholly-owned subsidiary of The Southern Company, a registered holding company, has filed an application pursuant to sections 2(a)(11)(D) and 9(c)(3) of the Act.

Alabama has acquired in a bankruptcy proceeding 88,205 shares of Class A Preferred Stock ("Preferred") and 137,598 shares of Common Stock ("Common") (collectively, "Stock") of Simetco, Inc. ("Simetco"), an Ohio corporation formerly known as Ohio Ferro-Alloys Corporation. All of the Stock is voting stock, and represents about 8.82% of all of the outstanding voting securities of Simetco. Alabama requests a determination 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 or appropriate under these circumstances.

Simetco operates a production facility ("Facility") in Mount Meigs, Alabama at which silicon metal is produced. On February 22, 1982, Alabama entered into a contract with Simetco in which it agreed to provide electric power to the Facility. In October 1982, Simetco experienced financial difficulties and failed to pay its electric bills. Subsequently, Simetco failed to pay its electric bills for power provided under later contracts with Alabama. On October 30, 1986, Simetco filed a petition in the United States Bankruptcy Court for the Northern District of Ohio ("Bankruptcy Court") for reorganization under Chapter 11 of the United States Bankruptcy Code. In the proceeding, Alabama was allowed total general unsecured claims of approximately $5 million resulting from unpaid charges for electric power provided by Alabama to Simetco. Pursuant to a Plan of

Reorganization filed with the Bankruptcy Court and confirmed by the Court in its order, dated November 22, 1988 ("Plan") holders of general unsecured claims were distributed their *pro rata* share of 225,000 shares of Preferred and 350,995 shares of Common. As a result of this order, Alabama acquired 88,205 shares of Preferred and 137,598 shares of Common.

In order to preserve a net operating loss carry-forward for Federal income tax purposes, the Bankruptcy 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 for a period of 3 years from the date of acquisition. Because Alabama controls approximately 8.82% of the voting power of Simetco, Alabama is bound by this restriction.

Alabama acquired the Stock as a result of indebtedness acquired in the ordinary course of business and holds such Stock solely as a passive investment. Alabama will sell the Common as soon as the restrictions on sale lapse and market conditions permit. Alabama will not be represented on the Board of Directors of Simetco or otherwise seek to change or influence control of Simetco. In this connection, without authorization from the Commission, Alabama will not vote its Stock.

Simetco is an affiliate of Alabama as that term is defined in section 2(a)(11) of the Act, because as discussed above, Alabama controls over 5% of the voting power of Simetco. However, because Alabama 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, Alabama 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, Alabama 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 Alabama be subject to the obligations, duties and liabilities imposed by the Act and rules thereunder as a result of Simetco being an affiliate of Alabama.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-13002 Filed 5-31-89; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 89-60]

Revocation of Commercial Gauger Approval of Caesar J. Thibodeaux, Inc. of Houston, TX

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

ACTION: General notice.

SUMMARY: Notice is hereby given that pursuant to § 151.13(k)(4) of the Customs Regulations, a written appeal against a proposal to revoke the commercial gauger approval of Caesar J. Thibodeaux, Inc. with prepjudice, was filed with the Commissioner of Customs. Under delegated authority, the appeal was considered by the Assistant Commissioner, Office of Commercial Operations, and it has been decided to suspend the firm's public gauger approval for a period of 30 days. It has been further decided that the 30-day suspension is to be set aside and cancelled upon the successful completion of a one-year probationary period by the firm, during which time the performance of the firm under the provisions of Part 151 will be closely monitored by the U.S. Customs Service. In addition, liquidated damages in the amount of $10,000 are being assesed under the terms of the commercial gauger bond, § 113.67 of the Customs Regulations.

The one year period specified above will commence on the date of publication of this notice.

Dated: May 25, 1989.

John B. O'Loughlin,

Director, Office of Laboratories and Scientific Services.

[FR Doc. 89-13022 Filed 5-31-89; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF TRANSPORTATION

Saint Lawrence Seaway Development Corporation

Advisory Board; Meeting

Pursuant to section 10(a)(2) 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463); 5 U.S.C. App. I) notice is hereby given of a meeting of the Advisory Board of the Saint Lawrence Seaway Development Corporation, to be held at 10:00 a.m., June 27, 1989, at the Radisson-Duluth Hotel, 505 West Superior Street, Duluth, Minnesota. The agenda for this meeting will be as follows: Opening Remarks, Consideration of Minutes of Past Meeting; Review of Programs; Business, Closing Remarks.

Attendance at meeting is open to the interested public but limited to the space available. With the approval of the Administrator, members of the public may present oral statements at the meeting. Persons wishing further information should contact not later than June, 20, 1989, Paul A Maroun, Advisory Board Liaison, Saint Lawrence Seaway Development Corporation, 400 Seventh Street, SW., Washington, DC 20590; 202/366-0091.

Any member of the public may present a written statement to the Advisory Board at any time.

Issued at Washington, DC on May 24, 1989.

Paul A. Moroun,

Advisory Board Liaison

[FR Doc. 89-12956 Filed 5-31-89; 8:45 am]

BILLING CODE 4910-61-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition

SUMMARY: The United States Information Agency hereby modifies a notice found at 54 FR 16038 (April 20, 1989) regarding immunity from judicial seizure for the art exhibit "Mary Cassatt: The Color Prints," to include an additional item for temporary exhibition in the United States.

EFFECTIVE DATE: This modification is effective upon publication in the Federal Register.

FOR FURTHER INFORMATION CONTACT: R. Wallace Stuart, Acting General Counsel, United States Information Agency, 301 Fourth Street, SW., Washington, DC 20547.

SUPPLEMENTARY INFORMATION: The United States Information Agency hereby modifies a notice published at 54 FR 16038 (April 20, 1989). The notice rendered immune from judicial process certain items to be included in the exhibit entitled "Mary Cassatt: The Color Prints." This modification of

notice adds an additional item (see supplemental list number 1[1]).

Dated: May 23, 1989.

R. Wallace Stuart,

Acting General Counsel.

[FR Doc. 89–12958 Filed 5–31–89; 8:45 am]

BILLING CODE 8230–01–M

[1] A copy of this list may be obtained by contacting Mr. R. Wallace Stuart of the Office of the General Counsel of USIA. The telephone number is (202) 485–7979, and the address is Room 700, U.S. Information Agency, 301 4th Street SW., Washington, DC 20547.

Sunshine Act Meetings

Federal Register
Vol. 54. No. 104
Thursday, June 1, 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 RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, June 5, 1989.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Jennifer J. Johnson,

Associate Secretary of the Board.

Date: May 26, 1989.

[FR Doc. 89–13081 Filed 5–26–89; 4:56 pm]

BILLING CODE 6210-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m. Tuesday, June 6, 1989.

PLACE: Board Room, Eighth Floor, 800 Independence Avenue, SW., Washington, DC 20594.

STATUS: The first three items are open to the public. The last four items are closed under Exemption 10 of the Government in Sunshine Act.

MATTERS TO BE CONSIDERED:

1. Marine Accident Report: Striking of a Submerged Object by Bahamian Tankship ESSO PUERTO RICO, Mississippi River, Kenner, Louisiana, September 3, 1988.
2. Reconsideration of Probable Cause: Midair Collision of Wings West Beech C–99 and Aesthetec, Inc. Rockwell Commander 112TC, San Luis Obispo, California, August 14, 1984.
3. Recommendation to FAA: International Operations and Use of Ground Proximity Warning Systems (GPWS) Brazil; Azores; and Malaysia.
4. Opinion and Order: Administrator v. Air Maryland, Inc., Docket SE–8843; disposition of Administrator's appeal.
5. Opinion and Order: Administrator v. Brothers, Docket SE–8375; disposition of respondent's appeal.
6. Opinion and Order: Administrator v. Hembree, Docket SE–8494; disposition of Administrator's and respondent's appeal.
7. Opinion and Order: Administrator v. Stephens, Docket SE–8669; disposition of respondent's appeal.

FOR MORE INFORMATION CONTACT: Bea Hardesty (202) 382–6525.

Bea Hardesty,

Federal Register Liaison Officer.

May 26, 1989.

[FR Doc. 89–13082 Filed 5–26–89; 4:57 pm]

BILLING CODE 7533-01-M

POSTAL RATE COMMISSION

Meeting

TIME AND DATE: 2:30 p.m., Wednesday, June 7, 1989.

PLACE: Hearing Room, 1333 H Street, NW., Suite 300, Washington, DC 20268.

STATUS: Open.

MATTERS TO BE CONSIDERED: To discuss a Notice of Proposed Rulemaking in Docket No. RM88–2.

CONTACT PERSON FOR MORE INFORMATION: Charles L. Clapp, Secretary Postal Rate Commission Room 300, 1333 H Street, NW. Washington, DC 20268–0001, Telephone (202) 789–6840.

Charles L. Clapp,

Secretary.

[FR Doc. 89–13188 Filed 5–30–89; 3:36 pm]

BILLING CODE 7715-01-M

Corrections

Federal Register
Vol. 54, No. 104
Thursday, June 1, 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.

GENERAL SERVICES ADMINISTRATION

41 CFR Chapters 301 and 302

[FTR 1989 Edition]

Federal Travel Regulation

Correction

In rule document 89-7115 beginning on page 20262 in the issue of Wednesday, May 10, 1989, make the following corrections:

§ 301-3.6 [Corrected]

1. On page 20276, in the second column, the 11th through 16th lines of text should appear at the end of the column.

§ 302-11.8 [Corrected]

2. On page 20339, in the second column, the first equation should be transferred to the corresponding space in the third column, under "Then:".

BILLING CODE 1505-01-D

LEGAL SERVICES CORPORATION

45 CFR Part 1633

Competitive Bidding for Grants

Correction

In proposed rule document 89-12565 beginning on page 22787 in the issue of Friday, May 26, 1989, make the following corrections:

1. On page 22787, in the third column, under **ADDRESS**, in the second line, "timothy" should be capitalized.

2. On page 22788, in the first column, in the second complete paragraph, in the sixth line, "anyone" should be capitalized.

3. On the same page, in the same column, in the same paragraph, in the last line, the telephone number should read "863-1839".

§ 1633.2 [Corrected]

4. On the same page, in the second column, in § 1633.2(a), in the fifth line, "responsible" should read "responsive".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 301 and 602

[T.D. 8254]

Abatement of Penalty or Addition to Tax Attributable to Erroneous Advice

Correction

In rule document 89-11611 beginning on page 21055 in the issue of Tuesday, May 16, 1989, make the following correction:

On page 21057, in the first column, in the authority citation for Part 301, in the second line, the section number should read "301.6404-3T".

BILLING CODE 1505-01-D

federal register

Thursday
June 1, 1989

Part II

Department of Health and Human Services

Office of Human Development Services

Availability of FY 1989 Funds and Request for Applications; Child Abuse and Neglect Program; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

[Program Announcement No. 13670-891]

Availability of FY 1989 Funds and Request for Applications; Child Abuse and Neglect Program

AGENCY: Administration for Children, Youth and Families (ACYF), Office of Human Development Services (OHDS), HHS.

ACTION: Announcement of the availability of FY 1989 financial assistance and request for applications for research or demonstration projects under the Child Abuse Prevention and Treatment Act.

SUMMARY: The National Center on Child Abuse and Neglect (NCCAN) of the Administration for Children, Youth and Families announces the availability of funds for research on the causes, prevention, identification and treatment of child abuse and neglect and for demonstration or service programs and projects designed to prevent, identify, and treat child abuse and neglect.

DATE: The closing date for receipt of grant applications is July 21, 1989.

ADDRESS: Address applications to: FY 1989 NCCAN Research and Demonstration Program, Office of Human Development Services, Grants and Contracts Management Division, Hubert H. Humphrey Building, Room 345-F, 200 Independence Avenue, SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Barbara Bates, (202) 245-0813.

SUPPLEMENTARY INFORMATION: This announcement consists of three parts. Part I provides the necessary background information on the National Center on Child Abuse and Neglect (NCCAN) for applicants. Part II describes the priorities under which NCCAN is soliciting applications for fiscal year 1989 funding of projects. Part III provides general information and requirements for preparing and submitting applications along with the criteria for the review and evaluation of applications.

All forms and instructions necessary to submit an application are published as part of this announcement following Part III. No separate application kit is either necessary or available for submitting an application. If you have a copy of this announcement, you have all the information and forms required to submit an application.

I. Background

In 1974, the Child Abuse Prevention and Treatment Act (the Act) established the NCCAN in the Department of Health and Human Services. It is located organizationally within the Children's Bureau of the Administration for Children, Youth and Families in the Office of Human Development Services.

The National Center on Child Abuse and Neglect conducts activities designed to assist and enhance national, State and community efforts to prevent, identify and treat child abuse and neglect. These activities include: Conducting research and demonstrations; supporting service improvement projects; gathering, analyzing and disseminating information through a national clearinghouse; providing grants to eligible States for strengthening and improving child protective service programs; and coordinating Federal activities related to child abuse and neglect through an Advisory Board on Child Abuse and Neglect composed of 13 members from the general public and two members from the Federal Inter-Agency Task Force and an Inter-Agency Task Force on Child Abuse and Neglect composed of Federal agencies.

The Act has been amended several times, most recently by the Child Abuse Prevention, Adoption, and Family Services Act of 1988, Pub. L. 100-294, which was signed into law on April 25, 1988. This announcement reflects the research and demonstration priorities and solicits applications under the authority of the Act (42 USC 5101 *et seq.*) as amended.

As required by section 6(a)(2)(B) of the Act, the Office of Human Development Services (OHDS) published for public comment proposed fiscal year 1989 child abuse and neglect research and demonstration priorities in the December 30, 1988 Federal Register (53 FR 53065). NCCAN received 110 responses from national, State and local child welfare and human service organizations and advocacy groups, professional associations, universities, hospitals, practitioners, representatives from government offices and elected officials, and private citizens. These comments included overall support for the priority areas proposed, support and comments specific to a number of the priority areas, and suggestions for new topics. The final priorities selected for fiscal year 1989 were prepared after consideration of all comments received and are described below in Part II. The priority areas on joint police/child protective investigations, risk assessment, results of research on child as witness projects, and professional child abuse and neglect training curricula are being carried over into FY 1990 for consideration as are the suggestions for new topics.

II. Fiscal Year 1989 Priorities for Research and Demonstration Projects

This part contains the information needed in order to successfully apply for funding. Failure to comply with the eligibility criteria and deadline for submittal of applications will result in an application being screened out and not considered for funding. The screening criteria can be found in Part III. B, Application Screening Criteria. Office of Human Development Services' experience has shown that an application which is broad and general in concept does not score as well as one which is directly responsive to the concerns of a specific priority area.

Applicants must identify the specific priority area under which they wish to have their application considered. On all applications developed jointly, one organization must be identified as the lead organization and applicant.

A. Available Funds

Approximately $5.5 million is available for grants in FY 1989. To the extent that selected proposals exceed the amount available for funding in FY 1989, some proposals may be deferred for funding until FY 1990, subject to the availability of funds.

B. Grantee Share of the Project

There is a 25% non-Federal share matching requirement for demonstration and service programs. The non-Federal share represents 25% of total project costs. The Federal share plus the non-Federal share equals the total project costs. In other words, for every three dollars of Federal support, a minimum of one dollar must come from a source other than the Federal government. For example, if the Federal funding requested is $100,000 per year, the cost sharing or match must be at least $33,333 per year with a total project cost of $133,333. There is no cost sharing or match requirement for research grants. In addition, territories are not required to provide a match for any grant proposal.

C. Grants Administrative Regulations

The non-Federal share matching requirement may be in cash or third party in-kind contributions in accordance with 45 CFR Part 74 and/or Part 92. For State and local governments, including Federally recognized Indian Tribes, 45 CFR Part 92

and selected parts of 45 CFR Part 74 are applicable. For all other applicants, 45 CFR Part 74 is applicable.

D. Research Priorities

The following research priority areas have no cost sharing requirement:

1. Family Functioning of Neglectful Families

Within the framework of families as systems, there is little information about the ways that neglectful families function in comparison with non-neglectful families. There are many issues that need to be researched within the family framework to enhance an understanding of neglectful families and provide more information for prevention and intervention strategies. There are also many methodological issues which should be addressed in developing research proposals, including the use of operational definitions and addressing potentially compounding factors in sampling and/or analysis, such as socioeconomic status, culture, and ethnicity. Additional factors to consider include family size and structure, divorce, employment, autonomy of individual family members, cohesion and adaptability of the family system, and access to and utilization of such support services as child care, respite care and other community based and related services.

Research questions proposed in this priority area are:

- Can differences in functioning be identified between neglectful and non-neglectful families?
- What are the characteristics of the men in neglectful vs. non-neglectful families? What functions do they serve in the family, and how do they impact on family functioning?
- How do mental health problems and/or substance abuse (including crack cocaine and street related drugs) relate to family functioning and neglectful families?
- How does level of family functioning relate to neglect?
- What facilitates prevention of neglect in at risk families?
- At what point in the family system is intervention most effective?
- Which intervention strategies are most effective?

NCCAN will fund studies for up to 36 months duration at a Federal level not to exceed $150,000 per project per year.

2. Community-Based Prevention of Child Maltreatment

A number of community-based prevention strategies have been utilized, and there is the need to examine the knowledge and experience of the field to date. Research in this priority area should include a three-part literature review and evaluation of approaches to ongoing community-based prevention of child maltreatment, as follows:

- Review and analyze literature and materials on the development of community prevention programs for child abuse and neglect and other fields with respect to the following issues: Community planning and development, planning models, effective fund-raising, types of community leadership, and prevention approaches.
- Identify and classify existing community-based prevention programs, including those developed under Children's Trust and Prevention Funds and Challenge Grants. The study should attempt to measure the program's relative effectiveness, the geographical area of the State covered, funding sources, groups targeted, and other factors.
- Synthesize materials and findings in a manual (and/or other dissemination modes) on how to plan, fund, initiate, implement and maintain community-wide prevention programs, with emphasis on empirical findings on ways of producing change.

NCCAN anticipates funding one or more 36-month projects at a Federal level not to exceed $150,000 per project per year.

3. Prosecution of Child Maltreatment Cases

Little data have been aggregated regarding the number, type and outcomes of judicial handling of child abuse cases. NCCAN is interested in approaching this informational need in two parts. One is to carry out a study of the number and types of child abuse and neglect cases prosecuted and the outcome for the nation as a whole. The second is to address the following research questions related to sexual abuse, physical abuse, and neglect, by level of risk. An experimental or quasi-experimental design is recommended using cases matched by type of abuse, age of child, family composition, and severity of injury.

- What kinds of cases are referred for prosecution?
- Which cases that were prosecuted went to trial and were convicted?
- To what extent are criminal child abuse and neglect cases coordinated with parallel civil child abuse and neglect proceedings?
- How does early prosecutorial involvement affect conviction or reunification rates?
- How does the composition of a multidisciplinary team affect prosecutorial decision making?
- How can multidisciplinary teams be managed to maximize interagency communication between child protective services and criminal justice systems?

NCCAN plans to fund projects for a 36 month duration at a Federal level not to exceed $150,000 per project per year.

4. Judicial Review Process

Abused and neglected children who are placed in foster care as a protective measure are thereafter covered by the provisions of the Adoption Assistance and Child Welfare Act of 1980, Pub. L. 96–272, which has a goal of permanency for the child either through rehabilitation of the child's own home or through an alternative placement.

Pub. L. 96–272 also requires periodic *judicial* review of foster care cases to insure that goals are met in a timely manner. Research is needed to determine how these judicial reviews are conducted in various jurisdictions and how this review process specifically addresses and contributes to treatment and rehabilitation of abusive and/or neglecting families, including support of these children in foster care. Consideration may also be given to examining all models of the review process. Questions to be addressed include:

- How do States and jurisdictions implement the judicial review process and how are the child abuse and neglect issues considered in this process (e.g., how are the frequency of the review, sources of data for the review, and progress towards goals affected by the type and severity of the incident of child abuse and neglect)?
- What are the outcomes of judicial reviews for abused and neglected children (e.g., redirection of services, increased monitoring, additional legal sanctions, reduced recidivism, length of foster care, proportion returned home or freed for adoption, etc.)?
- What are the various models of review used and what are the relationships among various types of reviews (e.g., judicial, administrative, and citizen)?
- Which review systems, alone or in combination, are the most effective in assuring permanency for abused and neglected children?

NCCAN anticipates funding projects of up to 36 months duration having a Federal level not to exceed $150,000 per year.

5. Impact of Treatment Approaches for Intrafamilial Child Sexual Abuse

Little objective data exist on the use of incarceration and diversion programs for cases of intrafamilial sexual abuse

and how treatment approaches can be used effectively to improve outcomes for children and families. This priority proposes to support a comparative multi-site study (to include a rural site) on intrafamilial sexual abuse that would include:

- Incarceration—without treatment;
- Incarceration—with treatment;
- Diversion program—pre-trial and post-trial; and
- Probation with no formal intervention program.

The study should focus on the outcome indicators for the victim, the offender, and the family unit. In particular, the outcomes need to address recidivism, cost of the program and victim and family functioning. An advisory committee, to include juvenile/family court judges, women's groups and other appropriate professionals, is recommended. The purpose of this study is to provide information for decreasing child victimization and critical and useful information for the judiciary system to assist them in making effective sentencing decisions.

NCCAN anticipates funding 36-month projects having a Federal level not to exceed $125,000 per project per year.

6. Status of Measurement Development in the Study of Child Abuse and Neglect

A substantial body of research knowledge has accumulated through the use, development and adaptation of an array of measurement techniques. There is the need for a state-of-the-art review of measures and instruments utilized in studies of child abuse and neglect. These measures may concern children, their families, and communities and include demographic characteristics and environmental settings; parent-child and family interactions; child social-emotional development and school performance; family strengths, needs, resources, and stress factors; social and economic support systems; and service availability and provision. This should cover psychometric properties, including validity and reliability; domains addressed for the instruments; identification of any gaps and next steps to be taken in their use; and adaptation or development of new measures. It is not intended, however, that the actual development of new measures take place at this time under this priority area.

Anticipated products from this project are a paper on the state-of-the-art of instrument development, a directory of measurements/instruments established as a computer file with a proposed strategy for ongoing maintenance, a hard copy reference directory for research applications and a manual for practitioners, a recommended set of common data elements to be collected across studies to enable comparability, and a library set of these measures and manuals for their utilization.

NCCAN anticipates funding one project for 24 months not to exceed a Federal level of $75,000 per year.

7. Field Initiated Research for Child Abuse and Neglect

NCCAN is interested in supporting new research initiated by researchers in the child abuse and neglect field to carry out the legislative responsibilities established for the National Center on Child Abuse and Neglect by the Child Abuse Prevention, Adoption, and Family Services Act of 1988, Pub. L. 100-294. One of these responsibilities is to conduct research on the causes, prevention, identification and treatment of child abuse and neglect, and on appropriate and effective investigative, administrative and judicial procedures in cases of child abuse. One-half the funds available for this priority area will be made available for research on prevention of child abuse and neglect.

Basic research in the behavioral and social sciences which contributes to theory development is not within the purview of this announcement. Also, it is not intended that program evaluation and demonstration projects be included in this category. Current issues having widespread impact on the field of child abuse and neglect and on the target population are of particular interest.

Secondary analyses of data from the 1986 study of the national incidence and prevalence of child abuse and neglect will also be considered. Public use data tapes and the documentation manual from this study are available from the Clearinghouse on Child Abuse and Neglect Information, P.O. Box 1182, Washington DC 20013.

Applicants should list all organizations to be involved on the project with a description of their contribution. Written assurances should be included with the application. Applicants should also show that they have the ability to gain access to necessary information, data, etc. Applicants should clearly demonstrate an indepth understanding of the issues and problems associated with child abuse and neglect and provide an up-to-date literature review.

NCCAN will fund studies for up to 36 months duration at a Federal level not to exceed $150,000 per project per year depending on the questions to be answered, the intensity of the effort proposed, and the generalizability of the anticipated results. Through this priority area, NCCAN seeks to provide a comparative process for field generated topics.

8. Consortium for Longitudinal Studies of Child Maltreatment

NCCAN intends to support a consortium of longitudinal studies to address aspects of the life course of families at risk of child maltreatment. These studies are expected to contribute to the knowledge of the etiology and ecology of child maltreatment and provide new insights into prevention, treatment and the organization of protective services (both public and private).

The consortium of longitudinal studies will have two parts: (1) A central grantee to oversee methodological issues and perform data analyses, and (2) satellite grantees who will identify data sources, collect and submit data to the central grantee for analysis. A two phased funding approach is anticipated for this priority. During Phase One, NCCAN will fund a planning grant for a central grantee and up to three planning grants for satellite grantees. The central grantee is expected to provide an experimental longitudinal study design which addresses sampling, a core set of measurements, and data collection and analysis plans. The satellite grantees are expected to propose the location of sources of data, obtain agreements to participate, propose a data collection procedure and carry out pilot testing of the proposed instruments. They may propose to initiate new studies or collect data from ongoing studies compatible with the longitudinal study design. They will have the opportunity to develop their own special analyses along with those about which they collaborate with the central grantee. Federal funding for Phase Two, the implementation of a consortium of longitudinal studies, will be based on a determination of the feasibility of the total effort.

NCCAN seeks proposals for a central grantee to oversee methodological issues and support the work of satellite grantees who will collect data and turn it over to the central grantee for analysis. This grantee will be responsible for establishing an experimental design, sampling procedures, a core set of measurement instruments, and data collection procedures to be used by all the grantees.

The central grantee must demonstrate methodological expertise in every aspect of longitudinal study work including the measurement of children and family systems, psychometrics, sampling, experimental design, tracking, data storage and statistical analysis.

The choice of instruments and procedures will be decided jointly by the central and satellite grantees and their consultants and staff of NCCAN. The central grantee will be expected to have staff and consultants expert in every area of methodology and child maltreatment.

The satellite grantees will be responsible for identifying appropriate sources for subjects and controls and arranging for data collection. These grantees are expected to expand on the core data collection instruments and to perform such additional analyses as they deem appropriate. They are expected to demonstrate expertise in child maltreatment and field work. Grantees must agree to surrender their data to the central grantee and arrange for associated child protection agencies to agree to transfer data under procedures that insure anonymity of subjects.

An annotated bibliography on longitudinal studies of child maltreatment can be obtained from the Clearinghouse on Child Abuse and Neglect Information, P.O. Box 1182, Washington, DC 20013.

For this particular priority area, applicants are encouraged to apply for both or either of these grants. Separate applications are required.

NCCAN will fund projects in Phase I to develop designs for the study for 12 months with a Federal level not to exceed $60,000 for the central grantee and $30,000 for the satellite grantees. Upon completion of Phase I, NCCAN will fund for a five year period and possibly longer pending statutory authority and availability of funds, one central grantee with a Federal level not exceeding $100,000 per year and three satellites with a Federal share not exceeding $33,000 per year. Additional satellite projects may be funded in the future.

E. Demonstration and Service Program Priorities

Except for territories, applicants for the following demonstration priority areas must provide a 25% non-Federal share matching requirement:

1. Utilizing Results of Demonstration Grant Clusters

Over the past several years NCCAN has funded clusters of grants relating to a common program theme in child abuse prevention and treatment. These projects are valuable to the communities they serve and for the knowledge and program expertise they have generated which can be transferred to other communities to improve child abuse and neglect services. The field needs to become more aware of successful, relevant programs that have reasonable costs and are easily adapted and implemented.

For several of the successful cluster grant programs there has been no final effort to evaluate and synthesize the results from individual projects into a cluster report for the field, including a review of individual final reports and other materials developed by the projects which reflect information about objectives, implementation strategies, costs and outcomes. There is a need for various organizations or agencies with experts in the field, who have special interests in the subject matter either by virtue of their professional or academic experience, to distill and synthesize the significant project findings into reports to the field, including development of utilization strategies. Dissemination strategies appropriate to the needs of various user groups also need to be addressed.

Three grant clusters which have a solid body of information suitable for this analysis include:

(a) Parent Aide and Respite Care Programs;

(b) Education of School-aged Children to Prevent Child Sexual Abuse and Development of Educational Materials Geared to Preschool-aged Children and Adolescents; and

(c) Models to Assist Teenage Mothers in Preventing Child Abuse and Neglect.

NCCAN anticipates funding projects for up to 18 months with a Federal share not to exceed $75,000.

2. Adaptation of Child Sexual Abuse Training Curricula for Demonstration with Native American Populations

Child sexual abuse is recognized as pervading modern society with estimates that, by the age of eighteen, 15–25 percent of girls and 3–10 percent of boys will be sexually abused. The Native American population is no exception.

Several curricula have been developed and used to train children, parents and teachers on: (1) How to talk about and cope with past child sexual abuse, and (2) how to prevent future child sexual abuse. Many experts believe that the manner of presentation and the environment in which the material is presented affects how children accept and incorporate the information. An educational setting is believed to be a non-threatening environment to children and a teacher is often viewed as a responsible person that the children will trust and communicate with openly. It is also important to involve the school administration and parents to ensure their full support.

Examples of curricula recognized in the field include the following:

- *Talking About Touching. A Personal Safety Curriculum* (1984) Ruth Harms and Donna James, Seattle, Washington: Committee for Children, Grade level: 1–5;
- *Personal Safety Curriculum: Prevention of Child Sexual Abuse* (1983) Geraldine Crisci, Hadley, Massachusetts, Grade level: Preschool—6;
- *Personal Safety: Curriculum for Prevention of Child Sexual Abuse* (1982), Marlys Olson, Child Sexual Abuse Prevention Program, Tacoma, Washington: Tacoma Public Schools, Grade level: Preschool—6.

An annotated bibliography of curricula for prevention of child sexual abuse can be obtained from the Clearinghouse on Child Abuse and Neglect Information, P.O. Box 1182, Washington, DC 20013.

NCCAN is interested in funding demonstration projects to adapt existing child sexual abuse prevention training curricula for children in preschool programs through elementary school grades six on or near Indian reservations. The projects should include training for the teachers to implement the program as well as for the parents and children. Applicants shall conduct a literature survey, review the state of the art curricula, and select the curricula suitable for adaptation for the Tribe(s).

Eligibility for this priority area is limited to Federally recognized Indian Tribes, national Indian organizations, Native American colleges and universities, and other institutions of higher education which have a history of serving the educational needs of Native Americans. Applicants should include on the project as staff or in an advisory capacity selected Tribal members who are also parents. Applications must include letters of commitment from the Tribal Councils detailing their proposed involvement in the program including their agreement to work with the curriculum addressed in the application.

NCCAN will fund projects for 24 month periods having a Federal share not to exceed $100,000 per project per year.

3. Parents' Self-help Group

From its inception, NCCAN has supported efforts of national networks of parent self-help groups that utilize techniques of self-help for the treatment of parents who abuse and neglect their children and also serve as a resource to

other troubled parents who believe that without this help they might harm their children. As these groups have expanded in the States and local communities, they have become a significant part of the intervention strategy for working with these parents and their children.

NCCAN is interested in continuing to support parent self-help programs of demonstrated effectiveness which are national in scope. These programs should include furthering the development of a national focus, public awareness, and network of parent self-help groups either by establishing new groups and/or by strengthening the capacity of existing groups.

Examples of activities that might be considered under this priority area are:

- Strengthening the relationships between parent self-help groups and public and private agencies which serve abused and neglected children in order to encourage consistent use of parent self-help as part of the intervention strategy;
- Enhancing public awareness and outreach programs to at risk families to encourage self referral;
- Increasing accessibility through recruitment and training of parents for participation in self-help groups, and transportation and staff consultation;
- Promoting the further development and expansion of local chapters which have limited resources;
- Promoting the development of State resource organizations in States that do not now have them:
- Enhancing the capacity for local chapters and State organizations to network and participate in national leadership development and agenda building;
- Supporting the preparation and dissemination of written materials for chapter leadership and development;
- Developing prototypes for varying needs (e.g., abused spouse and child, abuse by relative outside the home or stranger).

NCCAN anticipates funding one or more projects to national parent self-help organizations for up to three years for the furthering of the development and expansion of parent self-help groups at a Federal share not to exceed $150,000 per project per year.

4. Prevention of Physical Child Abuse and Neglect

Considerable evidence is available which suggests that reports of child abuse and neglect are increasing and that the State child protective services system does not have the capacity to respond effectively. Further, while a large percentage of these reports are unsubstantiated, a significant number of additional cases go unreported. There is the need, therefore, to once again focus on and support comprehensive community-based approaches to the prevention of child abuse and neglect capturing and utilizing the knowledge developed over the past decade.

NCCAN has supported many research and demonstration projects in prevention. Additionally, Children's Trust and Prevention Funds have been established in 48 States, and 44 States have received Challenge Grant funds to establish prevention programs in child abuse and neglect. Through these and other related efforts designed to prevent child maltreatment, a wide variety of prevention strategies are being utilized in communities across the United States. However, these are scattered and may not include the full range of components necessary to reach all children and families who may be at risk or in need of help.

NCCAN is interested in providing support for the planning and development of model comprehensive community-based physical child abuse and neglect prevention programs to address local needs in a number of urban, suburban and rural communities across the country. These model programs should be designed to minimally consist of the following components coordinated on a community-wide basis:

- Public awareness programs for citizens about positive parenting and positive family support;
- Prenatal health care and parenting education and support programs for all new parents (including home health visitor programs) that acknowledge and reinforce parental responsibility for their children;
- Support services for parents under stress that encourage parent participation (such as child care, respite care, crisis nurseries, helplines, self-help groups and other natural helping support networks in the community, provision for linkages and continuity of care and services, housing and other basic necessities, and job training);
- School-based age specific prevention education programs for all school age children;
- Coordination between child abuse and neglect services and domestic violence programs;
- Therapeutic care for victims and perpetrators of abuse; home based transition and follow-up services for children and their families;
- Projects for the prevention of alcohol and drug-related child abuse and neglect including substance abuse as a component of parenting education and curriculum training programs.

Additional components may include the following:

- Hospital-based (or whatever health facility may be available in a rural area) information and referral services for parents of children with handicaps and children who have been neglected or abused by their parents;
- Multidisciplinary training programs for professionals involved in the planning and implementation of these model community programs;
- A community-based interdisciplinary task force, including the citizens and the private sector, to plan, develop, implement, and oversee the model community prevention program.

NCCAN will fund up to ten grants for a five year period for the planning and development of model programs for prevention of physical child abuse and neglect. Successful applicants are expected to participate in a common data collection and evaluation effort. One grantee will be selected from among the successful applicants to serve as consortium leader for the data collection, evaluation and networking effort and additional funds will be available for this effort. Applicants should state their interest in being the consortium leader and provide a brief description of their capability to do so. It is not anticipated that funds will be used for direct services. The Federal share will not exceed $200,000 per project per year.

III. General Information and Requirements for the Application Process and Review

This part contains general information for applicants and basic requirements for submitting applications in response to this announcement. Application forms are provided along with detailed instructions for developing and assembling the application package for submittal at the end of this section.

A. General Information

1. Review Process and Funding Decisions

Applications will be reviewed and scored competitively against the published evaluation criteria (see III D of this announcement) by experts in the field, generally persons from outside of the Federal government. A formal review process established in accordance with section 6(e) of the Act will be conducted in Washington, DC. The results of this review will be a

primary factor in making funding decisions.

The Office of Human Development Services reserves the option of discussing applications with, or referring them to, other Federal or non-Federal funding sources when this is determined to be in the best interest of the Federal government or the applicant.

To the extent possible, final decisions for demonstration projects will reflect the equitable distribution of assistance among States, geographic areas of the nation, rural and urban areas, and ethnic populations. The Office of Human Development Services will also take into account the need to avoid duplication of effort in making funding decisions.

2. Executive Order 12372—Notification Process

This program is covered under Executive Order (E.O.) 12372, "Intergovernmental Review of Federal Programs," and 45 CFR Part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs. All States and territories except Alaska, Idaho, Kansas, Minnesota, Nebraska, American Samoa, and Palau have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applicants from these seven areas need take no action regarding E.O. 12372. Applications for projects to be administered by federally-recognized Indian Tribes are also exempt from the requirements of E.O. 12372.

Otherwise, applicants should contact their SPOC as soon as possible to alert them of the prospective application and to receive any necessary instructions. Applicants must submit any required material to the SPOC as early as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or date of contact if no submittal is required) on the SF 424, item 16a.

SPOCs have 60 days from the grant application deadline date to comment on applications for financial assistance under this program. SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which they intend to trigger the "accommodate or explain" rule.

When comments are submitted directly to OHDS, they should be addressed to: FY 1989 NCCAN Research and Demonstration Program, Office of Human Development Services, Grants and Contracts Management Division, Room 345F, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201. OHDS will notify the State of any application received which has no indication that the State process has had an opportunity for review. A list of single points of contact for each State and territory is included in Appendix I of this announcement.

B. Application Screening Criteria

Applications must meet the following screening requirements or they will not be considered in the current competition; these requirements will be rigorously enforced:

1. Eligible Applicants

With the exception of priority area II.E.2 any State or local, public or nonprofit organization or agency may submit an application under this announcement.

In addition, the application must meet any eligibility requirements specific to the priority area under which it is being submitted. An application can be submitted under only one priority area; however, other applications from the same organization may be submitted separately under other priority areas.

2. Deadline for Submittal of Applications

Under this announcement, the closing date for applications is July 21, 1989.

Applications must either be hand delivered or mailed to: FY 1989 NCCAN Research and Demonstration Program, Office of Human Development Services, Grants and Contracts Management Division, Hubert H. Humphrey Building, Room 345–F, 200 Independence Avenue, SW., Washington, DC 20201. Hand-delivered applications will be accepted during the normal working hours of 9:00 a.m. to 5:30 p.m., Monday through Friday.

(a) *Deadlines.* Applications shall be considered as meeting the deadline if they are either:

(i) Received on or before the deadline date at the address specified above, or

(ii) Sent on or before the deadline date and received by the granting agency in time for the independent review under Chapter 1–62 of HHS Transmittal 86.01 (4/30/86). Applicants are cautioned to request a legibly dated U.S. Postal Service postmark or to obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service as proof of mailing of the deadline date. Private metered postmarks shall not be acceptable as proof of timely mailing.

(b) *Late Applications.* Applications which do not meet the criteria in the above paragraphs are considered late applications. The granting agency shall notify each late applicant that its application will not be considered in the current competition.

(c) *Extension of Deadlines.* The Administration for Children, Youth and Families may extend the deadline for all applicants because of acts of God such as floods, hurricanes, earthquakes, etc., or when there is widespread disruption of the mail. However, if the granting agency does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicant.

C. Application Requirements

1. Priority Area Responsiveness

The application must be responsive to the priority area under which it is being submitted, as identified at the top of page one of the SF 424. In order to be considered responsive, the application must address each of the minimum requirements for an application specified in the priority area description.

2. Application Form

The application must be submitted on single-sided reproduced copies of the SF 424 (revised April 1988).

3. Copies Required

Applicants must submit an original and two copies of the complete application prepared in accordance with the instructions provided. A complete application includes: the completed SF 424, a summary description of the proposed project, and the program narrative. The full application package is described in III. H. below.

4. Signature

The signature of the Certifying Representative must be handwritten (preferably in black ink) and the signer's name and title must be typed in Item 18a of the original SF 424.

5. Length

All narrative sections of the application must meet the format specifications and recommended length requirements as specified in the instructions later in this part. Appendices/attachments may consist of approximately 10 pages.

6. State Single Point of Contact

Item 16a or 16b must be completed for State Single Point of Contact (SPOC) certification as required under Executive Order 12372.

D. Evaluation Criteria

The Program Narrative Statement of the application should correspond to the evaluation criteria. The description of the four criteria below should be used as headings in developing the program narrative.

Applications will be reviewed by a panel of at least three individuals. These reviewers will comment on and score the applications, basing their comments and scoring decisions on the criteria below.

1. Objectives and Need for Assistance (25 points)

The extent to which the application reflects a good understanding of the objectives of the project; pinpoints any relevant physical, economic, social, financial, institutional, or other problems; demonstrates the need for the assistance; states the principal and subordinate objectives of the project; and provides supporting documentation or other testimonies from concerned interests other than the applicant. Relevant data based on the results of planning studies are included and/or footnoted.

Describe the specific objectives and need for the project in terms of its national or regional significance. Describe the theoretical importance of the problem or area to be addressed and how the proposed effort will impact on it. For research grant proposals: Describe the hypothesis(es) to be tested or the specific questions to be answered. For demonstration and service program grant proposals: State the goals or service objectives of the project and, where applicable (e.g., planning grant proposals for prevention of physical child abuse and neglect), give a precise location of the project or area to be served by the project. Discuss the state-of-the-art relative to the problem or area of child abuse and neglect and provide a review of the literature, including previous work of the authors(s) of the proposal.

2. Results or Benefits Expected (10 points)

The extent to which the identified results and benefits to be derived are consistent with the objectives of the proposal and there are clear and important anticipated contributions to policy, practice, theory and/or research indicated.

Describe the product(s) expected from this project and the steps to be taken for distribution of these products and findings.

3. Approach (40 points)

The extent to which the application outlines a sound and workable plan of action pertaining to the scope of the project and details how the proposed work will be accomplished; cites factors which might accelerate or decelerate the work and gives acceptable reasons for taking this approach as opposed to others; describes and supports any unusual features of the project, such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvements; and provides for projections of the accomplishments to be achieved. The application lists the activities to be carried out in chronological order and shows a reasonable schedule of accomplishments and target dates. The applicant identifies the kinds of data to be collected and maintained, and discusses the criteria to be used to evaluate the results and success of the project. The applicant explains the methodology that will be used to determine if the needs identified and discussed are being met and if the results and benefits identified are being achieved. The application also lists each organization, agency, consultant, or other key individuals or groups who will work on the project along with a description of the activities and nature of their effort or contribution.

For research grant proposals: Describe the methodology including sampling, design, kinds of data to be collected, procedures for data collection, the instruments and measures to be utilized, adapted or developed and the plans for data analysis. For demonstration and service program grant proposals: Describe the design of the demonstration or training program or other appropriate techniques to be used, including measures for evaluation or assessment.

Describe the staffing pattern for the proposed project, listing key staff and consultants, their responsibilities in conjunction with this project and the time they will be committing to the project. Identify the authors of the application and their role in the proposed project. (Letters of commitment, where appropriate, must be included with the application.)

4. Staff Background and Experience (25 points)

The extent to which the resumes of the program director and key project staff (including names, addresses, training, background and other qualifying experience) and the organization's experience demonstrate the ability to effectively and efficiently administer a project of this size, complexity and scope and reflect the ability to use and coordinate activities with other agencies for the delivery of comprehensive support services. The application describes the relationship between this project and other work planned, anticipated or underway under Federal assistance.

Describe the background experience, training and qualifications of the key staff and consultants, including any experiences working on child abuse and neglect and similar projects. (Curriculum vitae must be included with the application.) Describe the adequacy of available resources and organizational experience related to the tasks of the proposed project. (An organizational capability statement must be included with the application.) Describe any collaborative efforts with other organizations including the nature of their contribution to the project. (Letters of commitment, where appropriate, must be included with the application.)

E. The Components of the Application

A complete application consists of the following in this order:

1. Application Face Sheet, SF 424, page 1.
2. Budget Non-Construction, SF 424A, Budget Information: Section A (Budget Summary), Section B (Budget Categories), and Section E (Budget Estimates of Federal Funds Needed for Balance of the Project);
3. Budget justification (approximately three pages);
4. Project summary description with listing of key words (approximately 1 page);
5. Program Narrative (up to approximately 25 double-spaced pages), organized with sections addressing the following four areas: (1) Objectives and Need for Assistance; (2) Results or Benefits Expected; (3) Approach; and (4) Staff Background and Experience;
6. Organizational capability statement;
7. Letters of commitment;
8. SF 424B Assurances-Non Construction, Debarment, and Drug Free Workplace; HHS 596, Human Subjects Certification; and
9. Appendices/attachments, up to approximately 10 pages, may include a bibliography (approximately two pages single-spaced); curriculum vitae (approximately two pages each); and instruments/measurements.

F. Preparing the Application

1. Availability of Forms

Agencies and organizations interested in applying for grant funds should submit an application(s) on the Standard Form 424 (revised April 1988) which is included in this announcement (Appendix II).

Each application must be executed by an individual authorized to act on behalf of the applicant agency and to assume responsibility for the obligations imposed by the terms and conditions of the grant award. Applications must be prepared in accordance with the guidance provided in this announcement and the instructions in the attached application package.

2. Application Submission and Notification

Completed applications must be sent to: FY 1989 NCCAN Research and Demonstration Program, Office of Human Development Services, Grants and Contracts Management Division, HHH Building—Room 345F, 200 Independence Avenue, SW., Washington, DC 20201.

The program announcement number (*13670–891*) must be clearly identified on the application.

Successful applicants will be notified through a Notice of Financial Assistance Awarded. The award will state the amount of Federal funds awarded, the purpose of the grant, the terms and conditions of the grant award, the effective date of the grant, the total project period, the budget period and the amount of the non-Federal matching share. Unsuccessful applicants will be notified by letter.

3. Program Narrative

The Program Narrative is a very important part of the application. It should be clear, concise and specific to the priority area being addressed as described in Part II. The narrative should provide information on how the application meets the evaluation criteria. This narrative should be no less than 6 double-spaced pages and up to approximately 25 double-spaced pages. It should be typed on a single-side of 8½" by 11" plain white paper with 1" margins on both sides. All pages of the narrative (including charts, tables, maps, exhibits, etc.) must be sequentially numbered, beginning with "Objectives and Need for Assistance" as page one. Applicants should not submit reproductions of larger size paper reduced to meet the size requirement.

Applicants are required to follow the format described below in preparing their applications, using the four headings for the sections of the narrative. However, the number of specific pages for each section is given as a suggestion only. The specific information to be included under each heading was discussed previously under the "Evaluation Criteria."

The four sections are:

(1) Objectives and Need for Assistance (six pages double-spaced);
(2) Results or Benefits Expected (two pages double-spaced);
(3) Approach (eleven pages double-spaced);
(4) Staff Background and Experience (six pages double-spaced).

4. Organizational Capability Statement

Applicants should provide a brief (approximately two pages double-spaced) background description of how the applicant is organized and the types and quantities of services it provides or the research capabilities it possesses. This statement may also include descriptions of current work or relevant past experience as well as the competence of the project team and its demonstrated ability to produce a final product that is comprehensible and usable.

5. Assurances and Certifications

Applicants must file a standard form 424B, Assurances-Non-Construction Programs, and Certifications Regarding Debarment and Drug-Free Workplace Requirements. These assurances are reprinted at the end of this announcement (Appendix II).

For research grants, an Assurance of Protection of Human Subjects (Form HHS 596) is also required and is reprinted in Appendix II. There is a place on this form to check that no assurance of compliance has been received and, in exceptional cases, the certification may be accepted up to 60 days after the receipt date for which the application is submitted. Where institutions do not have one on file with HHS, the certification must be submitted within 30 days of written request from HHS. If there is a question regarding the applicability of this assurance, contact the Office of Research Risks of the National Institutes of Health at (301) 496–7041.

G. The Application Package

To expedite the processing of applications, each applicant is requested to adhere to the following instructions. Each application package must include:

1. A copy of the Checklist for a Complete Application with all the items checked as being included in the application.

2. An original and two copies of the complete application. Each copy should be stapled securely (front and back if necessary) in the upper left corner. All pages of the narrative (including charts, tables, maps, exhibits, etc.) must be sequentially numbered, beginning with "Objectives and Need for Assistance" as page one. To facilitate handling, please do not use covers, binders, tabs or include extraneous materials, such as, agency promotion brocures, slides, tapes, film clips, minutes of meetings or articles of incorporation.

Do not include a self-addressed, stamped acknowledgment card. *All* applicants will be automatically notified of the receipt of, and the four digit identification number assigned to, their application. This number and priority area must be referred to in all subsequent communication with HDS concerning the application. After an identification number is assigned and the applicant has been notified of the number, applications are filed numerically by identification number to aid in quick retrieval. It will not be possible for HDS staff to provide a timely response to inquiries about a specific application unless the identification number and the priority area are given. Applicants should be advised that HDS staff cannot release pre-decisional information relative to an application other than that it has been received and that it is going through the review process. Once a decision is reached, the applicant will be notified as soon as possible of the acceptance or rejection of the application.

H. Checklist for a Complete Application

The Checklist below should be typed on 8½" by 11" plain white paper, completed and included in the application package.

Checklist

I have checked my application package to ensure that it includes the following:

____Checklist for a Complete Application;
____One original application signed in black ink and dated plus two copies;
____A completed SPOC certification with the date of SPOC contact entered in item 16 page 1 of the SF 424;
____Each package contains the application (original and two copies) for one priority area.

The original and both copies of the application include the following:

____SF 424, page 1, Application Face Sheet;
____SF 424A;

____Budget justification;
____Summary description and key words;
____Program narrative;
____Organizational Capability Statement;
____Letters of commitment;
____SF 424B Assurances—Non-Construction, Debarment, Drug-Free Workplace, and HHS 596 Human Subjects Certification; and
____Appendices/attachments.

(Federal Catalog of Domestic Assistance Program Number 13.670, Child Abuse and Neglect Prevention and Treatment).

Dated: May 2, 1989.

Joseph Mottola,

Acting Commissioner, Administration for Children, Youth and Families.

Approved: May 9, 1989.

Donna N. Givens,

Acting Assistant Secretary for Human Development Services.

Appendix I

Executive Order 12372—State Single Points of Contact

ALABAMA

Mrs. Donna J. Snowden, SPOC, Alabama State Clearinghouse, Alabama Department of Economic and Community Affairs, 3465 Norman Bridge Road, Post Office Box 2939, Montgomery, Alabama 36105–0939, Tel. (205) 284–8905

ALASKA

None

ARIZONA

Department of Commerce, State of Arizona, Janice Dunn, Arizona State Clearinghouse, 1700 West Washington, Fourth Floor, Phoenix, Arizona 85007, Tel. (602) 255–5004

ARKANSAS

Joe Gillesbie, Manager, State Clearinghouse, Office of Intergovernmental Services, Department of Finance and Administration, P.O. Box 3278, Little Rock, Arkansas 72203, Tel. (501) 371–1074

CALIFORNIA

Glenn Stober, Grants Coordinator, Office of Planning and Research, 1400 Tenth Street, Sacramento, California 95814, Tel. (916) 323–7480

COLORADO

State Single Point of Contact, State Clearinghouse, Division of Local Government, 1313 Sherman Street, Room 520, Denver, Colorado 80203, Tel. (303) 866–2156

CONNECTICUT

Under Secretary, Attn: Intergovernmental Review Coordinator, Comprehensive Planning Division, Office of Policy and Management, Hartford, Connecticut 06106–4459, Tel. (203) 566–3410

DELAWARE

Francine Booth, State Single Point of Contact, Executive Department, Thomas Collins Building, Dover, Delaware 19903, Tel. (302) 736–4204

DISTRICT OF COLUMBIA

Lovetta Davis, State Single Point of Contact, Executive Office of the Mayor, Office of Intergovernmental Relations, Room 416, District Building, 1350 Pennsylvania Avenue NW., Washington, DC 20004, Tel. (202) 727–9111

FLORIDA

George H. Meier, Director of Intergovernmental Coordination, State Single Point of Contact, Executive Office of the Governor, Office of Planning and Budgeting, The Capitol, Tallahassee, Florida 32301, Tel. (904) 488–8114

GEORGIA

Charles H. Badger, Administrator, Georgia State Clearinghouse, 270 Washington Street SW., Room 608, Atlanta, Georgia 30334, Tel. (404) 656–3855

HAWAII

Harold S. Masumoto, Acting Director, Office of State Planning, Department of Planning and Economic Development, Office of the Governor, Honolulu, Hawaii 96813, Tel. (808) 548–3016 or 548–3085

IDAHO

None

ILLINOIS

Tom Berkshire, Office of the Governor, State of Illinois, Springfield, Illinois 62706, Tel. (217) 782–8639

INDIANA

Ms. Peggy Boehm, Deputy Director, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Tel. (317) 232–5604

IOWA

Stephen R. McCann, Division of Community Progress, Iowa Dept. of Economic Development, Division of Community Progress, 200 East Grand Avenue, Tel. (515) 281–3725

KANSAS

None

KENTUCKY

Robert Leonard, State Single Point of Contact, Kentucky State Clearinghouse, 2nd Floor, Capital Plaza Tower, Frankfort, KY 40601, Tel. (502) 564–2382

LOUISIANA

Colby S. La Place, Assistant Secretary, Department of Urban & Community Affairs, Office of State Clearinghouse, P.O. Box 94455, Capitol Station, Baton Rouge, Louisiana 70804, Tel. (504) 342–9790

MAINE

State Single Point of Contact, Attn: Joyce Benson, State Planning Office, State House Station #38, Augusta, Maine 04333, Tel. (207) 289–3261

MARYLAND

Guy W. Hager, Director, Maryland State Clearinghouse, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21201–2365, Tel. (301) 225–4490

MASSACHUSETTS

State Single Point of Contact, Attn: Beverly Boyle, Executive Office of Communities and Development, 100 Cambridge Street, Rm. 904, Boston, Massachusetts 02202, Tel. (617) 727–3253

MICHIGAN

Michelyn Pasteur, Deputy Director, Local Development Services, Department of Commerce, P.O. Box 30225, Lansing, Michigan 48909, Tel. (517) 373–1838

Note: Please direct correspondence and questions to: Don Bailey, Manager, Federal Project Review System, 6500 Mercantile Way, Suite 2, Lansing, MI 48911, (517) 335–1838

MINNESOTA

None

MISSISSIPPI

Marlan Baucum, Office of Federal State Programs, Department of Planning and Policy, 2000 Walter Sillers Bldg., 500 High Street, Jackson, Mississippi 39202, Tel. (601) 359–3150

MISSOURI

Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, Division of General Services, P.O. Box 809—Room 460, Truman Building, Jefferson City, MO 65102, Tel. (314) 751–4834

MONTANA

Deborah Davis, State Single Point of Contact Intergovernmental Review Clearinghouse, c/o Office of the Lieutenant Governor, Capitol Station, Room 210—State Capitol, Helena, MT 59620, Tel. (406) 444–5522

NEBRASKA

None

NEVADA

Ms. Jean Ford, Director, Nevada Office of Community Services, Capitol Complex, Carson City, Nevada 89710, Tel. (702) 885–4420

Note: Please direct correspondence and questions to: John Walker, Clearinghouse Coordinator, Tel. (702) 885–4420

NEW HAMPSHIRE

John E. Dabuliewicz, Director, New Hampshire Office of State Planning, Attn: Intergovernmental Review Process, 2 ½ Beacon Street, Concord, New Hampshire 03301, Tel. (603) 271–2155

NEW JERSEY

Mr. Barry Skokowski, Director, Division of Local Government Services, Department of Community Affairs, CN 803, 363 West State Street, Trenton, New Jersey 08625–0803, Tel. (609) 292–6613

Note: Please direct correspondence and questions to: Nelson S. Silver, State

Review Process, Division of Local Government Services—CN 803, Trenton, New Jersey 08625–0803, Tel. (609) 292–9025

NEW MEXICO

Dean Olson, Director, Management and Program Analysis Division, Department of Finance and Administration, Room 424, State Capitol Building, Santa Fe, New Mexico 87503, Tel. (505) 827–3885

NEW YORK

New York State Clearinghouse, Division of the Budget, State Capitol, Albany, NY 12224 (518) 474–1605

NORTH CAROLINA

Mrs. Chrys Baggett, Director, Intergovernmental Relations, North Carolina Department of Administration, 116 West Jones Street, Raleigh, North Carolina 27611, Tel. (919) 733–0499

NORTH DAKOTA

William Robinson, State Single Point of Contact, Office of Intergovernmental Affairs, Office of Management and Budget, 14th Floor, State Capitol, Bismarck, North Dakota 58505, Tel. (701) 224–2094

OHIO

Larry Weaver, State Single Point of Contact, State/Federal Funds Coordinator, State Clearinghouse, Office of Budget and Management, 30 East Broad Street, Columbus, OH 43266–0411, Tel. (614) 466–0698

Note: Please direct correspondence and questions to: Linda E. Wise

OKLAHOMA

Don Strain, State Single Point of Contact, Oklahoma Department of Commerce, Office of Federal Assistance Management, 6601 Broadway Extension, Oklahoma City, Oklahoma 73116, Tel. (405) 843–9770

OREGON

Attn: Delores Streete, State Single Point of Contact, Intergovernmental Relations Division, State Clearinghouse, 155 Cottage Street NE., Salem, OR 97310, (503) 373–1998

PENNSYLVANIA

Laine A. Heltebridle, Special Assistant, Pennsylvania Intergovernmental Council, P.O. Box 11880, Harrisburg, Pennsylvania 17108, Tel. (717) 783–3700

RHODE ISLAND

Daniel W. Varin, Associate Director, Statewide Planning Program, Department of Administration, Division of Planning, 265 Melrose Street, Providence, Rhode Island 02907, Tel. (401) 277–2656

Note: Please direct correspondence and questions to: Review Coordinator, Office of Strategic Planning

SOUTH CAROLINA

Danny L. Cromer, State Single Point of Contact, Grant Services, Office of the Governor, 1205 Pendleton Street, Rm. 477, Columbia, South Carolina 29201, Tel. (803) 734–0435

SOUTH DAKOTA

Susan Comer, State Clearinghouse Coordinator, Office of the Governor, 500 East Capitol, Pierre, South Dakota 57501, Tel. (605) 773–3212

TENNESSEE

Charles Brown, State Single Point of Contact, State Planning Office, 500 Charlotte Avenue, 309 John Sevier Building, Nashville, Tennessee 37219, Tel. (615) 741–1676

TEXAS

Thomas C. Adams, Office of the Budget and Planning, Office of the Governor, P.O. Box 12427, Austin, Texas 78711, Tel. (512) 463–1778

UTAH

Dale Hatch, Director, Office of Planning and Budget, State of Utah, 116 State Capitol Building, Salt Lake City, Utah 84114, Tel. (801) 533–5245

VERMONT

Bernard D. Johnson, Assistant Director, Office of Policy Research and Coordination, Pavilion Office Building, 109 State Street, Montpelier, Vermont 05602, Tel. (802) 828–3326

VIRGINIA

Nancy Miller, Intergovernmental Affairs Review Officer, Department of Housing and Community Development, 205 North 4th Street, Richmond, Virginia 23219, Tel. (804) 786–4474

WASHINGTON

Catherine Townley, Coordinator, Intergovernmental Review process, Department of Community Development, Ninth and Columbia Building, Olympia, Washington 98504–4151, Tel. (206) 753–4978

WEST VIRGINIA

Mr. Fred Cutlip, Director, Community Development Division, Governor's Office of Community and Industrial Development, Building #6, Rm. 553, Charleston, West Virginia 25305, Tel. (304) 348–4010

WISCONSIN

James P. Klauser, Secretary, Wisconsin Department of Administration, 101 South Webster—CEF 2, P.O. Box 7864, Madison, Wisconsin 53707–7864, Tel. (608) 266–1741

Note: Please direct correspondence and questions to: Thomas Krauskopf, Federal-State Relations Coordinator, Wisconsin Department of Administration

WYOMING

Ann Redman, State Single Point of Contact, Wyoming State Clearinghouse, State Planning Coordinator's Office, Capitol Building, Cheyenne, Wyoming 82002, Tel. (307) 777–7574

American Samoa

None

Guam

Michael J. Reidy, Director, Bureau of Budget and Management Research, Office of the Governor, P.O. Box 2950, Agana, GU 96910, (671) 472–2285

VIRGIN ISLANDS

Jose L. George, Director, Office of Management and Budget No. 32 and 33 Kongens Gade, Charlotte Amalle, VI 00802 (809) 774–0750

PUERTO RICO

Ms. Patricia G. Custodio/Isael Soto Marrero, Chairman/Director, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico 00940–9985, Tel. (809) 727–4444

NORTHERN MARIANA ISLANDS

State Single Point of Contact, Planning and Budget Office, Office of the Governor, Saipan, CM Northern, Mariana Islands 96950

BILLING CODE 4130–01–M

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name	Organizational Unit
Address *(give city, county, state, and zip code)*	Name and telephone number of the person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A State — H Independent School Dist
B County — I State Controlled Institution of Higher Learning
C Municipal — J Private University
D Township — K Indian Tribe
E Interstate — L Individual
F Intermunicipal — M Profit Organization
G Special District — N Other (Specify) _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es) ☐ ☐

A Increase Award B Decrease Award C Increase Duration
D Decrease Duration Other *(specify)*

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ • ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(cities, counties, states, etc.)*

13. PROPOSED PROJECT: Start Date	Ending Date	14. CONGRESSIONAL DISTRICTS OF: a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE _____

b. NO ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BUDGET INFORMATION — Non-Construction Programs

OMB Approval No. 0348-0044

SECTION A – BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B – BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY (1)	(2)	(3)	(4)	Total (5)
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Standard Form 424A (4-88)
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SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

21. Direct Charges:	22. Indirect Charges:
23. Remarks	

SF 424A (4-88) Page 2
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INSTRUCTIONS FOR THE SF-424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A,B,C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A,B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary
Lines 1-4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g.)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

Lines 1-4, Columns (c) through (g.) (continued)

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 — Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a-i — Show the totals of Lines 6a to 6h in each column.

Line 6j - Show the amount of indirect cost.

Line 6k - Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

INSTRUCTIONS FOR THE SF-424A *(continued)*

Line 7 – Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8-11 – Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) – Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) – Enter the contribution to be made by the applicant.

Column (c) – Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) – Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) – Enter totals of Columns (b), (c), and (d).

Line 12 — Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 – Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 – Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 – Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16 - 19 – Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 – Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 – Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 – Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 – Provide any other explanations or comments deemed necessary.

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will compiy with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

Standard Form 424B (4 88)
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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

Certification Regarding Debarment, Suspension, and Other Responsibility Matters - Primary Covered Transactions

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR Part 76, certifies to the best of its knowledge and believe that it and its principals:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency;

(b) have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

The inability of a person to provide the certification required above will not necessarily result in denial of participation in this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services' (HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion - Lower Tier Covered Transactions," provided below without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

U.S. Department of Health and Human Services

Certification Regarding

Drug-Free Workplace Requirements

Grantees Other Than Individuals

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the January 31, 1989 Federal Register, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when HHS determines to award the grant. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment.

The grantee certifies that it will provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing a drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and,

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and,

(2) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;

(e) Notifying the agency within ten days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction;

(f) Taking one of the following actions, within 30 days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

OMB No. 0925-0637

DEPARTMENT OF HEALTH AND HUMAN SERVICES

PROTECTION OF HUMAN SUBJECTS ASSURANCE/CERTIFICATION/DECLARATION

☐ ORIGINAL ☐ FOLLOWUP ☐ EXEMPTION (previously undesignated)

☐ GRANT ☐ CONTRACT ☐ FELLOW. ☐ OTHER

☐ New ☐ Competing continuation ☐ Noncompeting continuation ☐ Supplemental

APPLICATION IDENTIFICATION NO. *(if known)*

POLICY: A research activity involving human subjects that is not exempt from HHS regulations may not be funded unless an Institutional Review Board (IRB) has reviewed and approved the activity in accordance with Section 474 of the Public Health Service Act as implemented by Title 45, Part 46 of the Code of Federal Regulations (45 CFR 46–as revised). The applicant institution must submit certification of IRB approval to HHS unless the applicant institution has designated a specific exemption under Section 46.101(b) which applies to the proposed research activity. Institutions with an assurance of compliance on file with HHS which covers the proposed activity should submit certification of IRB review and approval with each application. (In exceptional cases, certification may be accepted up to 60 days after the receipt date for which the application is submitted.) In the case of institutions which do not have an assurance of compliance on file with HHS covering the proposed activity, certification of IRB review and approval must be submitted within 30 days of the receipt of a written request from HHS for certification.

1. TITLE OF APPLICATION OR ACTIVITY

2. PRINCIPAL INVESTIGATOR, PROGRAM DIRECTOR, OR FELLOW

3. FOOD AND DRUG ADMINISTRATION REQUIRED INFORMATION *(see reverse side)*

4. HHS ASSURANCE STATUS

☐ This institution has an approved assurance of compliance on file with HHS which covers this activity.

_____ Assurance identification number _____ IRB identification number

☐ No assurance of compliance which applies to this activity has been established with HHS, but the applicant institution will provide written assurance of compliance and certification of IRB review and approval in accordance with 45 CFR 46 upon request.

5. CERTIFICATION OF IRB REVIEW OR DECLARATION OF EXEMPTION

☐ This activity has been reviewed and approved by an IRB in accordance with the requirements of 45 CFR 46, including its relevant Subparts. This certification fulfills, when applicable, requirements for certifying FDA status for each investigational new drug or device. *(See reverse side of this form.)*

_____ Date of IRB review and approval. *(If approval is pending, write "pending." Followup certification is required.)*
(month/day/year)

☐ Full Board Review ☐ Expedited Review

☐ This activity contains multiple projects, some of which have not been reviewed. The IRB has granted approval on condition that all projects covered by 45 CFR 46 will be reviewed and approved before they are initiated and that appropriate further certification *(Form HHS 596)* will be submitted.

☐ Human subjects are involved, but this activity qualifies for exemption under 46.101(b) in accordance with paragraph _____ *(insert paragraph number of exemption in 46.101(b), 1 through 5)*, but the institution did not designate that exemption on the application.

6. Each official signing below certifies that the information provided on this form is correct and that each institution assumes responsibility for assuring required future reviews, approvals, and submissions of certification.

APPLICANT INSTITUTION	COOPERATING INSTITUTION
NAME, ADDRESS, AND TELEPHONE NO.	NAME, ADDRESS, AND TELEPHONE NO.
NAME AND TITLE OF OFFICIAL *(print or type)*	NAME AND TITLE OF OFFICIAL *(print or type)*
SIGNATURE OF OFFICIAL LISTED ABOVE *(and date)*	SIGNATURE OF OFFICIAL LISTED ABOVE *(and date)*

HHS 596 (Rev. 1/82)

(If additional space is needed, please use reverse side under "Notes.")

3. FOOD AND DRUG ADMINISTRATION REQUIRED INFORMATION *(from front side)*

According to 45 CFR 46.121, if an application is made to HHS requiring certification and involving use of an investigational new drug or device, additional information is required. In addition, according to 21 CFR 312.1(a)(2), 30 days must elapse between date of receipt by FDA of Form FD-1571 and use of the drug, unless the 30 day delay period is waived by FDA.

3a. INVESTIGATIONAL NEW DRUG EXEMPTION *(if more than one is involved, list others below under NOTES):*

SPONSOR NAME

DRUG NAME

DATE OF END OF 30-DAY EXPIRATION OR WAIVER	NUMBER ISSUED

3b. INVESTIGATIONAL DEVICE EXEMPTION:

SPONSOR NAME

DEVICE NAME

Unless notified otherwise by FDA, under 21 CFR 812.2(b) (ii) a sponsor is deemed to have an approved IDE if: (1) the IRB has agreed with the sponsor that the device is a nonsignificant risk device; and (2) the IRB has approved the study. *(Check applicable box.)*

☐ The IRB agrees with the sponsor that this device is a nonsignificant risk device.

OR

☐ The IDE application was submitted to FDA on *(date)*_____. Number issued_____.

NOTES:

HHS 596 (Rev. 1/82) BACK

☆ U.S. GOVERNMENT PRINTING OFFICE: 1985-527-491/30482

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federal register

Thursday
June 1, 1989

Part III

Department of Education

National School Volunteer Program; Notice Inviting Applications for New Awards for Fiscal Year 1989

DEPARTMENT OF EDUCATION

[CFDA 84.222]

National School Volunteer Program; Notice Inviting Applications for New Awards for Fiscal Year 1989.

Note to Applicants

This notice is a complete application package. Together with the Department of Education Appropriations Act, 1989, and the Education Department General Administrative Regulations (EDGAR), the notice contains information, application forms, and instructions needed to apply for a grant under this competition.

Purpose of Program

To support projects to conduct national school volunteer programs.

Deadline for Transmittal of Applications: July 18, 1989

Deadline for Intergovernmental Review: September 16, 1989

Available Funds: $988,000

Estimated Range of Awards: $50,000–$400,000

Estimated Number of Awards: One to Four

Project Period: 12–24 Months

Applicable Regulations

The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations), Part 75 (Direct Grant Programs), Part 77 (Definitions that Apply to Department Regulations), Part 79 (Intergovernmental Review of Department of Education Programs and Activities), Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), Part 81 (General Education Provisions Act—Enforcement), and Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

Authority and Description of Program

This program is authorized under Pub. L. 100–436, the fiscal year 1989 appropriations act for the Department of Education, which appropriated $988,000 for school volunteer programs.

Invitational Priorities

In accordance with 34 CFR 75.105(c)(1), the Secretary establishes two invitational priorities, as described below. However, applications proposing these types of projects will not receive an absolute or competitive preference over applications that do not propose these types of projects.

For both types of projects, the Secretary is particularly interested in projects that are intergenerational and that target services to at-risk students, emphasize drug and alcohol abuse prevention, or promote the transfer of high technology skills from volunteers to students. Applications are invited for two types of projects:

1. *National Center:* The Secretary is interested in supporting a national center for leadership in school volunteer and partnership programs involving educators, business people, students, senior citizens, and other volunteers interested in improving elementary and secondary education. The organization would operate nationwide and have experience in assisting schools in organizing, promoting, and utilizing volunteer programs. The center would conduct the following activities: (1) Provide training in school volunteer program development; (2) conduct an annual survey of volunteer programs; and (3) evaluate volunteer programs.

2. *Partnership Projects:* The Secretary is also interested in supporting partnerships between elementary and secondary schools, State educational agencies (SEAs), local educational agencies (LEAs), or any combination of these entities, and one or more of the following entities: State or local government agencies, nonprofit organizations, institutions of higher education, and businesses. Partnerships could establish or expand school volunteer projects at the State and local level; or strengthen the capability of SEAs and nonprofit organizations to provide leadership and assistance to LEAs and nonprofit schools in the planning, operation, and improvement of school volunteer programs.

Eligible Parties

The following parties are eligible to apply for a grant under this program: SEAs, LEAs, institutions of higher education and other public and private agencies, organizations and institutions.

Selection Criteria

(a)(1) The Secretary uses the following selection criteria to evaluate applications for new grants under this competition.

(2) The maximum score for all of these criteria is 100 points.

(3) The maximum score for each criterion is indicated in parentheses.

(b) *The criteria*—(1) *Meeting the purposes of the authorizing statute. (30 points)* The Secretary reviews each application to determine how well the project will conduct national school volunteer programs, including consideration of—

(i) The objectives of the project; and

(ii) How the objectives of the project implement national school volunteer programs.

(2) *Extent of need for the project.* (15 points) The Secretary reviews each application to determine the extent to which the project meets specific needs recognized in the statute that authorizes the program, including consideration of—

(i) The needs addressed by the project;

(ii) How the applicant identified those needs;

(iii) How those needs will be met by the project; and

(iv) The benefits to be gained by meeting those needs.

(3) *Plan of operation.* (20 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(i) The quality of the design of the project;

(ii) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(iii) How well the objectives of the project relate to the purpose of the program;

(iv) The quality of the applicant's plan to use its resources and personnel to achieve each objective;

(v) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition; and

(vi) For grants under a program that requires the applicant to provide an opportunity for participation of students enrolled in private schools, the quality of the applicant's plan to provide that opportunity.

(4) *Quality of key personnel.* (15 points)

(i) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(A) The qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraph (b)(4)(i)(A) and (B) will commit to the project; and

(D) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without

regard to race, color, national origin, gender, age, or handicapping condition.

(ii) To determine personnel qualifications under paragraphs (b)(4)(i)(A) and (B), the Secretary considers—

(A) Experience and training in fields related to the objectives of the project; and

(B) Any other qualifications that pertain to the quality of the project.

(5) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(i) The budget is adequate to support the project; and

(ii) Costs are reasonable in relation to the objectives of the project.

(6) *Evaluation plan.* (5 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(i) Are appropriate to the project; and

(ii) To the extent possible, are objective and produce data that are quantifiable.

Cross-reference: See 34 CFR 75.590 Evaluation by the grantee.

(7) *Adequacy of resources.* (10 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

Intergovernmental Review of Federal Programs

This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR Part 79.

The objective of the Executive order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372. Applicants proposing to perform activities in more than one State should immediately contact the Single Point of Contact for each of those States and follow the procedure established in each State under the Executive order. If you want to know the name and address of any State Single Point of Contact, see the list published in the **Federal Register** on November 18, 1987, pages 44338–44340.

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372—CFDA #84.222, U.S. Department of Education, Room 4161, 400 Maryland Avenue, SW., Washington, DC 20202–0125.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, DC time) on the date indicated in this notice.

Please note that this address is not the same address as the one to which the applicant submits its completed application. Do not send application to the above address.

Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to:

U.S. Department of Education, Application Control Center, Attention: (CFDA #84.222), Washington, DC 20202–4725.

or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on the deadline date to:

U.S. Department of Education, Application Control Center, Attention: (CFDA #84.222), Room #3633, Regional Office Building #3, 7th and D Streets, SW., Washington, DC.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) An applicant wishing to know that its application has been received by the Department must include with the application a stamped, self-addressed postcard containing the CFDA number and title of this program.

(3) The applicant must indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and letter, if any—of the competition under which the application is being submitted.

Application Instructions and Forms:

The appendix to this application is divided into three parts plus a statement regarding estimated public reporting burden and various assurances and certifications. These parts and additional materials are organized in the same manner that the submitted application should be organized. The parts and additional materials are as follows:

PART I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

PART II: Budget Information—Non-Construction Programs (Standard Form 424A) and instructions.

PART III: Application Narrative.

Additional Materials

Estimated Public Reporting Burden.

Assurances—Non-Construction Programs (Standard Form 424B).

Certification regarding Debarment, Suspension, and Other Responsibility Matters: Primary Covered Transactions (ED Form GCS–008) and instructions.

Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED Form GCS–009) and instructions. (NOTE: ED Form GCS–009 is intended for the use of grantees and should not be transmitted to the Department.)

Certification Regarding Drug-Free Workplace Requirements: Grantees Other than Individuals (ED 80–0004).

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature. No grant may be awarded unless a completed application form has been received.

FOR FURTHER INFORMATION CONTACT

U.S. Department of Education, Fund for the Improvement and Reform of Schools and Teaching, 555 New Jersey Avenue, NW., Room 522, Washington, DC 20208–5524, Telephone: (202) 357–6496.

Program Authority Department of Education Appropriations Act, 1989, Pub. L. 100–436.

Dated: May 25, 1989.

Bruno Manno,

Acting Assistant Secretary, Office of Educational Research and Improvement.

CFDA 84.222, National School Volunteer Program (Fund for the Improvement and Reform of Schools and Teaching)

BILLING CODE 4000-01-M

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

2. DATE SUBMITTED	Applicant Identifier
3. DATE RECEIVED BY STATE	State Application Identifier
4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

1. TYPE OF SUBMISSION:

Application	Preapplication
☐ Construction	☐ Construction
☒ Non-Construction	☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, state, and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

8. TYPE OF APPLICATION:

☒ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration

D. Decrease Duration Other (specify): _____

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State	H. Independent School Dist.
B. County	I. State Controlled Institution of Higher Learning
C. Municipal	J. Private University
D. Township	K. Indian Tribe
E. Interstate	L. Individual
F. Intermunicipal	M. Profit Organization
G. Special District	N. Other (Specify): _____

9. NAME OF FEDERAL AGENCY:

U.S. Department of Education

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 8 4 . 2 2 2

TITLE: National School Volunteer Program

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT:		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3	State use only (if applicable).
4.	If this application is to continue or revise an existing award, enter present Federal identifier number If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided: — "New" means a new assistance award. — "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. — "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11.	Enter a brief descriptive title of the project. if more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12.	List only the largest political entities affected (e.g., State, counties, cities).
13.	Self-explanatory
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

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BUDGET INFORMATION — Non-Construction Programs

SECTION A – BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B – BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

21. Direct Charges:	22. Indirect Charges:
23. Remarks	

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INSTRUCTIONS FOR THE SF-424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A,B,C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A,B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary
Lines 1-4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g.)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

Lines 1-4, Columns (c) through (g.) (continued)

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 — Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a-i — Show the totals of Lines 6a to 6h in each column.

Line 6j – Show the amount of indirect cost.

Line 6k – Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

INSTRUCTIONS FOR THE SF-424A *(continued)*

Line 7 – Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8-11 – Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) – Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) – Enter the contribution to be made by the applicant.

Column (c) – Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) – Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) – Enter totals of Columns (b), (c), and (d).

Line 12 — Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 – Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 – Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 – Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16 - 19 – Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 – Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 – Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 – Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 – Provide any other explanations or comments deemed necessary.

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Part III—Application Narrative

Before preparing the Application Narrative, an applicant should read carefully the Application Notice describing the priorities and selection criteria used to evaluate applications.

The narrative should encompass each function or activity for which funds are being requested and should—

1. Begin with a one-page Abstract; include statements about: (i) the need for the project; (ii) the proposed plan of operation; and (iii) the project's significance/intended outcomes.

2. Describe the proposed project in light of each of the selection criteria in the order in which the criteria are listed in this application package; and

3. Include any other pertinent information that might be useful in reviewing the application.

Please limit the Application Narrative to no more than 15* double-spaced, typed pages (on one side only). The total application should not exceed 25 pages, including appendices.

*NOTE: Applicants submitting proposals for a National Center may require more than 15 pages for the narrative to describe their proposed center. In such cases the narrative may exceed 15 pages, but the total application, including appendices, should be limited to 40 pages.

Estimated Public Reporting Burden

Under terms of the Paperwork Reduction Act of 1980, as amended, and the regulations implementing that Act, the Department of Education invites comment on the public reporting burden in this collection of information. Public reporting burden for this collection of information is estimated to average 24 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. You may send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, DC 20202–4651; and to the Office of Management and Budget, Paperwork Reduction Project 1850–0634, Washington, DC 20503.

(Information collection approved under OMB control number 1850–0634. Expiration date: 5/31/92.)

BILLING CODE 4000–01–M

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

SF 424B (4-88) Back

Certification Regarding Debarment, Suspension, and Other Responsibility Matters Primary Covered Transactions

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, Section 85.510, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211). Copies of the regulations may be obtained by contacting the U.S. Department of Education, Grants and Contracts Service, 400 Maryland Avenue, S.W. (Room 3633 GSA Regional Office Building No. 3), Washington, D.C. 20202-4725, telephone (202) 732-2505.

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE)

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Organization Name	PR/Award Number or Project Name
Name and Title of Authorized Representative	
Signature	Date

Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal i being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regardin Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

Certification Regarding
Debarment, Suspension, Ineligibility and Voluntary Exclusion
Lower Tier Covered Transactions

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, Section 85.510, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211). Copies of the regulations may be obtained by contacting the person to which this proposal is submitted.

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE)

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Organization Name PR/Award Number or Project Name

Name and Title of Authorized Representative

Signature Date

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Drug-Free Workplace Requirements Grantees Other Than Individuals

This certification is required by the regulations implementing the Drug-Free Workplace Act of 1988, 34 CFR Part 85, Subpart F. The regulations, published in the January 31, 1989 Federal Register, require certification by grantees, prior to award, that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the agency determines to award the grant. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment (see 34 CFR Part 85, Sections 85.615 and 85.620).

The grantee certifies that it will provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing a drug-free awareness program to inform employees about--

(1) The dangers of drug abuse in the workplace;
(2) The grantee's policy of maintaining a drug-free workplace;
(3) Any available drug counseling, rehabilitation, and employee assistance programs; and
(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will--

(1) Abide by the terms of the statement; and
(2) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;

(e) Notifying the agency within ten days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction;

(f) Taking one of the following actions, within 30 days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted--

(1) Taking appropriate personnel action against such an employee, up to and including termination; or
(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

Organization Name PR/Award Number or Project Name

Name and Title of Authorized Representative

Signature Date

ED 80-0004

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federal register

Thursday
June 1, 1989

Part IV

Department of Education

Student Literacy Corps Program; Applications for New Awards for Fiscal Year 1989; Notice

DEPARTMENT OF EDUCATION

[CFDA No: 84.219]

Student Literacy Corps Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1989

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and applicable regulations governing the program, including the Education Department General Administrative Regulations (EDGAR), the notice contains information, application forms, and instructions needed to apply for a grant under this competition.

Purpose of Program: To promote student literacy corps projects operated by institutions of higer education (IHEs) where volunteer undergraduates will serve as unpaid literacy tutors in public community agencies.

Deadline for Transmittal of Applications: July 28, 1989.

Deadline for Intergovernmental Review: August 28, 1989.

Available Funds: $4,940,000.

Estimated Range of Awards: Up to $50,000.

Estimated Average Size of Awards: $45,000.

Estimated Number of Awards: 90–110.

Note: The Department is not bound by any estimate in this notice.

Project Period: 24 months.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals and Nonprofit Organizations), Part 75 (Direct Grant Programs), Part 77 (Definitions that Apply to Department Regulations), Part 79 (Intergovernmental Review of Department of Education Programs and Activities), and Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

Description of Program: The Secretary of Education will make two-year non-renewable grants to eligible institutions of higher education to support literacy training at public community agency facilities. No more than $25,000 can be expended by any IHE during the first year. To be eligible to receive a grant, an IHE must demonstrate that it has previously engaged in community service activities. Specifically, it must indicate that it has either used a portion of its allotment under Pact C of Title IV of the Higher Education Act of 1965, as amended (HEA), for work study and community service learning under section 443(b)(2)(A), or conducted a cooperative education program.

Upon request of the IHE, the Secretary may grant a waiver of the prior community service requirement described above if the IHE provides assurances that: (a)(1) It has conducted some other significant program involving community outreach and service; or (2) if it has not conducted such a program, it can demonstrate that it currently has the ability to engage in outreach efforts necessary to carry out Student Literacy Corps requirements; and (b) in the event that it receives an allotment under Part C of Title IV of the HEA, that a portion of this allotment will be used for community service learning programs.

Each IHE applicant must provide assurances in its application for Student Literacy Corps Program funds that—

(a) Its grant will be used to cover an IHE's costs of participation in the Student Literacy Corps Program for which assistance is sought, including evaluation and stipends for student coordinators, and funds made available will not be used for the payment of stipends or salaries to tutors, in accordance with the Uses of Funds provision in the authorizing legislation (20 U.S.C. 1018b);

(b) It will provide literacy tutoring services in structured classroom settings supervised by qualified personnel in one or more public community agencies in the community in which it is located which serve educationally or economically disadvantaged individuals (the term "public community agency" means an established non-Federal community agency with established programs of instruction such as those serving youth, the handicapped, disabled veterans and individuals in public institutions such as schools and prisons);

(c) It will offer one or more courses for academic credit (in such academic areas as the social sciences, economics or education) designed to combine formal study with undergraduates' experience as literacy tutors;

(d) As a condition of receiving credit for the courses of instruction referred to in paragraph (c) above, undergraduates will perform not less than six hours of voluntary, uncompensated service each week of the academic term in a public community agency as tutors in its educational or literacy programs;

(e) The tutoring service referred to in paragraph (d) above will be supplementary both to the IHE's regular academic program and the existing instructional services offered by the community service learning programs; and

(f) It will make arrangements for adequate training of volunteers, depending upon available resources, which may include the training of student coordinators to assist in the process of preparing and placing undergraduates as tutors in community service learning programs.

Selection Criteria

(a)(1) The Secretary uses the following selection criteria to evaluate applications for new grants under this competition.

(2) The maximum score for all of these criteria is 100 points.

(3) The maximum score for each criterion is indicated in parentheses.

(b) *The criteria*—(1) *Meeting the purposes of the authorizing statute.* (30 points) The Secretary reviews each application to determine how well the project will meet the purpose of Title I, Part D of the Higher Education Act of 1965, as amended, including consideration of—

(i) The objectives of the project; and

(ii) How the objectives of the project further the purposes of Title I, Part D of the Higher Education Act of 1965, as amended.

(2) *Extent of need for the project.* (20 points) The Secretary reviews each application to determine the extent to which the project meets specific needs recognized in Title I, Part D of the Higher Education Act of 1965, as amended, including consideration of—

(i) The needs addressed by the project;

(ii) How the applicant identified those needs;

(iii) How those needs will be met by the project; and

(iv) The benefits to be gained by meeting those needs.

(3) *Plan of operation.* (30 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(i) The quality of the design of the project;

(ii) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(iii) How well the objectives of the project relate to the purpose of the program;

(iv) The quality of the applicant's plan to use its resources and personnel to achieve each objective;

(v) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition; and

(vi) For grants under the program that requires the applicant to provide an opportunity for participation of students enrolled in private schools, the quality of the applicant's plan to provide that opportunity.

(4) *Quality of key personnel.* (7 points)

(i) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(A) The qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraph (b)(4)(i) (A) and (B) will commit to the project; and

(D) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(ii) To determine personnel qualifications under paragraphs (b)(4)(i) (A) and (B), the Secretary considers—

(A) Experience and training in fields related to the objectives of the project; and

(B) Any other qualifications that pertain to the quality of the project.

(5) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(i) The budget is adequate to support the project; and

(ii) Costs are reasonable in relation to the objectives of the project.

(6) *Evaluation plan.* (5 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(i) Are appropriate to the project; and

(ii) To the extent possible, are objective and produce data that are quantifiable.

Cross-reference: See 34 CFR 75.590 Evaluation by the grantee.

(7) *Adequacy of resources.* (3 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

Intergovernmental Review of Federal Programs

This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR Part 79.

The objective of the Executive order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372. Applicants proposing to perform activities in more than one State should immediately contact the Single Point of Contact for each of those States and follow the procedure established in each State under the Executive order. If you want to know the name and address of any State Single Point of Contact, see the list published in the **Federal Register** on November 18, 1987, pages 44338–44340.

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372—CFDA# 84.219, U.S. Department of Education, Room 4161, 400 Maryland Avenue S.W., Washington, DC 20202–0125.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, DC time) on the date indicated in this notice.

Please note that this address is not the same address as the one to which the applicant submits its completed application. Do Not Send Application To The Above Address.

Instructions for Transmittal of Applications

(a) If an applicant wants to appy for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA #84.219), Washington, DC 20202–4725.

or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA #84.219), Room #3633, Regional Office Building #3, 7th and D Streets SW., Washington, DC.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) An applicant wishing to know that its application has been received by the Department must include with the application a stamped, self-addressed postcard containing the CFDA number and title of this program.

(3) The applicant must indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and letter, if any—of the competition under which the application is being submitted.

Application Instructions and Forms

The appendix to this application is divided into three parts. These parts are organized in the same manner that the submitted application should be organized. The parts are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

Part II: Budget Information—Non-Construction Programs (Standard Form 424A) and instructions.

Party III: Application Narrative.

Student Literacy Corps Program Assurances.

Assurances—Non-Construction Programs (Standard Form 424B).

Certification regarding Debarment, Suspension, and Other Responsibility Matters: Primary Covered Transactions (ED Form GCS–008) and instructions.

Certification regarding Debarment, Suspension Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (Ed Form GCS–009) and instructions. (NOTE: Ed Form GCS–009 is intended for the use of primary

participants and should not be transmitted to the Department.)

Certification Regarding Drug-Free Workplace Requirements: Grantees Other Than Individuals (ED 80–0004).

An applicant may submit information on photostatic copy of the application and budget forms, the assurances, and the certification. However, the application form, the assurances, and the certification must each have an original signature. No grant may be awarded unless a completed application form has been received.

For Further Information: Dr. Donald N. Bigelow, Education Program Officer, Higher Education Programs, Department of Education, Room 3082, (202) 732–5596, ROB–3, Mail Station 5131, 400 Maryland Avenue SW., Washington, DC 20202–5249.

Program Authority: 20 U.S.C. 1018–1018f.

Dated: April 21, 1989.

James B. Williams,

Acting Assistant Secretary for Postsecondary Education.

BILLING CODE 4000–01–M

Appendix

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, state, and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

8. TYPE OF APPLICATION:
☐ New ☐ Continuation ☐ Revision
If Revision, enter appropriate letter(s) in box(es): ☐ ☐
A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify): _____

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐
A. State H. Independent School Dist.
B. County I. State Controlled Institution of Higher Learning
C. Municipal J. Private University
D. Township K. Indian Tribe
E. Interstate L. Individual
F. Intermunicipal M. Profit Organization
G. Special District N. Other (Specify): _____

9. NAME OF FEDERAL AGENCY:
U.S. Department of Education

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 8 4 . 2 1 9
TITLE: Student Literacy Corps Program

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT: Start Date	Ending Date	14. CONGRESSIONAL DISTRICTS OF: a. Applicant	b. Project

15. ESTIMATED FUNDING:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:
DATE _____
b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?
☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. if more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A – BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B – BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Standard Form 424A (4-88)
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SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

21. Direct Charges:	22. Indirect Charges:
23. Remarks	

SF 424A (4-88) Page 2
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INSTRUCTIONS FOR THE SF-424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A,B,C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A,B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary
Lines 1-4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g.)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

Lines 1-4, Columns (c) through (g.) (continued)

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 — Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a-i — Show the totals of Lines 6a to 6h in each column.

Line 6j – Show the amount of indirect cost.

Line 6k – Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

INSTRUCTIONS FOR THE SF-424A *(continued)*

Line 7 – Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8-11 – Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) – Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) – Enter the contribution to be made by the applicant.

Column (c) – Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) – Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) – Enter totals of Columns (b), (c), and (d).

Line 12 — Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 – Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 – Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 – Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16 - 19 – Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 – Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 – Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 – Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 – Provide any other explanations or comments deemed necessary.

BILLING CODE 4000-01-C

Instruction for Part III—Application Narrative

Before preparing the Application Narrative an applicant should read carefully the description of the program and the selection criteria the Secretary uses to evaluate applications.

The Narrative should encompass each function or activity for which funds are being requested and should—

1. Begin with an Abstract; that is, a single page summary of the proposed project;
2. Describe the project in terms of each of the selection criteria in the order in which they are listed; and
3. Include in the Narrative, information that will assist the Secretary in reviewing the application by indicating as fully as possible how the relevant "assurances" ("a" to "f" in the Description of the Program) will be carried out. Clearly describe the course(s) to be offered, the related training for undergraduate tutors and the duties of student coordinators, if any; explain which community agencies will be cooperating and why, with information about their programs and their clients; finally, describe the management and logistics of the proposed project, whether or not it is new, and, if it is new, how it will be combined with pre-existing projects.

Please limit the Application Narrative to no more than 15 double-spaced, typed pages (on one side only).

Public reporting burden for this collection of information is estimated to average 4 hours per response, including the time for reviewing instructions, searching existing data sources, and gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202–4651; and to the Paperwork Reduction Project, OMB 1840–0618, Office of Management and Budget, Washington, D.C. 20503. (Information collection approved under OMB control number 1840–0618. Expiration date: March 31, 1992.)

BILLING CODE 4000-01-M

Student Literacy Corps Program
Program Assurances

As the duly authorized representative of the IHE applicant, I certify that the applicant will comply with all statutory and regulatory requirements applicable to this program and provide specific program assurances that:

a. Its grant will be used to cover an IHE's costs of participation in the Student Literacy Corps Program for which assistance is sought, including evaluation and stipends for student coordinators, and funds made available will not be used for the payment of stipends or salaries to tutors, in accordance with the USES OF FUNDS provision in the authorizing legislation (20 U.S.C. 1018b);

b. It will provide literacy tutoring services in structured classroom settings supervised by qualified personnel in one or more public community agencies in the community in which it is located which serve educationally or economically disadvantaged individuals (the term "public community agency" means an established non-Federal community agency with established programs of instruction such as those serving youth, the handicapped, disabled veterans and individuals in public institutions such as schools and prisons);

c. It will offer one or more courses for academic credit (in such academic areas as the social sciences, economics or education) designed to combine formal study with undergraduates' experience as literacy tutors;

d. As a condition of receiving credit for the courses of instruction referred to in paragraph (c) above, undergraduates will perform not less than six hours or voluntary, uncompensated service each week of the academic term in a public community agency as tutors in its educational or literacy programs;

e. The tutoring service referred to in paragraph (d) above will be supplementary both to the IHE's regular academic program and the existing instructional services offered by the community service learning programs; and

f. It will make arrangements for adequate training of volunteers, depending upon available resources, which may include the training of student coordinators to assist in the process of preparing and placing undergraduate as tutors in community service learning programs.

Signature or Authorized Certifying Official	Title
Applicant Organization	Date Submitted

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

Standard Form 424B (4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

SF 424B (4-88) Back

Certification Regarding Debarment, Suspension, and Other Responsibility Matters Primary Covered Transactions

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, Section 85.510, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211). Copies of the regulations may be obtained by contacting the U.S. Department of Education, Grants and Contracts Service, 400 Maryland Avenue, S.W. (Room 3633 GSA Regional Office Building No. 3), Washington, D.C. 20202, telephone (202) 732-2505.

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE)

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph(1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Name And Title Of Authorized Representative

Signature Date

ED Form GCS-008, 6/88

Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower Tier Covered Transactions

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, Section 85.510, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211). Copies of the regulations may be obtained by contacting the person to which this proposal is submitted.

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE)

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Organization Name PR/Award Number or Project Name

Name and Title of Authorized Representative

Signature Date

ED Form GCS-009, (REV. 12/88)

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Drug-Free Workplace Requirements Grantees Other Than Individuals

This certification is required by the regulations implementing the Drug-Free Workplace Act of 1988, 34 CFR Part 85, Subpart F. The regulations, published in the January 31, 1989 Federal Register, require certification by grantees, prior to award, that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the agency determines to award the grant. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment (see 34 CFR Part 85, Sections 85.615 and 85.620).

The grantee certifies that it will provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing a drug-free awareness program to inform employees about--

(1) The dangers of drug abuse in the workplace;
(2) The grantee's policy of maintaining a drug-free workplace;
(3) Any available drug counseling, rehabilitation, and employee assistance programs; and
(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will--

(1) Abide by the terms of the statement; and
(2) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;

(e) Notifying the agency within ten days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction;

(f) Taking one of the following actions, within 30 days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted--

(1) Taking appropriate personnel action against such an employee, up to and including termination; or
(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

Organization Name PR/Award Number or Project Name

Name and Title of Authorized Representative

Signature Date

ED 80-0004

[FR Doc. 89-13146 Filed 5-31-89; 8:45 am]
BILLING CODE 4000-01-C

federal register

Thursday
June 1, 1989

Part V

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 29

Tobacco Inspection—Growers' Referendum

Technical Bulletin

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 29

[TB-88-107]

Tobacco Inspection—Growers' Referendum

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of referendum.

SUMMARY: This notice announces that a referendum will be conducted by mail during the period June 5–9, 1989, for producers of flue-cured tobacco who sell their tobacco at auction in Stoneville and Madison, North Carolina, to determine producer approval of the designation of the Stoneville and Madison tobacco markets as one consolidated auction market.

DATE: The referendum will be held June 5–9, 1989.

FOR FURTHER INFORMATION CONTACT: Ernest L. Price, Director, Tobacco Division, Agricultural Marketing Service, United States Department of Agriculture, P.O. Box 96456, Washington, DC 20090–6456; Telephone Number (202) 447–2567.

SUPPLEMENTARY INFORMATION: Notice is hereby given of a mail referendum on the designation of a consolidated auction market at Stoneville and Madison, North Carolina. Stoneville and Madison, North Carolina, were separately designated on June 26, 1942 (7 CFR 29.8001) as flue-cured tobacco auction markets under the Tobacco Inspection Act (7 U.S.C. 511 *et seq.*). Under this Act the two markets have been receiving mandatory grading services from USDA.

On September 6, 1988, an application was made to the Secretary of Agriculture to consolidate the designated markets of Stoneville and Madison. The application, filed by warehouse operators in those markets, was made pursuant to the regulations promulgated under the Tobacco Inspection Act (7 CFR 29.1–29.3). On November 9, 1988, a public hearing was held in Madison, North Carolina, pursuant to the regulation. A Review Committee, established pursuant to § 29.3(h) of the regulations (7 CFR 29.3(h)), has reviewed and considered the application, the testimony presented at the hearing, the exhibits received in evidence, and other available information. The Committee recommended to the Secretary that the application be granted and the Secretary approved the application on May 10, 1989.

Before a new market can be officially designated, a referendum must be held to determine that a two-thirds majority of producers favor the designation. It is hereby determined that the referendum will be held by mail during the period of June 5–9, 1989. The purpose of the referendum is to determine whether farmers who sold their tobacco on the designated markets at Stoneville and Madison are in favor of or opposed to the designation of the consolidated market for the 1989 and succeeding crop years. Accordingly, if a two-thirds majority of those tobacco producers voting in the referendum favor this consolidation, a new market will be designated as and be called Stoneville-Madison.

To be eligible to vote in the referendum a tobacco producer must have sold flue-cured tobacco on either the Stoneville or Madison, North Carolina, auction market during the 1988 marketing season. Any farmer who believes he or she is eligible to vote in the referendum but has not received a mail ballot by June 5, 1989, should immediately contact Ernest L. Price at (202) 447–2567.

The referendum will be held in accordance with the provisions for referenda of the Tobacco Inspection Act, as amended (7 U.S.C. 511d) and the regulations for such referendum set forth in 7 CFR 29.74.

Dated: May 31, 1989.

J. Patrick Boyle,

Administrator.

[FR Doc. 89–13230 Filed 5–31–89; 11:02 am]

BILLING CODE 3410–02–M

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Federal Register
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Thursday, June 1, 1989

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FEDERAL REGISTER PAGES AND DATES, JUNE

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 May 22, 1989

TABLE OF EFFECTIVE DATES AND TIME PERIODS—JUNE 1989

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

DATE OF FR PUBLICATION	15 DAYS AFTER PUBLICATION	30 DAYS AFTER PUBLICATION	45 DAYS AFTER PUBLICATION	60 DAYS AFTER PUBLICATION	90 DAYS AFTER PUBLICATION
June 1	June 16	July 3	July 17	July 31	August 30
June 2	June 19	July 3	July 17	August 1	August 31
June 5	June 20	July 5	July 20	August 4	September 5
June 6	June 21	July 6	July 21	August 7	September 5
June 7	June 22	July 7	July 24	August 7	September 5
June 8	June 23	July 10	July 24	August 7	September 6
June 9	June 26	July 10	July 24	August 8	September 7
June 12	June 27	July 12	July 27	August 11	September 11
June 13	June 28	July 13	July 28	August 14	September 11
June 14	June 29	July 14	July 31	August 14	September 12
June 15	June 30	July 17	July 31	August 14	September 13
June 16	July 3	July 17	July 31	August 15	September 14
June 19	July 5	July 19	August 3	August 18	September 18
June 20	July 5	July 20	August 4	August 21	September 18
June 21	July 6	July 21	August 7	August 21	September 19
June 22	July 7	July 24	August 7	August 21	September 20
June 23	July 10	July 24	August 7	August 22	September 21
June 26	July 11	July 26	August 10	August 25	September 25
June 27	July 12	July 27	August 11	August 28	September 25
June 28	July 13	July 28	August 14	August 28	September 26
June 29	July 14	July 31	August 14	August 28	September 27
June 30	July 17	July 31	August 14	August 29	September 28