AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

2-2-89
Vol. 54 No. 21
Pages 5207-5404

federal register

Thursday
February 2, 1989

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

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

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

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

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

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

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

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

Single copies/back copies:

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

FEDERAL AGENCIES

Subscriptions:

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

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

THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

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

WHO: The Office of the Federal Register.

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

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

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

WASHINGTON, DC

WHEN: February 28, 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

AUSTIN, TX

WHEN: February 22, at 9:00 a.m.
WHERE: Lyndon Baines Johnson Library 8th Floor, 2313 Red River Street, Austin, TX
RESERVATIONS: Call the Houston Federal Information Center:
Austin: 512–472–5494
San Antonio: 512–224–4471
Houston: 713–229–2552

Contents

Federal Register
Vol. 54, No. 21
Thursday, February 2, 1989

Administrative Conference of the United States
RULES
Recommendations:
Practice and procedure, 5207
NOTICES
Meetings:
Ethics in Government Special Committee, 5255
Governmental Processes Committee et al., 5255

Agriculture Department
See also Soil Conservation Service
NOTICES
Agency information collection activities under OMB review, 5255

Army Department
See also Engineers Corps
NOTICES
Military traffic management:
Defense Transportation Tracking System, 5260

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Centers for Disease Control
NOTICES
Meetings:
Immunization Practices Advisory Committee, 5278

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
Florida, 5256
Louisiana, 5257
Meetings; Sunshine Act, 5301

Commerce Department
See also National Technical Information Service; National Telecommunications and Information Administration
NOTICES
Agency information collection activities under OMB review, 5257, 5258
(4 documents)

Committee for the Implementation of Textile Agreements
NOTICES
Textile and apparel categories:
Visa arrangements based on harmonized system; correction, 5260

Defense Department
See also Army Department; Engineers Corps
RULES
Privacy Act; implementation, 5235

Drug Enforcement Administration
NOTICES
Applications, hearings, determinations, etc.:
Kissena Pharmacy, Inc., 5289
Sorenson, Jay Blaine, D.D.S., 5289

Economic Regulatory Administration
NOTICES
Consent orders:
Thos. P. Reidy, Inc., 5265

Education Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Magnet schools assistance program—
Local educational agencies, 5264
Strengthening institutions program, 5264

Employment Standards Administration
See also Wage and Hour Division
RULES
Contracts covering federally financed and assisted construction (nonconstruction contracts subject to Contract Work Hours and Safety Standards Act); labor standards provisions; and wage rates predetermination procedures
Correction, 5303

Energy Department
See also Economic Regulatory Administration; Federal Energy Regulatory Commission
PROPOSED RULES
Special nuclear materials, Category I quantities; personnel security access program, 5376

Engineers Corps
NOTICES
Environmental statements; availability, etc.:
Chattahoochee River, GA, 5261
Folsom Dam and Reservoir, CA, 5261
Gulf Intracoastal Waterway, LA and TX, 5262
Snake and Gros Ventre Rivers, WY, 5263

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
California, 5236
Air quality planning purposes; designation of areas:
Iowa, 5237
PROPOSED RULES
Air pollution; standards of performance for new stationary sources:
Volatile organic compounds (VOC) emissions—
Polypropylene, polyethylene, polystyrene, and poly(ethylene terephthalate) manufacturing industry; correction, 5302
Air quality implementation plans; approval and promulgation; various States:
Massachusetts, 5247, 5249
(2 documents)
NOTICES
Toxic and hazardous substances control:
Chemical testing—
Data receipt, 5275

Federal Aviation Administration
RULES
Transition areas, 5214–5219
(5 documents)
VOR Federal airways, 5218, 5219
(2 documents)
PROPOSED RULES
Transition areas, 5246
NOTICES
Commercial aircraft fleet modernization; alternatives, 5298

Federal Communications Commission
RULES
Radio stations; table of assignments:
Alabama and Florida, 5243
Florida, 5243
Georgia, 5244
Vermont, 5244
Washington and Oregon, 5244
Wyoming, 5245

Federal Election Commission
NOTICES
Meetings; Sunshine Act, 5301

Federal Emergency Management Agency
RULES
Flood elevation determinations:
California et al., 5238, 5240
(2 documents)
Georgia et al., 5239

Federal Energy Regulatory Commission
RULES
Natural Gas Policy Act:
Outer Continental Shelf Lands Act (Section 5); pipeline transportation of natural gas across OCS; interpretation, 5219
NOTICES
Electric rate, small power production, and interlocking directorate filings, etc.:
Mississippi Power & Light Co. et al., 5269
Natural gas certificate filings:
Transwestern Pipeline Co. et al., 5269
Applications, hearings, determinations, etc.:
Canadian Petroleum Association, 5273
Nevada Power Co., 5273
Oklahoma Gas & Electric Co., 5274
Utah Power & Light Co. et al., 5274

Federal Maritime Commission
PROPOSED RULES
Maritime carriers in domestic offshore commerce:
Tariff filing requirements; Hawaiian domestic offshore trade, 5253
NOTICES
Agreements filed, etc., 5275, 5276
(3 documents)

Federal Reserve System
NOTICES
Agency information collection activities under OMB review, 5276
Applications, hearings, determinations, etc.:
Citizens Dimension Bancorp, Inc., 5277
First Brundidge Bankshares, Inc., 5277
Nogle, Richard F., et al., 5278

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
Maduramicin ammonium, 5229
Human drugs:
Over-the-counter drug products; tamper-resistant packaging requirements, 5227
NOTICES
Animal drugs, feeds, and related products:
Melatonin implants for mink; correction, 5302
Sulfamethazine, etc., in food-producing animals; correction, 5303

Foreign Assets Control Office
RULES
Foreign and Cuban assets control:
Publications and informational materials importation and exportation restrictions terminations, etc., 5229

Health and Human Services Department
See Centers for Disease Control; Food and Drug Administration; Health Care Financing Administration; Health Resources and Services Administration; Public Health Service

Health Care Financing Administration
RULES
Medicaid and medicare:
Long-term care facilities (skilled nursing and intermediate care); conditions of participation, 5316

Health Resources and Services Administration
See also Public Health Service
NOTICES
Grants and cooperative agreements; availability, etc.:
Children; emergency medical services, 5278

Interior Department
See Land Management Bureau; Minerals Management Service; National Park Service; Reclamation Bureau

International Trade Commission
RULES
Practice and procedure:
Imports sold at less than fair value or subsidized exports to U.S.; injury to domestic industries; investigations, 5220
NOTICES
Import investigations:
Carbon steel structural shapes from Norway, 5287

Interstate Commerce Commission
NOTICES
Railroad operation, acquisition, construction, etc.:
Chicago & North Western Transportation Co. et al., 5288
Railroad services abandonment:
Central of Georgia Railroad Co., 5287

Justice Department
See also Drug Enforcement Administration
NOTICES
Pollution control; consent judgments:
Jacquin Florida Distilling Co., 5288

Labor Department
See Employment Standards Administration; Wage and Hour Division

Land Management Bureau
RULES
Public land orders:
Colorado; correction, 5302
NOTICES
Alaska Native claims selection:
Eyak Corp., 5280
Coal leases, exploration licenses, etc.:
Alabama, 5281
Environmental statements; availability, etc.:
Fortymile River, AK, 5281
Mineral interest applications:
California, 5281
Motor vehicles; off-road vehicle designations:
California, 5281
Oil and gas leases:
Wyoming, 5281
Realty actions; sales, leases, etc.:
California, 5282, 5283
(2 documents)
Idaho, 5283
Nevada, 5282
Survey plat filings:
Colorado, 5283
Idaho, 5283
Withdrawal and reservation of lands:
California, 5284
Colorado, 5285

Maritime Administration
RULES
Documented vessels and other maritime interests; regulated transactions, 5382

Minerals Management Service
NOTICES
Outer Continental Shelf; development operations coordination:
Mark Producing, 5286
Walter Oil & Gas Corp., 5286

National Aeronautics and Space Administration
NOTICES
Meetings:
Aerospace Medicine Advisory Committee, 5289

National Foundation on the Arts and the Humanities
NOTICES
Agency information collection activities under OMB review, 5289
Grants and cooperative agreements; availability, etc.:
Museum services—
Professional services program, 5290

National Institute for Occupational Safety and Health
See Centers for Disease Control

National Park Service
NOTICES
Meetings:
Chesapeake and Ohio Canal National Historical Park Commission, 5287

National Technical Information Service
NOTICES
Inventions, Government-owned; availability for licensing, 5258
Patent licenses, exclusive:
Bordo Citras Products Cooperative, 5259
Medtech Laboratories Inc., 5259
ORFA Corp. of America, 5259
Southern Research Institute, 5259

National Telecommunications and Information Administration
NOTICES
U.S. telecommunications industry competitiveness; effects of foreign telecommunications policies and practices, 5259

Nuclear Regulatory Commission
NOTICES
Export and import license applications for nuclear facilities or materials, 5291
Meetings:
Reactor Safeguards Advisory Committee, 5291
Three Mile Island Unit 2 Decontamination Advisory Panel, 5292
Applications, hearings, determinations, etc.:
Gulf States Utilities, 5292
Houston Lighting & Power Co., 5292
Public Service Co. of Colorado, 5294
Tennessee Valley Authority, 5295

Public Health Service
See also Centers for Disease Control; Food and Drug Administration; Health Resources and Services Administration
NOTICES
National toxicology program:
Toxicology and carcinogenesis studies—
Formamide, etc., 5279
Penicillin VK, 5280

Railroad Retirement Board
RULES
Railroad Retirement Act:
Employment relation, 5223
Social security benefit payment, 5225
Railroad Unemployment Insurance Act:
Reduction in unemployment and sickness benefits, and rate of railroad unemployment; CFR Parts removed, 5226

Reclamation Bureau
NOTICES
Environmental statements; availability, etc.:
Milltown Hill Dam and Reservoir, Umpqua River Project, OR, 5285

Saint Lawrence Seaway Development Corporation
NOTICES
Meetings:
Advisory Board, 5299

Securities and Exchange Commission
NOTICES
Meetings; Sunshine Act, 5301

Small Business Administration
NOTICES
Disaster loan areas:
California, 5297

Soil Conservation Service
NOTICES
Environmental statements; availability, etc.:
Town Creek Subwatershed, MS, 5256

State Department
NOTICES
Meetings:
International Telegraph and Telephone Consultative Committee, 5297
(2 documents)
Shipping Coordinating Committee, 5297

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Transportation Department
See Federal Aviation Administration; Maritime Administration; Saint Lawrence Seaway Development Corporation

Treasury Department
See also Foreign Assets Control Office
NOTICES
Agency information collection activities under OMB review, 5299
(2 documents)

Veterans Administration
RULES
Adjudication; pensions, compensation, dependency, etc.:
Dependent establishment; suitable evidence, 5235

Wage and Hour Division
PROPOSED RULES
Homeworkers; employment in industries:
Women's apparel industry
Correction, 5303

Separate Parts In This Issue

Part II
Department of Health and Human Services, Health Care Financing Administration, 5316

Part III
Department of Energy, 5376

Part IV
Department of Transportation, Maritime Administration, 5382

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

CFR PARTS AFFECTED IN THIS ISSUE

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

1 CFR
305 5207

10 CFR
Proposed Rules:
710 5376

14 CFR
71 (7 documents) 5214–5219
Proposed Rules:
71 5246

18 CFR
284 5219

19 CFR
207 5220

20 CFR
204 5223
235 5225
302 5226
337 5226

21 CFR
211 5227
556 5229
558 5229

29 CFR
1 5303
5 5303
Proposed Rules:
530 5303

31 CFR
500 5229
515 5229

32 CFR
286b 5235

38 CFR
3 5235

40 CFR
52 5236
81 5237
Proposed Rules:
52 (2 documents) 5247, 5249
60 5302

42 CFR
405 5316
442 5316
447 5316
483 5316
488 5316
489 5316
498 5316

43 CFR
Public Land Orders:
6696 5302

44 CFR
65 (2 documents) 5238, 5239
67 5240

46 CFR
221 5382
Proposed Rules:
550 5253

47 CFR
73 (6 documents) 5243–5245

Rules and Regulations

Federal Register
Vol. 54, No. 21
Thursday, February 2, 1989

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

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

1 CFR Part 305

Recommendations of the Administrative Conference Regarding Administrative Practice and Procedure

AGENCY: Administrative Conference of the United States.

ACTION: Recommendations.

SUMMARY: The Administrative Conference of the United States, at its Thirty-eighth Plenary Session, adopted three recommendations.

Recommendation 88-9, Presidential Review of Agency Rulemaking, endorses continuation of presidential review of agency rulemaking with certain guidelines as to its implementation that are set forth in the recommendation. The term "presidential review" is used in the recommendation to refer to a program of systematic oversight and dialogue that involves coordinating agency actions where conflicts exist, and probing the agency's fact and policy judgments with the purpose of ensuring that the agency considers factors of importance to the President's policies to the extent permitted by law. However the term "presidential review" does not include displacement of responsibilities placed in the agency by law or the use of factors not otherwise permitted by law. In addition, the Conference does not address review of agency rulemaking of an ad hoc nature pursuant to the President's constitutional authority.

Recommendation 88-10, Federal Use of Computers in Acquiring and Releasing Information, is intended to guide agencies in addressing the questions that will arise when an agency considers whether to acquire or release information in electronic form. The recommendation suggests an analytical framework for assessing options when electronic acquisition or release of information may facilitate performance of the agency's mission or may be helpful in fulfilling agency obligations under the Freedom of Information Act. Relevant factors identified in the recommendation include costs and benefits as well as the appropriate roles of the public and private sectors. The Conference also urges agencies to experiment with electronic means of providing public participation in administrative proceedings.

Recommendation 88-11, Encouraging Settlements by Protecting Mediator Confidentiality, suggests several steps intended to ensure appropriate confidentiality to information divulged to mediators and other neutrals in the course of settlement negotiations involving a statute, rule or policy administered by a federal agency. The recommendation covers agency use of contracts, policy statements and procedural rules to ensure confidentiality of information in appropriate situations, and it contains a model rule that agencies may adopt to govern confidentiality of communications with mediators.

Recommendations of the Administrative Conference are published in full text in the **Federal Register** upon adoption. Complete lists of recommendations, together with the texts of those deemed to be of continuing interest, are published in the Code of Federal Regulations (1 CFR Part 305).

DATES: These recommendations were adopted December 8-9, and issued January 27, 1989.

FOR FURTHER INFORMATION CONTACT: Jeffrey S. Lubbers, Research Director (202-254-7065).

SUPPLEMENTARY INFORMATION: The Administrative Conference of the United States was established by the Administrative Conference Act, 5 U.S.C. 571-576. The Conference studies the efficiency, adequacy, and fairness of the administrative procedures used by federal agencies in carrying out administrative programs, and makes recommendations for improvements to the agencies, collectively or individually, and to the President, Congress, and the Judicial Conference of the United States (5 U.S.C. 547(1)).

At its Thirty-eighth Plenary Session, held December 8-9, 1988, the Assembly of the Administrative Conference of the United States adopted three recommendations, the texts of which are set out below. These texts will be transmitted to the affected agencies and, if so directed, to the Congress of the United States. The Administrative Conference of the United States has advisory powers only, and the decision on whether to implement the recommendations must be made by each body to which the various recommendations are directed.

The transcript of the Plenary Session will be available for public inspection at the Conference's offices at Suite 500, 2120 L Street, NW., Washington, DC.

List of Subjects in 1 CFR Part 305

Administrative Practice and Procedure, Presidential review of agency rulemaking, Use of computers in acquiring and releasing information, Alternative dispute resolution, Mediator confidentiality.

PART 305—RECOMMENDATIONS OF THE ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

1. The authority citation for Part 305 continues to read as follows:

Authority: 5 U.S.C. 571-576.

2. The table of contents to Part 305 of Title 1 CFR is amended to add the following new sections:

Sec.
305.88-9 Presidential review of agency rulemaking (Recommendation No. 88-9).
305.88-10 Federal agency use of computers in acquiring and releasing information (Recommendation No. 88-10).
305.88-11 Encouraging settlements by protecting mediator confidentiality (Recommendation No. 88-11).

3. New §§ 305.88-9 through 305.88-11 are added to Part 305, to read as follows:

§ 305.88-9 Presidential review of agency rulemaking (Recommendation 88-9).

Federal regulation has grown in both scope and complexity in recent decades. Among its wide variety of national goals are: Ensuring competitive markets, spurring economic growth, checking inflation, reducing unemployment, protecting national security, assuring equal opportunity, increasing social security, protecting the environment, ensuring safety, and improving energy sufficiency. Policies implementing these goals compete for scarce resources and sometimes conflict with one another. Thus, a central task of modern democratic government is to make

wise choices among the courses of action that pursue one or more of these goals.

While Congress establishes the goals, it seldom legislates the details of every action taken in pursuit of these goals or makes the balancing choices that these decisions require. It has assigned this task to the regulatory agencies. Each regulatory agency, however, usually is given a set of primary goals, without specific regard for whether proposed actions in pursuit of those goals might conflict with the pursuit of other goals by other agencies. An effective mechanism is needed to coordinate agency decisions with the judgments of officials having a broader perspective, such as the President and Congress.[1]

Some form of presidential review of agency rulemaking has been the practice since at least 1971. Like its predecessors, the current program is established by presidential executive order.[2] The responsible officer (the Administrator, Office of Information and Regulatory Affairs, in the Office of Management and Budget) is appointed by the President, subject to Senate confirmation.

The Conference believes that there is sufficient experience under these executive orders to warrant continuing such review with certain guidelines as to its implementation. The Recommendation below sets forth standards that should be followed whether review is governed by executive order or by a general statute. It also assumes that the President has the authority to enunciate principles to guide agency rulemaking, even though the programmatic responsibilities are by statute delegated to agencies. In addressing the presidential review process, the Conference recognizes that some of the issues are analogous to congressional involvement in agency rulemaking, but it does not address this latter subject at this time.

Recommendation

The Conference recommends that the following principles should guide any program of presidential review [3] of agency rulemaking.

1. General Applicability

Presidential review should apply generally to federal rulemaking. Such review can improve the coordination of agency actions and resolve conflicts among agency rules and assist in the implementation of national priorities. However, not all agency rules or categories of rules may be appropriate for such presidential review. Exempt categories include formal rulemaking, ratemaking, and rulemaking that resolves conflicting private claims to a valuable privilege.

2. Applicability to Independent Regulatory Agencies

As a matter of principle, presidential review of rulemaking should apply to independent regulatory agencies to the same extent it applies to the rulemaking of Executive Branch departments and other agencies.

3. Timeliness of Review

The process of presidential review of rulemaking, including agency participation, should be completed in a timely fashion by the reviewing office and, when so required, by the agencies, with due regard to applicable administrative, executive, judicial and statutory deadlines.

4. Public Disclosure of Documents

(a) *Proposed or Final Rules.* Where an agency submits a draft proposed or final rule for presidential review, the agency submission and any additional formal analyses [4] submitted for presidential review should be made available to the public when the proposed or final rule to which they pertain is published. If a decision is made to terminate a rulemaking after a notice of proposed rulemaking has been published, agency submissions to the office responsible for presidential review and any additional formal analyses submitted for review should be made available to the public when the decision to terminate is announced.

(b) *Review of Agendas or Other Summaries or Schedules of Agency Rulemaking Actions.* Where an agency submits agendas or other summaries or schedules of pending or planned rulemakings for presidential review, the agency submission and any supporting documents submitted for presidential review should be made available to the public once the agenda or other summary or schedule is made known to the public in an official publication.

5. Executive Branch Communications Relating to Presidential Review of Rulemaking

(a) *Policy Guidance.* An agency engaged in informal rulemaking should be free to receive guidance concerning that rulemaking at any time from the President, members of the Executive Office of the President, and other members of the Executive Branch, without having a duty to place these communications in the public file of the rulemaking unless otherwise required by law. However, official written policy guidance from the officer responsible for presidential review of rulemaking should be included in the public file of the rulemaking once a notice of proposed rulemaking or final rule to which it pertains is issued or when the rulemaking is terminated without issuance of a final rule.[5]

(b) *Factual Information.* When an agency engaged in rulemaking receives a communication from the office responsible for presidential review which contains factual information relating to the substance of the rulemaking that is not already in the public file, the agency should promptly place the communication (or if oral, a summary) in the public file of the rulemaking.[6]

(c) *Communications Transmitting Outside Comments.* When an agency receives a communication from the office responsible for presidential review which transmits any factual submissions or the views or positions of persons outside the government, the agency should promptly place the communication (or if oral, a summary) in the public file of the rulemaking.[7]

6. Responsibility of the Reviewing Office Regarding Outside Comments

The officer responsible for presidential review of rulemaking should not allow the process of review to serve as a conduit to the rulemaking agency for unrecorded communications from persons outside the government. To guard against such occurrence, the responsible officer should take appropriate steps—and the following should be considered:

---

[1] The need for greater coordination of federal regulation was recognized in 1979 by the American Bar Association's Commission on Law and the Economy.

[2] Exec. Orders Nos. 11,821, 11,949 (President Ford), Exec. Order 12,044 (President Carter), Exec. Orders Nos. 12,291, 12,498 (President Reagan). For a thorough analysis of the experince under the executive orders, *see* National Academy of Public Administration, Presidential Management of Rulemaking in Regulatory Agencies (Jan. 1987).

[3] Presidential review, as used in this Recommendation, refers to a program of systematic executive oversight and dialogue that involves coordinating agency actions where conflicts exist, and in all cases probing the agency's fact and policy judgments, with the purpose of ensuring that the agency considers factors of importance to the President's policies to the extent permitted by law. Such review does not displace responsibilities placed in the agency by law nor authorize the use of factors not otherwise permitted by law. Other review of an ad hoc nature by the President (or the President's delegates) of agency rulemaking pursuant to the President's constitutional authority is not within the scope of this Recommendation.

[4] See ACUS Recommendation 85-2, Agency Procedures for Performing Regulatory Analysis of Rules, 1 CFR 305.85-2.

[5] The Conference's position on the public availability of official written policy guidance stated in this Recommendation modifies its earlier position in Recommendation 80-6, Intragovernmental Communications in Informal Rulemaking Proceedings, 1 CFR 305.80-6, ¶1.

[6] Agencies also should place factual information received from other sources in the public file of the rulemaking, *see* Recommendation 80-6, ¶2.

[7] This reaffirms the Conference's position on the handling of comments by persons outside the government stated in Recommendation 80-6, ¶2.

(a) Identifying any communications to the rulemaking agency that transmit the views or positions of persons outside the government;

(b) Promptly transmitting written communications received by the office responsible for presidential review from persons outside the government relating to the substance of a proposed agency rule to the rulemaking agency for inclusion in the public file of the rulemaking;

(c) Maintaining a list identifying the time and general topic of oral communications that pertain to the substance of an agency rule under review with persons outside the government and making such list available to the rulemaking agency for inclusion in the public file; and

(d) Inviting a representative of the rulemaking agency to attend any meetings between the reviewing office and persons outside the government which pertain to any agency rulemaking under review by that office. The agency representative attending any such meeting should prepare an appropriate summary of the discussion and promptly place it in the public file of the rulemaking.

7. Not Judicially Reviewable

The presidential review process should be designed to improve the internal management of the federal government and should not create any substantive or procedural rights enforceable by judicial review.

§ 305.88–10 Federal agency use of computers in acquiring and releasing information (Recommendation 88–10).

The rapid evolution of computer technology raises many economic and policy issues that affect the acquisition and release of information by government agencies. New information technologies can improve public access to public information and reduce paperwork burdens. They can also impose significant economic burdens, however, and they may stimulate competition between government agencies and established electronic information enterprises.

The essential role of information in a democratic system underscores the need to examine with care the opportunities that electronic information storage and transmission provide for improving the flow of information between government agencies and the public.

The following recommendations are intended to guide agencies in addressing the questions that will arise when an agency considers whether to acquire or release information in electronic form, either to facilitate performance of the agency's mission or to fulfill requirements established by the Freedom of Information Act (FOIA) or other laws.[1]

At the present stage in the evolution of government electronic information policy, the most one can do is to suggest an analytical framework within which agency electronic system designers, policy makers, and budget planners can assess their opinions. The process and substance of decisionmaking within this framework should, of course, conform with general principles of administrative law.

Because experience is now relatively limited and information technology is subject to rapid evolution, when Congress sets policy it should do so on as broad a basis as possible. Because changes in electronic information capability occur at a different pace in different sectors of the society, transitional arrangements will be necessary to ensure that electronic acquisition and release do not disadvantage major segments of the population.

The pertinent considerations depend on the context in which electronic acquisition or release of information is addressed. For example, the factors relevant to the release of information in electronic form in response to discrete FOIA requests differ from those that bear on discretionary agency decisions to release information broadly through electronic publishing. As a further example, resolution of issues pertaining to the acquisition of information in electronic form might depend on such factors as the technological capacity of the private parties from whom electronic filing is to be requested.

Recommendation A addresses the Freedom of Information Act. The FOIA was written with paper records in mind. The problem is to apply the Act to information maintained in electronic form. This recommendation does not seek to provide comprehensive guidance but does address in general terms such matters as whether electronic records should be deemed records subject to the FOIA and whether an agency should be expected to write new computer programs for the purpose of responding to a FOIA request.

Recommendations B and C discuss principles applicable to electronic acquisition and release of information, respectively. Recommendation D offers principles for defining the appropriate roles of the public and private sectors in the provision of electronic acquisition and release systems.

Recommendations C and D envision a three-step process for evaluating possible new electronic information products. The first step in the evaluation process is to identify the current level of release of the information that would be contained in a new electronic information product. There are in general terms three possible levels of agency activity in releasing information: (i) "dissemination" or "publishing", leading to the broadest availability of information; (ii) "disclosure", involving wholesaling to private information suppliers or providing electronic release capability in public reference rooms; and (iii) "access", involving ad hoc release in response to discrete requests. For the special meaning of these and other related terms used in this recommendation, it is important to refer to the appended glossary.

The second step is to identify the benefits and costs of replacing or supplementing existing means of release with various levels of electronic release. An agency should not offer an electronic information product unless the cost-benefit analysis demonstrates that the electronic alternative analyzed is likely to be superior to existing means. The third step is to define the most desirable public and private sector roles, applying principles described in Recommendation D.

Deciding to "promote" electronic publishing does not necessarily mean a direct, retail, electronic publishing and distribution role for the government, if private sector electronic publishing activities and commitments are more cost effective (see Recommendation D). Electronic publishing contemplated by this recommendation also can occur through depository libraries. In some cases it may be appropriate to retain both paper and electronic versions of the same information, even though costs almost certainly will be higher than for either form alone.

Recommendation E identifies cost and benefit categories that should be considered in applying Recommendations B, C and D. Recommendations F through J deal with discrete questions of policy and technology: For example, the use of private telecommunications systems, the undesirability of exclusive private or public control of information, and the need to stay abreast of developing technologies.

These recommendations do not address such important issues as protection of trade secrets or privileged commercial information, invasion of personal privacy, or the need for Congress and agencies to consider allocating budgetary resources so that FOIA staffs will include persons skilled in using electronic databases. Nor do they address in detail the security of electronic databases. These subjects deserve separate investigation.

---

[1] OMB Circular A–130 (50 FR 52730, Dec. 24, 1985) provides a general framework for management of federal information resources. The relationship between parts of this recommendation and provisions of the OMB Circular is as follows. Recommendation A reflects the same policy as Paragraph 7(g) of the Circular, but provides additional detail. Recommendation B deals with electronic acquisition, a subject addressed in proposed OMB guidelines, but not in detail in the existing version of Circular A–130. Recommendation C suggests a cost-benefit approach to defining agency electronic dissemination activities essentially consistent with that prescribed by the Circular, but offers a finer level of analytical detail to guide agency selection among three different levels of release. Recommendation D suggests defining the boundary between public and private sectors based on a cost-benefit analysis; this is endorsed by Paragraph 7(e) of Circular A–130, but Recommendation D defers less to private sector activities than the Circular. Recommendation E lists more specific cost and benefit categories to be considered than does the Circular. Recommendation F reflects the same policy as that set forth in Appendix IV to Circular A–130 (discussing paragraph 11(a)). Recommendations G and H have no counterparts in the Circular. Recommendation I discusses the role and limits of governmentwide policy; Circular A–130 is an example of such a policy. Recommendation J is consistent with Paragraph 9(c) of the Circular.

The recommendations also do not address issues pertaining to automation of internal agency functions including important questions of records retention, evidentiary use of electronic records, and program administration. Rather the recommendations assume that an agency has automated or will automate an identifiable portion of its activities and therefore is confronted with the questions of whether and how to establish interfaces between internal electronic information systems and the outside world.

Recommendation

A. Freedom of Information Act

1. In interpreting the Freedom of Information Act, agencies should recognize that a "record" includes information maintained in electronic form.

2. Agencies using electronic databases rather than paper records should not deny access to the electronic data on the grounds that the electronic data are not "records," that retrieval of the electronic information is equivalent to creation of a "new" record, or that programming is required for retrieval. In responding to FOIA requests, agencies should provide electronic information in the form in which it is maintained or, if so requested, in such other form as can be generated directly and with reasonable effort from existing databases with existing software. Agencies, however, should not be obligated under the FOIA to create large new databases for private advantage, thus using agency resources for private purposes. Agencies should use a standard of reasonableness in determining the nature and extent of the programming that provides an appropriate search for and retrieval of records in responding to FOIA requests, and in determining the extent to which FOIA requesters may ask the agency to produce data organized in formats other than those used by the agency in the regular course of its operation.[2]

3. Differences in technologies and database structures used by individual agencies make it necessary, for the near term, to define FOIA obligations on a case-by-case basis. Further experience with electronic information systems is a prerequisite to the formulation of general rules applicable to such controversies under the Act as how requesters must identify the records sought, how much programming, if any, an agency must do, and how costs shall be borne. The concept of reasonableness applied to searches for paper information made in response to FOIA requests should provide a useful guideline for resolving controversies over the application of FOIA to electronically maintained data.

B. Acquisition of Information in Electronic Form

1. Agencies should acquire information in electronic form when they use, or will use, the information in that form and when most information submitters already maintain information electronically, or have ready access to intermediaries who will prepare and submit it in electronic form. When agencies sponsor electronic acquisition programs, they should make clear their intention that all information required will eventually be available to them in electronic form, either by strictly administering exceptions to mandatory programs, or by undertaking the conversion of paper submissions into electronic form themselves.

2. When most providers of information ("filers") are technologically sophisticated, it is appropriate for agencies to require electronic filing of information, after developing standard formats in consultation with the filer community, and after appropriate testing and transition periods.

3. In determining whether to require or permit electronic filing of information and in designing the particulars of an electronic acquisition program, agencies should carefully weigh the costs and benefits of electronic acquisition of information. The analysis should address the factors identified in Recommendation D together with other considerations made relevant by the agency's mandate.

4. Agencies initiating electronic acquisition programs should take steps to facilitate electronic filing by entities having limited technological capacity (without raising the costs for sophisticated entities), including the optional use of "smart forms." When a significant proportion of the filer community is technologically unsophisticated, electronic acquisition may be feasible only through intermediaries. In such cases, agencies should create economic incentives for electronic filing rather than mandating it. Part of the economic incentive to file electronically under voluntary electronic acquisition programs can be the imposition of a fee on technologically sophisticated filers who choose to file on paper, assuming the statutory authority to do so exists.

C. Release of Information in Electronic Form

1. Electronic information release policies should depend on such factors as (a) whether the desired level of release consists of electronic publishing, electronic disclosure, or electronic access in response to FOIA requests (see the glossary for definitions of these terms); (b) the agency's policies in releasing like information maintained in paper records; and (c) the costs and benefits of replacing or supplementing an existing paper medium with an electronic medium.

2. When a statute or agency policy mandates the publishing of information, the agency should itself electronically publish the information or facilitate its electronic publication by others, unless the cost-benefit analysis suggests the desirability of restricting publishing to the paper medium, possibly accompanied by a lower level of electronic release.[3] If the agency publishes the information only on paper, it should consider electronic publication of the availability of the paper information products. Where an agency publishes information electronically, it should consider the feasibility of providing dial-up access.

3. When a statute mandates public reference room disclosure, or paper products presently are made available through a public reference room, agencies should provide electronic disclosure in public reference rooms of information already in electronic form. Such agencies should consider the costs and benefits of upgrading from electronic disclosure to electronic publishing. Agencies should also make information disclosed electronically available to any requester in an electronic form that would be easily usable by information resellers.

4. In those instances where an agency maintaining information in electronic form has no mandate to release information other than in response to FOIA requests, the agency should consider upgrading release of appropriate parts of this information to electronic disclosure through public reference rooms and wholesaling in electronic bulk form to private sector requesters.[4]

---

[2] Agencies should be able to recover the costs of complying with FOIA requests, including programming costs, in a manner consistent with the Freedom of Information Reform Act of 1986, 100 Stat. 3207, 3207–48 (1986), amending 5 U.S.C. 552(a)(4)(A), and related OMB guidance, 52 FR 10012, 10017 (1987).

[3] When a statute mandates electronic publishing, the agency would not have discretion to restrict publication to a paper medium or to a lower level of electronic release.

[4] The prices for such electronic information would be determined under the general user fee statute, 31 U.S.C. 9701, or under the FOIA. See OMB's user fee guidelines, restated in App. IV to OMB Circular A–130, 50 FR 52748 (1985).

D. Allocation of Responsibilities Between Public and Private Sectors

1. Agencies that have decided under Recommendations B and C to acquire or release information in electronic form should define the appropriate roles of the public and private sectors in providing that information and related products (including telecommunications facilities, indexes and retrieval software as well as raw data). That choice should depend on the relative costs and benefits of privately versus publicly provided information products.

2. When choosing between publishing and a lower level of electronic release of information, an agency should determine whether private sector providers are willing to supply electronic products having features (e.g., user-friendly menus) that will give the public greater benefits or lower costs than would electronic publishing by the agency. When an agency relies on the private sector for electronic publishing of agency information, the agency should seek to establish by contract the nature of the products to be provided.

3. When an agency determines that its mission warrants new electronic means of acquisition or release of information and the private sector will not commit to provide them at appropriate prices, the agency should provide them, if clearly identified non-economic and economic benefits outweigh the capital and marginal costs. Agencies should recognize, however, that there may be circumstances where the costs to an agency would suggest the wisdom of creating incentives for the private provision of the desired electronic information product—for example, the free use of agency-developed software.

E. Determination of Costs and Benefits

1. Agencies should take into account the following costs in the decisionmaking processes suggested in Recommendations B, C and D:

(a) Capital costs to the agency of establishing the product, and the probable economic life and other uses over which the costs should be allocated;

(b) Capital costs to information consumers and information providers to utilize the product, and the probable economic life and other uses over which these costs should be allocated;

(c) The marginal costs to the agency of user access;

(d) Marginal costs to users for obtaining the information;

(e) Marginal costs to electronic information providers of updating the electronic information;

(f) Unrecovered costs associated with existing government or private sector capital that would be made obsolete by the new product;

(g) The costs of updates and upgrades in service levels or capacity necessary to permit intended benefits to be realized at levels of demand expected over the long term; and

(h) Costs of changing to standard formats or of handling different formats.

2. Agencies should take into account the following benefits in decisionmaking processes suggested in Recommendations B, C and D:

(a) Savings associated with eliminating the cost of producing and maintaining existing paper products;

(b) Savings to agencies and consumers associated with upgrading the level of information release from ad hoc FOIA disclosure to electronic disclosure in a public reference room;

(c) Savings to agencies and consumers associated with upgrading paper public reference room disclosure to electronic publishing;

(d) Increase in the number of interested persons having access to information;

(e) Improvements in the utility of information for its intended purpose because of improved organization and retrieval capabilities; and

(f) Reductions in delays associated with transferring information from an agency to eventual consumers.

3. Cost-benefit analyses should take into account FOIA obligations, including obligations to protect trade secrets and other exempt information. In designing electronic databases, agencies should consider the types of FOIA requests likely to be received for data in the database, consulting with representative users when feasible. Insofar as it is consistent with agency mission performance, databases should be designed so as to facilitate reponses to FOIA requests. A proper rule of thumb is that it should not be any more difficult to obtain information under the FOIA after automation than before.

4. In some cases, effective design may require some sacrifices in electronic FOIA retrieval capability. In these cases, agency designers of electronic databases and retrieval software should consider how FOIA requests can be satisfied consistent with the spirit of the Act. For example, an agency might choose to make raw data available to requesters in computer-readable form along with retrieval software, so that requesters can effect their own retrievals. In other situations, new electronic information products may reduce costs of FOIA requests, to both requesters and agencies. This would occur, for example, if information were published or otherwise made accessible electronically in a public reference room, rather than provided only on paper in response to FOIA requests.

F. Exclusive Control of Public Information

An agency generally should not grant a private party exclusive control of its electronic information or of the acquisition or release thereof. Nor should the agency itself as a general matter maintain such control in the absence of a compelling public purpose. Where an agency has, and wishes to exercise, authority to enter into an exclusive arrangement providing a private sector vendor with a preferential right to electronic information, the agency should first consider whether the analysis suggested in Recommendations B, C, D and E demonstrates that efficiencies can be achieved through such an arrangement. The agency should also guard against the possibility that the arrangement may be inconsistent with its responsibilities under the FOIA or may impair the ability of the agency and the public to benefit from subsequent technological developments.

G. Technology Issues

1. Agencies should use proven technologies in their electronic acquisition and release systems. They should stay abreast of the state-of-the-art in all matters related to the electronic acquisition and release of information and should be particularly alert to the need for up-to-date and effective access control and other techniques required to maintain an appropriate level of security.

2. Agencies should seek to base electronic information formats on existing standards efforts such as American National Standards Institute standards on Electronic Business Data Interchange [5] before developing their own distinctive format definitions.[6]

3. Whenever possible, agencies should use public data networks rather than developing their own communications links for public filers or consumers.

4. Agencies should consider conducting demonstration projects to experiment with evolving electronic information technology.

---

[5] These standards are currently designated as "X.12".

[6] Cf. Recommendation 78-4, Federal Agency Interaction with Private Standard-setting Organizations in Health and Safety Regulation, 1 CFR 305.78-4.

H. Electronic Participation in Administrative Proceedings

Agencies should experiment with electronic means of providing public participation in rulemaking, adjudication and other administrative proceedings, while retaining a means of effective participation for persons who lack the means to access the electronic information system.

I. Government-wide Policy on Electronic Information

1. A government-wide policy on electronic information is desirable to afford guidance to agencies. Such a policy should articulate goals consistent with those expressed in the foregoing recommendations.

2. Congress should formulate the larger value judgments necessary for a government-wide policy on electronic information.[7] These include the roles of public and private sectors; who ought to pay for increased information utility; and the level of funding to be provided by the government.

3. Because agencies often are in the best position to apply the considerations identified in this recommendation, Congess should normally defer to agency judgment in selecting methods to implement congressionally enacted policies when the agencies have offered rational justifications for their electronic information program decisions.

J. National Institute of Standards and Technology

The National Institute of Standards and Technology should continue to work with the U.S. Patent and Trademark Office to advance electronic data storage and transmission technology, as, for example, its work with high-capacity storage technology, and should inform agencies about commercially available products and services to facilitate electronic acquisition and communications.

Glossary

Bulk form: Large quantities of data in nearly raw form, with little formatting information or other added value, usually maintained and transferred on magnetic tape or cassettes or high capacity optical or magnetic disks.

Data product: A specific form of electronic information, sometimes including data structures, indices, retrieval software, and telecommunications links.

Database: A body of information maintained in electronic form, from which parts can be retrieved electronically.

Dial-up: A form of electronic dissemination through which anyone with a computer, a modem, and access to an ordinary telephone line can retrieve information from an electronic database.

Electronic access: The lowest level of electronic release; the ability to obtain agency information; communicating information to consumers.

Electronic acquisition: Obtaining information from the public electronically; includes electronic filing; submitting information to an agency in electronic form.

Electronic disclosure: An intermediate level of electronic release; making information available electronically to the public at one or only a few places.

Electronic dissemination: The highest level of electronic release; using electronic means to make information widely available to the public at places where it is used; same as electronic publishing.

Electronic publishing: Same as electronic dissemination.

Electronic release: Communicating information to users in electronic form; a generic term that includes access, disclosure, and dissemination.

Hardware: Computers and associated peripherals.

Public data networks: Communications common carriers that aggregate small volume data communications and thereby reduce the cost of high-quality transmission of data.

Retailing: Providing information in a format different from that used by the government, or with accompanying analysis, aggregation or segregated subsets, enhanced search or retrieval capabilities, or otherwise tailored to be of value to specialized or individual end users; also may include distribution components of electronic release.

Retrieval: Extracting a part of a database and presenting it to the requester in a form understandable by humans.

Smart forms: Interactive computer data acquisition programs that guide the filer in answering questions.

Software: Computer programs or data.

Wholesaling: Providing resellers or large end users information only in the form used by the government or only in bulk form.

[7] See, e.g., U.S. Congress, Office of Technology Assessment, *Informing the Nation: Federal Information Dissemination in an Electronic Age* (October 1988).

§ 305.88–11 Encouraging settlements by protecting mediator confidentiality (Recommendation 88–11).

The resolution of issues through negotations among the affected parties has long been recognized as an essential ingredient of the administrative process.[1] Settlements bring to bear parties' experience, foster creative solutions, and result in faster decisions requiring fewer resources than formal litigation. Most settlements now occur simply through ad hoc negotiations among the lawyers for the parties, generally on the eve of hearing. The Administrative Conference has recommended that agencies adopt alternative means of dispute resolution ("ADR") to enhance negotiations and stimulate the possibility of reaching agreement expeditiously within the confines of the agency's authority and policy.[2]

This recommendation seeks to encourage agency use of alternative means of dispute resolution by affording appropriate protection to communications between the parties and the neutral in settlement negotiations. The Conference, of course, recognizes the principle that decisions affecting the public welfare ought to be made in the open and subject to public and judicial scrutiny. Nevertheless, since settlements are essential to administrative agencies, a careful balance must be struck between the openness required for the legitimacy of many agency agreements and the confidentiality that is critical if sensitive negotiations are to yield agreements. This recommendation attempts to strike that balance, without thwarting open decisionmaking.

Most ADR techniques, including mediation, non-binding arbitration, factfinding and minitrials,[3] involve a neutral third party who aids the parties in reaching agreement that resolves the issues in controversy. A skillful mediator can speed negotiations and increase chances for agreement by holding separate confidential meetings with the parties, where each party may give the mediator a relatively full and candid account of its own interests

[1] As the influential Attorney General's *Manual on the Administrative Procedure Act* explained in 1947,

[t]he settlement of cases and issues by informal methods is nothing new in Federal administrative procedure. In its Final Report, the Attorney General's Committee on Administrative Procedure pointed out * * * that "even where formal proceedings are fully available, informal procedures constitute the vast bulk of administrative adjudication and are truly the lifeblood of the administrative process."

[2] The Conference has repeatedly recommended that agencies employ ADR. Recommendation 86–3 calls on agencies to make greater use of mediation, facilitation, negotiation, minitrials, and other "ADR" methods to reduce the delay and contentiousness that accompany many agency decisions. *E.g., Agencies' Use of Alternative Means of Dispute Resolution*, 1 CFR 305.86–3; *Alternatives for Resolving Government Contract Disputes*, 1 CFR 305.87–11; *Procedures for Negotiating Proposed Regulations*, 1 CFR 305.82–4, 85–5; *Negotiated Cleanup of Hazardous Waste Sites Under CERCLA*, 1 CFR 305.84–4; *Resolving Disputes under Federal Grant Programs*, 1 CFR 305.82–2.

[3] For brief definitions of these terms, *see* the Appendix to Conference Recommendation 86–3, *supra*.

(rather than its litigating position), discuss what it would be willing to accept, and consider alternative approaches. The mediator, armed with this information but avoiding premature disclosure of its details, can then help to shape the negotiations in such a way that they will proceed most directly to their goal. The mediator may also carry messages between the parties, launch "trial balloons," and act as an agent of reality to reduce the likelihood of miscalculation. This structure can make it safe for the parties to talk candidly and to raise sensitive issues and creative ideas. In non-binding arbitration, minitrials and factfinding, the neutral may play a different role from that of a mediator, because he may issue a tentative decision that is then used as a basis for negotiations, but all of these neutrals have the common characteristic of helping the parties negotiate an agreement.

With all of these neutrals, many of the benefits of ADR can be achieved only if the proceedings are held confidential. Confidentiality assures the parties that what is said in the discussions will be limited to the negotiations alone so they can be free to be forthcoming. This need extends to the neutral's materials, such as notes and reports, which are produced solely to assist the neutral in the negotiation process and which others could misconstrue as indicating a bias against some party or interest. This is why many mediators routinely destroy their personal notes and drafts and return all other materials to the parties. Moreover, if the neutral were to testify in a subsequent proceeding as to what went on during the negotiations, his neutrality might be destroyed. The ADR process could be jeopardized because one party or another is likely to feel disadvantaged. Also, the parties ould justifiably feel their confidences might be threatened. All this would certainly inhibit future participation by parties and neutrals.

Limited protection for settlement negotiations and work product developed in preparation for litigation is provided by Rule 408 of the Federal Rules of Evidence and Rule 26(b)(3) of the Federal Rules of Civil Procedure. However, uncertainties as to their application—not to mention the effects on confidentiality of the Freedom of Information Act—may raise obstacles to protecting communications with ADR neutrals in federal agencies' disputes. As a result, many statutes, rules, and guidelines have explicitly provided for some degree of confidentiality of mediation and similar materials.

The Administrative Conference takes the view that maintaining confidentiality of settlement discussions is consistent with the principles underlying the FOIA, Rule 408 of the FRE, Rule 26(b)(3) of the FRCP, and the work product doctrine. To encourage the use of ADR in negotiations, the recommendation contains a model rule seeking to protect the communications between the neutral and the parties or other participants in the course of the negotiations as well as the neutral's own notes and impressions. It does so in recognition that the mediator will virtually *never* have information or evidence that is not shared by at least one other person, excepting of course the neutral's own notes, recollections, and judgments. The rule does not address (1) when meetings or negotiations should be held in public session, (2) what justification should be prepared to support any agreement reached, or (3) what information should be available from a party to the negotiations. The rule covers oral communications or actions that are related to a settlement proceeding, as well as documents that are created specifically for the negotiations or other, previously existing documents that are furnished to the neutral in confidence by a participant in the negotiation. The restrictions on the neutral's disclosing information from the negotiation are not categorically absolute, being subject to several narrow exceptions that deal with extraordinary cases. Finally, the model rule does not attempt to impose its terms on all parties for all issues; they would be free to vary the terms for their particular negotiations.

Recommendation

1. Agencies that use the services of neutrals in settlement proceedings:

(a) Should explicitly indicate that as a matter of policy they will not seek to discover or otherwise force disclosure of a neutral's notes, memoranda or recollections or of documents provided to the neutral in confidence in the course of settlement negotiations;

(b) In arranging with an individual or organization to serve as a neutral in settlement proceedings, should include a provision in any agreement with the neutral that (i) the agency makes no claim to the neutral's notes, memoranda or recollecitons or to documents provided to the neutral in confidence in the course of the settlement negotiations and (ii) that such material is outside the scope of the agency's right to any data developed pursuant to the agreement; and

(c) Should adopt a procedual rule, consistent with the model rule contained in the appendix below, for all cases where the agency itself is a party to the negotiations or where private parties are negotiating the resolution of an issue in controversy concerning a statute, regulation, or policy administered by the agency.

2. The neutral, including a neutral (as defined in the model rule) who serves as a presiding officer,[4] should carefully segregate, and identify as settlement documents, all materials received or developed during the course of a settlement proceeding, including any retained following its conclusion, so they will be used solely to assist the neutral in working to settle the issues in controversy.

3. Agencies should interpret the FOIA, Rule 408 of the Federal Rules of Evidence, Rule 26(b)(3) of the Federal Rules of Civil Procedure, and the work product doctrine to avoid disclosure of settlement communications by neutrals serving in administrative settlement proceedings.

Appendix

Model Rule

§ xxx.1 Introduction; Encouraging Settlement; ADR Techniques.

(a) To facilitate a vigorous enforcement program and expeditious administrative decisionmaking, [the agency] encourages the resolution of issues in controversy through negotiations among the affected parties. Voluntary settlement processes within [the agency's] statutory mandates and existing policies can produce decisions more efficiently than traditional procedures, and often yield decisions that are more effective than those reached without the concurrence of persons with firsthand involvement. Settlement agreements thereby enable the agency and the parties to accomplish their goals with expenditure of fewer resources.

(b) In addition to unassisted negotiations among the affected interests, alternative means of dispute resolution ("ADR") can aid the parties in reaching agreement in appropriate cases. These techniques include facilitation, mediation, minitrials, factfinding, and non-binding arbitration. In each, a neutral third party helps the parties reach a voluntary agreement. [The agency] encourages the use of these ADR processes as part of its policy favoring settlements.

(c) The voluntary settlement of issues in controversy through a dispute resolution process requires integrity, objectivity, and fairness on the part of the neutral and of the process itself. Moreover, the parties must feel free to discuss the dispute with the neutral without fear of being disadvantaged by the negotiations. [The agency] takes the position that the public policy favoring voluntary resolution of disputes therefore requires that the neutral not reveal, either voluntarily or through legal compulsion, information learned in confidence during the negotiations. To encourage the parties to negotiate, this rule enunciates an agency policy seeking to protect the confidentiality of settlement negotiations involving the neutral.

§ xxx.2 Definitions.

As used in this rule:

(a) "Issue in controversy" means a question that is material to a decision involving a statute, regulation, or policy

[4] *See, e.g.*, Recommendation 88-5, *Agency Use of Settlement Judges*, 1 CFR 305.88-5.

administered by [the agency] about which persons who would be substantially affected or the agency disagree.

(b) "Settlement proceeding" means any process, such as facilitation, mediation, minitrial, factfinding, or non-binding arbitration, that is used to resolve issues in controversy by agreement of the parties in which a neutral serves, whether or not administrative or judicial proceedings have been instituted.

(c) "Neutral" means an individual who with respect to the issues in controversy—

(1) Is not a party;

(2) Does not have any official, financial, or personal conflict of interest unless such interest has been fully disclosed in writing and all parties agree that the individual may nevertheless serve as a neutral; and

(3) Works to aid the parties in arriving at settlement of the issues in controversy through agreement.

(d) "Settlement communication" means any oral or written communication or conduct made in confidence and in connection with a settlement proceeding by any party, neutral, non-party participant, or other source of information relevant to the proceeding.

(e) "Settlement document" means any written material that is—

(1) Prepared for the purpose of, in the course of, or pursuant to a settlement proceeding, including memoranda, notes, and work product of the neutral and the parties, or

(2) Provided to the neutral in confidence for purposes of the settlement proceeding.

An agreement reached as a result of a settlement proceeding is not a settlement document unless the parties agree in writing, and the law allows, that it shall be regarded as such.

(f) "In confidence" means with the expressed desire of the source that the information be kept confidential or provided under circumstances that would create the reasonable expectation that it will not be disclosed.

(g) "Party" means a person or entity whose dispute is the subject of the settlement proceeding, including representatives of such a party.

(h) "Non-party participant" means a person or entity who is not a party to the dispute but who participates in the settlement proceeding, such as by providing information, analysis, advice, or views.

§ xxx.3 Applicability of the Rule.

(a) This rule applies to any settlement proceeding whether or not [the agency] is a party if the parties communicate with the neutral under circumstances that reasonably imply that the parties expect that the communications will be held confidential. Prior to beginning substantive negotiations, the parties may (1) agree that this rule does not apply to their negotiations or (2) modify the terms of this rule by agreement in which case that agreement will prevail to the extent it is authorized by law or is otherwise consistent with this rule. So that the neutral can decide whether he wishes to serve under those conditions, the parties shall so inform the neutral otherwise prior to commencing settlement proceedings. If they fail to do so, this rule shall apply.

(b) The provisions of the rule take effect when—

(1) A person has been specifically requested or accepted by at least one party to (i) serve as the neutral in the settlement proceeding, or (ii) discuss the potential of conducting a settlement proceeding, or (iii) contact other potential parties to determine whether it would be appropriate to convene a settlement proceeding to resolve the issues in controversy;

(2) The other parties with whom the neutral has contact knows that he or she is occupying the role of a neutral; and

(3) They communicate with the neutral in that capacity.

(c) The rule does not address—

(1) The extent to which a party may disclose settlement documents and communications either voluntarily or in response to discovery or legal process; or,

(2) The information that is required to support a decision or agreement reached in a settlement proceeding.

§ xxx.4 Neutral Impartiality and Confidentiality of Settlement Negotiations.

(a) A neutral shall not voluntarily or through compulsory process disclose or testify concerning settlement communications or settlement documents, unless—

(1) All parties to the settlement proceeding and the neutral consent in writing, and if the settlement communication or document was provided by a non-party participant, that participant also consents in writing;

(2) The request is for a settlement document that was provided to the neutral in a public meeting or is otherwise already in the public domain;

(3) The settlement document is required by law to be made public, but only if it is not available from the person who prepared it or from any other source;

(4) A court determines that there is a need for such testimony or disclosure. The agency takes the position that any such determination should be pursuant to a finding that the need for disclosure to—(i) prevent a manifest injustice, (ii) reveal a violation of law, or (iii) protect the public health or safety is of sufficient magnitude in the particular case to outweigh the integrity of settlement proceedings in general by reducing the confidence of parties in future cases that their communications will remain confidential; or

(5) The settlement document or communication is relevant to the resolution of a dispute between the neutral and a party or participant, but only to the extent that the document or communication is used for purposes of resolving that dispute and not any issue in controversy in the settlement proceeding.

(b) If a demand, by way of discovery request or other legal process, is made for disclosure by the neutral of a settlement document or communication, the neutral shall make reasonable efforts to notify the parties and any affected non-party participant so that countermeasures may be taken if desired.

§ xxx.5 Agency Records.

(a) The agency makes no claim of control or ownership over the notes, memoranda, and other work product prepared by a neutral or by his or her staff in connection with a settlement proceeding.

(b) The agency takes the position that settlement documents and communications are not agency records solely on account of their having been received by the neutral during a settlement proceeding; a document or other material that is otherwise an agency record remains as such.

Michael W. Bowers,

Deputy Research Director.

Dated: January 27, 1989.

[FR Doc. 89-2436 Filed 2-1-89; 8:45 am]

BILLING CODE 6110-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 87-AAL-2]

Establishment of Big Lake and Petersburg, AK, Transition Areas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes two transition areas, one with a base 700 feet above the surface at Big Lake, AK, (lat. 61°32'10" N., long. 149°48'42" W.) and one with a base 1,200 feet above the surface at Petersburg, AK, (lat. 56°48'04" N., long. 132°55'28" W.). A public instrument approach procedure has been developed at each location and a transition area is needed to provide protected airspace for the approach/departure and missed approach procedures.

EFFECTIVE DATE: 0901 u.t.c., June 1, 1989.

FOR FURTHER INFORMATION CONTACT: Robert C. Durand, Operations, Procedures, and Airspace Branch, (AAL-536), Federal Aviation Administration, Air Traffic Division, 222 West 7th Avenue, Box #14, Anchorage, Alaska 99513-7587; telephone: (907) 271-5903.

SUPPLEMENTARY INFORMATION:

History

On May 6, 1987, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish two transition areas, one with a base of 700 feet above the surface at Big Lake, AK, (lat. 61°32'10" N., long. 149°48'42" W.) and one with a base of 1,200 feet above the surface at Petersburg, AK, (lat. 56°48'07" N., long. 132°56'36" W.) (52 FR 16856). A public instrument approach procedure has been developed at each location and a transition area is needed to provide protected airspace for the approach/departure and missed approach procedures. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes and correction of the true bearings/coordinates at Petersburg, and length/width of Big Lake transition area, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations establishes a transition area with a base of 700 feet above the surface at Big Lake, AK, and a transition area with a base of 1,200 feet above the surface at Petersburg, AK, to provide protected airspace for approach/departure and missed approach procedures.

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

List of Subjects in 14 CFR Part 71

Aviation safety, transition areas.

Adoption of the Amendments

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

1. The authority citation for Part 71 continues to read as follows:

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

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Big Lake, AK [New]

That airspace extending upward from 700 feet above the surface within a 5-mile radius of the Big Lake Airport (lat. 61°32'10" N., long. 149°48'42" W.); within 4.5 miles on the northeast and 9.5 miles on the southwest side of the Big Lake VORTAC (lat. 61°34'12" N., long. 149°57'54" W.) 296°T (271°M) radial, extending from the 5-mile radius area to 18.5 miles northwest of the Big Lake VORTAC.

Petersburg, AK [New]

That airspace extending upward from 1,200 feet above the surface within 5 miles west and 5 miles east of the Petersburg localizer 004°T (337°M) radial extending from 5 miles south to 16.5 miles north of the Petersburg localizer (lat. 56°48'04" N., long. 132°55'28" W.); from a point where the Fredericks Point (FPN) NDB (lat. 56°47'33" N., long. 132°49'09" W.) 347°T (320°M) bearing crosses the 004°T (337°M) radial from the Petersburg localizer, 18 miles northwest on a heading of 307°T (280°M) and 5 miles southwest and 5 miles northeast of the 307°T (280°M) heading.

Issued in Anchorage, Alaska, on January 20, 1989.

Henry A. Elias,

Manager, Air Traffic Division.

[FR Doc. 89-2378 Filed 2-1-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 88-ASW-30]

Removal of Transition Areas; Paragould, AR, and Jonesboro, AR

AGENCY: Federal Aviation Administration (FAA), DOT

ACTION: Final rule.

SUMMARY: This amendment will remove the transition area located at Paragould, AR, and will revise the transition area located at Jonesboro, AR. The development of a VOR RWY 4 standard instrument approach procedure (SIAP) to the Paragould Municipal Airport, utilizing the Jonesboro Very High Frequency Omnidirectional Radio Range/Tactical Air Navigation (VORTAC), has made a revision to the existing Paragould, AR, Transition Area necessary. The intended effect of this revision is to provide adequate controlled airspace for aircraft executing all SIAP's now serving both the Jonesboro and Paragould Municipal Airports and to simplify the legal description of this controlled airspace.

EFFECTIVE DATE: 0901 u.t.c., April 6, 1989.

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530, telephone (817) 624-5561.

SUPPLEMENTARY INFORMATION:

History

On September 27, 1988, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by removing the transition area located at Paragould, AR, and by revising the transition area located at Jonesboro, AR (53 FR 40073).

Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 17.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D, dated January 4, 1988.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations will remove the transition area located at Paragould, AR, and will revise the transition area located at Jonesboro, AR. The development of a new VOR RWY 4

SIAP to the Paragould Municipal Airport, utilizing the Jonesboro VORTAC, has necessitated the need to expand the existing Paragould, AR, Transition Area. In addition, a review of the types of aircraft now using the Jonesboro Municipal Airport revealed a change in the category and size of aircraft, thus necessitating the need to expand the existing Jonesboro, AR, Transition Area. However, the proximity of the two transition areas and the need to revise both areas have intertwined the two transition areas to the extent that it is no longer possible to separate the two areas on the sectional aeronautical chart. The intended effect of the amendment is to provide adequate controlled airspace for aircraft executing all SIAP's now serving both the Jonesboro and Paragould Municipal Airports and to simply the legal description of the controlled airspace. The status of the Jonesboro and Paragould Municipal Airports will remain IFR.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

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

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Paragould, AR [Removed]

3. Section 71.181 is amended as follows:

Jonesboro, AR [Revised]

That airspace extending upward from 700 feet above the surface within a 12-mile radius of the Jonesboro Municipal Airport (latitude 35°49'52"N., longitude 90°38'47"W.), and within 3.5 miles each side of the 048° radial of the Jonesboro VORTAC (latitude 35°52'29"N., longitude 90°35'18"W.), extending from the 12-mile radius area to 11.5 miles northeast of the Jonesboro VORTAC; and within a 6.5-mile radius of the Paragould Municipal Airport (latitude 36°03'36"N., longitude 90°30'34"W.), and within 2.5 miles each side of the 247° bearing of the Walcott NDB (latitude 36°01'48"N., longitude 90°35'49"W.), extending from the 6.5-mile radius area to 11 miles southwest of the Walcott NDB.

Issued in Fort Worth, TX, on January 12, 1989.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 89-2379 Filed 2-1-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 88-ASW-08]

Revision of Transition Area: Center, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment will revise the transition area located at Center, TX. A standard instrument approach procedure (SIAP) to the Center Municipal Airport was canceled many years ago, but the transition area was never removed. However, since then a new SIAP to Runway 16 at the Center Municipal Airport has been developed, utilizing the Amason Nondirectional Radio Beacon (NDB), requiring that the existing transition area be modified. The intended effect of this revision is to provide adequate controlled airspace for aircraft executing the new SIAP. The status of the airport still remains instrument flight rules (IFR).

EFFECTIVE DATE: 0901 u.t.c., April 6, 1989.

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530, telephone (817) 624-5561.

SUPPLEMENTARY INFORMATION:

History

On September 15, 1988, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by revising the transition area located at Center, TX (53 FR 38025).

Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D, dated January 4, 1988.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations will revise the transition area located at Center, TX. The development of a new NDB RWY 16 SIAP to the Center Municipal Airport has necessitated this revision. The existing transition area was developed for a SIAP which was canceled years ago; however, the transition area was never removed. The intended effect of this revision is to modify the existing transition area in order to provide adequate controlled airspace for aircraft executing the new SIAP. The status of the Center Municipal Airport will remain IFR.

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

List of Subjects in 14 CFR Part 71

Aviation Safety, Transition Areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

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

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Center, TX [Revised]

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Center Municipal Airport (latitude 31°49'46" N., longitude 94°09'22" W.) and within 4.5 miles each side of the 320° bearing of the Amason NDB (latitude 31°50'10" N., longitude 94°08'59" W.), extending from the 6.5-mile radius area to 9 miles northwest of the Amason NDB.

Issued in Fort Worth, TX, on January 13, 1989.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 89-2381 Filed 2-1-89; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 71

[Airspace Docket No. 88-ASW-27]

Removal of Transition Area; La Pryor La Paloma Ranch Airport, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment will remove the transition area located at La Pryor La Paloma Ranch Airport, TX. This revision is necessary since the only standard instrument approach procedure (SIAP) to the La Paloma Ranch Airport has been canceled, thus negating the need for the 700-foot transition area. The intended effect of this revision is to return that controlled airspace no longer required for aircraft executing the old SIAP. Coincident with this revision, the airport status will change from instrument flight rules (IFR) to visual flight rules (VFR).

EFFECTIVE DATE: 0901 u.t.c., April 6, 1989.

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530, telephone (817) 624-5561.

SUPPLEMENTARY INFORMATION:

History

On September 20, 1988, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by removing the transition area located the La Pryor La Paloma Ranch Airport, TX. (53 FR 39314).

Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D, dated January 4, 1988.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations will remove the transition area located at La Pryor La Paloma Ranch Airport, TX. The cancellation of the only SIAP serving the La Paloma Ranch Airport, thus negating the need for a 700-foot transition area, has necessitated this revision. The intended effect of this revision is to return that controlled airspace no longer required for aircraft executing the old SIAP. Coincident with this revision is the changing of the airport status from IFR to VFR.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

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

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

La Pryor La Paloma Ranch Airport, TX [Removed]

Issued in Fort Worth, TX, on January 12, 1989.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 89-2382; Filed 2-1-89; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 71

[Airspace Docket No. 88-ASW-38]

Revision of Transition Area: McAllen, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This revision will revise the transition area located at McAllen, TX. The development of a new RNAV (Area Navigation) RWY 13 standard instrument approach procedure (SIAP) to the Mid Valley Airport, Weslaco, TX, has made this revision necessary. The intended effect of this revision is to provide adequate controlled airspace for aircraft executing the new SIAP to the Mid Valley Airport. Coincident with this revision will be the changing of the status of the airport from visual flight rules (VFR) to instrument flight rules (IFR).

EFFECTIVE DATE: 0901 u.t.c., April 6, 1989.

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530, telephone (817) 624-5561.

SUPPLEMENTARY INFORMATION:

History

On October 10, 1988, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by revising the transition area located at McAllen, TX (53 FR 41352).

Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D, dated January 4, 1988.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations will revise the transition area located at McAllen, TX. The development of a new RNAV RWY 13 SIAP to the Mid Valley Airport, Weslaco, TX, has necessitated this revision. The intended effect of this revision is to provide adequate controlled airspace for aircraft executing the new SIAP. Coincident with this revision will be the changing of the status of the Mid Valley Airport from VFR to IFR.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

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

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

McAllen, TX [Amended]

By adding to the end of the legal description: "and within a 6.5-mile radius of the Mid Valley Airport (latitude 26°10'37"N., longitude 97°58'20"W.)."

Issued in Fort Worth, TX, on January 13, 1989.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 89-2384 Filed 2-1-89; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 71

[Airspace Docket No. 87-ACE-4]

Alteration of VOR Federal Airways—KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the descriptions of several Federal Airways located in the vicinity of Salina, KS. The Salina Very High Frequency Omni-Directional Radio Range and Tactical Air Navigational Aid (VORTAC) has been relocated approximately 2.6 nautical miles to the north. The FAA did not renew the lease on the current VORTAC site and this action alters the descriptions of all airways affected by the VORTAC's relocation.

EFFECTIVE DATE: 0901 u.t.c., April 6, 1989.

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

SUPPLEMENTARY INFORMATION:

History

On July 15, 1987, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the descriptions of VOR Federal Airways V-4, V-307, V-508, and V-532 that were affected by the relocation of the Salina, KS, VORTAC (52 FR 26489). The FAA will not renew the current VORTAC land lease site and has relocated the VORTAC 2.6 nautical miles north to coordinates lat. 38°55'35"N., long. 97°37'15"W. This action amends the descriptions of all airways affected by this relocation. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations alters the descriptions of VOR Federal Airways V-4, V-307, V-508, and V-532 that were affected by the relocation of the Salina, KS, VORTAC. The FAA will not renew the current VORTAC land lease site and has relocated the VORTAC 2.6 nautical miles north to coordinates lat. 38°55'35"N., long. 97°37'15"W. This action amends the descriptions of all the airways affected by this relocation.

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

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

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

§ 71.123 [Amended]

2. § 71.123 is amended as follows:

V–4 [Amended]

By removing the words "INT Hill City 097° and Salina, KS, 284° radials; Salina;" and substituting the words "Salina, KS;"

V–307 [Amended]

By removing the words "Pawnee City, NE, 193° radials;" and substituting the words "Pawnee City, NE, 194° radials;"

V–508 [Amended]

By removing the words "INT Salina 080°" and substituting the words "INT Salina 082°"

V–532 [Amended]

By removing the words "Salina, KS, 167° radials;" and substituting the words "Salina, KS, 168° radials;"

Issued in Washington, DC, on January 25, 1989.

William C. Davis,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 89–2380 Filed 2–1–89; 8:45 am]

BILLING CODE 4910–13–M

---

14 CFR Part 71

[Airspace Docket No. 88–ASW–20]

Alteration of VOR Federal Airway V–583; Texas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the description of VOR Federal Airway V–583 located in the vicinity of Leona, TX. This action extends V–583 from Leona very high frequency omni-directional radio range and tactical air navigational aid (VORTAC) to Austin, TX, VORTAC via College Station, TX. This action improves the flow of traffic to and from the Austin terminal area, improves flight planning and reduces controller workload.

EFFECTIVE DATE: 0901 U.T.C. April 6, 1989.

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

SUPPLEMENTARY INFORMATION:

History

On July 11, 1988, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the description of Federal Airway V–583 located in the vicinity of Leona, TX (53 FR 26087). This action extends V–583 from Leona to Austin, TX. This action improves the flow of traffic in the Austin terminal area and reduces controller workload. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations alters the description of V–583 by extending that airway from Leona VORTAC via College Station VORTAC to Austin VORTAC. The Houston Air Route Traffic Control Center (ARTCC) requested this extension be considered for implementation. Currently, aircraft inbound to Austin must be given a very detailed and lengthy clearance. This action provides controlled airspace routing to and from the Austin terminal area in an area where radar vectors are now utilized, thereby reducing controller workload and improving flight planning.

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

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

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

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V–583 [Revised]

From Austin, TX; College Station, TX; Leona, TX; Frankston, TX; to Quitman, TX.

Issued in Washington, DC, on January 24, 1989.

William C. Davis,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 89–2383 Filed 2–1–89; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket Nos. RM88–14–002 and RM88–15–001]

Interpretation of, and Regulations Under, Section 5 of the Outer Continental Shelf Lands Act (OCSLA); Order Granting Rehearing Solely for the Purpose of Further Consideration

Issued: January 27, 1989.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Order granting rehearing solely for the purpose of further consideration.

SUMMARY: The Federal Energy Regulatory Commission (Commission) issued a final rule (Order No. 509) on December 9, 1988, that established regulations to implement section 5 of the Outer Continental Shelf Lands Act (OCSLA). In addition, the Commission also revised its interpretative rule on section 5 of the OCSLA, Order No. 491, 53 FR 14922 (April 26, 1988).

The Commission received timely requests for rehearing and is granting rehearing of Order No. 509 solely for the purpose of further consideration. This action does not constitute a grant or denial of the requests on their merits in whole or in part.

EFFECTIVE DATE: January 27, 1989.

FOR FURTHER INFORMATION CONTACT: Roger E. Smith, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 357–9231.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this

document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 1000 at the Commission's Headquarters, 825 North Capitol Street NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 357–8997. To access CIPS, set your communications software to use 300, 1200 or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this order will be available on CIPS for 10 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 1000, 825 North Capitol Street NE., Washington, DC 20426.

Before Commissioners: Martha O. Hesse, Chairman; Charles G. Stalon, Charles A. Trabandt, Elizabeth Anne Moler, and Jerry J. Langdon.

Issued: January 27, 1989.

On December 9, 1988, the Federal Energy Regulatory Commission (Commission) issued Order No. 509, 53 FR 50925 (December 19, 1988), that established regulations to implement section 5 of the Outer Continental Shelf Lands Act (OCSLA) (43 U.S.C. 1334 (1982)). In addition, the Commission also revised its interpretative rule on section 5 of the OCSLA, Order No. 491, 53 FR 14922 (April 26, 1988). Pursuant to 18 CFR 18 385.713 (1988), the Commission has received timely requests for rehearing in this proceeding. In order to review more fully the arguments raised, the Commission grants rehearing of the order solely for the purpose of further consideration. This order is effective on the date of issuance. This action does not constitute a grant or denial of the requests on their merits in whole or in part.

Pursuant to Rule 713(d) of the Commission's Rule of Practice and Procedure (18 CFR 385.713(d) (1988)), no answers to the requests for rehearing will be entertained by the Commission.

By the Commission. Commissioner Trabandt concurred with a separate statement attached.

Lois D. Cashell,

Secretary.

TRABANDT, Commissioner, *concurring*:

I concur in granting rehearing of Order No. 509 solely for the purpose of further consideration, with one major reservation.

The Final Rule in these dockets in Order No. 509 requires that all jurisdictional OCS pipelines must hold a single open season to facilitate the voluntary reallocation of firm transportation capacity and a separate open season for voluntary and involuntary reallocation of interruptible transportation capacity, both beginning no later than March 1, 1989. The rule also requires the OCS pipelines to file no later than March 1, 1989, rate schedules conforming to the requriements of Section 284.7, 284.8(d) and 284.9(d), or—in the alternative—rate schedules which would continue the existing approved rates of those pipelines.

Many parties in their rehearing petitions have protested this approach to the allocation of firm and interruptible transportation capacity for a variety of legal and policy reasons. For example, the Indicated Producers pointed out that an OCS pipeline's open access transportation rates will not become final until they have been fully litigated in a rate proceeding, which cannot occur as a practical matter for a number of months after the now-scheduled March 1 open seasons. They state, at page 10,

> Because of the timing of the exclusive open season, prospective firm shippers may be compelled to decide whether to request firm capacity on pipelines that do not have existing applicable tariffs without knowing how much that capacity will ultimately cost. Thus, it will be difficult for potential shippers and purchasers of OCS gas to evaluate sources of supply and alternate transportation routes * * *. In addition, the total firm capacity available on OCS pipelines for the winter heating season beginning October 1989 will not be known until September of that year, at the conclusion of the offshore pipeline construction season. If uncommitted and voluntarily relinquished capacity is to be reallocated in an open season after the OCS pipelines begin operating under their blanket certificates, that reallocation should take place in September 1989, when the total firm capacity available to shippers is known.

I also would note that the grandfathering mechanism for the existing interruptible transportation in the interruptible capacity open season depends directly on the existing interruptible shipper agreeing to match the highest price paid by any other shipper. As I discussed at length in my concurring opinion to Order No. 509, it will be similarly difficult for those existing shippers to know what that maximum rate will be until the individual pipeline rate cases (with new Part 284 rates or existing rates filed in the alternative) have been fully litigated. Thus, grandfathered existing interruptible shippers, as well as new interruptible shippers, would also be compelled to request interruptible capacity or agree to pay the highest price paid by any other shipper, as the case may be, without knowing how much that capacity will ultimately cost.

In my concurring opinion, I urged all interested parties to carefully consider the scheduling of the open seasons no later than March 1, 1989, particularly in light of the very short time frame for the Commission to act on rehearing. My colleagues indicated that they were interested in the views of interested parties as to the workability of the Final Rule and would act to make adjustments, if necessary, prior to the March 1 date for the open seasons and the rate filings. It is quite clear that the "jury is now in" as to the need for an immediate delay of the March 1 open seasons and a thorough reconsideration of the mechanics of the involuntary blanket certificates and the capacity allocation process. Consequently, it is imperative that the Commission act on rehearing as soon as possible and prior to the March 1 date, at least to delay the open seasons until the rate filings have been processed. Other important issues should also be addressed as soon as possible.

For these reasons, I concur.

Charles A. Trabandt,

Commissioner.

[FR Doc. 89–2473 Filed 2–1–89; 8:45 am]

BILLLING CODE 6717-01-M

INTERNATIONAL TRADE COMMISSION

19 CFR Part 207

Investigations of Whether Injury to Domestic Industries Results From Imports Sold at Less Than Fair Value or From Subsidized Exports to the United States

AGENCY: U.S. International Trade Commission.

ACTION: Interim rules and request for comments.

SUMMARY: The Commission is amending Part 207 on an interim basis to address concerns which have arisen relating to the interim amendments which appeared at 53 FR 33039 (Aug. 29, 1988) and which were issued to conform with the Omnibus Trade and

Competitiveness Act of 1988, Pub. L. 100–418 (Aug. 23, 1988).

The amendments to Part 207 provide, in particular, for changes in the procedure for release and service of business proprietary (formerly confidential business) information under administrative protective order.

DATES: The interim rules are effective on February 2, 1989. Comments on the interim rules will be considered if received on or before March 20, 1989.

ADDRESS: A signed original and 14 copies of each set of comments, along with a cover letter addressed to Kenneth R. Mason, Secretary, should be sent to the U.S. International Trade Commission, 500 E Street SW., Room 112, Washington, DC 20436.

FOR FURTHER INFORMATION CONTACT: Paul R. Bardos, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–252–1102.

SUPPLEMENTARY INFORMATION: Section 335 of the Tariff Act of 1930 (19 U.S.C. 1335) authorizes the Commission to adopt such reasonable procedures and rules and regulations as it deems necessary to carry out its functions and duties.

On August 23, 1988, the Omnibus Trade and Competitiveness Act of 1988 ("the 1988 Act") became effective. This new trade legislation contains provisions which, *inter alia,* amend Title VII of the Tariff Act of 1930 (19 U.S.C. 1671 *et seq.*). The Commission's rules concerning Title VII practice and procedure were amended to conform to the new legislation. 53 FR 33039 (Aug. 29, 1988).

Commission rules ordinarily are promulgated in accordance with the rule making provisions of section 553 of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) (APA), which entails the following steps: (1) Publication of a notice of proposed rule making; (2) solicitation of public comment on the proposed rules; (3) Commission review of such comments prior to developing final rules; and (4) publication of the final rules thirty days prior to their effective date. *See* 5 U.S.C. 553. That procedure has not be utilized in this instance because the problems addressed in this interim rulemaking needed immediate resolution.

The Commission thus determined to adopt *interim* rules that will go into effect immediately and will remain in effect until the Commission can adopt final rules promulgated in accordance with the usual notice, comment, and advance publication procedure.

The Commission's authority to adopt interim rules without following all steps listed in section 553 of the APA is derived from two sources: (1) Section 335 of the Tariff Act of 1930 (19 U.S.C. 1335) and (2) provisions of section 553 of the APA which allow an agency to dispense with various steps in the prescribed rule making procedure under certain circumstances.

Section 335 of the Tariff Act of 1930 authorizes the Commission "to adopt such reasonable procedures and rules and regulations as it deems necessary to carry out its functions and duties." 19 U.S.C. 1335. The Commission determined that the need for interim rules is clear in this instance. The 1988 Act made substantial changes in the procedure of Title VII investigations and required the issuance of interim rules within a short time. Problems have arisen in the use of the interim rules which the Commission found require immediate resolution.

An agency may dispense with publication of a notice of proposed rule making when the proposed rules are interpretive rules, general statements of policy, or rules of agency organization, procedure or practice. 5 U.S.C. 553(b). An agency may also dispense with the publication of a notice of final rules thirty days prior to their effective date if (1) the rules are interpretive rules or statements of policy or (2) the agency finds that "food cause" exists for not meeting the advance publication requirement and that finding is published along with the rule. 5 U.S.C. 553(d)(3).

In this instance, the Commission determined that the requisite circumstances existed for dispensing with the notice, comment, and advance publication procedure that ordinarily precedes the adoption of Commission rules. For purposes of invoking the section 553(b) exemption from publishing a notice of proposed rule making which solicits public comment, the Commission found that the interim rules are "agency rules of procedure or practice." For the purpose of invoking the section 553(d)(3) exemption from publishing advance notice of the interim rules thirty days prior to their effective date, the Commission found that the need to immediately address the problems associated with administrative protective order procedures constituted "good cause" for the Commission not to comply with that requirement.

The Commission recognizes that interim regulations should not respond to anything more than the exigencies created by the new legislation and expects that the more comprehensive final rules to follow will emerge as a result of the Congressionally-mandated policy of affording public participation in the rule making process.[1] More comprehensive final rules will be issued at a later date in accordance with the usual notice, public comment, and advance publication procedure.

The Commisson has determined that these interim rules do not constitute a major rule for the purposes of Executive Order 12291 (46 FR 13193, Feb. 19, 1981) because they do not meet the criteria described in section 1(b) of the EO. The Amendments, as interim rules, are not subject to the filing requirement of section 3(c)(3) of the EO. Moreover, in accordance with the Regulatory Flexibility Act (5 U.S.C. 601 note), the Commission hereby certifies pursuant to 5 U.S.C. 605(b) that the interim rules set forth in this notice are not likely to have a significant economic impact on a substantial number of small business entities. The Commission has determined that the interim rules' provisions for clarification of coverage and procedure, a procedure for seeking exemption from service requirements, faster service of briefs, and a deadline for service of certain documents neither impose a significant burden nor confer a significant benefit on small business entities.

Explanation of the Interim Amendments to 19 CFR Part 207

Section 207.3 is amended to require that mail service of briefs in preliminary investigations and of posthearing briefs in final investigations be by overnight mail or its equivalent. Service by hand remains an appropriate alternative. This amendment is intended to allow parties having access to business proprietary information the maximum time practicable to comment on such information when it is presented in such briefs.

Section 207.7 is amended to modify the procedure for obtaining confidential business information, now termed business propertary information, under administrative protective orders. Paragraph (a)(1) is amended to make clear that business proprietary information submitted by a nonparty in an investigation initiated before the effective date of the 1988 Act but instituted after such date will only be released under administrative protective order with the consent of the submitter.

Paragraph (a)(2) of § 207.7 is amended to make clear that an application for release of business proprietary

[1] *See* American Federation of Government Employees, AFL–CIO v. Block, 655 F.2d 1153, 1157–1158 (D.C. Cir. 1981). *See also* United States v. Garner, 767 F.2d 104, 120 (5th Cir. 1985) (*quoting* American Federation of Government Employees, AFL–CIO v. Block).

information under administrative protective order must be filed no later than the deadline for filing an entry of appearance, but need not be filed simultaneously with the entry of appearance. The paragraph is also amended to permit later application on behalf of an interested party which is a party up to three days before the deadline for filing posthearing briefs in the investigation, or the deadline for filing briefs in a preliminary investigation, providing that one of such party's representatives files an application by the deadline for filing entries of appearance.

Paragraph (a)(3) of § 207.7 is amended to make clear that only a representative of an interested party which is a party can be an authorized applicant.

Paragraph (b) of § 207.7 is amended to make clear to whom business proprietary information may be divulged under administrative protective order.

Paragraph (c) of § 207.7 is amended to conform to other amendments by replacing "attorney" and "confidential information" with "authorized applicant" and "business proprietary information."

Paragraph (f) of § 207.7 is amended to provide a procedure for determining whether particular information is subject to the service requirement set out in the paragraph. This amendment is not intended to broaden the narrow grounds for exemption from the service requirement, but merely to provide a procedure for seeking such an exemption. Paragraph (f) is also amended to provide that, in the event a document containing business proprietary information is filed with the Commission before the Secretary issues the list described in paragraph (a)(4) of § 207.7, the document must be served within two business days of the issuance of the list.

Section 207.10 is amended to provide a deadline for the service of the business proprietary version of the petition on authorized applicants whose application for access to business proprietary information under administrative protective order has been granted. This provision for service of the business proprietary version of the petition is intended to apply only to investigations initiated after the effective date of the 1988 Act.

List of Subjects in 19 CFR Part 207

Administrative practice and procedure, Investigations, Imports.

19 CFR Chapter II, Part 207 is amended as set forth below:

PART 207—[AMENDED]

1. The authority citation for Part 207, Subparts A–F, continues to read as follows:

Authority: Secs. 303, 332, 335, and 701–779 of the Tariff Act of 1930 (19 U.S.C. 1303, 1332, 1335, 1671–1677h); sec. 603 of the Trade Act of 1974 (19 U.S.C. 2582); secs. 3, 102–107, 1001, and 1002 of the Trade Agreements Act of 1979; and secs. 1311–1337 of the Omnibus Trade and Competitiveness Act of 1988.

2. Section 207.3 is revised to read as follows:

§ 207.3 Certification and service of documents

Any person submitting factual information on behalf of the petitioner or any other interested party for inclusion in the record, and any person submitting a response to a Commission questionnaire, must certify that such information is accurate and complete to the best of the submitter's knowledge. Any party submitting a document for inclusion in the record of the investigation shall, in addition to complying with § 201.8 of this Chapter, serve a copy of each such document on all other parties to the investigation in the manner prescribed in § 201.16 of this Chapter. Notwithstanding § 201.16 of this Chapter, briefs filed pursuant to § 207.15 and briefs filed pursuant to § 207.24 shall be served, if served by mail, by overnight mail or its equivalent. Failure to comply with the requirements of this rule may result in removal from status as a party. The Commission shall make available to all parties to the investigation a copy of each document, except transcripts of conferences and hearings and responses to requests under § 201.6(b) (confidential business information) of this Chapter and § 207.7 (documents under protective order), placed in the record of the investigation by the Commission.

3. Section § 207.7 is amended by revising paragraphs (a)(1), (a)(2), (a)(3), (b), (c), and (f) to read as follows:

§ 207.7 Limited disclosure of certain business proprietary information under a protective order.

(a)(1) *Disclosure.* Upon receipt of a timely application filed by an authorized applicant, as defined in paragraph (a)(3) of this section, which (i) describes in general terms the information requested, and (ii) sets forth the reasons for the request (*e.g.*, all business proprietary information properly disclosed prusuant to this section for the purpose of representing an interested party in proceedings pending before the Commission) the Secretary will make available all business proprietary information contained in Commission memoranda and reports and in written submissions filed with the Commission at any time during the investigation (except privileged information, classified information, and specific information of a type which there is a clear and compelling need to withhold from disclosure, *e.g.*, trade secrets) to the authorized applicant under a protective order described in paragraph (b) of this section. The term "business proprietary information" as used in this section has the same meaning as the term "confidential business information" as defined in § 201.6 of this Chapter, except that, in the case of an investigation initiated before August 23, 1988, but instituted after such date, the term "business proprietary information" does not cover business proprietary information that is submitted by a nonparty unless the submitter has consented to have such information released under administrative protective order.

(2) *Application.* An application under paragraph (a)(1) of this section must be made by an authorized applicant on a form adopted by the Secretary or by certification that the authorized applicant agrees to be bound by the terms of the protective order entered pursuant to paragraph (b) of this section. An application must be made no later than the time that an entry of appearance is due pursuant to § 201.11 of this Chapter. In the event that two or more authorized applicants represent one interested party who is a party to the investigation, such authorized applicants may select one of their number to be lead authorized applicant, whose application must be filed no later than the time that an entry of appearance is due, and who, providing the application is accepted, will be served with business proprietary information pursuant to paragraph (f) of this section. The other authorized applicants representing the same party may file their applications after the deadline for entries of appearance but must file at least three business days before the deadline for filing posthearing briefs in the investigation, or the deadline for filing briefs in a preliminary investigation, and will not be served with business proprietary information.

(3) *Authorized applicant.* Only an authorized applicant may file an application under this subsection. An authorized applicant is:

(i) An attorney, excepting in-house corporate counsel, for an interested party which is a party to the investigation.

(ii) An in-house corporate attorney for an interested party which is a party to the investigation, if the attorney is not involved in competitive decisionmaking as defined in *U.S. Steel Corp. v. United States*, 730 F.2d 1465 (Fed. Cir. 1984).

(iii) A consultant or expert under the direction and control of a person under paragraph (a)(3) (i) or (ii) of this section.

(iv) A consultant or expert who appears regularly before the Commission and who represents an interested party which is a party to the investigation.

(v) An interested party which is a party to the investigation, if such interested party is not represented by counsel.

A person under paragraph (a)(3) (iv) or (v) of this section will be given access to the business proprietary information in the record under such terms and conditions as required to assure its use is limited to the current investigation and that the recipient is not involved in competitive decisionmaking as defined in *U.S. Steel Corp. v. United States, supra.*

* * * * *

(b) *Protective order.* The protective order under which information is made available to the authorized applicant shall require him to submit to the Secretary a personal sworn statement that, in addition to such other conditions as the Secretary may require, he will:

(1) Not divulge any of the information so obtained and not otherwise available to him, to any person other than

(i) Personnel of the Commission concerned with the proceeding,

(ii) The person or agency from whom the information was obtained,

(iii) An authorized applicant participating in the proceeding whose application has been granted, and

(iv) those persons employed or supervised by the authorized applicant having a need thereof in connection with the proceeding and who have furnished a similar statement;

(2) Use such information solely for the purposes of the Commission proceeding then in progress or for judicial or Commission review thereof;

(3) Not consult with any person not described in paragraph (b)(1) of this section concerning such business proprietary information without first having received the written consent of the Secretary and the attorney of the party from whom such business proprietary information was obtained;

(4) Not copy or otherwise reproduce any business proprietary material obtained under the protective order except in accordance with procedures to be established by the Secretary; and

(5) Report promptly to the Secretary any breach of the protective order.

(c) *Final disposition of material released under protective order.* Upon completion of a proceeding, or at such other date as the Secretary may determine appropriate for particular data, the security of business proprietary information shall be protected by the return of all copies of materials released to authorized applicants pursuant to this section and all other materials containing the business proprietary information, such as charts or notes based on any such information recieved under protective order, accompanied by a certificate from the authorized applicant to whom the material was disclosed attesting to his personal, good faith belief that no other copies of such materials have been made available to the party he represents or any other person to whom disclosure was not specifically authorized.

* * * * *

(f) *Service.* (1) Any party filing written submissions which include business proprietary information with the Commission during an investigation shall at the same time serve complete copies of such submissions upon all authorized applicants appearing on the list established by the Secretary pursuant to paragraph (a)(4) of this section. In the event that such a submission if filed before the Secretary's list is established, the submission shall be served within two business days of the establishment of the list. All such submissions must be accompanied by a certificate attesting that complete copies of the submission have been properly served. The Secretary shall not accept for filing into the record of a proceeding any such submission not accompanied by such a certificate of service.

(2) A party may seek an exemption from the service requirement of paragraph (f)(1) of this section for a particular submission by filing a request for exemption with the reasons therefor along with the submission. The Secretary shall not accept the submission into the record but shall hold the submission until the request has been granted or denied. The Secretary shall promptly respond to the request. If a request is granted, the Secretary shall accept the submission into the record. If a request is denied, the party shall serve the submission within two business days of the denial and file a certificate of service in the form described in paragraph (f)(1) of this section, and the Secretary shall then accept the submission into the record. All submissions which include business proprietary information must be accompanied by a certificate attesting either (1) that complete copies of the submission have been properly served, or (2) that a request for exemption has been filed with the submission.

(3) The Secretary shall not accept submissions filed without a proper certificate of service. Failure to comply with paragraph (f) of this section may result in denial of party status and such sanctions as the Commission deems appropriate. Business proprietary information in submissions must be clearly marked as such when submitted, and must be segregated from other material being submitted.

4. Section 207.10 is amended by revising paragraph (b) to read as follows:

§ 207.10 Filing of petition with the Commission.

* * * * *

(b) *Service of the petition.* A copy of the petition, or a version thereof omitting business proprietary information, shall be served by petitioner on those persons enumerated in 19 CFR 353.36 (a)(6) and (a)(11) or in 19 CFR 355.26 (a)(6) and (a)(10), as appropriate. A copy of the petition including all business proprietary information shall be served by petitioner on those persons enumerated on the list established by the Secretary pursuant to § 207.7(a)(4) within two business days of the establishment of the Secretary's list. Service shall be attested by a certificate of service as required in § 201.16(c)(2).

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: January 30, 1989.

[FR Doc. 89-2499 Filed 2-1-89; 8:45 am]

BILLING CODE 7020-02-M

RAILROAD RETIREMENT BOARD

20 CFR Part 204

Employment Relation

AGENCY: Railroad Retirement Board.

ACTION: Final rule.

SUMMARY: The Railroad Retirement Board (Board) hereby revises Part 204 of its regulations by removing obsolete material, simplifying the language therein, and by adding definitions of employment relation in connection with certain subjects which are not in the current regulations. Addition of those references should render the explanation of employment relation in Part 204 complete.

EFFECTIVE DATE: February 2, 1989.

ADDRESS: Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Thomas W. Sadler, General Attorney, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751–4513 (FTS 386–4513).

SUPPLEMENTARY INFORMATION: Section 3(i)(1) of the Railroad Retirement Act (Act) provides that in determining years of service only years subsequent to 1936 are counted. However, section 3(i)(3) provides that an individual who has less than 30 years of post-1936 service may have his service prior to 1937 counted so as to be credited with 30 years of service if he was actually working for a railroad employer on August 29, 1935, or was in an employment relation with such an employer on that date. Service by an individual to a local lodge or division of a railway labor organization is creditable under the Act only if preceded by actual service or an employment relation to a railroad on or after August 29, 1935 (see Part 203 of this chapter). Present Part 204 defines employment relation for purposes of crediting prior service and for establishing that service to a local lodge or division of a railway labor organization is creditable under the Act. These provisions are extremely detailed. The Board has removed unnecessary detail in these provisions and added a separate § 204.7 dealing with service to a local lodge or division of a railway labor organization.

An employment relation is also necessary for crediting pay for time lost under § 211.3 of the regulations and for crediting deemed service under § 210.3 of the regulations. The Board also adds definitions of employment relation for those situations. See §§ 204.5 and 204.6.

These regulations were published as a proposed rule on September 14, 1988 (53 FR 35515–35516). The Board invited comments to be received by October 14, 1988. Although no comments were received the Board has determined that certain minor revisions should be made to the proposed rule.

First, § 204.3, Employment relation—general rules, has been retitled "Employment relation—prior service" to make it clearer to the reader that the rules under this section relate primarily to the prior service determinations referred to above.

Secondly, § 204.5, Employment relation—deemed service, was modified to make it clearer that an employment relation with an employer ceases once an individual becomes entitled to an annuity under the Railroad Retirement Act. The last sentence of § 204.6 was reworded to parallel similar language in § 204.5.

Finally, a new section, § 204.7, Employment relation—service to a local lodge or division of a railway labor organization, has been added to make it clearer to the reader how the concept of employment relation relates to this type of railroad service.

The Board has determined that this is not a major rule for purposes of Executive Order 12291. Therefore no regulatory impact analysis is required by the Regulatory Flexibility Act (5 U.S.C. 601–611). In addition, no requirements for the collection of information within the meaning of the Paperwork Reduction Act of 1980 are imposed.

List of Subjects in 20 CFR Part 204

Railroad employees.

For the reasons set out in the preamble, Title 20, Chapter II of the Code of Federal Regulations is amended by revising Part 204 as follows:

PART 204—EMPLOYMENT RELATION

Sec.

204.1 Introduction.
204.2 Employment relation—determination by the Board.
204.3 Employment relation—prior service.
204.4 Conditions which preclude an employment relation.
204.5 Employment relation—deemed service.
204.6 Employment relation—pay for time lost.
204.7 Employment relation—service to a local lodge or division of a railway labor organization.

Authority: 45 U.S.C. 231f.

§ 204.1 Introduction.

In order for an individual to receive credit under the Railroad Retirement Act (Act) for railroad service prior to 1937, he or she must establish that he or she was actively working for an employer under the Act on August 29, 1935, or was in an employment relation to an employer on that date. Section 204.3 of this part defines employment relation for purposes of establishing prior service. It is also necessary to establish an employment relation to an employer for any month in which an individual wishes to receive a deemed service month, as provided for in § 210.3 of this chapter, and to receive credit for pay for time lost as provided for in § 211.3 of this chapter. This part defines employment relation for these purposes. See §§ 204.5 and 204.6. In addition, in order for an individual to have his or her service to a local lodge or division of a railway labor organization considered as creditable service under the Act, he or she must establish that he or she was working for a railroad or in an employment relation to a railroad on or after August 29, 1935, and that such employment or employment relation preceded his or her service to the local lodge or division. Section 204.7 defines employment relation for this purpose.

§ 204.2 Employment relation—determination by the Board.

The existence or non-existence of an employment relation, as defined in this part, is a conclusion which must be reached by the Board or its authorized officers or employees upon the basis of the evidence before the agency. The employer and the employee are the principal sources of evidence with respect to a determination whether an employment relation existed, but the Board will not be bound by the mere conclusion of the employer or the employee that the employee had or did not have an employment relation.

§ 204.3 Employment relation—prior service.

An individual shall have an employment relation to an employer on August 29, 1935, for purposes of crediting service prior to January 1, 1937, if:

(a) He or she was in the service of an employer on that date; or

(b) He or she was on that date on leave of absence expressly granted by the employer or by a duly authorized representative of such employer, but only if such leave of absence was established to the satisfaction of the Board before July 1947; or

(c) He or she was in the service of an employer after that date and before January 1946, in each of six calendar months, whether or not consecutive; or

(d) Before that date he or she did not retire and was not retired or discharged from the service of the last employer by whom he or she was employed, but solely by reason of a physical or mental disability he or she ceased before August 29, 1935, to be in the service of such employer and thereafter remained continuously disabled until he or she attained age sixty-five or until August 1945; or

(e) Solely for the reason stated in paragraph (c) of this section an employer by whom he or she was employed before August 29, 1935, did not on or after August 29, 1935, and before August 1945, call him or her to return to service, or if he or she were called to return to service he or she for such reason was unable to render service in six calendar months as

provided in paragraph (b) of this section; or

(f) He or she was on August 29, 1935, absent from the service of an employer by reason of a discharge which, within one year after the effective date thereof, was protested to an appropriate labor representative or to the employer, as wrongful, and which was followed within ten years of the effective date thereof by his or her reinstatement in good faith to his or her former service with all his or her seniority rights.

§ 204.4 Conditions which preclude an employment relation.

(a) An individual shall not have been on August 29, 1935, an employee by reason of an employment relation if, during the last payroll period in which he or she rendered service to an employer prior to that date, such service was rendered outside of the United States to an employer not conducting the principal part of its business in the United States.

(b) An individual may not acquire an employment relation solely by virtue of service to a local lodge or division of a railway labor organization.

§ 204.5 Employment relation—deemed service.

For the purpose of crediting deemed service months as provided in § 210.3(b) of this chapter, an individual must have maintained an employment relation to one or more employers in the month or months to be deemed. For that purpose an employment relation exists with respect to any month in which an individual, although not in the active service of an employer, is on furlough subject to recall by an employer, is on a bona fide leave of absence, has not been retired or discharged but was by reason of continuous disability unable to return to service, or was not in active service because of a discharge later determined to be wrongful. However, an employment relation with respect to an employer ceases after an individual has resigned or relinquished his or her rights to return to the service of that employer or after the individual becomes entitled to receive an annuity under the Railroad Retirement Act.

§ 204.6 Employment relation—pay for time lost.

For the purpose of crediting pay for time lost as provided in § 211.3 of this chapter, an individual must have maintained an employment relation to one or more employers in the month or months to be credited with pay for time lost. For that purpose an employment relation exists with respect to any month in which an individual, although not in the active service of an employer, is on furlough subject to recall by an employer, is on a bona fide leave of absence, has not been retired or discharged but was by reason of continuous disability unable to return to service, or was not in active service because of a discharge later determined to be wrongful. However, an employment relation with respect to an employer ceases after an individual has resigned or relinquished his or her rights to return to the service of that employer.

§ 204.7 Employment relation—service to a local lodge or division of a railway labor organization.

Service by an individual to a local lodge or division of a railway labor organization shall be creditable under the Railroad Retirement Act only if, prior to such service, and on or after August 29, 1935, such individual performed compensated service for a carrier employer under Part 202 of this chapter or was in an employment relation to such a carrier employer under the rules set forth in § 204.3 of this part.

By Authority of the Board.

Dated: January 26, 1989.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 89-2395 Filed 2-1-89; 8:45 am]

BILLING CODE 7905-01-M

---

20 CFR Part 235

Payment of Social Security Benefits

AGENCY: Railroad Retirement Board.

ACTION: Final rule.

SUMMARY: The Railroad Retirement Board (Board) hereby amends its regulations by adding a new Part 235 to explain the Board's role in paying social security benefits. The new part explains why, when and under what circumstances the Board pays social security benefits.

EFFECTIVE DATE: February 2, 1989.

ADDRESS: Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Stanley Jay Shuman, General Attorney, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751-4568 (FTS 386-4568).

SUPPLEMENTARY INFORMATION: Pursuant to the Railroad Retirement Act the Board is authorized to pay social security benefits on behalf of the Social Security Administration to certain individuals. Part 235 identifies those individuals and explains, in general, how the Board pays social security benefits.

The Board published this part as a proposed rule on October 6, 1988 (53 FR 39315-39316), and invited comments by December 5, 1988. No comments were received.

The Board has determined that this is not a major rule for purposes of Executive Order 12291. Therefore, no regulatory impact analysis is required. In addition, this part does not impose any requirement for the collection of information within the meaning of the Paperwork Reduction Act of 1980.

List of Subjects in 20 CFR Part 235

Railroad employees, Railroad retirement, Social security.

For the reasons set out in the preamble, Chapter II, Title 20 of the Code of Federal Regulations is amended by adding a new Part 235 to read as follows:

PART 235—PAYMENT OF SOCIAL SECURITY BENEFITS BY THE RAILROAD RETIREMENT BOARD

Sec.

235.1 Basis and purpose.
235.2 Other regulations related to this part.
235.3 Who is paid social security benefits by the Board.
235.4 How the Board pays social security benefits.

Authority: 45 U.S.C. 231f.

§ 235.1 Basis and purpose.

Effective January 1, 1975, the Railroad Retirement Act of 1974 (Act) requires the Railroad Retirement Board (Board) to provide for the payment of monthly social security benefit payments on behalf of the Social Security Administration to certain individuals as described in § 235.3 of this part. However, any such individual who was receiving benefits from the Social Security Administration prior to January 1, 1975, will continue to receive benefits from that agency unless he or she becomes eligible for a different type of social security benefit after that date and files a new application with the Social Security Administration for that benefit. Benefits under the new entitlement will be paid by the Board. The Act provides an offset in the railroad retirement benefits of individuals who are also eligible for social security benefits. Because the Board is required to make this offset, the payment of social security benefits by the Board is authorized for the purpose of convenience in the administration of the Act.

§ 235.2 Other regulations related to this part.

This part is related to a number of other parts in this chapter:

(a) Part 216 describes when a person is eligible for an annuity under the Railroad Retirement Act.

(b) Part 222 defines family relationships (for example, who is the wife or widow of an employee) for use when it is necessary to establish such a relationship in order to receive a benefit under the Railroad Retirement Act.

§ 235.3 Who is paid social security benefits by the Board.

The following individuals, if entitled to social security benefits, are paid such benefits by the Board:

(a) A railroad employee who has been credited with at least 120 months of railroad service;

(b) A wife or husband of a railroad employee who has been credited with at least 120 months of railroad service;

(c) A divorced wife or husband of a railroad employee who has been credited with at least 120 months of railroad service, but only if the divorced wife or husband is claiming social security benefits based upon the railroad employee's social security wages;

(d) A survivor of a railroad employee, including a surviving divorced spouse, remarried widow(er), surviving divorced mother or father, who is entitled, or upon application would be entitled, to an annuity under the Railroad Retirement Act;

(e) Any other person entitled to benefits under Title II of the Social Security Act based on the social security wages of a railroad employee who has been credited with at least 120 months of railroad service, except survivors of a railroad employee when the Social Security Administration has jurisdiction for survivor benefits. See Part 221 of this title.

§ 235.4 How the Board pays social security benefits.

(a) When an individual described in § 235.3 of this part is determined by the Social Security Administration to be entitled to social security benefits, the Social Security Administration certifies such benefits to the Board for payment by the Board. Once social security entitlement is certified to the Board, the Board then certifies the amount of the social security benefit to the Department of the Treasury for payment and makes any necessary adjustments in the individual's railroad retirement benefit.

(b) The Board has no authority with respect to the adjudication of the benefit to be paid under the Social Security Act. Entitlement to and the computation of such benefits is a matter solely within the jurisdiction of the Social Security Administration.

Dated: January 26, 1989.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 89-2396 Filed 2-1-89; 8:45 am]

BILLING CODE 7905-01-M

---

20 CFR Parts 302 and 337

Railroad Unemployment Insurance Benefits

AGENCY: Railroad Retirement Board.

ACTION: Final rule; removal.

SUMMARY: The Railroad Retirement Board (Board) hereby removes Part 302, Reduction in Unemployment and Sickness Benefits, and Part 337, Rate of Railroad Unemployment, because these parts are now obsolete.

EFFECTIVE DATE: This regulation is effective February 2, 1989.

ADDRESS: Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Thomas W. Sadler, General Attorney, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751-4513, (FTS) 386-4513.

SUPPLEMENTARY INFORMATION: Under section 10(d) of the Railroad Unemployment Insurance Act (RUIA) (45 U.S.C. 360(d)), the Board has the authority to require the Secretary of the Treasury to transfer as a loan from the Railroad Retirement Account to the credit of the railroad unemployment insurance account such funds which in the estimate of the Board are necessary to pay benefits under the RUIA if the funds in the railroad unemployment insurance account are insufficient before such transfer to pay such benefits.

Section 302 of Pub. L. 98-76, August 12, 1983, 97 Stat. 411, 432, prohibited such transfers after September 30, 1985, for purposes of paying benefits and refunds due after such date. By subsequent amendments this date was extended to December 19, 1985.

Part 302 was added at 50 FR 36870, September 10, 1985, effective October 1, 1985, to describe how the Board would continue to pay benefits under the RUIA at a reduced rate following the repeal of the borrowing authority referred to above. At 50 FR 3993, October 1, 1985, the effective date was deferred until further notice and the regulation has never become effective. Section 13302 of Pub. L. 99-272, April 7, 1986, 100 Stat. 82, 327, restored the Board's authority under section 10(d) of the RUIA and thus Part 302 is no longer needed.

Section 2(h)(1) of the RUIA provides for an extended benefit period during which an employee, with less than 10 years of service, may continue to receive unemployment benefits after he or she has exhausted his or her normal rights to benefits in a benefit year pursuant to section 2(c) of the RUIA. This extended benefit period begins with a period of high unemployment as defined in section 2(h)(2). This section in turn defines high unemployment with reference to a national rate of unemployment as indicated by a national "on" and "off" indicator provided for in section 203(d) of the Federal-State Extended Unemployment Insurance Compensation Act of 1970, Pub. L. 91-373, August 10, 1970, 84 Stat. 695. However, the national indicator in section 203(d) was repealed by section 2401 of Pub. L. 97-35, August 13, 1981, 95 Stat. 356, 874. Consequently, section 2(h) of the RUIA is now inoperative. Part 337 was added at 42 FR 29486, June 9, 1977, to describe how the Board, on a monthly basis, would make determinations of high unemployment under section 2(h). Thus, Part 337 is now obsolete.

Because this rule simply removes regulations which are now clearly out of date, public comment was not considered necessary and thus, this rule was not published in proposed form.

The Board has determined that this is not a major rule under Executive Order 12291. Therefore no regulatory impact analysis is required. There are no information collections associated with this rule.

List of Subjects

20 CFR Part 302

Railroad employees, Unemployment compensation.

20 CFR Part 337

Railroad employees, Unemployment compensation.

For the reasons set forth in the preamble, and in accord with the authority provided in 45 U.S.C. 362l, Chapter II, Title 20 of the Code of Federal Regulations is amended as follows:

PART 302—[REMOVED AND RESERVED]

1. Part 302, consisting of §§ 302.1 through 302-5, is hereby removed and reserved.

PART 337—[REMOVED AND RESERVED]

2. Part 337, consisting of §§ 337.1 through 337.4, is hereby removed and reserved.

By Authority of the Board.

Dated: January 26, 1989.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 89–2408 Filed 2–1–89; 8:45 am]

BILLING CODE 7905–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 211

[Docket No. 88N–0027]

Tamper-Resistant Packaging Requirements for Certain Over-the-Counter (OTC) Human Drug Products

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its current tamper-resistant packaging regulation for over-the-counter (OTC) drug products. Under the final rule, manufacturers of two-piece, hard gelatin capsules must package their products using at least two tamper-resistant packaging features. Where the capsules themselves are sealed by a suitable tamper-resistant technology, the standard OTC tamper-resistant packaging requirement of a minimum of one tamper-resistant feature is sufficient. The new requirement applies only to hard gelatin capsules, and has no applicability to soft capsules (also known as soft gels). The revisions apply to all OTC human drug products, except dermatologics, dentifrices, insulin, and throat lozenges. This rule is part of agency efforts to improve consumer protection from the the threat of product tampering.

EFFECTIVE DATE: February 2, 1990.

FOR FURTHER INFORMATION CONTACT: Diane P. Goyette, Center for Drug Evaluation and Research (HFD–362), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8049.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of May 5, 1988 (53 FR 16150), FDA proposed to amend the tamper-resistant packaging regulation for certain OTC drug products (21 CFR 211.132). FDA is now adopting these proposed requirements in a final rule.

The final rule requires that OTC drug products, marketed in two-piece, hard gelatin capsules, be packaged using a minimum of two tamper-resistant packaging features. However, where capsules have been sealed by a tamper-resistant technology such as gelatin-banding, a single additional tamper-resistant packaging feature is sufficient. This action is taken as part of the agency's continuing review of the potential public health threat posed by product tampering.

Although tamper-resistant features on OTC packages have been widely and effectively used since first required in 1982, more recent cases of product contamination show that two-piece, hard gelatin capsules remain vulnerable to malicious tampering. The agency believes that the requirement of two tamper-resistant features for these products will provide a necessary additional measure of consumer protection. Many manufacturers have already voluntarily taken measures that are consistent with the new rule. By amending the regulation, the agency intends to ensure that all manufacturers of this dosage form provide the increased level of protection.

II. Comments on Proposed Rule

Interested persons were given 60 days to comment on the proposed rule. FDA received three comments. One comment from a major pharmaceutical manufacturer, and another comment from a national trade association that represents manufacturers of OTC drug products, expressed agreement and support for the amendment. The third comment asked for inclusion of a particular tamper-resistant packaging technology in the amended regulation and in the related Compliance Policy Guide (CPG 7132a.17).

The agency believes that the tamper-resistant packaging regulation is not the appropriate place to include a description or listing of specific packaging designs. Section 211.132 defines acceptable technology by describing, in general, consumer protection standards that must be met by a tamper-resistant package. Specific examples are given only to illustrate the general requirements of the regulation. Manufacturers and packagers are free to use any packaging systems that meet these tamper-resistant standards. This allows for innovation and flexibility in choosing the best packaging system for a product.

The comment also requested that the specific form of tamper-resistant packaging be included in the agency's Compliance Policy Guide 7132a.17 ("Tamper-Resistant Packaging Requirements for Certain Over-the-Counter (OTC) Human Drug Products"). The availability of this CPG, recently updated to reflect changes in tamper-resistant technology, was announced in the **Federal Register** of May 5, 1988 (53 FR 16192). At this time, FDA is considering the issue of including new packaging systems in this CPG.

In the proposed rule, FDA specifically invited comments on certain aspects of the amendment, including its impact on State and local regulations and the costs to industry of implementing the new requirements. No comments were received on these or other issues. FDA is therefore adopting the amendment as proposed.

III. Economic Impact

FDA previously analyzed the potential economic effects of this rule, finding the projected cost to be less than $100 million annually and less than one-tenth of 1 percent of manufacturers' sales of OTC drug products. The agency thus determined that the rule is not a major rule as defined by Executive Order 12291, and a regulatory impact analysis is not required. As mentioned earlier, the agency has not received any new information that would alter its previous determination.

The costs of this regulation are not expected to pose a significant economic impact on small manufacturers. Therefore, in accordance with the Regulatory Flexibility Act (Pub. L. 96–543), the agency certifies that this rule will not have a significant impact on a substantial number of small entities.

IV. Executive Order 12612: Federalism

Executive Order 12612 requires that Federal agencies carefully examine regulatory actions to determine if they would have significant federalism implications. As stated in the preamble to the proposed rule (May 5, 1988; 53 FR 16150 at 16152), FDA believes that the amendment provides adequate safeguards to protect consumers from tampering of OTC drug products utilizing two-piece, hard gelatin capsules, and the amendment, therefore, should eliminate the need for additional action at the State or local level. FDA invited comments on the adequacy of the agency's amendment in this regard and received no comments. Thus, the agency concludes that no assessment under Executive Order 12612 is necessary.

V. Environmental Impact

The agency has determined under 21 CFR 25.24(a) (10) and (11) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Effective Date

To allow sufficient time for necessary manufacturing and packaging changes, manufacturers are given until February 2, 1990 to comply with the new requirements. The effective date applies to products subject to this final rule and initially introduced or initially delivered for introduction into interstate commerce.

List of Subjects in 21 CFR Part 211

Drugs, Labeling, Laboratories, Manufacturing, Packaging and containers, Prescription drugs, Reporting and recordkeeping requirements, Warehouses.

Therefore, under the Federal Food, Drug, and Cosmetic Act, Part 211 is amended as follows:

PART 211—CURRENT GOOD MANUFACTURING PRACTICE FOR FINISHED PHARMACEUTICALS

1. The authority citation for 21 CFR Part 211 is revised to read as follows:

Authority: Secs. 201(n), 501, 502, 505, 506, 507, 701 (21 U.S.C. 321(n), 351, 352, 355, 356, 357, 371); 21 CFR 5.10, 5.11.

2. Section 211.132 is revised to read as follows:

§ 211.132 Tamper-resistant packaging requirements for over-the-counter (OTC) human drug products.

(a) *General.* The Food and Drug Administration has the authority under the Federal Food, Drug, and Cosmetic Act (the act) to establish a uniform national requirement for tamper-resistant packaging of OTC drug products that will improve the security of OTC drug packaging and help assure the safety and effectiveness of OTC drug products. An OTC drug product (except a dermatological, dentifrice, insulin, or throat lozenge product) for retail sale that is not packaged in a tamper-resistant package or that is not properly labeled under this section is adulterated under section 501 of the act or misbranded under section 502 of the act, or both.

(b) *Requirement for tamper-resistant package.* Each manufacturer and packer who packages an OTC drug product (except a dermatological, dentifrice, insulin, or throat lozenge product) for retail sale shall package the product in a tamper-resistant package, if this product is accessible to the public while held for sale. A tamper-resistant package is one having one or more indicators or barriers to entry which, if breached or missing, can reasonably be expected to provide visible evidence to consumers that tampering has occurred. To reduce the likelihood of successful tampering and to increase the likelihood that consumers will discover if a product has been tampered with, the package is required to be distinctive by design (e.g., an aerosol product container) or by the use of one or more indicators or barriers to entry that employ an identifying characteristic (e.g., a pattern, name, registered trademark, logo, or picture). For purposes of this section, the term "distinctive by design" means the packaging cannot be duplicated with commonly available materials or through commonly available processes. For purposes of this section, the term "aerosol product" means a product which depends upon the power of a liquified or compressed gas to expel the contents from the container. A tamper-resistant package may involve an immediate-container and closure system or secondary-container or carton system or any combination of systems intended to provide a visual indication of package integrity. The tamper-resistant feature shall be designed to and shall remain intact when handled in a reasonable manner during manufacture, distribution, and retail display.

(1) For two-piece, hard gelatin capsule products subject to this requirement, a minimum of two tamper-resistant packaging features is required, unless the capsules are sealed by a tamper-resistant technology.

(2) For all other products subject to this requirement, including two-piece, hard gelatin capsules that are sealed by a tamper-resistant technology, a minimum of one tamper-resistant feature is required.

(c) *Labeling.* Each retail package of an OTC drug product covered by this section, except ammonia inhalant in crushable glass ampules, aerosol products as defined in paragraph (b) of this section, or containers of compressed medical oxygen, is required to bear a statement that is prominently placed so that consumers are alerted to the specific tamper-resistant feature of the package. The labeling statement is also required to be so placed that it will be unaffected if the tamper-resistant feature of the package is breached or missing. If the tamper-resistant feature chosen to meet the requirement in paragraph (b) of this section is one that uses an identifying characteristic, that characteristic is required to be referred to in the labeling statement. For example, the labeling statement on a bottle with a shrink band could say "For your protection, this bottle has an imprinted seal around the neck."

(d) *Request for exemptions from packaging and labeling requirements.* A manufacturer or packer may request an exemption from the packaging and labeling requirements of this section. A request for an exemption is required to be submitted in the form of a citizen petition under § 10.30 of this chapter and should be clearly identified on the envelope as a "Request for Exemption from Tamper-Resistant Rule." The petition is required to contain the following:

(1) The name of the drug product or, if the petition seeks an exemption for a drug class, the name of the drug class, and a list of products within that class.

(2) The reasons that the drug product's compliance with the tamper-resistant packaging or labeling requirements of this section is unnecessary or cannot be achieved.

(3) A description of alternative steps that are available, or that the petitioner has already taken, to reduce the likelihood that the product or drug class will be the subject of malicious adulteration.

(4) Other information justifying an exemption.

(e) *OTC drug products subject to approved new drug applications.* Holders of approved new drug applications for OTC drug products are required under § 314.70 of this chapter to provide the agency with notification of changes in packaging and labeling to comply with the requirements of this section. Changes in packaging and labeling required by this regulation may be made before FDA approval, as provided under § 314.70(c) of this chapter. Manufacturing changes by which capsules are to be sealed require prior FDA approval under § 314.70(b) of this chapter.

(f) *Poison Prevention Packaging Act of 1970.* This section does not affect any requirements for "special packaging" as defined under § 310.3(l) of this chapter and required under the Poison Prevention Packaging Act of 1970.

(Information collection requirements approved by the Office of Management and

Budget under OMB control number 0910-0149)

Frank E. Young,

Commissioner of Food and Drugs.

Otis R. Bowen,

Secretary of Health and Human Services.

Dated: January 18, 1989.

[FR Doc. 89-2409 Filed 2-1-89; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Parts 556 and 558

Animal Drugs, Feeds, and Related Products; Maduramicin Ammonium

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 new animal drug application (NADA) filed by American Cyanamid Co. The application provides for the use of maduramicin ammonium 1 percent Type A medicated articles to make Type C medicated feeds for the prevention of coccidiosis in broiler chickens.

EFFECTIVE DATE: February 2, 1989.

FOR FURTHER INFORMATION CONTACT: Diane T. McRae, Center for Veterinary Medicine (HFV-135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4913.

SUPPLEMENTARY INFORMATION: American Cyanamid Co., Berdan Ave., Wayne, NJ 07470, is the sponsor of NADA 139-075 for maduramicin ammonium 1 percent Type A medicated articles for making Type C medicated broiler feeds. The Type C medicated feeds are for broiler chickens for the prevention of coccidiosis caused by *Eimeria acervulina, E. tenella, E. brunetti, E. maxima, E. necatrix,* and *E. mivati.* The NADA is approved, 21 CFR 558.4 is amended, and new 21 CFR 558.340 is added to reflect the approval. Additionally, the tolerance for residues of maduramicin ammonium in the edible tissues of chickens is established in 21 CFR 556.375.

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 section. 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

21 CFR Part 556

Animal drugs, Foods, Residues.

21 CFR Part 558

Animal drugs, Animal feeds.

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, Parts 556 and 558 are amended as follows:

PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

1. The authority citation for 21 CFR Part 556 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343-351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

2. New § 556.375 is added to read as follows:

§ 556.375 Maduramicin ammonium.

A tolerance is established for residues of maduramicin ammonium in chickens as follows:

(a) A tolerance for maduramicin ammonium (marker residue) in chickens is 0.38 parts per million in fat (target tissue). A tolerance refers to the concentration of marker residues in the target tissue used to monitor for total drug residues in the target animals.

(b) The safe concentrations for total maduramicin ammonium residues in uncooked edible chicken tissues are: 0.24 parts per million in muscle; 0.72 parts per million in liver; 0.48 parts per million in skin; and 0.48 parts per million in fat. A safe concentration refers to the total residue concentration considered safe in edible tissues.

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

3. The authority citation for 21 CFR Part 558 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343-351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

4. Section 558.4 is amended in paragraph (d) in the table entitled "Category II" by alphabetically adding a new entry "Maduramicin ammonium" to read as follows:

§ 558.4 Medicated feed applications.

* * * * *

(d) * * *

CATEGORY II

Drug	Assay limits, percent [1] Type A	Type B maximum (100x)	Assay limits, percent [1] type B/C [2]
*	*	*	*
Maduramicin ammonium.	90-110	54.5 g/ton (.006%).	80-120
*	*	*	*

[1] Percent of labeled amount.

[2] Values given represent ranges for either Type B or Type C medicated feeds. For those drugs that have two range limits, the first set is for a Type B medicated feed and the second set is for a Type C medicated feed. These values (ranges) have been assigned in order to provide for the possibility of dilution of a Type B medicated feed with lower assay limits to make a Type C medicated feed.

* * * * *

5. New § 558.340 is added to read as follows:

§ 558.340 Maduramicin ammonium.

(a) *Approvals.* Type A medicated articles: 4.54 grams per pound to 010042 in § 510.600(c) of this chapter.

(b) *Tolerances.* See § 556.375 of this chapter.

(c) *Conditions of use. (1) Amount.* 4.54 to 5.45 grams per ton (5 to 6 parts per million) (1 to 1.2 pounds per ton).

(2) *Indications for use.* For prevention of coccidiosis caused by *Eimeria acervulina, E. tenella, E. brunetti, E. maxima, E. necatrix, and E. mivati.*

(3) *Limitations.* For broiler chickens only. Feed continuously as sole ration. Do not feed to laying hens. Withdraw 5 days before slaughter.

Dated: January 27, 1989.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 89-2463 Filed 2-1-89; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Parts 500 and 515

Foreign Assets Control Regulations and Cuban Assets Control Regulations

AGENCY: Office of Foreign Assets Control, Department of the Treasury.

ACTIONS: Final rule; amendments.

SUMMARY: This rule makes three sets of parallel amendments to the Foreign

Assets Control Regulations, 31 CFR Part 500, and the Cuban Assets Control Regulations, 31 CFR Part 515 (hereinafter referred to jointly as the "Regulations"), together with conforming amendments. The first set of amendments terminates restrictions on the importation and exportation of publications and other tangible informational materials to bring the Regulations into conformity with section 2502(a) of the Omnibus Trade and Competitiveness Act, Pub. L. No. 100–418, 102 Stat. 1107 (the "Trade Act"). The second set of amendments sets forth the Treasury Department's long-standing interpretation that the existing general licenses unblocking certain trust and estate assets held by U.S. nationals apply only to trusts created by gift, donation, or bequest, and not to trusts such as "sinking funds" established by issuers of securities. The third set of amendments provides for the issuance of specific licenses unblocking estate assets of deceased designated nationals under certain circumstances to heirs who are not designated nationals. A set of conforming amendments incidental to the trusts and estates licensing amendments provides, in §§ 500.505 and 515.505, that persons who have never been designated nationals of an embargoed country and who are resident in, or organized under the laws of, the United States or the authorized trade territory are licensed as "unblocked nationals." A further set of conforming provisions amends the definition of "authorized trade territory" in §§ 500.322 and 515.322 to expressly include Australia and New Zealand, in accordance with long-standing Treasury policy.

EFFECTIVE DATE: February 2, 1989.

FOR FURTHER INFORMATION CONTACT: William B. Hoffman, Chief Counsel, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220. Tel. (202) 376–0408.

SUPPLEMENTARY INFORMATION: Section 2502(a)(1) of the Trade Act amends the Trading With the Enemy Act, 50 U.S.C. App. 5(b) ("TWEA"), to remove the authority of the President to regulate or prohibit, directly or indirectly, the importation from any country, or the exportation to any country, whether commercial or otherwise, of informational materials which are not otherwise controlled for exports for national security reasons under section 5 of the Export Administration Act of 1979, 50 U.S.C. 2401–2419, or with respect to which no acts are prohibited by Chapter 37 of Title 18 of the United States Code, dealing with espionage and censorship.

Financial and other transactions directly related to the physical importation and exportation of tangible informational materials are authorized. Transactions relating to the dissemination of informational materials are also authorized, such as copying, dubbing, and translating. Transactions relating to the substantive enhancement or alteration of informational materials, however, remain prohibited.

Under section 2502(a)(2) of the Trade Act, the new limitation on the President's authority under TWEA applies to existing and future sanctions programs. This rule makes revisions to the Regulations necessary to conform them to this new limitation on Presidential authority under TWEA.

The rule also revises sections 500.524 and 515.524 of the Regulations, which are identical provisions authorizing, among other things, payment of distributive shares of principal and interest due under certain blocked trusts and estates of infants and incompetents to unblocked beneficiaries. This revision is for purposes of clarification only, deemed necessary in the wake of a court decision, *Cuellar v. Secretary of the Treasury, et al.*, Civ. Action No. 87–1611 (S.D. Fla., March 16, 1988), misconstruing § 515.524 to apply to a sinking fund established by the Republic of Cuba. The revision sets forth the Treasury Department's long-standing interpretation that §§ 500.524 and 515.524 apply only to trusts created by gift, donation, or bequest, and not to business or commercial trusts, such as sinking funds established by an issuer of securities. The latter security arrangements are established in order to ensure the availability of funds to pay off installments of interest or principal as the securities mature. Treasury distinguishes such sinking funds, intended to obtain financing for business and public or private commercial activities, from trusts established in order to make a gift of funds or other assets to a specific person or class of persons. Thus, under the Treasury Department's long-standing interpretation of these provisions, sinking funds and other similar arrangements are not eligible for individual unblockings under these general licenses.

Third, this rule modifies current licensing policy regarding blocked estate assets of deceased designated nationals. Formerly, a deceased designated national (*i.e.* a national of an embargoed country at the time of his death) was treated as retaining an interest in his estate. The estate assets remained blocked, therefore, even if the heirs were not designated or specially designated nationals and no other nexus to the designated foreign country existed.

Under the new licensing policy announced in this rule, specific licenses will be issued to allow the unblocking of estate assets of deceased designated nationals under circumstances where the following conditions are met: (1) The assets have passed by intestate succession or by testamentary disposition; (2) the heir is a permanent resident of the United States or the authorized trade territory and is not a specially designated national; and (3) the heir can establish by documentary evidence the death of the decedent and his own heirship and residence in the United States or the authorized trade territory. License applications to unblock particular estate assets inherited by designated nationals, or in which an unblocked heir and a designated national share in undivided interest, will be denied. Provisions already in effect authorizing certain transactions with regard to blocked estates will continue in effect as to those assets remaining blocked under this rule.

Since the Regulations involve a foreign affairs function, the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, does not apply. Because the Regulations are issued with respect to a foreign affairs function of the United States, they are not subject to Executive Order 12291 of February 17, 1981, dealing with Federal regulations.

This rule is being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collections of information contained in this rule have been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget ("OMB") under control number 1505–0075.

The collections of information in this regulation are in §§ 500.557, 500.568, 515.552, and 515.568 of Title 31 of the Code of Federal Regulations. Submission of the information required under these sections is necessary in order for the Office of Foreign Assets Control to evaluate the merits of a license application seeking to unblock

frozen estate assets of decreased designated nationals, a transaction that would otherwise be prohibited under the Regulations. The likely respondents are individuals.

The estimated total annual reporting burden is 500 hours. The estimated average annual burden hours per respondent is five hours. The estimated number of respondents is 100. Comments concerning the collection of information and the accuracy of this burden estimate, and suggestions for reducing this burden should be directed to the Office of Information and Regulatory Affairs, attention: Desk Officer for the Office of Foreign Assets Control, U.S. Department of the Treasury, or the Paperwork Reduction Project (1505-0075), of the Office of Management and Budget, Washington, DC 20503, with copies to the Office of Information Resources Management, Department of the Treasury, 15th & Pennsylvania Avenue, NW., Washington, DC 20220. Such comments should be submitted by April 3, 1989.

List of Subjects in 31 CFR Parts 500 and 515

Australia, Cambodia, Cuba, Exports, Foreign Assets Control, Imports, Informational materials, New Zealand, North Korea, Publications, Securities, Trusts and Estates, Vietnam.

For the reasons set forth in the preamble, Title 31, Chapter V of the Code of Federal Regulations, is amended as follows.

31 CFR Part 500 is amended as set forth below:

PART 500—FOREIGN ASSETS CONTROL REGULATIONS

1. The authority citation for Part 500 continues to read as follows:

Authority: 50 U.S.C. App. 5(b), as amended; E.O. 9193, 7 FR 5205, 3 CFR 1938–1943 Cum. Supp., p. 1174; E.O. 9989, 13 FR 4891, 3 CFR 1943–1948 Comp., p. 748.

Subpart B—Prohibitions

2. Section 500.206 is added to read as follows:

§ 500.206 Exemption of informational materials.

(a) The importation from any country, and the exportation to any country, whether commercial or otherwise, of informational materials, as defined in § 500.332, are exempt from the prohibitions and regulations of this part.

(b) All transactions of common carriers incident to the importation or exportation of mail or informational materials between the United States and any foreign country designated under § 500.201 are exempt from the prohibitions and regulations of this part.

(c) This section does not authorize transactions related to informational materials not fully created and in existence at the date of the transaction, or to the substantive or artistic alteration or enhancement of informational materials, or to the provision of marketing and business consulting services by a person subject to the jurisdiction of the United States. Such prohibited transactions include, without limitation, payment of advances for informational materials not yet created and completed, provision of services to market, produce or co-produce, create or assist in the creation of informational materials, and payment or royalties to a designated national with respect to income received for enhancements or alterations made by persons subject to the jurisdiction of the United States to informational materials imported from a designated national.

(d) This section does not authorize transactions incident to the exportation of restricted technical data as defined in § 799 of the Export Administration Regulations, 15 CFR Parts 768–799, or to the exportation of goods for use in the transmission of any data. The exportation of such goods to designated foreign countries is prohibited, as provided in § 500.201 of this part and § 785.1 of the Export Administration Regulations.

Example #1: A U.S. publisher ships 500 copies of a book to Vietnam directly from San Francisco aboard a chartered aircraft, and receives payment by means of a letter of credit issued by a Vietnamese bank and confirmed by an American bank. These are permissible transactions under this section.

Example #2: A Vietnamese party exports a single master copy of a Vietnamese motion picture to a U.S. party and licenses the U.S. party to duplicate, distribute, show and exploit in the United States the Vietnamese film in any medium, including home video distribution, for five years, with the Vietnamese party receiving 40% of the net income. All transactions relating to the activities described in this example are authorized under this section or § 500.550.

Example #3: A U.S. recording company proposes to contract with a Vietnamese musician to create certain musical compositions, and to advance royalties of $10,000 to the musician. The music written in Vietnam is to be recorded in a studio that the recording company owns in the Bahamas. These are all prohibited transactions. The U.S. party is prohibited under § 500.201 from contracting for the Vietnamese musician's services, from transferring $10,000 to Vietnam to pay for those services, and from providing the Vietnamese with production services through the use of its studio in the Bahamas. No informational materials are in being at the time of these proposed transactions. However, the U.S. recording company may contract to purchase and import preexisting recordings by the Vietnamese musician, or to copy the recordings in the United States and pay negotiated royalties to Vietnam under this section or § 500.550.

Example #4: A Vietnamese party enters into a subpublication agreement licensing a U.S. party to print and publish copies of a musical composition and to sub-license rights of public performance, adaptation, and arrangement of the musical composition, with payment to be a percentage of income received. All transactions related to the activities described in this example are authorized under this section and § 500.550, except for synchronization, adaption, and arrangement, which constitute artistic enhancement of the Vietnamese composition. Payment to the Vietnamese party may not reflect income received as a result of these enhancements.

Subpart C—General Definitions

§ 500.307 [Amended]

3. Section 500.307 is amended by adding the phrase "pursuant to § 500.505" after "Any person licensed * * * ."

4. Paragraph (a)(3) of §500.322 is revised to read as follows:

500.322 Authorized trade territory; member of the authorized trade territory.

(a) * * *

(3) Australia and Oceania, including Indonesia, New Zealand, and the Philippines;

* * * * *

5. Section 500.332 is added to read as follows:

§ 500.332 Informational materials.

(a) For purposes of this part, the term "informational materials" means information recorded in tangible form, *i.e.*, publications, films, posters, phonograph records, photographs, microfilms, microfiche, tapes, and other tangible informational articles.

(b) The term "informational materials" does not include:

(1) Items that are controlled for export under section 5 of the Export Administration Act of 1979, or with respect to which acts are prohibited by chapter 37 of title 18 of the United States Code; and

(2) Intangible items, such as telecommunications transmissions.

Subpart D—Interpretations

§500.407 [Amended]

6. Section 500.407 is amended by adding the words ", and § 500.568 which authorizes the unblocking by specific license of estate assets to certain heirs under certain circumstances." to the end of the last sentence.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

7. Section 500.505 is amended by redesignating existing paragraphs (a) (1) and (2) as paragraphs (a) (2) and (3) and by adding a new paragraph (a)(1) to read as follows:

§ 500.505 Certain persons unblocked.

(a) * * *

(1) Any person resident in, or organized under the laws of a jurisdiction in, the United States or the authorized trade territory who or which has never been a designated national;

* * * * *

8. Section 50.523 is amended by adding a new paragraph (a)(4), and concluding text to paragraph (a), and by revising paragraph (b)(3) to read as follows:

§ 500.523 Transactions incident to the administration of decedents' estates.

(a) * * *

* * * * *

(4) Any transfer of title pursuant to a valid testamentary disposition.

This paragraph does not authorize any unblocking or distribution of estate assets to a designated national.

(b) * * *

* * * * *

(3) The assets are unblocked under a specific license issued pursuant to § 500.568.

9. Paragraph (a) of § 500.524 is revised to read as follows, and a new paragraph (d) is added:

§ 500.524 Payment from, and transactions in the administration of, certain trusts and estates.

(a) Any bank or trust company incorporated under the laws of the United States, or of any State, territory, possession, or district of the United States, or any private bank subject to supervision and examination under the banking laws of any State of the United States, acting as trustee of a trust created by gift, donation or bequest and administered in the United States, or as legal representative of an estate of an infant or incompetent administered in the United States, in which trust or estate one or more persons who are designated nationals have an interest, beneficial or otherwise, or are co-trustees or co-representatives, is hereby authorized to engage in the following transactions:

* * * * *

(d) The application of this section to trusts is limited to trusts established by gift, donation, or bequest from individuals or entities to benefit specific heirs, charitable causes, and similar beneficiaries. This section does not apply to trusts established for business or commercial purposes, such as sinking funds established by an insurer of securities in order to secure payment of interest or principal due on such securities.

§ 500.525 [Amended]

10. Section 500.525 is amended by removing the word "limited" from the first sentence of paragraph (b) and by adding ", § 500.568," after "§ 500.523".

Appendix to § 500.536 [Removed]

11. The Appendix to § 500.536 is removed.

12. Section 500.550 is revised to read as follows:

§ 500.550 Transactions related to informational materials.

(a) All financial and other transactions directly incident to the physical importation or exportation of informational materials are authorized.

(b) Transactions relating to the dissemination of informational materials are authorized, including remittance of royalties paid for informational materials that are reproduced, translated, subtitled, or dubbed. This section does not authorize the remittance of royalties or other payments relating to works not yet in being, or for marketing and business consulting services, or artistic or other substantive alteration or enhancements to informational materials, as provided in § 500.206(c).

13. Section 500.557 is revised to read as follows:

§ 500.557 Proceeds of insurance policies.

(a) Specific licenses are issued authorizing payment of the proceeds of blocked life insurance policies issued on the life of a North Korean, North Vietnamese, Cambodian, or South Vietnamese national, who died in one of those countries after the applicable effective date to certain beneficiaries licensed as unblocked nationals pursuant to § 500.505, as follows:

(1) The applicant is a permanent resident of the United States or the authorized trade territory and is not a specially designated national; and

(2) No interest on the part of a designated national not licensed as an unblocked national exists in that portion of the funds to which the applicant is entitled.

(b) Applications for specific licenses under this section must include all of the following information:

(1) Proof of permanent residence in the United States or the authorized trade territory, to be established by the submission of documentation issued by relevant government authorities that must include at least two of the following documents: (i) passport; (ii) voter registration card; (iii) permanent resident alien card; or (iv) national identity card. Other documents tending to show residency, such as income tax returns, may also be submitted in support of government documentation, but will not suffice in and of themselves; and

(2) Proof of entitlement under the insurance policy to be established by a copy of the policy and an affidavit from an appropriate officer of a recognized insurance company acknowledging the legitimacy of the beneficiary's claim and the amount of the payment.

(c) Any document provided pursuant to this section that is not written in the English language must be accompanied by a translation into English, as well as a certification by the translator that he is not an interested party to the proceeding, is qualified to make the translation, and has made an accurate translation of the document in question.

§ 500.562 [Removed and reserved]

14. Section 500.562 is removed and reserved.

15. Section 500.563 is amended by removing paragraph (b) and redesignating paragraphs (c) as (b), (d) as (c) and (e) as (d), and by revising paragraph (a)(3) to read as follows:

§ 500.563 Certain transactions incident to travel to and in North Korea, North or South Vietnam, or Cambodia.

(a) * * *

(3) The purchase in any foreign country designated under § 500.201 of this part, and importation as accompanied baggage, of merchandise with a foreign market value not to exceed $100 per person for personal use only. Such merchandise may not be resold. This authorization may be used only once in every six consecutive months. As provided in § 500.206 of this part, informational materials are exempt from this restriction.

* * * * *

16. Section 500.568 is added to read as follows:

§ 500.568 U.S. assets of blocked decedents.

(a) Specific licenses may be issued unblocking the net pro rata shares of certain heirs of designated nationals in U.S.-located estate assets, after deducting the total debt due creditors for claims that accrued prior to the effective date, in cases where all of the following conditions are met:

(1) The applicant is a permanent resident of the United States or the authorized trade territory and is not a specially designated national; and

(2) No interest on the part of a designated national not licensed as an unblocked national pursuant to § 500.505 exists in that portion of the assets to which the applicant is entitled.

(b) Applications for specific licenses under this section must include all of the following information:

(1) Proof of permanent residence in the United States or the authorized trade territory, to be established by the submission of documentation issued by relevant government authorities that must include at least two of the following documents: (i) passport; (ii) voter registration card; (iii) permanent resident alien card; or (iv) national identity card. Other documents tending to show residency, such as income tax returns, may also be submitted in support of government documentation, but will not suffice in and of themselves;

(2) Proof of death of the designated national to be established by a death certificate;

(3) Proof of heirship, to be established by a copy of the decedent's duly executed will certified by a probate court, a court decree determining the heirs, or, failing the availability of such documents, copies of certificates establishing the relationship of the heir to the deceased, *e.g.*, birth or marriage certificates; and

(4) A description of the assets involved, including interest due on blocked funds since April 1, 1979, the name and address of the institution in which the assets are held, the account or safe deposit box number, the name in which the assets are held and a statement of all known encumbrances or claims against them.

(c) Any document provided pursuant to this section that is not written in the English language must be accompanied by a translation into English, as well as a certification by the translator that he is not an interested party to the proceeding, is qualified to make the translation, and has made an accurate translation of the document in question.

31 CFR Part 515 is amended as set forth below:

PART 515—CUBAN ASSETS CONTROL REGULATIONS

1. The authority citation for Part 515 continues to read as follows:

Authority: 50 U.S.C. App. 5(b), as amended; 22 U.S.C. 2370(a); Proc. 3447, 27 FR 1085, 3 CFR 1959–1963 Comp. p. 157; E.O. 9193, 7 FR 5205, 3 CFR 1938–1943 Cum. Supp. p. 1174; E.O. 9989, 13 FR 4891, 3 CFR 1943–1948 Comp. p. 748.

Subpart B—Prohibitions

2. Section 515.206 is added to read as follows:

§ 515.206 Exemption of informational materials.

(a) The importation from any country, and the exportation to any country, whether commercial or otherwise, of informational materials, as defined in § 515.332, are exempt from the prohibitions and regulations of this part.

(b) All transactions of common carriers incident to the importation or exportation of mail or informational materials between the United States and any foreign country designated under § 515.201 are exempt from the prohibitions and regulations of this part.

(c) This section does not authorize transactions related to informational materials not fully created and in existence at the date of the transaction, or to the substantive or artistic alteration or enhancement of informational materials, or to the provision of marketing and business consulting services by a person subject to the jurisdiction of the United States. Such prohibited transactions include, without limitation, payment of advances for informational materials not yet created and completed, provision of services to market, produce or co-produce, create or assist in the creation of informational materials, and payment of royalties to a designated national with respect to income received for enhancements or alterations made by persons subject to the jurisdiction of the United States to informational materials imported from a designated national.

(d) This section does not authorize transactions incident to the transmission of restricted technical data as defined in section 779 of the Export Administration Regulations, 15 CFR Parts 768–799, or to the exportation of goods for use in the transmission of any data. The exportation of such goods to designated foreign countries is prohibited, as provided in § 515.201 of this part and § 785.1 of the Export Administration Regulations.

(e) This section does not authorize transactions related to travel to Cuba when such travel is not otherwise authorized under § 515.560 or by specific license.

Example #1: A U.S. publisher ships 500 copies of a book to Cuba directly from Miami aboard a chartered aircraft, and receives payment by means of a letter of credit issued by a Cuban bank and confirmed by an American bank. These are permissible transactions under this section.

Example #2: A Cuban party exports a single master copy of a Cuban motion picture to a U.S. party and licenses the U.S. party to duplicate, distribute, show and exploit in the United States the Cuban film in any medium, including home video distribution, for five years, with the Cuban party receiving 40% of the net income. All transactions relating to the activities described in this example are authorized under this section or § 515.550.

Example #3: A U.S. recording company proposes to contract with a Cuban musician to create certain musical compositions, and to advance royalties of $10,000 to the musician. The music written in Cuba is to be recorded in a studio that the recording company owns in the Bahamas. These are all prohibited transactions. The U.S. party is prohibited under § 515.201 from contracting for the Cuban musician's services, from transferring $10,000 to Cuba to pay for those services, and from providing the Cuban with production services through the use of its studio in the Bahamas. No informational materials are in being at the time of these proposed transactions. However, the U.S. recording company may contract to purchase and import preexisting recordings by the Cuban musician, or to copy the recordings in the United States and pay negotiated royalties to Cuba under this section or § 515.550.

Example #4: A Cuban party enters into a subpublication agreement licensing a U.S. party to print and publish copies of a musicial composition and to sub-license rights of public performance, adaptation, and arrangement of the musical composition, with payment to be a percentage of income received. All transactions related to the activities described in this example are authorized under this section and § 515.550, except for synchronization, adaptation, and arrangement, which constitute artistic enhancement of the Cuban composition. Payment to the Cuban party may not reflect income received as a result of these enhancements.

Subpart C—General Definitions

§ 515.307 [Amended]

3. Section 515.307 is amended by adding the phrase "pursuant to § 515.505" after "Any person licensed * * *."

4. Paragraph (a)(3) of § 515.322 is revised to read as follows:

§ 515.322 Authorized trade territory; member of the authorized trade territory.

(a) * * *

* * * * *

(3) Australia and Oceania, including Indonesia, New Zealand, and the Philippines;

* * * * *

5. Section 515.332 is added to read as follows:

§ 515.332 Informational materials.

(a) For purposes of this part, the term "informational materials" means:

(1) Publications, films, posters, phonograph records, photographs, microfilms, microfiche, tapes, and other

informational articles, including tangible items described in the following:

(2) 15 CFR 799.1, Control List, Group 5, CL No. 7599I: microfilm that reproduces the content of certain publications, and similar materials;

(3) 15 CFR 799.1, Control List, Group 9, CL No. 7999I: certian publications and related materials; and

(4) 15 CFR 779.3, General License GTDA, technical data available to all destinations;

(b) The term "informational materials" does not include:

(1) Items that are controlled for export under § 5 of the Export Administration Act of 1979, or with respect to which acts are prohibited by chapter 37 of title 18 of the United States Code; and

(2) Intangible items such as telecommunications transmissions.

Subpart D—Interpretations

§ 515.407 [Amended]

6. Section 515.407 is amended by adding the words ", and § 515.568 which authorizes the unblocking by specific license of estate assets to certain heirs under certain circumstances." to the end of the last sentence.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

7. Section 515.505 is amended by redesignating existing paragraphs (a) (1) and (2) as paragraphs (a) (2) and (3) and by adding a new paragraph (a)(1) to read as follows:

§ 515.505 Certain persons unblocked.

(a) * * *

(1) Any person resident in, or organized under the laws of a jurisdiction in, the United States or the authorized trade territory who or which has never been a designated national;

* * * * *

8. Section 515.523 is amended by adding a new paragraph (a)(4), and concluding text to paragraph (a), and by revising paragraph (b)(3) to read as follows:

§ 515.523 Transactions incident to the administration of decedents' estates.

(a) * * *

(4) Any transfer of title pursuant to a valid testamentary disposition.

This paragraph does not authorize any unblocking or distribution of estate assets to a designated national.

(b) * * *

(3) The assets are unblocked under a specific license issued pursuant to section 515.568.

9. Paragraph (a) of § 515.524 is revised to read as follows, and a new paragraph (d) is added:

§ 515.524 Payment from, and transactions in the administration of, certain trusts and estates.

(a) Any bank or trust company incorporated under the laws of the United States, or of any State, territory, possession, or district of the United States, or any private bank subject to supervision and examination under the banking laws of any State of the United States, acting as trustee of a trust created by gift, donation or bequest and administered in the United States, or as legal representative of an estate of an infant or incompetent administered in the United States, in which trust or estate one or more persons who are designated nationals have an interest, beneficial or otherwise, or are co-trustees or co-representatives, is hereby authorized to engage in the following transactions:

* * * * *

(d) The application of this section to trusts is limited to trusts established by gift, donation, or bequest from individuals or entities to benefit specific heirs, charitable causes, and similar beneficiaries. This section does not apply to trusts established for business or commercial purposes, such as sinking funds established by an issuer of securities in order to secure payment of interest or principal due on such securities.

§ 515.525 [Amended]

10. Section 515.525 is amended by removing the word "limited" from the first sentence of paragraph (b) and by adding ", § 515.568," after "§ 515.523".

Appendix to § 515.536 [Removed]

11. The Appendix to § 515.536 is removed.

12. Section 515.545 is revised to read as follows:

§ 515.545 Transactions related to informational materials.

(a) All financial and other transactions directly incident to the physical importation or exportation of informational materials are authorized.

(b) Transactions relating to the dissemination of informational materials are authorized, including remittance of royalties paid for informational materials that are reproduced, translated, subtitled, or dubbed. This section does not authorize the remittance of royalties or other payments relating to works not yet in being, or for marketing and business consulting services, or artistic or other substantive alteration or enhancements to informational materials, as provided in § 515.206(c).

§ 515.546 [Removed and reserved]

13. Section 515.546 is removed and reserved.

§ 515.550 [Removed and reserved]

14. Section 515.550 is removed and reserved.

15. Section 515.551 is amended by removing the third sentence and revising the second sentence of paragraph (a)(3) to read as follows:

§ 515.551 Joint bank accounts.

(a) * * *

(3) * * * However, if 50 percent of the account has been unblocked under that policy, and the spouse who is the blocked Cuban national subsequently dies, the surviving spouse may be entitled to a license unblocking the remainder of the assets under § 515.568.

* * * * *

16. Section 515.552 is revised to read as follows:

§ 515.552 Proceeds of insurance policies.

(a) Specific licenses are issued authorizing payment of the proceeds of blocked life insurance policies issued on the life of a Cuban national who died in Cuba after July 8, 1963, to certain beneficiaries licensed as unblocked nationals pursuant to § 515.505, as follows:

(1) The applicant is a permanent resident of the United States or the authorized trade territory and is not a specially designated national; and

(2) No interest on the part of a designated national not licensed as an unblocked national exists in that portion of the funds to which the applicant is entitled.

(b) Applications for specific licenses under this section must include all of the following information:

(1) Proof of permanent residence in the United States or the authorized trade territory, to be established by the submission of documentation issued by relevant government authorities that must include at least two of the following documents: (i) Passport; (ii) voter registration card; (iii) permanent resident alien card; or (iv) national identity card. Other documents tending to show residency, such as income tax returns, may also be submitted in support of government documentation, but will not suffice in and of themselves;

(2) Proof of entitlement under the insurance policy to be established by a copy of the policy and an affidavit from an appropriate officer of a recognized insurance company acknowledging the legitimacy of the beneficiary's claim and the amount of the payment; and

(c) Any document provided pursuant to this section that is not written in the English language must be accompanied by a translation into English, as well as a certification by the translator that he is not an interested party to the proceeding, is qualified to make the translation, and has made an accurate translation of the document in question.

17. Paragraphs (c) (3) and (5) of § 515.560 are revised to read as follows, and paragraph (e) of § 515.560 is removed and reserved:

§ 515.560 Certain transactions incident to travel to and within Cuba.

* * * * *

(c) * * *

(3) The purchase in Cuba, and importation as accompanied baggage, of merchandise with a foreign market value not to exceed $100 per person for personal use only. Such merchandise may not be resold. This authorization may be used only once in every six consecutive months. As provided in § 515.206 of this part, informational materials are exempt from this restriction.

* * * * *

(5) All transactions concerning aircraft or vessels incidental to their nonscheduled flights or voyages to, from, or within Cuba. This paragraph does not authorize the carriage of any merchandise to and from Cuba, except accompanied baggage, informational materials as defined in § 515.332, and merchandise authorized by paragraph (c)(3) of this section.

* * * * *

18. Section 515.568 is added to read as follows:

§ 515.568 U.S. assets of certain Cuban decedents.

(a) Specific licenses may be issued unblocking the net pro rata shares of certain heirs of designated nationals in U.S.-located estate assets, after deducting the total debt due creditors for claims that accrued prior to the effective date, in cases where all of the following conditions are met:

(1) The applicant is a permanent resident of the United States or the authorized trade territory and is not a specially designated national; and

(2) No interest on the part of a designated national not licensed as an unblocked national pursuant to § 515.505 exists in that portion of the assets to which the applicant is entitled.

(b) Applications for specific licenses under this section must include all of the following information:

(1) Proof of permanent residence in the United States or the authorized trade territory, to be established by the submission of documentation issued by relevant government authorities that must include at least two of the following documents: (i) passport; (ii) voter reigstration card; (iii) permanent resident alien card; or (iv) national identity card. Other documents tending to show residency, such as income tax returns, may also be submitted in support of government documentation, but will not suffice in and of themselves;

(2) Proof of death of the designated national to be established by a death certificate;

(3) Proof of heirship, to be established by a copy of the decedent's duly executed will certified by a probate court, a court decree determining the heirs, or, failing the availability of such documents, copies of certificates establishing the relationship of the heir to the deceased, *e.g.*, birth or marriage certificates;

(4) A description of the assets involved, including interest due on blocked funds since April 1, 1979, the name and address of the institution in which the assets are held, the account or safe deposit box number, the name in which the assets are held and a statement of all known encumbrances or claims against them; and

(c) Any document provided pursuant to this section that is not written in the English language must be accompanied by a translation into English, as well as a certification by the translator that he is not an interested party to the proceeding, is qualified to make the translation, and has made an accurate translation of the document in question.

Date: January 9, 1989.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: January 23, 1989.

Salvatore R. Martoche,

Assistant Secretary (Enforcement).

[FR Doc. 89-2373 Filed 1-30-89; 11:45 am]

BILLING CODE 4810-25-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 286b

Privacy Program

AGENCY: Department of Defense.

ACTION: Final rule; suspension of date.

SUMMARY: The Department of Defense published an amendment to 32 CFR Part 286b on January 19, 1989 (54 FR 2101). In the last sentence of the **DATE** paragraph reading "All outstanding IG, DoD-related Privacy Act requests remaining on file with the Office of the Secretary of Defense will be transferred January 3, 1989.", the date "January 3, 1989" is suspended to "April 3, 1989".

EFFECTIVE DATE: February 2, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Dan Cragg, OSD Privacy Act Officer, Records Management Division, The Pentagon, Washington, DC 20301-1100, telephone 202-697-2501 or AUTOVON 227-2501.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

January 26, 1989.

[FR Doc. 89-2249 Filed 2-1-89; 8:45 am]

BILLING CODE 3810-01-M

VETERANS ADMINISTRATION

38 CFR Part 3

Evidence Suitable To Establish Dependents

AGENCY: Veterans Administration.

ACTION: Final Regulatory Amendment.

SUMMARY: The Veterans Administration (VA) has amended its regulation regarding the acceptability of proofs to establish dependents or verify a death. The Department of the Army requested an expansion of the current regulation to permit its civilian, as well as military, personnel to authenticate photocopies of marriage, birth and death certificates. The effect of the change will be to facilitate processing by the military services, improving assistance to claimants for VA benefits.

EFFECTIVE DATE: March 6, 1989.

FOR FURTHER INFORMATION CONTACT: Robert M. White, Chief, Regulations Staff, Compensation and Pension Service, Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-3005.

SUPPLEMENTARY INFORMATION: On pages 36586-87 of the **Federal Register** of September 21, 1988, the VA published a proposed regulatory amendment on acceptability of photocopied evidence. Interested persons were invited to submit comments, suggestions or objections by October 21, 1988. Since no

comments, suggestions or objections were received, the amendment is adopted as proposed.

The Administrator hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the Administrator has determined that this regulatory amendment is non-major for the following reasons:

(1) It will not have an annual effect on the economy of $100 million or more.

(2) It will not cause a major increase in costs or prices.

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance program numbers are 64.101, 64.104, 64.105, 64.109 and 64.110.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

Approved: January 24, 1989.

Thomas E. Harvey,

Acting Administrator.

PART 3—[AMENDED]

In 38 CFR Part 3, Adjudication, § 3.204 is amended by revising paragraph (c)(2)(iii) to read as follows:

§ 3.204 Evidence other than evidence of service.

* * * * *

(c) *Acceptability of photocopies.* * * *

(2) * * *

(iii) Military or civilian personnel appointed on orders for this purpose by the commander of a military installation.

* * * * *

(Authority: 38 U.S.C. 210(c))

[FR Doc. 89–2418 Filed 2–1–89; 8:45 am]

BILLING CODE 8320–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–3509–6]

Approval and Promulgation of Implementation Plans; Disapproval of Three Architectural Coatings Rules in California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final rulemaking.

SUMMARY: This notice takes final action to disapprove three volatile organic compound (VOC) control rules which were submitted by the California Air Resources Board (CARB) as revisions to the California State Implementation Plan (SIP). The rules concern architectural coatings requirements in Placer County, Sutter County, and the South Coast Air Quality Management District and were submitted to EPA on November 12, 1985, and February 10, 1986. EPA is disapproving the rules because they are unjustified relaxations from existing SIP requirements in nonattainment areas. The rules are inconsistent with the Clean Air Act (CAA), 40 CFR Part 51, and EPA policy.

EPA proposed to disapprove these revisions in the May 11, 1988, **Federal Register** (53 FR 16732). No comments were received during the public comment period. EPA is therefore taking final action to disapprove these revisions.

DATE: This action is effective March 6, 1989.

ADDRESSES: Copies of the submitted rules and EPA's evaluation of the submittals are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rules are also available at the following locations:

California Air Resources Board, General Projects Section, Technical Support Division, 1131 S Street, Sacramento, CA 95814.

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

Placer County Air Pollution Control District, 11484 B Avenue, Auburn, CA 95603.

Sutter County Air Pollution Control District, 142 Garden Way, Yuba City, CA 95991.

South Coast Air Quality Management District, 9150 Flair Drive, El Monte, CA 91731.

FOR FURTHER INFORMATION CONTACT: John Ungvarsky, State Implementation Plan Section (A–2–3), Air Management Division, Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, (415) 974–7639; (FTS) 454–7639.

SUPPLEMENTARY INFORMATION:

Background

CARB submitted the following rules for the control of VOC emissions on the dates indicated:

November 12, 1985

South Coast Air Quality Management District

Rule 1113—Architectural Coatings.

February 10, 1986

Placer County Air Pollution Control District

Rule 218—Architectural Coatings.

Sutter County Air Pollution Control District

Rule 3.15—Architectural Coatings.

On May 11, 1988, EPA published in the **Federal Register** a proposal to disapprove the rule revisions and solicited public comments on the disapproval. Copies of EPA's detailed evaluations, including policy memoranda, were made available for public inspection at EPA's Region 9 office. No public comments were received regarding the proposed disapproval.

EPA Evaluation

EPA has evaluated the architectural coatings rules listed above for consistency with the CAA, 40 CFR Part 51, and EPA policy. EPA has also evaluated the rules to determine whether they weaken or strengthen the existing federally approved SIP.

Revised South Coast Rule 1113: (1) Extends the final limit compliance date for non-flat, non-specialty coatings to September 2, 1989; (2) adds interim VOC content limits for certain types of industrial maintenance primers and topcoats; and (3) effects labeling requirements for industrial maintenance coatings on January 1, 1986. Overall, and individually, the revisions to Rule 1113 represent a significant relaxation of the existing SIP in an area which has not attained the National Ambient Air Quality Standards (NAAQS) for ozone. EPA is disapproving the rule because it is inconsistent with the requirements of the CAA, 40 CFR Part 51, and EPA policy.

Placer County Rule 218 and Sutter County Rule 3.15 have been revised and restructured to: (1) Establish interim and final VOC content limits for a number of specialty coatings; and (2) extend the final compliance date for non-flat, non-specialty coatings to September 1, 1989. Overall and individually, the revisions to Placer Rule 218 and Sutter Rule 3.15

represent significant relaxations of the existing SIP. They cannot be approved because they are inconsistent with the requirements of the CAA, 40 CFR Part 51, and EPA policy.

EPA Requirements

EPA's requirements governing proposed SIP revisions are contained in the CAA, section 110 and Part D, 40 CFR Part 51, and various EPA policy memoranda. Section 110(a)(2)(A) and 172(a)(1) of the CAA, 40 CFR 51.110 (formerly 51.10), and EPA policy require that SIPs provide for the attainment of the NAAQS "as expeditiously as practicable." Section 110(a)(2)(B) of the CAA, 40 CFR 51.110 (formerly 51.12 and 51.13), and EPA policy require that SIPs also insure maintenance of the NAAQS. Section 110(a)(3)(A) of the CAA and 40 CFR 51.104 (formerly 51.6) extend the SIP requirements in Section 110 and 40 CFR Part 51 to SIP revisions.

EPA cannot approve a SIP or a SIP revision without a demonstration that the SIP or SIP revision is adequate to attain and maintain the standards. EPA's policy is that the burden of proof is on the State to provide an adequate demonstration. If the State fails to provide an adequate demonstration, EPA must disapprove the submission for failure to satisfy the requirements of the Act.

Section 172 of the Clean Air Act requires states to adopt regulations which reflect reasonably available control technology (RACT), at a minimum, in order to attain and maintain the NAAQS. Although the existing EPA approved rules may require controls more stringent than RACT, these controls are necessary for the attainment and maintenance of the ozone standard. The revised rules would allow increased emissions in areas which have not demonstrated attainment of the ozone standard. EPA is therefore disapproving the revisions because they fail to satisfy the requirements of section 172 of the Act.

In this case, the State of California has failed to demonstrate that the submitted architectural coatings rule revisions will provide for attainment and maintenance of the NAAQS. The State has also not demonstrated that it would be unreasonable to continue to impose the existing SIP limits on the subject sources. EPA has evidence which indicates that at least forty companies have certified compliance with the limits for non-flat, non-specialty coatings which these revisions would relax. In an additional survey, fourteen out of fifteen companies indicated having a compliant oil-based coating. Therefore, both water-based and oil-based coatings are available which meet the limits currently in the SIP. However, no comments were received in response to EPA's disapproval indicating that compliance with the existing rules could not be achieved. EPA will continue to accept additional information regarding quality, price, and performance of the non-flat architectural coatings affected by this rule.

Final Action

Under Section 110 and Part D of the CAA, EPA is taking final action to disapprove amended South Coast Rule 1113, Placer County Rule 218, and Sutter County Rule 3.15 because they weaken the existing California SIP and are inconsistent with the CAA, 40 CFR Part 51, and EPA Policy.

Regulatory Process

Under Executive Order 12291, today's action is not "Major." It has been submitted to the Office of Management and Budget for review.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 3, 1989. This action may not be challenged after the expiration of the 60 day period (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and Recordkeeping requirements.

Date: January 18, 1989.

Lee M. Thomas,

Administrator.

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

PART 52—[AMENDED]

Subpart F—California

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

Authority: 42 U.S.C. 7401–7642.

2. Section 52.229 is amended by adding paragraph (b)(2)(iii) to read as follows:

§ 52.229 Control strategy and regulations: Photochemical oxidants (hydrocarbons), Metropolitan Los Angeles Intrastate Region.

* * * * *

(b) * * *

(2) * * *

(iii) Rule 1113, Architectural Coatings, adopted on August 2, 1985 and submitted to EPA on November 12, 1985. The version of this rule by the same number and title submitted on July 10, 1984 and approved by EPA on January 24, 1985 is retained.

3. Section 52.269 is amended by adding paragraphs (b)(2)(ii) and (b)(2)(iii) to read as follows:

§ 52.269 Control strategy and regulations: Photochemical oxidants (hydrocarbons) and carbon monoxide.

* * * * *

(b) * * *

(2) * * *

(ii) Placer County APCD.

(A) Rule 218, Architectural Coatings, adopted on May 20, 1985 and submitted to EPA on February 10, 1986 is disapproved. The version of this rule by the same number and title submitted on July 19, 1983 and approved by EPA on May 3, 1984 is retained.

(iii) Sutter County APCD.

(A) Rule 3.15, Architectural Coatings, adopted on October 15, 1985 and submitted to EPA on February 10, 1986 is disapproved. The version of this rule by the same number and title submitted on January 1, 1981 and approved by EPA on May 3, 1982 is retained.

* * * * *

[FR Doc. 89–1786 Filed 2–1–89; 8:45 am]

BILLING CODE 6560–50–M

---

40 CFR Part 81

[FRL–3513–9]

Designation of Areas for Air Quality Planning Purposes; State of Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Section 107(d) of the Clean Air Act, as amended, provides for the designation of areas as either attainment, nonattainment, or unclassified with respect to the National Ambient Air Quality Standards (NAAQS). Today, EPA takes final action to redesignate Des Moines and Lee Townships in Polk County, Iowa, attainment with respect to the NAAQS for carbon monoxide (CO). After this action, all areas of Polk County and the state of Iowa become attainment for CO. This action is in response to a request from the Iowa Department of Natural Resources (IDNR). EPA is acting on this request using the direct-to-final procedure.

DATES: The effective date of this rulemaking is April 3, 1989 unless EPA receives a notice that someone wishes to make adverse or critical comments by March 6, 1989.

ADDRESSES: Comments should be sent to Robert J. Chanslor, Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101. Copies of the state's submittal are available for inspection during normal business hours at the above address; at the Iowa Department of Natural Resources, 900 East Grand, Des Moines, Iowa 50319; and the Environmental Protection Agency, Public Information Reference Unit, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Robert J. Chanslor at (913) 236-2893; FTS 757-2893.

SUPPLEMENTARY INFORMATION: In response to section 107(d) of the Clean Air Act, as amended, EPA and the state of Iowa have designated all areas of the state as attaining the NAAQS, not attaining the NAAQS, or having insufficient data to make a determination. An attainment area is one having air quality equal to or better than an NAAQS. A nonattainment area is one having air quality worse than an NAAQS. An unclassified area is one for which there is insufficient air quality data upon which to determine whether an area is attainment or nonattainment. The attainment status of areas of the state is identified at 40 CFR Part 81, Subpart C.

On March 3, 1978, EPA designated Des Moines and Lee Townships in Polk County, Iowa, nonattainment for CO (43 FR 8995). The remainder of Polk County was designated attainment for CO. In response to the requirements of Part D of the Clean Air Act, as amended in 1977, the state of Iowa submitted a plan showing attainment of the CO NAAQS in Des Moines and Lee Townships (Des Moines). The attainment demonstration was approved on March 6, 1980 (45 FR 14561).

EPA's redesignation policy for CO requires the most recent eight consecutive quarters of air quality data with no standard violations and an approved State implementation plan (SIP). Alternatively, the state may submit four quarters of the most recent air quality data plus modeling which projects continued attainment in the future in lieu of the most recent eight consecutive quarters.

On April 26, 1988, the IDNR submitted a request that EPA redesignate Des Moines, Iowa, attainment for CO. The state's request is supported by air quality data for 1985, 1986, and 1987 showing no violations of the CO NAAQS. Additionally, the state's submittal contains modeling results which project continued attainment through 1990. The state submittal identifies transportation control measures (TCM) instituted in Des Moines which are believed to have significantly contributed to the reduced concentrations of CO.

The model used was the EPA-approved CALINE 3 with emission factors developed using EPA's MOBILE-3 model. The state's results project continuing attainment through 1990. There are no significant stationary sources of CO in Des Moines; for that reason, the approved control strategy demonstration relied upon TCMs. Thus, stack heights are not an issue concerning CO in Des Moines.

The state has demonstrated that the CO control strategy has been carried out, and that no CO standard exceedances have been measured during the most recent 12 consecutive quarters (1985 through 1987). The modeling demonstration projects continued attainment at least through 1990. EPA believes that the CO redesignation policy is satisfied.

EPA believes that redesignating Des Moines and Lee Townships in Polk County, Iowa, is noncontroversial. For that reason, EPA is using the direct-to-final procedure for this action. The public should be advised that this action will be effective 60 days from today. However, if notice is received within 30 days that someone wishes to make adverse or critical comments, this action will be withdrawn and two subsequent notices will be published prior to the effective date. One notice will withdraw final action and another will begin a new rulemaking by announcing a proposal of action and establishing a comment period.

Action: EPA approves the Iowa request to redesignate Des Moines (Des Moines and Lee Townships) attainment for CO.

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

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

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 (60 days from date of publication). This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Date: January 26, 1989.

John A. Moore,

Acting Administrator.

40 CFR Part 81, Subpart C, is amended as follows:

Subpart C—Iowa

PART 81—[AMENDED]

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

Authority: 42 U.S.C. 7401-7642.

§ 81.316 [Amended]

2. Section 81.316, Iowa, is amended by revising the attainment status designation table for CO to read as follows:

IOWA—CO

Designated area	Does not meet primary standards	Cannot be classified or better than national standards
Entire state		X

[FR Doc. 89-2421 Filed 2-1-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

Changes in Flood Elevation Determinations; California et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Modified base (100-year) flood elevations are finalized for the communities listed below.

These modified elevations will be used in calculating flood insurance premium rates for new buildings and their contents and for second layer coverage on existing buildings and their contents.

DATES: The effective dates for these modified base flood elevations are indicated on the following table and amend the Flood Insurance Rate Map(s) (FIRM) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed on the following table.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of modified flood elevations for each community listed. These modified elevations have been published in newspaper(s) of local circulation and ninety (90) days have elapsed since that publication. The Administrator, has resolved any appeals resulting from this notification.

Numerous changes made in the base (100-year) flood elevations on the FIRMs for each community make it administratively infeasible to publish in this notice all of the changes contained on the maps. However, this rule includes the address of the Chief Executive Officer of the community, where the modified base flood elevation determinations are available for inspection.

These modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234) and are in accordance with the National Flood Insurance Act of 1968, as amended (Title XIII of the Housing and Urban Development Act of 1986, (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 44 CFR 65.4.

For rating purposes, the revised community number is shown and must be used for all new policies and renewals.

The modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together, with the floodplain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State or regional entities.

These modified base flood elevations shall be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for second layer coverage on existing buildings and their contents.

The changes in the base flood elevations are in accordance with 44 CFR 65.4.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains.

The authority citation for Part 65 continues to read as follows:

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

§ 65.4 [Amended]

Section 65.4 is amended by adding in alphabetical sequence new entries to the table.

State and county	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Georgia: DeKalb (Docket No. FEMA-6940).	Unincorporated areas	Sept. 22, 1988, and Sept. 29, 1988, *Decatur-DeKalb News/Era.*	The Hon. Manuel J. Maloof, chief executive officer, DeKalb County, 556 N. McDonough, Decatur, GA 30030.	Sept. 13, 1988	130065
Maryland: Prince Georges (FEMA docket No. 6933).	Unincorporated areas	Aug. 2, 1988, and Aug. 9, 1988, *Prince Georges Journal.*	The Hon. Parris N. Glendening, county executive, Prince Georges County, County Administrative Bldg., Upper Marlboro, MD 20772.	July 22, 1988	245208
Massachusetts: Bristol (FEMA docket No. 6936).	City of New Bedford	Aug. 26, 1988, and Sept. 2, 1988, *New Bedford Standard Times.*	The Hon. John K. Bullard, mayor of the City of New Bedford, 113 William St., New Bedford, MA 02740.	Aug. 12, 1988	255216 B
New Jersey: Bergen (FEMA docket No. 6933).	Borough of Ramsey	July 29, 1988, and Aug. 5, 1988, *Ramsey-Mahwah Reporter.*	The Hon. Nicholas Saros, Ramsey Borough Administrator, 33 North Central Ave., Ramsey, NJ 07446.	July 22, 1988	340064 B

Harold T. Duryee,

Administrator, Federal Insurance Administration.

Issued: January 26, 1989.

[FR Doc. 89-2416 Filed 2-1-89; 8:45 am]

BILLING CODE 6718-03-M

---

44 CFR Part 65

[Docket No. FEMA-6947]

Changes in Flood Elevation Determinations; Georgia et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Interim rule.

SUMMARY: This rule lists those communities where modification of the base (100-year) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base (100-year) elevations for new buildings and their contents and for second layer insurance on existing buildings and their contents.

DATES: These modified elevations are currently in effect and amend the Flood Insurance Rate Map (FIRM) in effect prior to this determination.

From the date of the second publication of notice of these changes in a prominent local newspaper, any person has ninety (90) days in which he can request through the community that the Administrator, reconsider the changes. These modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base (100-year) flood elevation determinations are available for inspection at the office of the Chief Executive Officer of the community, listed in the fifth column of the table. Send comments to that address also.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency

Management Agency, Washington, DC 20472, (202) 646–2767.

SUPPLEMENTARY INFORMATION: The numerous changes made in the base (100-year) flood elevations on the FIRM(s) make it administratively infeasible to publish in this notice all of the modified base (100-year) flood elevations contained on the map. However, this rule includes the address of the Chief Executive Officer of the community where the modified base (100-year) flood elevation determinations are available for inspection.

Any request for reconsideration must be based on knowledge of changed conditions, or new scientific or technical data.

These modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234) and are in accordance with the National Flood Insurance Act of 1968, as amended (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR 65.4.

For rating purposes, the revised community number is listed and must be used for all new policies and renewals.

These base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program.

These elevations, together with the floodplain management measures required by 60.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time, enact stricter requirements on its own, or pursuant to policies established by other Federal, State or regional entities.

The changes in the base (100-year) flood elevations listed below are in accordance with 44 CFR 65.4.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains.

The authority citation for Part 65 continues to read as follows:

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

§ 65.4 [Amended]

Section 65.4 is amended by adding in alphabetical sequence new entries to the table.

State and County	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
California: Riverside	Unincorporated areas	February 13, 1989 and February 20, 1989, *Press Enterprise.*	The Honorable Kay Ceniceros, Chairperson, Riverside County Board of Supervisors, 4080 Lemon Street, 14th Floor, Riverside, California 92501.	Jan. 9, 1989	060245B
Florida: Manatee	Unincorporated areas	December 9, 1988 and December 16, 1988, *The Bradenton Herald.*	The Honorable Kent G. Chetlain, Chairman, Board of County Commissioners, Manatee County, P.O. Box 1000, Bradenton, Florida 33506.	Nov. 29, 1988	120153
Maryland: Queen Anne's	Unincorporated areas	January 4, 1989 and January 11, 1989, *Queen Anne's County Record-Observer.*	The Honorable Robert Sallitt, Queen Anne's County Administrator, 208 North Commerce Street, Centreville, Maryland 21617.	Dec. 21, 1988	240054C
Tennessee: Shelby	City of Germantown	December 22, 1988 and December 29, 1988, *Germantown News.*	The Honorable Warner Hodges III, Mayor, City of Germantown, 1930 South Germantown Road, P.O. Box 38809, Germantown, Tennessee 38183–0809.	December 12, 1988.	470053

Issued: January 26, 1989.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 89–2415 Filed 2–1–89; 8:45 am]

BILLING CODE 6718–03–M

44 CFR Part 67

Final Flood Elevation Determinations; California et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Modified base (100-year) flood elevations are finalized for the communities listed below.

These modified elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program.

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing modified base flood elevations, for the community. This date may be obtained by contacting the office where the maps are available for inspection indicated on the table below:

ADDRESSES: See table below:

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of flood elevations for each community listed. Proposed base flood elevations or proposed modified base flood elevations have been published in the **Federal Register** for each community listed.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR Part 67. An opportunity for the community or individuals to appeal the proposed determination to or through the

community for a period of ninety (90) days has been provided.

The Agency has developed criteria for floodplain management in flood-prone areas in accordance with 44 CFR Part 60.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies for reasons set out in the proposed rule that the final flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. Also, this rule is not a major rule under terms of Executive Order 12291, so no regulatory analyses have been proposed. It does not involve any collection of information for purposes of The Paperwork Reduction Act.

List of Subjects in 44 CFR Part 67

Flood Insurance, Floodplains.

PART 67—[AMENDED]

The authority citation for Part 67 continues to read as follows:

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

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The modified base flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. Any appeals of the proposed base flood elevations which were received have been resolved by the Agency.

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD). Modified
CALIFORNIA	
Perris (city), Riverside County (FEMA Docket No. 6935)	
San Jacinto River:	
Approximately 1,600 feet upstream of Ethanac Road	*1,418
At the confluence of Mountain Avenue Wash	*1,419
Approximately 2,000 feet upstream of Goetz Road	*1,419
At Case Road and the Atchison, Topeka and Santa Fe Railway	*1,420
Approximately 2,400 feet upstream of the confluence with Perris Valley Storm Drain	*1,420
Maps are available for inspection at Civic Center, 101 North D Street, Perris, California 92370.	
San Jose (city), Santa Clara County (FEMA Docket No. 6943)	
Upper Penitencia Creek Overflow:	
Intersection of Cornish Lane and Berryessa Road	*79
Approximately 400 feet south of intersection of Berryessa Road and Western Pacific Railroad	*81
Approximately 900 feet west of confluence of Upper Penitencia Creek with Coyote Creek	*81
Intersection of Cornish Lane and Berryessa Road	*79
Approximately 800 feet west of the King Road crossing of Upper Penitencia Creek	#1
Area bounded by King Road, Mabury Road and Penitencia Creek	#1
Approximately 200 feet north of westernmost crossing of Mabury Road and Upper Penitencia Creek	#2
Approximately 250 feet west of easternmost crossing of Mabury Road and Upper Penitencia Creek	#2
Approximately 350 feet west of intersection of Mossdale Way and Jackson Avenue	#1
Approximately 400 feet south of intersection of Berryessa Road and Park Way	#1
Approximately 500 feet south of intersection of Jackson Avenue and Bluejacket Way	#2
Approximately 1,450 feet north of intersection of Lava Drive and Jackson Avenue	#1
Heatherfield Lane extended 150 feet south from intersection with Penitencia Creek Road	#1
Upper Penitencia Creek Overflow North of Penitencia Creek:	
Approximately 1,000 feet west of intersection of Trimble Road and Ringwood Avenue	#1
Intersection of Lundy Avenue and Trimble Road	#1
Area north of Ramstree Drive to Four Oaks Road	#1
Intersection of Old Stone Way and Olive-Stone Way	#1
Intersection of Old Post Way and Battaglia Circle	*121
Intersection of Old Gate Place and Battaglia Circle	*129
Intersection of Old Manor Place and Battaglia Circle	#2
Approximately 200 feet west of intersection of Capitol Avenue and Moorbrook Drive	#1
Approximately 700 feet south of intersection of Capitol Avenue and Moorbrook Drive	#1
Approximately 400 feet south of intersection of Capitol Avenue and Moorbrook Drive	#2
Approximately 1,200 feet south of intersection of Berryassa Road and Capitol Avenue	#2
Intersection of Penitencia Creek and Capitol Avenue	#2
Upper Penitencia Creek Overflow South of Penitencia Creek:	
Area along Sinclair Freeway from approximately 700 feet south of Alum Rock Avenue north to McKee Road	*100
Approximately 1,600 feet north of junction of McKee Road and Sinclair Freeway	#1
Approximately 1,600 feet south of intersection of Mabury Road and Capitol Avenue	#2
Approximately 1,200 feet south of intersection of Mabury Road and Capitol Avenue	#2
Intersection of Capitol Avenue and Baton Rouge Drive	#1
Intersection of Williford Road and Gilchrist Drive	#2
Area bounded by Gilchrist Drive, Capitol Avenue and Williford Drive	#2
Approximately 800 feet northwest of intersection of Capitol Avenue and Mabury Road along Capitol Avenue	#2
Approximately 200 feet west of intersection of Gilchrist Drive and Capitol Avenue	#2
Approximately 1,400 feet south of intersection of Penitencia Creek Road and Capitol Avenue	#2
San Francisco Bay:	
At confluence of Guadalupe Slough and Coyote Creek	*8
At crossing of Southern Pacific Railroad and Alvisio Slough	*9
Maps are available for review at the City of San Jose Engineering Department, 801 North First Street, San Jose, California.	
Santa Clara County (unincorporated areas) (FEMA Docket No. 6943)	
Upper Penitencia Creek Overflow:	
Approximately 300 feet west of intersection of Western Pacific Railroad and Cornish Lane	*81
Approximately 200 feet east of intersection of Cornish Lane and Western Pacific Railroad	#1
Approximately 700 feet east of intersection of Cornish Lane and Western Pacific Railroad	#1
Approximately 250 feet north of Upper Penitencia Creek at Jackson Avenue crossing	#1
Approximately 4,200 feet west of Mabury Road and Sinclair Freeway	#1
Approximately 200 feet northeast of intersection of Berryessa Road and Flickinger Avenue	#2
Approximately 1,150 feet south of intersection of Hosterrer Road and Capitol Avenue	#2
Approximately 1,000 feet west of intersection of Sierra Road and Capitol Avenue	#2
Intersection Old Post Way and Capitol Road	#121
Intersection of Berryessa Road and Capitol Road	#1
Area between Capitol Road and Sinclair Freeway from 700 feet north of Upper Penitencia Creek to 100 feet north of Upper Penitencia Creek	#2
Approximately 2,700 feet north of intersection of McKee Road and Wood Road	#2

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD). Modified
Approximately 1,300 feet south of intersection of Baton Rouge Drive and Capitol Avenue	#2
Approximately 800 feet south of intersection of Baton Rouge Drive and Capitol Drive	#1
Approximately 200 feet west of intersection of Capitol Road and Baton Rouge Drive	#1
Approximately 400 feet north of intersection of Sinclair Freeway and Mabury Road	#2
Approximately 400 feet west of intersection of Mabury Road and Capitol Avenue	#2
Approximately 200 feet west of Penitencia Creek at Sinclair Freeway crossing	#2
At Confluence of Guadalupe Slough and Coyote Creek	*8
At crossing of Southern Pacific Railroad and Alvisio Slough	*9
Approximately 800 feet northwest of San Tomas Aquino Creek from Coffin Road crossing	*9
Maps are available for review at the Santa Clara County Department of Land Use and Development, Central Permit Office, 70 West Hedding Street, San Jose, California.	
GEORGIA	
Clayton (city), Rabun County (FEMA Docket No. 6935)	
Stekoa Creek:	
1,100 feet downstream of Camper Corrol Bridge	*1,862
Confluence of Scott Creek	*1,872
Confluence of Needy Creek	*1,877
Scott Creek:	
At mouth	*1,872
Just upstream of South Main Street	*1,873
Saddle Gap Branch:	
At mouth	*1,875
Just downstream of Duggan Hill Road	*1,875
Maps available for inspection at the City Clerk's Office, Attention Mary Ann Hollifield, P.O. Box 702, Clayton, Georgia.	
MICHIGAN	
Vassar (city), Tuscola County (FEMA Docket No. 6929)	
Cass River:	
About 1,000 feet downstream of Chesapeake and Ohio Railway	*634
Just upstream of Tuscola and Saginaw Bay Railway Company	*637
About 1.1 miles upstream of Tuscola and Saginaw Railway Company	*639
Maps available for inspection at the City Hall, 287 East Huron Avenue, Vassar, Michigan.	
OKLAHOMA	
Moore (city), Cleveland County (FEMA Docket No. 6934)	
North Fork River:	
Approximately 1,050 feet downstream of N.E. 12th Street	*1,211
Approximately 100 feet upstream of N.E. 12th Street	*1,220
Stream D:	
Approximately 5,116 feet upstream of S.E. 19th Street	*1,196
Approximately 10 feet upstream of N.W. 3rd Street	*1,239
Tributary of Stream D:	
At the confluence with Stream D	*1,233
At the Limit of Detail Study	*1,240
Maps available for inspection at the Department of Community Development, 301 North Broadway, Moore, Oklahoma.	
Rogers County, unincorporated areas (FEMA Docket No. 6934)	
Cat Creek: Backwater for a Tributary of Cat Creek 2,000 feet south of Lowry and west of Owalla Road	*611
Maps available for inspection at the Rogers County Courthouse, 219 S. Missouri, Suite 1–102, Claremore, Oklahoma.	
TENNESSEE	
Dayton (city), Rhea County (FEMA Docket No. 6935)	
Broyles Branch:	
Just downstream of Blythes Ferry Road	*691
About 250 feet upstream of U.S. Route 27	*721
Unnamed Tributary to Broyles Branch:	
Mouth at Broyles Branch	*721
About 650 feet upstream of mouth	*722
Maps available for inspection at the City Hall, Building Inspector's Office, P.O. Box 226, Dayton, Tennessee.	
TEXAS	
Bandera (city), Bandera County (FEMA Docket No. 6929)	
Medina River:	
Approximately 0.9 mile downstream of State Route 173	*1,218
Approximately 0.4 mile upstream of Sixth Street Extension	*1,252
Maps available for inspection at the City Hall, 503 Main Street, Bandera, Texas.	
Benbrook (city), Tarrant County (FEMA Docket No. 6934)	
Stream 26:	
Downstream corporate limits	*594
Upstream corporate limits	*602
Maps available for inspection with the Director of Community Development, City Hall, 911 Winscott Road, Benbrook, Texas.	
Bexar County (unincorporated areas) (FEMA Docket No. 6930)	
Balcones Creek:	
At confluence with Cibolo Creek	*1,271
Approximately 1.6 miles upstream of confluence with Cibolo Creek	*1,290
Cibolo Creek:	
At Interstate Route 10/U.S. Route 90	*621
Approximately 1.5 miles upstream of Schaeffer Road	*690
Approximately 2,000 feet downstream of Missouri-Kansas-Texas Railroad	*760
Approximately 3.4 miles upstream of Missouri Pacific Railroad	*830
Approximately 8.8 miles upstream of Missouri Pacific Railroad	*900
Approximately 4,150 feet upstream of FM 1863	*970
Approximately 1.9 miles downstream of U.S. Route 281	*1,040
Approximately 450 feet downstream of confluence of Kelley Creek	*1,110
Approximately 1.0 mile upstream of confluence of Kelley Creek	*1,127
Approximately 1.15 miles downstream of Ralph Fair Road	*1,232
Approximately 1,200 feet upstream of confluence of Balcones Creek	*1,272
Huebner Creek: Approximately 200 feet upstream of corporate limits and Ingram Road	*763
Leon Creek:	
Approximately 850 feet upstream of Ingram Road	*765
Approximately 1,275 feet upstream of Ingram Road	*766
Approximately 5,500 feet downstream of Bandera Road	*813
Approximately 75 feet upstream of Bandera Road	*838
Approximately 700 feet upstream of West Prue Road	*892
Approximately 50 feet downstream of Babcock Road	*917
Medio Creek:	
Upstream face of U.S. Highway 90 (Limit of Detailed Study)	*703
Approximately 3.07 miles upstream of U.S. Highway 90	*743
Slick Ranch Creek:	
Approximately 6,500 feet downstream of Potranco Road (FM 1957)	*758
Approximately 1,000 feet downstream of Potranco Road (FM 1957)	*766
Approximately 3,000 feet upstream of Potranco Road (FM 1957)	*793
Salado Creek:	
At the upstream corporate limits	*850
Approximately 1.8 miles (9,400 feet) downstream of Blanco Road	*802
West Fork Olmos Creek:	
Approximately 325 feet downstream of Red Maple Wood Lane	*938
Approximately 2,330 feet upstream of Red Maple Wood Lane	*962
Maps available for inspection at the Bexar County Courthouse, Commissioners Court, Suite 101, San Antonio, Texas.	
Corpus Christi (city), Nueces and Kleberg Counties (FEMA Docket No. 6930)	
Oso Bay Tributary No. 2:	
Approximately 1,000 feet downstream of Rodd Field Road	*11
Approximately 100 feet downstream of Wooldridge Road	*15
Maps available for inspection at the City Hall, 1201 Leopard Street, Corpus Christi, Texas.	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD). Modified
Irving (city), Dallas County (FEMA Docket No. 6922)	
West Fork of Trinity River: Confluence with Trinity River	*424
Elm Fork of Trinity River:	
Confluence with Trinity River	*424
At State Highway 482	*426
Approximately 400 feet upstream of State Highway 348	*430
At confluence of Grapevine Creek	*439
At Beltline Road	*442
Hackberry Creek: Confluence with Elm Fork of Trinity River	*431
Cottonwood Branch: Confluence with Hackberry Creek	*431
Grapevine Creek:	
Confluence with Elm Fork of Trinity River	*439
Approximately 1,700 feet downstream of MacArthur Boulevard	*440
Maps available for inspection at the Department of Public Works, 825 West Irving Boulevard, Irving, Texas.	
Wylie (city), Collin, Dallas and Rockwall Counties (FEMA Docket No. 6935)	
Rush Creek:	
Approximately 550 feet upstream of East Stone Road	*476
Approximately 80 feet downstream of East Brown Street	*492
Maps available for inspection at the City Hall, 2000 N. Highway 78, Wylie, Texas.	
VIRGINIA	
Norton (city), Independent City (FEMA Docket No. 6930)	
Powell River:	
At corporate limits	*2,015
Approximately .76 mile upstream of State Route 610	*2,037
Maps available for inspection at the Municipal Building, 618 Virginia Avenue, Norton, Virginia.	
WEST VIRGINIA	
Raleigh County (unincorporated areas) (FEMA Docket No. 6929)	
Soak Creek:	
Confluence with Piney Creek	*2,263
Approximately 1.3 miles upstream of Church Street	*2,357
Maps available for inspection at the County Commission Offices, 116½ N. Heber Street, Beckley, West Virginia.	

Harold T. Duryee,

Administrator, Federal Insurance Administration.

Issued: January 26, 1989.

[FR Doc. 89-2417 Filed 2-1-89; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88-148; RM-6033, RM-6101]

Radio Broadcasting Services; Ariton, AL, and Bonifay, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 249C1 at Bonifay, Florida, and modifies the Class A license of Mary Lake Communications, Inc. for Station WTBB-FM, as requested, to specify operation on the higher class channel. This document also dismisses the rule making petition of Patsy Nance Marsh and Rickey Earl Nance for an allotment of Channel 249A to Ariton, Alabama, as the area's first local service, for lack of a timely expression of interest in the allotment. Reference coordinates for Channel 249C1 are 30-41-57 and 85-37-15. With this action, the proceeding is terminated.

EFFECTIVE DATE: March 16, 1989.

FOR FURTHER INFORMATION CONTACT: Michael Ruger, Mass Media Bureau, (202) 632-6302.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88-148, adopted December 22, 1988, and released January 30, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

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 for Florida, is amended by revising the entry for Bonifay by removing Channel 249A and adding Channel 249C1.

Federal Communications Commission.

Steve Kaminer,

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

[FR Doc. 89-2455 Filed 2-1-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 85-376; RM-4988 and RM-5378]

Radio Broadcasting Services; Ponte Vedra Beach, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document grants a petition for reconsideration filed by General Broadcasting of Florida, Inc., licensee of Station WCAT-FM, Leesburg, Florida, directed against the *Report and Order* in MM Docket No. 85-376 which allotted Channel 293A to Ponte Vedra Beach. A Channel 293A allotment at Ponte Vedra Beach precludes a grant of an application to maintain full Class C status at Station WCAT-FM. Accordingly, this action substitutes Channel 227A in lieu of Channel 293A at Ponte Vedra Beach. With this action, this proceeding is terminated.

EFFECTIVE DATE: March 13, 1989.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Memorandum Opinion and Order*, MM Docket No. 85-376, adopted December 14, 1989, and released January 27, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

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 Florida

by removing Channel 293A and adding Channel 227A at Ponte Vedra Beach.

Federal Communications Commission.

Bradley P. Holmes,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-2456 Filed 2-1-89; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 73

[MM Docket No. 87-473; RM-5954]

Radio Broadcasting Services; Sylvester, GA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 291A to Sylvester, Georgia, as a second local FM service at the request of Thomas W. Lawhorne, Sr. Channel 291A can be allotted to Sylvester, Georgia in compliance with the minimum distance separation requirements, with a site restriction. The coordinates for Channel 291A are 31-28-02 and 83-52-57 with a site restriction. With this action, this proceeding is terminated.

DATES: Effective March 13, 1989. The window period for filing applications will open on March 14, 1989, and close on April 13, 1989.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-473, adopted December 7, 1988, and released January 27, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

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 for Sylvester, Georgia by adding Channel 291A.

Federal Communications Commission.

Steve Kaminer,

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

[FR Doc. 89-2457 Filed 2-1-89; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 73

[MM Docket No. 88-173; RM-6249]

Radio Broadcasting Services; Brandon, VT

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 270A to Brandon, Vermont, as that community's first FM service, at the request of James G. Kirkpatrick. The allotment can be made consistent with the Commission's minimum spacing requirements at reference coordinates 43-47-54 and 73-05-30. With this action, this proceeding is terminated.

DATES: Effective March 13, 1989. The window period for filing applications will open on March 14, 1989, and close on April 13, 1989.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88-173, adopted November 30, 1988, and released January 27, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

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. § 73.202(b), the Table of FM Allotments is amended under Vermont, by adding Channel 270A at Brandon.

Steve Kaminer,

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

[FR Doc. 89-2458 Filed 2-1-89; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 73

[MM Docket No. 87-523; RM-6027]

Radio Broadcasting Services; Vancouver, WA; Coos Bay and Corvallis, OR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 290C2 to Vancouver, Washington, as a first local FM service at the request of P-N-P Broadcasting, Inc. This action also substitutes Channel 290C2 for Channel 293C2 at Corvallis, Oregon and Channel 292C for Channel 291C at Coos Bay, Oregon and modifies the licenses of Stations KFAT(FM) and KYNG-FM, respectively. Applicants for Channel 290C2 at Vancouver will be required to reimburse both Stations KFAT(FM) and KYNG-FM for changing their facilities. The allotment of Channel 290C2 can be made at the city's reference coordinates, which are 45-37-30 and 122-40-12. Concurrence of the Canadian government has been obtained. With this action, this proceeding is terminated.

DATES: Effective March 13, 1989. The window period for filing applications on Channel 290C2 at Vancouver, Washington, will open on March 14, 1989, and close on April 13, 1989.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-523, adopted December 13, 1988, and released January 27, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

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 Washington by adding Channel 290C2 at

Vancouver; and under Oregon, by deleting Channel 293C2 and adding Channel 290C2 at Coos Bay and deleting Channel 291C and adding Channel 292C at Corvallis.

Steve Kaminer,

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

[FR Doc. 89-2459 Filed 2-1-89; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 73

[MM Docket No. 88-176; RM-6218]

Radio Broadcasting Services; Albin, WY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 297C2 to Albin, Wyoming, as that community's first FM service, at the request of Alton Lewis. A site restriction of 23.5 kilometers (14.6 miles) north of the community is required at coordinates 41-40-00 and 104-11-38. With this action, this proceeding is terminated.

DATES: Effective March 13, 1989. The window period for filing applications will open on March 14, 1989, and close on April 13, 1989.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88-176, adopted December 21, 1988, and released January 27, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

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 Wyoming, by adding Albin, Channel 297C2.

Steve Kaminer,

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

[FR Doc. 89-2460 Filed 2-1-89; 8:45 am]

BILLING CODE 6712-01-M

Proposed Rules

Federal Register
Vol. 54, No. 21
Thursday, February 2, 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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 88-AGL-31]

Proposed Alteration of Transition Area—Austin, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the Austin, MN, transition area to accommodate a new VOR RWY 18 Standard Instrument Approach Procedure (SIAP) and a new VOR RWY 36 SIAP to Austin Municipal Airport, Austin, MN. The intended effect of this action is to ensure segregation of the aircraft using approach procedures in instrument conditions in controlled airspace.

DATE: Comments must be received on or before March 10, 1989.

ADDRESS: Send comments on the proposal in triplicate to: Federal Aviation Administration, Regional Counsel, AGL-7, Attn: Rules Docket No. 88-AGL-31, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Harold G. Hale, Air Traffic Division, Airspace Branch, AGL-520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7360.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 88-AGL-31". The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM'S

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Section 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the designated transition area airspace near Austin, MN.

The present transition area is being modified to accommodate a new VOR RWY 18 SIAP and a new VOR RWY 36 SIAP to Austin Municipal Airport, Austin, MN. The modifications will consist of increasing the 5 mile radius of the transition area to an 8.5 mile radius; and, increasing the lengths and widths of the north and south transition area extensions.

The development of the SIAPS requires that the FAA alter the designated airspace to insure that the procedures will be contained within controlled airspace. The minimum descent altitude for the procedures may be established below the floor of the 700-foot controlled airspace.

Aeronautical maps and charts will reflect the defined areas which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

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

List of Subjects in 14 CFR Part 71

Aviation Safety, Transition Areas

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part

71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

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

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Austin, MN [Revised]

That airspace extending upward from 700 feet above the surface within an 8.5 mile radius of the Austin Municipal Airport (lat. 43°40'00" N., long. 92°56'00" W.); within 4.25 miles each side of the Austin VOR 355 radial extending from the 8.5 mile radius to 15 miles north of the Austin Municipal Airport; and, within 4.25 miles each side of the Austin VOR 175 radial extending from the 8.5 mile radius to 15 miles south of the Austin Municipal Airport; excluding that portion which overlies the Rochester, MN, transition area.

Issued in Des Plaines, Illinois, on January 19, 1989.

Teddy W. Burcham,

Manager, Air Traffic Division.

[FR Doc. 89–2385 Filed 2–1–89; 8:45 am]

BILLING CODE 4910–13–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A–1–FRL–3514–3]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; Reasonably Available Control Technology for Cranston Print Works Company, Webster Division Facility, Webster, MA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the Commonwealth of Massachusetts. This revision establishes and requires the use of reasonably available control technology (RACT) to control volatile organic compound (VOC) emissions from Cranston Print Works Company, Webster Division Facility located in Webster, Massachusetts. The intended effect of this action is to propose approval of a source-specific RACT determination made by the Commonwealth of Massachusetts in accordance with commitments made in its ozone attainment plan approved by EPA on November 9, 1983 (48 FR 51480). This action is being taken under section 110 of the Clean Air Act.

DATES: Comments must be received on or before March 6, 1989.

ADDRESSES: Comments may be mailed to Louis F. Gitto, Director, Air Management Division, Room 2311, JFK Federal Bldg., Boston, MA 02203. Copies of Massachusetts' submittal and EPA's Technical Support Document prepared for this revision are available for public inspection during normal business hours at the Environmental Protection Agency, Room 2311, JFK Federal Bldg., Boston, MA 02203; and the Department of Environmental Quality Engineering, Division of Air Quality Control, One Winter Street, 8th Floor, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Lynne A. Hamjian, (617) 565–3246; FTS 835–3246.

SUPPLEMENTARY INFORMATION: EPA approved Regulation 310 CMR 7.18(17), "Reasonably Available Control Technology (RACT)," on November 9, 1983 (48 FR 51480) as part of the Commonwealth of Massachusetts' 1982 ozone attainment plan. This regulation requires the DEQE to determine and impose RACT on all facilities with potential to emit one hundred tons per year (TPY) or more of VOC that are not already subject to Massachusetts' regulations developed pursuant to the EPA Control Techniques Guideline (CTG) documents. In a November 17, 1982 letter to EPA, the DEQE committed to submit each of the individual RACT determinations to EPA as source-specific SIP revisions. On November 9, 1983, EPA codified at 40 CFR 52.1123(b) that DEQE must submit each RACT determination made under 310 CMR 7.18(17) to EPA as a SIP revision in order to incorporate the limitations into the SIP. EPA's rationale for requiring DEQE to submit each RACT determination as a single-source SIP revision is that emission limits and reduction measures imposed by states on existing stationary sources in nonattainment areas do not constitute RACT until and unless EPA approves them as RACT via rulemaking.

On February 4, 1988 and February 29, 1988, the Massachusetts Department of Environmental Quality Engineering (DEQE) submitted a SIP revision for parallel processing. This revision is composed of two Massachusetts plan approvals dated March 21, 1975 and February 29, 1988 (CM–74–IF–025 and CR–88–IF–002) which define VOC control requirements for Cranston Print Works Company, Webster Division Facility (Cranston) located in Webster, Massachusetts. Cranston is a fabric printing company. It is not subject to either the Massachusetts' fabric coating regulation (which applies to facilities which administer a uniform layer of coating across the entire width of the substrate) or to the Massachusetts' graphic arts regulation (which applies to flexographic printing facilities and packaging and publication rotogravure printing facilities). Therefore, Cranston is subject to 310 CMR 7.18(17), "Reasonably Available Control Technology," as a non-CTG source with the potential to emit 100 TPY or more of VOCs.

Cranston prints fabrics which are used primarily in the high-fashion apparel industry. Its VOC emissions result from two processes, the acid ager process and the fabric printing process. The acid ager process treats the fabric. The fabric printing process employs six roller and three rotary screen printing machines. The source of VOC emissions from this process is the mineral spirits print paste used on its roller printers. Cranston uses 9 print pastes; only one contains mineral spirits. The majority of VOCs are emitted when the printed fabric is dried on steam dry cans. A description of Cranston's non-CTG processes, DEQE's plan approvals, and the amendments necessary to secure final EPA approval of those plan approvals is provided below.

The Acid Ager Process

A scrubber controls the VOC emissions (acetic acid) from the acid ager line. The scrubber controls VOC emissions to 0.6 lb/hr at an overall efficiency of 99%. The scrubber reduces VOC emissions from 260 tons per year (TPY) 2.6 TPY. The waste-water stream from the scrubber is neutralized prior to discharge by mixing it with other on-site waste streams that are basic. The DEQE issued Cranston a plan approval on March 21, 1975 (#CM–74–IF–025) requiring that it operate the acid ager line with a scrubber. The DEQE specifically determined RACT for the acid ager line as a scrubber with 99% overall efficiency as required by the March 21, 1975 plan approval. In addition, the DEQE has imposed daily recordkeeping and compliance testing requirements for this line in a February 29, 1988 RACT plan approval (#CR–88–IF–002) which was also issued to Cranston pursuant to 310 CMR 7.18(17).

EPA has reviewed the two plan approvals and supporting documentation which were submitted as a SIP revision for parallel processing. EPA generally concurs with the DEQE's RACT determination for the acid ager process. The proposed plan approvals

must however be amended, as explained below, to include additional recordkeeping, monitoring, and other enforceable provisions necessary to ensure that the RACT requirements will be enforceable as a practical matter prior to being formally submitted as SIP revisions by the DEQE. These amendments must be made in order for EPA to take final action to approve the plan approvals as a revision to the SIP.

Amendments to Plan Approvals for the Acid Ager Process

The DEQE must make the following revisions to the March 21, 1975 plan approval (#CM–74–IF–025) and to the February 29, 1988 plan approval (#CR–88–IF–002) for the acid ager process:

1. The March 21, 1975 plan approval must require that Cranston maintain an overall scrubber efficiency greater than or equal to 99% at all times.

2. The March 21, 1975 plan approval must specifically require that the acid ager emissions shall not exceed 0.6 lb/hr.

3. The March 21, 1975 plan approval must contain additional operating limitations, monitoring provisions, and recordkeeping requirements to indicate whether the 99% efficiency is being maintained.

Specifically, the plan approval should contain a minimum water inlet flow rate, a maximum operating temperature of the air inlet, and a maximum wet air flow rate derived either from a compliance test which demonstrated compliance with the 99% efficiency or, if compliance test results are not available, from the scrubber design. In addition, the plan approval must specify a maximum pressure drop across the scrubber which is based on the compliance test or scrubber design. The plan approval must require Cranston to monitor and record the pressure drop once per day. Further, the plan approval must require that Cranston continuously monitor and record the temperature of the air inlet, the inlet air flow rate, and the inlet water flow rate to confirm that the 99% efficiency is being met. The plan approval also must contain a contingency plan for when monitored parameters are not maintained at the values specified in the plan approval.

4. As an alternative to No. 3 above, the March 21, 1975 plan approval could require Cranston to continuously monitor with some hydrocarbon detection device and record the amount of VOC in the inlet and outlet gas to confirm that the 99% efficiency is being met.

5. The DEQE must formally submit an approvable revision to the SIP's VOC test method regulation requiring non-CTG sources subject to 310 CMR 7.18(17) to use EPA-approved test methods, or specify the use of EPA-approved test methods in both the March 21, 1975 plan approval (#CM–74–IF–025) and the February 29, 1988 plan approval (#CR–88–IF–002).

In addition, the DEQE did not provide the opportunity for public comment on the March 21, 1975 plan approval. The DEQE must publish a public notice and hold a public hearing on this plan approval, or certify that its requirements are a "reasonable outgrowth" of the RACT proposal in the plan approval that went to public hearing on October 7, 1986.

For further details on these requirements refer to the Technical Support Document prepared for this revision which may be obtained from the EPA Regional Office listed in the **ADDRESSES** section of this notice.

The Fabric Printing Process

Cranston has reduced VOC emissions (mineral spirits) from its fabric printing operations by reformulating one of its print pastes, changing production schedules, and by replacing roller printers with screen printers. Cranston has reduced its actual annual VOC emissions from fabric printing operations from 819 TPY in 1980 to 412 TPY in 1987. This is a 50% annual reduction. The DEQE issued the fabric printing operations a plan approval on February 29, 1988 (#CR88–IF–002) which imposes a short term emission rate of 82.5 lb VOC/1000 lb fabric printed (averaged over 24 hours) and an annual emissions cap of 412 TPY. This plan approval also imposes daily recordkeeping, quarterly reporting, and compliance testing requirements for the fabric printing process. The DEQE has determined that a 50% annual reduction in VOC emissions from Cranston's fabric printing operations is RACT for this process.

EPA has reviewed the February 29, 1988 plan approval and supporting documentation which DEQE submitted as a SIP revision for parallel processing and has concluded that further documentation, as detailed below, is necessary to support the emission rate of 82.5 lb VOC/1000 lb fabric printed (averaged over 24 hours) as RACT for the fabric printing process. Cranston's emission rate in 1980 was 89.8 lb VOC/1000 lb fabric printed. The emission rate included in the plan approval is 82.5 lb VOC/1000 lb fabric printed (averaged over 24 hours). This is only an 8% reduction in VOC emissions on a daily basis.

EPA considers fabric printing similar to graphic arts printing because both processes print substrates using engraved intaglio rollers. Therefore, the DEQE must clearly document, in the SIP submittal, why Cranston cannot achieve a 65% reduction with add-on control technology, or cannot use print pastes with equivalent formulations as those set forth in Massachusetts' Regulation 310 CMR 7.18(12) which was developed in accordance with EPA's graphic arts CTG (EPA–450/2–78–033). For EPA to approve this SIP revision, the DEQE must submit the following additional documentation to support that 82.5 lb VOC/1000 lb fabric printed (averaged over 24 hours) is RACT:

1. Why Cranston cannot achieve a 65% overall reduction with add-on control technology as in the Massachusetts Graphic Arts Regulation. Specifically, why add-on controls are not technically or economically feasible for each line. Documentation must include cost analyses and technical documentation for carbon adsorption, incineration (catalytic and thermal), and ducting emissions to existing boilers. Further, the DEQE's documentation must include why Cranston cannot duct the exit gas of each line to add-on control equipment, and why Cranston cannot adjust the existing ventilation system to accommodate add-on controls.

2. Why Cranston cannot use print pastes with equivalent formulations as those set forth in the Massachusetts Graphic Arts Regulation. Specifically, why Cranston cannot achieve a higher percent reduction via reformulation or switching to screen printing.

In addition, it is not clear whether the 82.5 lb VOC/1000 lb fabric printed (as averaged over 24 hours) emission limit is being met on a line-by-line or via cross-line averaging. If Cranston is achieving compliance with this emission limit via cross-line averaging, then the plan approval must require that Cranston meet all of the requirements of EPA's Emissions Trading Policy published on December 4, 1986 (51 FR 43814).

Finally, DEQE must amend the February 29, 1988 plan approval itself, as summarized below, to include additional testing, enforceable emission rates and other provisions to ensure that the limitations are enforceable prior to being formally submitted as a SIP revision by the DEQE. These amendments must be made in order for EPA to take final action and incorporate the plan approval into the SIP.

Amendments to the Plan Approval for the Fabric Printing Process

The DEQE must make the following revisions to the February 29, 1988 plan

approval (#CR-88-IF-002) for the fabric printing process:

1. DEQE must first submit adequate documentation to justify that the 82.5 lb VOC/1000 lb fabric printed (averaged over 24 hours) is RACT. If this limit is being met by cross-line averaging, then the DEQE must amend the plan approval to require Cranston to comply with EPA's Emissions Trading Policy.

2. The DEQE must formally submit an approvable revision to the SIP's VOC test method regulation requiring non-CTG sources subject to 310 CMR 7.18(17) to use EPA-approved test methods, or specify the use of EPA-approved test methods in the plan approval.

3. The plan approval must require Cranston to record the density of the mineral spirits on a daily basis. Alternatively, the plan approval could require that Cranston make this information readily accessible with the VOC records.

For further details on these requirements refer to the Technical Support Document prepared for this revision which may be obtained from the EPA Regional Office listed in the **ADDRESSES** section of this notice.

EPA is proposing to approve two Massachusetts plan approvals as a revision to the SIP provided that Massachusetts makes the changes described in this notice, and is soliciting public comments. These comments will be considered before taking final action. Interested parties may participate in the Federal Rulemaking procedure by submitting written comments to the Region I office listed in the addresses section of this notice. In addition, prior to final rulemaking, EPA is requiring that the DEQE submit additional documentation to support the proposed RACT determination for the fabric printing process. EPA will provide the opportunity for comment on the additional documentation submitted by the DEQE prior to final approval of this revision.

This revision is being processed under a procedure called "parallel processing" (47 FR 27073). If the proposed revision is substantially changed, in areas other than required by this notice, EPA will evaluate those changes and may publish another notice of proposed rulemaking. If no substantial changes were made to the proposed revision, EPA will publish a final rulemaking notice. The final rulemaking action by EPA will occur only after the final plan approvals for Cranston have been issued by the DEQE and have been formally submitted to EPA for incorporation into the SIP.

Proposed Action: EPA is proposing to approve the Massachusetts Plan Approvals dated March 21, 1988 and February 29, 1988 (#CM-74-IF-025 and #CR-88-IF-002) imposing RACT on Cranston Print Works Company as a revision to the Massachusetts SIP. EPA is proposing approval with the understanding that the DEQE will revise the plan approvals and submit additional documentation as outlined in this notice prior to formal submittal of the plan approvals for incorporation into the SIP. If the DEQE's formal SIP revision request does not incorporate the requirements outlined in this notice, EPA will withdraw this proposed action and take action to disapprove DEQE's SIP revision request.

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

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

The Administrator's decision to approve or disapprove the plan revision will be based on whether it meets the requirements of section 110(a)(2)(A)—(K) and 110(a)(3) of the Clean Air Act, as amended, and EPA regulations in 40 CFR Part 51.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7404-7642.

Date: September 27, 1988.

Michael R. Deland,

Regional Administrator, Region I.

[FR Doc. 89-2423 Filed 2-1-89; 8:45 am]

BILLING CODE 6560-50-M

---

40 CFR Part 52

[A-1-FRL-3514-1]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; Reasonably Available Control Technology for Monsanto Polymer Products Co., Indian Orchard, MA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a proposed State Implementation Plan (SIP) revision submitted by the Commonwealth of Massachusetts. This revision establishes and requires the use of reasonably available control technology (RACT) to control volatile organic compound (VOC) emissions from Monsanto Polymer Products Company in Indian Orchard, Massachusetts. The intended effect of this action is to propose approval of a source specific RACT determination made by the Commonwealth of Massachusetts in accordance with commitments of its approved 1982 ozone attainment plan. This action is being taken under section 110 of the Clean Air Act.

DATES: Comments must be received on or before March 6, 1989.

ADDRESSES: Comments may be mailed to Louis F. Gitto, Director, Air Management Division, Room 2313, JFK Federal Bldg., Boston, MA 02203. Copies of the State submittal and EPA's Technical Support Document are available for public inspection during normal business hours at the Environmental Protection Agency, Room 2313, JFK Federal Bldg., Boston, MA 02203 and the Department of Environmental Quality Engineering, Division of Air Quality Control, One Winter Street, 8th floor, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Lorenzo Thantu, (617) 565-3250; FTS 835-3250.

SUPPLEMENTARY INFORMATION: EPA approved Regulation 310 CMR 7.18(17), "Reasonably Available Control Technology (RACT)," on November 9, 1983 (48 FR 51460) as part of the Commonwealth of Massachusetts' 1982 ozone attainment plan. This regulation requires the Commonwealth of Massachusetts Department of Environmental Quality Engineering (DEQE) to determine and impose RACT on all stationary sources with the potential to emit one hundred tons per year (TPY) or more of VOCs that are not already subject to RACT under Massachusetts' regulations developed pursuant to the EPA Control Techniques Guideline (CTG) documents. In a November 17, 1982 letter to EPA, the DEQE committed to submit each of the individual RACT determinations to EPA for incorporation into the Massachusetts SIP. One November 9, 1983, EPA codified at 40 CFR 52.1123 that the DEQE must submit each RACT determination made under 310 CMR 7.18(17) to EPA as a SIP revision in order to incorporate the limitations imposed on each non-CTG source into the SIP. EPA's rationale for requiring the DEQE to submit each RACT determination as a single source SIP revision is that emission limits and reduction measures imposed by States on existing stationary sources in nonattainment areas do not

constitute RACT unless and until EPA approves them as RACT via federal rulemaking.

The Monsanto Polymer Products Company (Monsanto) in Indian Orchard, Massachusetts is a one hundred TPY non-CTG VOC source subject to RACT under Massachusetts' Regulation 310 CMR 7.18(17). On February 4, 1988, EPA received a request from the DEQE to parallel-process a proposed SIP revision imposing RACT on Monsanto's non-CTG processes. This revision includes the DEQE's proposed Plan Approval, dated December 23, 1987, issued under 310 CMR 7.18(17) to Monsanto.

Description of the RACT Determination

Monsanto primarily produces polymers and plastics at its Indian Orchard plant. Originally, Monsanto had eleven processes subject to RACT. With the shutdown of the Phenol/Formaldehyde Resins Process and the Polyvinyl Alcohol Process, and the sale of the Polystyrene Resins Process, the Indian Orchard plant now has *eight* non-CTG processes that are subject to RACT requirements under 310 CMR 7.18(17):

The Formaldehyde Process;

The Polyvinyl Butyral Sheeting Process;

The Polyvinyl Butyral-South Process;

The Melamine and Urea/Formaldehyde Resins Process;

The Polyvinyl Formal Process;

The Polyvinyl Acetate Products Process;

The Polyvinyl Acetate Multipolymer Solutions Process; and

The Polyvinyl Butyral-East Process.

The proposed Plan Approval imposes requirements which the DEQE has determined to constitute RACT for these eight processes in order to reduce VOC emissions.

In the course of its technical RACT determination, the DEQE determined that Monsanto's control of VOC emissions for the Formaldehyde Process, the Polyvinyl Acetate Products Process, and the Polyvinyl Acetate Multipolymer Solutions Process already constituted RACT. A description of the VOC controls for these processes is contained in the Technical Support Document prepared on today's action. It is available at the EPA Regional Office listed in the **ADDRESSES** section of this notice. For these *three* processes, the DEQE has imposed certain compliance/enforcement requirements in the proposed Plan Approval to insure that the emissions do not exceed those RACT levels. For the remaining *five* processes, the DEQE has imposed specific RACT requirements on Monsanto. In addition, the DEQE has imposed a general Leak Detection and Repair Program on Monsanto to control fugitive VOC emissions. This general Leak Detection and Repair Program is applicable to the entire plant with the exception of the Polyvinyl Butyral Sheeting Process and part of the Polyvinyl Butyral-East Process. These RACT measures and the resulting emission reductions are detailed below:

Polyvinyl Butyral Sheeting Process: Through a process change, Monsanto phased out the use of toluene resulting in a seventeen TPY reduction.

Polyvinyl Butyral-South Process: Monsanto installed: (a) mechanical seals on the hydrolysis reactors resulting in a 30.0 TPY reduction, (b) a packed-tower scrubber on the dryer, resulting in a 165.1 TPY reduction, and (c) a chilled condensation system on eleven storage tanks, resulting in a 22.2 TPY reduction.

Melamine and Urea/Formaldehyde Resins Process: Monsanto installed a packed-bed scrubber on one kettle used for "spill over" production, resulting in a 0.52 TPY reduction.

Polyvinyl Formal Process: Monsanto redesigned the venting systems from the soak tanks, resulting in a 23.9 TPY emission reduction.

Polyvinyl Butyral-East Process: In an earlier version of the Plan Approval, dated April 29, 1986, the DEQE required Monsanto to meet a schedule for the installation of a packed-tower scrubber on the dryer in order to achieve a 51.3 TPY VOC emission reduction. That Plan Approval also required Monsanto to meet a schedule for the implementation of an intensive Leak Detection and Repair Program on two process units, the Acetalization/Hydrolysis unit and the Wash Tank. This intensive Leak Detection and Repair Program is to insure that the engineering fixes (e.g. the installation of mechanical seals on agitator shafts) imposed in the proposed Plan Approval achieve a 96.6 TPY VOC emission reduction (a 56% reduction) as part of Monsanto's RACT determination. This intensive Leak Detection and Repair Program is specific to these two units of the Polyvinyl Butyral-East Process and should not be confused with the general Leak Detection and Repair Program that is being imposed on Monsanto's Indian Orchard facility including the remainder of the Polyvinyl Butyral-East Process.

Monsanto did not comply with the schedule imposed in the April 29, 1986 Plan Approval. Accordingly, the DEQE issued a Consent Agreement and Order dated December 5, 1986 with a forty thousand dollar penalty to Monsanto. That Order required Monsanto to comply with all the provisions of the April 29, 1986 Plan Approval for the Polyvinyl Butyral-East Process as soon as practical but in no case later than April 30, 1987. Further, the Order imposed additional requirements on the Polyvinyl Butyral-East Process which included an increase in the monitoring frequency of the *general* Leak Detection and Repair Program from quarterly to monthly, and the installation of a chilled fluid condensation system by June 30, 1987 on four slurry tanks (vents #111P181, #111P182, #111P183, and #111P184). The December 5, 1986 Order is part of the DEQE's December 23, 1987 proposed Plan Approval which is the subject of today's action.

General Leak Detection and Repair Program: In addition to the process-specific intensive Leak Detection and Repair Program discussed in the previous paragraph, the DEQE has imposed a general Leak Detection and Repair Program to control fugitive VOC emissions from Monsanto's Indian Orchard facility. The December 23, 1987 proposed Plan Approval states that the test methods and the recording/reporting requirements of that general Leak Detection and Repair Program must meet the requirements of Massachusetts SIP Regulation 310 CMR 7.18(19), Synthetic Organic Chemical Manufacture. The DEQE adopted Regulation 310 CMR 7.18(19) pursuant to EPA's CTG, *Control of Volatile Organic Compound Leaks From Synthetic Organic Chemical and Polymer Manufacturing Equipment* (EPA–450/3–83–006). The general Leak Detection and Repair Program applies to the entire plant except for the part of the Polyvinyl Butyral-East Process where the process-specific intensive Leak Detection and Repair Program is imposed and the Polyvinyl Butyral Sheeting Process. The DEQE did not subject the Polyvinyl Butyral Sheeting Process to the general Leak Detection and Repair Program because the only VOC utilized in this process is a heavy liquid as defined in 310 CMR 7.18(19) and in the above referenced CTG. Processes utilizing only heavy liquids are not subject to quarterly monitoring requirements for leak detection under 310 CMR 7.18(19). Therefore, the DEQE has imposed these requirements of the general Leak Detection and Repair Program for Monsanto, a non-CTG source, consistent with leak detection and repair programs required by 310 CMR 7.18(19) for CTG-subject sources.

Process Shutdowns: In addition to the requirements imposed on the five processes and the general Leak Detection and Repair Program as discussed above, the DEQE's proposed Plan Approval also includes the

reductions achieved by shutting down the Polyvinyl Alcohol Process as part of the RACT determination for the Indian Orchard facility. In the course of its technical RACT determination, the DEQE had found 5.8 pounds of VOC per 100 pounds of product to be RACT for this process. Implementation of *that* RACT determination would have resulted in an emission reduction of 601 TPY. However, Monsanto shutdown this process in 1986. The DEQE's December 23, 1987 proposed Plan Approval requires that the shutdown be permanent, and the DEQE considers *all* of the emission reductions achieved by this shutdown to be RACT. This shutdown resulted in 827.2 TPY reduction.

The Phenol/Formaldehyde Resins Process was shutdown in 1984. The DEQE did not quantify the resulting emission reductions and did not count them toward the percent reduction achieved by its RACT determination. The DEQE does consider the 1984 shutdown of this process to be permanent and enforceable. Should Monsanto opt to restart this process, it would be subject to the Massachusetts SIP's new source review regulation located at 310 CMR 7.02.

EPA's Evaluation of the RACT Determination

As a result of VOC emission reduction measures imposed on Monsanto's active processes and the shutdown of the Polyvinyl Alcohol Process, Monsanto's Indian Orchard facility has achieved a plantwide emission reduction of approximately 76% (a 1222.8 TPY reduction), comparing 1985 emission levels with emission levels after RACT. The year 1985 was used as the baseline year to determine the percent reduction achieved by imposing RACT rather than the 1980 baseline year of the SIP. In 1985, Monsanto conducted an extensive refinement of its annual Source Registration Database. EPA and the DEQE determined that use of the 1985 update to calculate Monsanto's pre-RACT VOC emissions provided for a more accurate comparison to post-RACT emissions than the use of the baseline year of the 1982 SIP. This 76% reduction in VOC emissions does not include the reductions in fugitive emissions achieved by Monsanto's general Leak Detection and Repair Program to control fugitive VOC emissions. As previously stated, this 76% reduction in VOC emissions does not include the reductions achieved in 1984 by the shutdown of the Phenol/Formaldehyde Resins Process. Most importantly, this 76% reduction is greater than the reduction projected for Monsanto in the *Massachusetts 1982 State Implementation Plan for Ozone and Carbon Monxide; August 1982.*

EPA has reviewed the proposed Plan Approval and supporting documents submitted as a SIP revision and generally coucurs with the DEQE's RACT determination. For more details on EPA's evaluation of the DEQE's RACT determination and the baseline used to calculate the RACT percent reduction, please refer to the Technical Support Document available at the EPA Regional Office listed in the **ADDRESSES** section of this notice.

For Monsanto's eight processes that are subject to 310 CMR 7.18(17), the DEQE's proposed Plan Approval sets forth compliance/enforcement requirement. The purpose of these requirements, as specified in the December 23, 1987 proposed Plan Approval, is to insure that Monsanto is meeting each RACT requirement on a continuous basis.

However, EPA finds that several of the RACT requirements, as currently written in the proposed Plan Approval, are not clearly enforceable. Therefore, EPA and the DEQE cannot insure that the RACT emission reductions will actually occur.

Before EPA will conduct final rulemaking approving this SIP revision, the DEQE must add the requirements listed below to Monsanto's Plan Approval to remedy these enforceability problems:

Formaldehyde Process

1. The final Plan Approval must require Monsanto to operate the chilled condensation system such that the vented exhaust is at a temperature of 40 degrees F or less, and install and maintain indicators to monitor compliance on a continuous basis.

2. The final Plan Approval must specifically require boiler No. 6 to be in a concurrent operation, i.e., in a firing mode, whenever the absorbers are in operation because their process off-gas is ducted and directed to boiler No. 6 for destruction.

3. The final Plan Approval must specify a percent removal efficiency for the scrubber used for tank truck loading. This specific percent removal efficiency should be written into the final Plan Approval such that it is met whenever the scrubber is in operation.

Polyvinyl Butyral Sheeting Process

For the printing process step, the Plan Approval's current language, "press not used", is unclear and does not appear to impose a duty on Monsanto and therefore is not legally enforceable. Consequently, the language should be revised to read "the rotogravure printing press shall not be used at any time."

Polyvinyl Butyral-South Process

1. The final Plan Approval must indicate a *correct* number of reactor agitators on the four hydrolysis reactors for which RACT has been defined as a Leak Detection and Repair Program (covered under Monsanto's general Leak Detection and Repair Program).

2. The final Plan Approval must specify the reduction efficiency to the packed-tower scrubber installed on the dryer as a continuous requirement (i.e., Monsanto shall operate the scrubber at a removal efficiency of at least 85.0 percent at all times).

3. The proposed Plan Approved contains a provision for the chilled condensation system installed on the solvent recovery process unit which reads "that Monsanto operate the chilled condensation system regardless of the outside ambient temperature unless Monsanto can demonstrate to the Department that operation results in no significant VOC reductions compared to non-operation." The final Plan Approval should specify the size of the "significant" VOC reduction for the purposes of comparing the operation of the system with the shutdown of the system. The formal SIP revision submittal from the DEQE to EPA should describe the procedure by which the DEQE would authorize the system shutdown and issue an amended Plan Approval to Monsanto. In addition, the final Plan Approval must state the chilled fluid temperature as an enforceable operating parameter (i.e., Monsanto must maintain the temperature of the chilled fluid supplying the chilled condensers at 40 degrees F or less at all times).

Melamine and Urea/Formaldehyde Resins Process

The final Plan Approval must define the specific overall reduction efficiency that must be continuously met for the two-stage scrubbing system, i.e., venturi scrubber and packed-tower scrubber, for this process. In addition, the final Plan Approval should clarify that a "no flow" condition of the induced draft fan for the packed-tower scrubber must sound an alarm in the control room.

Polyvinyl Acetate Products Process

The DEQE imposed an operating restriction of 750 hours per year on the 75 gallon dissolving tank which is used to make Polyvinyl Butyral-East windshield grade products. This operating restriction, as written in the December 23, 1987 proposed Plan

Approval, is not considered enforceable in practice by EPA. If compliance with the operating restriction is based on the total annual operating hours, there may be considerable time lag before a violation can be determined and documented as a continuing violation. Therefore, the final Plan Approval must require Monsanto to comply with the annual 750 hour/year cap on a rolling monthly basis for any twelve consecutive months. In addition, an effective date must be specified in the final Plan Approval for this operating restriction of no later than December 31, 1986.

Polyvinyl Butyral-East Process

1. The final Plan Approval must specify the reduction efficiency for the packed-tower scrubber installed on the dryer as a continuous requirement (i.e. "Monsanto shall operate the scrubber at a removal efficiency of at least 90% at all times).

2. The final Plan Approval must require Monsanto to install and maintain indicators to monitor that the vented exhaust temperature of the chilled condensation system does not exceed 40 degrees F. In addition, the final Plan Approval must state the chilled fluid temperature as an enforceable operating parameter (i.e. "Monsanto must maintain the temperature of the chilled fluid supplying the chilled condensers at 40 degrees F or less at all times.").

3. The December 23, 1987 proposed Plan Approval imposes a process-specific intensive Leak Detection and Repair Program on the Acetilization/Hydrolysis and Wash Tank process units of the Polyvinyl Butyral-East Process. As previously stated, this intensive Leak Detection and Repair Program is to insure that the engineering fixes (e.g. installation of mechanical seals on agitator shafts) achieve the 56% RACT reduction in fugitive VOC emissions from these subject process units. The fugitive VOC emissions from the Acetilization/Hydrolysis and Wash Tank process unit areas are exhausted via elephant trunks to vent No. 820 and vent No. 821 respectively. The DEQE's December 23, 1987 proposed Plan Approval states that Monsanto will demonstrate that the 56% RACT reduction in VOC emissions has occurred by monitoring the exhaust from vent No. 820 and vent No. 821 *daily* with an organic vapor analyzer (OVA). Further, that proposed Plan Approval states that compliance would be based on the quarterly average of all readings. The DEQE proposes that quarterly averaged OVA reading of 35 parts per million (ppm) for the vent No. 820 and 23 ppm for vent No. 821 would represent compliance with RACT.

However, EPA does not concur that compliance with RACT for these two processes units should be determined solely by monitoring vents No. 820 and 821. The proposed Plan Approval must be amended to subject all of the engineering fixes and process modifications which achieve the 56% reduction in fugitive VOC emissions to the intensive Leak Detection and Repair Program. The final Plan Approval must require Monsanto to monitor each of these fugitive VOC emission points (e.g. agitator shafts, manhole covers, sampling points, etc.) of the Acetilization/Hydrolysis and Wash Tank process units. Further, the final Plan Approval must specify a frequency for conducting such monitoring. In no event may the monitoring frequency be less than on a quarterly basis.

4. The DEQE's December 5, 1986 Consent Agreement and Order (which is part of the December 23, 1987 proposed Plan Approval) also requires Monsanto to conduct its *general* Leak Detection and Repair Program, applicable to the remainder of the Polyvinyl Butyral-East Process, on a monthly basis instead of on a quarterly basis beginning on January 1, 1987 until such time that Monsanto can demonstrate to the satisfaction of the DEQE that a less frequent interval provides equivalent VOC emission reduction. The formal SIP revision submitted by the DEQE to EPA should describe the procedure by which the DEQE would authorize a change in intervals for leak checks and issue an amended Plan Approval.

5. With regard to the chilled fluid condensation system installed on the four slurry tanks as required by the December 5, 1986 Consent Agreement and Order, the final Plan Approval must require that Monsanto: (a) maintain the temperature of the vented exhaust at or below a specified temperature in accordance with the design efficiency of the control system; and (b) monitor and record the temperature of the vented exhaust stream or set up an alram and recording system similar to the one Monsanto has already implemented for its control equipment (i.e., scrubbers and chilled condensation systems). If the alarm and recording system approach is taken, the final Plan Approval must require that this system be designed so that the alarm will sound in the process control room if the temperature of the chilled fluid supplying the condensers exceeds a *specified* value.

General Leak Detection and Repair Program

The DEQE's December 23, 1987 proposed Plan Approval contains a footnote regarding the general Leak Detection and Repair Program which reads "Intervals subject to change based upon Department review of leak checking and repair data gathered by Monsanto." The formal SIP revision submitted by the DEQE to EPA should describe the procedure by which the DEQE would authorize a change in intervals for leak checks and issue an amended plan approval.

Compliance Schedule

The DEQE's December 23, 1987 proposed Plan Approval does not specify final compliance dates for the RACT requirements for Monsanto's Formaldehyde Process, Polyvinyl Butyral Sheeting Process, and Polyvinyl Acetate Products Process. The final Plan Approval must specify final compliance dates of no later than December 31, 1986 for all RACT requirements for these processes.

Miscellaneous

The December 23, 1987 proposed Plan Approval interchangeably uses commercial names as well as trade names for Monsanto's non-CTG processes. The final Plan Approval should specifically state the trade name that corresponds to each commercial name for Monsanto's non-CTG processes.

EPA is soliciting public comments on issues discussed in this notice. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the address above.

This revision is being proposed under a procedure called "parallel processing" (47 FR 27073). If the proposed revision is substantially changed, in areas other than those required in this notice, EPA will evaluate those changes and may publish a revised NPR. If no substantial changes are made other than those areas cited in this notice, EPA will publish a Final Rulemaking Notice on the revision. Final rulemaking action by EPA will occur after a final Plan Approval for Monsanto has been issued by the DEQE and has been formally submitted to EPA for incorporation into the SIP.

Proposed Action

EPA is proposing to approve Commonwealth of Massachusetts' proposed Plan Approval dated December 23, 1987 as a revision to the

Massachusetts SIP Final EPA approval is contingent upon the DEQE amending that proposed Plan Approval as outlined in this notice prior to its formal submittal to EPA for incoporatin into the SIP.

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

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

The Administrator's decision to approve or disapprove the SIP revision will be based on whether it meets the requirements of sections 110(a)(2)(A)–(k) and 110(a)(3) of the Clean Air Act, as amended, and EPA regulations in 40 CFR Part 51.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Hydrocarbons, Intergovernmental relations, Reporting and recordkeeping requirementss.

Authority: 42 U.S.C. 7401–7642.

Date: July 5, 1988.

Micael R. Deland,

Regional Administrator, Region I.

Editorial Note: This document was received at the Office of the Federal Register on January 30, 1989.

[FR Doc. 89–2422 Filed 2–1–89; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL MARITIME COMMISSION

46 CFR Part 550

[Docket No. 89–03]

Tariff Filing Notice Periods—Exemption

AGENCY: Federal Maritime Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Federal Maritime Commission proposes to amend its regulations governing the publishing, filing and posting of tariffs in domestic offshore commerce pursuant to the Shipping Act, 1916. This proposed amendment of Part 550 would add a new exemption for carriers providing port-to-port service in the Hawaiian domestic offshore trade. The proposed rule would permit such carriers to publish on one day's notice reductions in existing individual commodity rates, and rates on new tariff items.

DATES: Comments (original and 15 copies) are due on or before March 6, 1989.

ADDRESS: Send comments to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523–5725.

FOR FURTHER INFORMATION CONTACT:

Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523–5740.

Robert G. Drew, Director, Bureau of Domestic Regulation, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523–5796.

SUPPLEMENTARY INFORMATION: In a separate Order issued this date in Petition No. P5–88, *Matson Navigation Company, Inc.—Application for Section 35 Exemption*, the Federal Maritime Commission ("FMC" or "Commission") has granted to Matson Navigation Company ("Matson"), pursuant to section 35 of the Shipping Act, 1916 ("1916 Act"), 46 U.S.C. app. 833a, an exemption from certain requirements of the Intercoastal Shipping Act, 1933 ("1933 Act"), *id.* 843 *et seq.* Matson is an ocean common carrier providing port-to-port service in the Hawaiian domestic offshore trade ("Trade"). The Commission's Order in Petition No. P5–88 permits Matson to put into effect on one day's notice reductions in existing individual commodity rates, and rates on new tariff items. Under the 1933 Act, such tariff actions ordinarily are subject to thirty days' notice. *Id.* 844.

By this Notice, the Commission proposes a rule that would extend the same exemption to all FMC-regulated carriers in the Trade.

Section 35 of the 1916 Act authorizes the Commission to grant exemptions from any requirement of the 1933 Act, if "such exemption will not substantially impair effective regulation * * *, be unjustly discriminatory, or be detrimental to commerce." 46 U.S.C. app. 833a. The exemption granted to Matson resulted from the division in jurisdiction over the domestic offshore ocean trades between the FMC, which regulates all-water, port-to-port services pursuant to the 1933 Act, and the Interstate Commerce Commission ("ICC"), which regulates joint intermodal services originating at or destined to interior mainland points. While the 1933 Act requires thirty days' notice for new or reduced all-water rates, the ICC by regulation permits new or reduced motor/water rates to go into effect on one day's notice. 49 CFR 1312.39(h)(1). Matson's chief competitor for westbound container traffic, Sea-Land Service, Inc. ("Sea-Land"), maintains tariffs only at the ICC. As a result, Sea-Land has been able to put its rates into effect more quickly even when Matson had taken the initiative in reducing a particular rate.

In granting the exemption sought by Matson, the Commission observed that Matson merely would be permitted to engage in rate competition with Sea-Land under equal notice requirements, and that shippers would benefit from being able to utilize new or reduced rates more quickly. We found that there was no basis to conclude that allowing new rates and individual rate decreases to go into effect on one day's notice would impair effective regulation or otherwise transgress the standards of section 35. The Commission cautioned that section 35 may not be used to essentially deregulate a particular trade or the operations of a particular carrier, but found that these concerns did not apply to Matson's exemption, which does not alter the notice requirements imposed by the 1933 Act on general rate decreases, "across-the-board" decreases, or rate increases of any kind.

Comments in support of Matson's request for an exemption had been filed by Sause Bros. Ocean Towing Co., Inc. ("Sause Bros."), which provides tug-and-barge service in the Trade pursuant to FMC port-to-port tariffs. Sause Bros. claimed that, like Matson, it is competitively disadvantaged as a result of the different notice periods, and asked that the exemption sought by Matson be made applicable to all FMC-regulated carriers in the Trade. Although Matson stated that it had no objective to Sause Bros.'s request, the question of a trade-wide exemption had not been included in the **Federal Register** notice of Matson's original application and, consequently, interested parties had had no opportunity to comment on that specific issue. The Commission thus could not properly consider a trade-wide exemption in the context of Matson's application.

Because Sause Bros. and the other FMC-regulated carriers besides Matson are relatively small operators, there appears to be a rational basis to conclude that application on a trade-wide basis of the exemption already granted to Matson would not impair effective regulation or be detrimental to commerce within the meaning of section 35. Furthermore, it appears that a trade-wide exemption would eliminate the possibility of unjust discrimination against carriers other than Matson, remove any remaining artificial barriers to equitable rate competition, and extend the benefits of accelerated rate decreases to all shippers in the Trade. We reiterate, however, that this is a limited exemption designed to remedy a discrete problem. It should not be taken

as an indication that the Commission will engage in wide-scale deregulation of the Trade as a result of the division in jurisdiction between this agency and the ICC. As affirmed by our Order in Petition No. P5–88, the section 35 exemption procedure may not be used to "repeal or substantially amend" the "clear and definite statutory scheme of regulation" prescribed by the 1933 Act. *Amendment of Certain Regulations Governing Common Carriers by Water in the Domestic Offshore Commerce of the United States,* ___ F.M.C. ___, 22 S.R.R. 1195, 1199 (1984).

The Federal Maritime Commission has determined that the proposed rule, if adopted, is not a "major rule" as defined in Executive Order 12291 dated February 17, 1981, because it will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the Federal Maritime Commission certifies that the proposed rule will not, if adopted, have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units and small government jurisdictions.

List of Subjects in 46 CFR Part 550

Maritime carriers, Reporting and recordkeeping requirements.

Therefore, pursuant to 5 U.S.C. 553, sections 18, 35 and 43 of the Shipping Act, 1916, 46 U.S.C. app. 817, 833a and 841a, and section 2 of the Intercoastal Shipping Act, 1933, 46 U.S.C. app. 844, Part 550 of Title 46, Code of Federal Regulations, is proposed to be amended as follows:

PART 550—[AMENDED]

1. The authority citation for Part 550 continues to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 812, 814, 815, 817, 820, 833a, 841a, 843, 844, 845, 845a, 845b, and 847.

2. In § 550.1, the introductory text is redesignated as paragraph (a), paragraphs (a) through (i) are redesignated as paragraphs (a)(1) through (a)(9) respectively, old paragraphs (c)(1) through (3) are redesignated as new paragraphs (a)(3)(i) through (iii), and a new paragraph (b) is added reading as follows:

§ 550.1 Exemptions.

* * * * *

(b) Carriers providing all-water transportation between the continental United States (including Alaska and the District of Columbia) and Hawaii may publish new individual commodity rates, or reductions in existing individual rates, on one day's notice, and to that extent are exempted from the notice requirements of the Act and the rules of this part.

* * * * *

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 89–2304 Filed 2–1–89; 8:45 am]

BILLING CODE 6730–01–M

Notices

Federal Register
Vol. 54, No. 21
Thursday, February 2, 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.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Special Committee on Ethics in Government; Meeting

ACTION: Special Committee on Ethics in Government; Notice of Public Meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of a meeting of the Special Committee on Ethics in Government of the Administrative Conference of the United States. The committee has scheduled the meeting to continue its discussion of draft reports on (1) the Ethics in Government Act's financial reporting requirements and (2) conflict-of-interest rules for federal advisory committee members. Requests for copies of these draft reports may be made to the Office of the Chairman at the address and telephone number given below.

DATE: Friday, February 17, 1989 at 9:30 a.m.

Location: Library of the Administrative Conference, 2120 L Street, N.W., Suite 500, Washington, DC.

Public Participation: The committee meeting is open to the interested public, but limited to the space available. Persons wishing to attend should notify the contact person at least two days prior to the meeting. The committee chairman may permit members of the public to present oral statements at the meeting. Any member of the public may file a written statement with the committee before, during, or after the meeting. Minutes of the meeting will be available on request.

FOR FURTHER INFORMATION CONTACT: Michael W. Bowers, Office of the Chairman, Administrative Conference of the United States, 2120 L Street N.W., Suite 500, Washington, DC 20037. Telephone: (202) 254–7065.

Dated: January 27, 1989.

Jeffrey S. Lubbers,

Research Director.

[FR Doc. 89–2491 Filed 2–1–89; 8:45 am]

BILLING CODE 6110–01–M

Committee on Governmental Processes and Working Group on Model Rules; Public Meetings

Pursuant to the Federal Advisory Committee Act (Pub. L. No. 92–463), notice is hereby given of meetings of the Committee on Governmental Processes and the Working Group on Model Rules of the Administrative Conference of the United States.

Committee on Governmental Processes

Date: Thursday, February 16, 1989.

Time: 12:15 p.m.—2:30 p.m.

Location: Covington and Burling, 1201 Pennsylvania Avenue NW., Washington, DC (Conference Center West, 11th floor).

Agenda: The committee will meet to discuss a study of the federal personnel complaint, appeal, and grievance processes conducted by Professor William V. Luneburg of the University of Pittsburgh School of Law.

Contact: David M. Pritzker, 202–254–7065.

Working Group on Model Rules

Date: Friday, March 10, 1989.

Time: 12:00 p.m.

Location: Administrative Conference of the United States Library, 2120 L Street NW., Suite 500, Washington, DC.

Agenda: The committee will meet as part of an ongoing effort to develop model rules of practice and procedure which can be used by Federal agencies in formal adjudications.

Contact: Gary J. Edles 202–254–7020.

Public Participation

Attendance at the committee meetings is open to the public, but limited to the space available. Persons wishing to attend should notify the contact person at least three days in advance of the meeting. The committee chairmen may permit members of the public to present oral statements at meetings. Any member of the public may file a written statement with a committee before, during, or after a meeting. Minutes of the meetings will be available on request to the contact persons. The contact persons' mailing address is: Administrative Conference of the United States, 2120 L Street NW., Suite 500, Washington, DC 20037.

Jeffrey S. Lubbers,

Research Director.

January 30, 1989.

[FR Doc. 89–2503 Filed 2–1–89; 8:45 am]

BILLING CODE 6110–01–M

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

January 27, 1989.

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

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

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

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Revision

• Agricultural Marketing Service
7 CFR Part 59, Regulation Governing the Inspection of Eggs and Egg Products
PY–38, PY–76, PY–155, PY–156, PY–214, PY–222, PY–240, PY–518–1
Recordkeeping; On occasion; Monthly; quarterly, Semi-annually; Annually; Daily
State or local governments; Businesses or other for-profit; Small businesses or organizations; 50,243 responses; 31,439 hours; not applicable under section 3504(h)
Merlin L. Nichols, Jr., (202) 447–3506

• Animal and Plant Health Inspection Service
9 CFR Part 85 Pseudorabies
None
Recordkeeping; On occasion; Quarterly
Farms; Businesses or other for-profit; 75,200 responses; 76,550 hours; not applicable under section 3504(h)
Robert R. Ormiston, (301) 436–8378

• Agricultural Stabilization and Conservation, Personnel Division
Application for County Employment and Supplemental Qualifications Statement
ASCS–650 and ASCS–675
On Occasion
Individuals or households; Federal agencies or employees; 15,000 responses; 16,000 hours; not applicable under section 3504(h)
Don Samuels, (202) 447–7517

• Agricultural Marketing Service
7 CFR Part 70, Regulations for Voluntary Grading of Poultry Products and U.S. Classes, Standards, and Grades
PY–32, PY–33
On occasion; Monthly
State or local governments; Businesses or other for-profit; Small businesses or organizations; 441 responses; 3,123 hours; not applicable under section 3504 (h)
Merlin L. Nichols, Jr., (202) 447–3506

Extension

• Agriculture Research Service
Taxonomic Data Input Forms—Beetle genus and species
ARS 125, ARS 126
On Occasion
State or local governments; Federal agencies or employees; 10 responses; 800 hours; not applicable under section 3504(h)
Robert D. Gordan, (202) 382–1792

• Food and Nutrition Services
Child Nutrition Labeling Program
None
On occasion
Businesses or other for-profit; Federal agencies or employees; Small businesses or organizations; 5,700 responses; 4,275 hours; not applicable under section 3504(h)
Lori Hornfeck, (703) 756–3556

• Food and Nutrition Service
7 CFR Part 220—School Breakfast Program
None
Recordkeeping; Annually
State or local governments; Businesses or other for-profit; Non-profit institutions; Small businesses or organizations; 37,900 responses; 5,368,344 hours; not applicable under section 3504 (h)
Marian Stroud, (703) 756–3600

• Foreign Agricultural Service
Export Sales of U.S. Agricultural Commodities
FAS–97, 98, 99, 100
On occasion; Weekly; Quarterly
Businesses or other for-profit; 39,550 responses; 21,753 hours; not applicable under section 3504(h)
Thomas B. McDonald Jr., (202) 447–3273

• Rural Electrification Administration
Certification of Authority
REA Form 675
On occasion
Small businesses or organizations; 200 responses; 20 hours; not applicable under section 3504(h)
Archie W. Cain, (202) 382–1900

New Collection

• Forest Service
Wilderness in the South: The Relationship Between the Visitor and Resource
None
One Time Only
Individuals or households; 1,400 responses; 0 hours; not applicable under section 3504 (h)
Dr. Alan E. Watson, (406) 721–5694

Jane A. Benoit,

Departmental Clearance Officer.

[FR Doc. 89–2414 Filed 2–1–89; 8:45 am]

BILLING CODE 3410–01–M

Soil Conservation Service

Town Creek Subwatershed, Mississippi; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (7 CFR Part 650); U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for Town Creek Subwatershed, a portion of North Tillatoba-Hunter Creek Watershed in Tallahatchie County, Mississippi.

FOR FURTHER INFORMATION CONTACT: L. Pete Heard, State Conservationist, Soil Conservation Service, Suite 1321, A.H. McCoy Federal Building, 100 West Capitol Street, Jackson, Mississippi 39269, telephone (601) 965–5205.

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

The project concerns a plan for flood protection in a predominantly urban watershed. The planned works of improvement include approximately 0.7 miles of concrete lined urban channel and 0.6 miles of rock riprap lined channel, a major grade control structure and minor grade control structures. Planned measures will be installed jointly by the Corps of Engineers and the Soil Conservation Service as a component of a Demonstration Erosion Control Project.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting L. Pete Heard.

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

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of EO 12372 which requires intergovernmental consultation with state and local officials.)

Date: January 19, 1989.

L. Pete Heard,

State Conservationist, SCS, Jackson, Mississippi.

[FR Doc. 89–1912 Filed 2–1–89; 8:45 am]

BILLING CODE 3410–16–M

COMMISSION ON CIVIL RIGHTS

Florida 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 (CCR), that a meeting of the Florida Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 4:00 p.m. on February 23, 1989, at the Inter-Continental Hotel, 100 Chopin Plaza, Miami, Florida 33131. The purpose of the meeting is to discuss the status of the Commission and the recent Regional SAC Chairs Conference in which the Florida Committee was represented; to hear a report on Civil Rights progress and/or problems in the state; and to plan a project for Fiscal Year 1989.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Michael Moorhead, (904/342–2211) or Bobby Doctor, CCR staff at (202/523–5571). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact Mr. Doctor 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, January 24, 1989.

Melvin L. Jenkins,

Acting Staff Director.

[FR Doc. 89–2487 Filed 2–1–89; 8:45 am]

BILLING CODE 6335–01–M

Louisiana 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 Louisiana Advisory Committee to the Commission will convene at 2:00 p.m. and adjourn at 5:00 p.m., on Friday, February 24, 1989, at the Hilton Hotel, 5500 Hilton Avenue, Baton Rouge, Louisiana. The purpose of the meeting will be to review Committee projects, discuss civil rights issues of current concern in the State, and plan future projects. Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Michael R. Fontham, or William F. Muldrow, Acting Director 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 Washington, DC, January 24, 1989.

Melvin L. Jenkins,

Acting Staff Director.

[FR Doc. 89–2488 Filed 2–1–89; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Agency Information Collection 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: National Oceanic and Atmospheric Administration.

Title: Marine Debris Education Program Evaluation.

Form Number: None.

Type of Request: New collection.

Burden: 400 respondents, 100 reporting hours. Average hours per response is .25 hours.

Needs and Uses: This survey will evaluate the effectiveness of NOAA's marine debris education program, which is aimed at ocean and shoreline users. The information will be used to evaluate and improve the program. West coast shippers, charterboat operators, and commercial fishermen will be sampled.

Affected Public: Individuals, Businesses and other for-profit, Small businesses or organizations.

Frequency: One-time.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Francine Picoult, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Dated: January 27, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89–2466 Filed 2–1–89; 8:45 am]

BILLING CODE 3510–CW–M

Agency Information Collection 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 Export Administration.

Title: Application for Duplicate License.

Form Number: Export Administration Regulations, Section 372.10, OMB–0694–0031.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 280 respondents; 145 reporting/recordkeeping hours. Average hours per respondent is one-half hour.

Needs and Uses: This collection of information is necessary to identify export licenses of respondents who request duplicate export licenses for lost or destroyed licenses and provides information needed to issue the duplicate license.

Affected Public: Businesses or other for-profit institutions; small business or organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Francine Picoult, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

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

Dated: January 27, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89–2467 Filed 2–1–89; 8:45 am]

BILLING CODE 3510–CW–M

Agency Information Collection 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 Export Administration

Title: Humanitarian License
Form Number: Agency—EAR 773.5; OMB—0694–0033
Type of Request: Extension of the expiration date of a currently aspproved collection
Burden: 4 respondents; 32 reporting/recordkeeping hours—Average hours per respondent—8 hours
Needs and Uses: In response to a provision of the Export Administration Amendments Act of 1985 exempting foreign policy controls on exports of donations, BXA established a "Humanitarian License." This license allows multiple shipments of donations to be sent to embargoed destinations—Libya, North Korea, Cuba, Vietnam, and Cambodia. The items exported can only be those required to meet basic human needs such as medical supplies, food, clothing and shelter. The information provided is used to issue a license. Records must also be maintained on the shipments and can be used for audit purposes.
Affected Public: Non-profit institutions
Frequency: On occasion
Respondent's Obligation: Required to obtain or retain a benefit
OMB Desk Officer: Francine Picoult, (202) 395–7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

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

Dated: January 27, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89–2468 Filed 2–1–89; 8:45 am]

BILLING CODE 3510-CW-M

Agency Information Collection 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: National Oceanic and Atmospheric Administration (NOAA)
Title: Licenses for Private Remote-sensing Space Systems.
Form Number: None.
Type of Request: Request for extension of a currently approved collection.
Burden: 1 respondent; 16 reporting hours; average hours per response—16 hours.
Needs and Uses: Persons under U.S. jurisdiction who wish to operate a private remote-sensing space system must obtain a license from NOAA. The information provided in the application is used by NOAA and other Federal agencies to ensure that U.S. security is protected, that international obligations are met, and that the unenhanced data obtained will be made available on a nondiscriminatory basis.
Affected Public: Business or other for-profit.
Frequency: On occasion.
Respondent's obligation: Required to obtain a benefit.
OMB Desk Officer: Francine Picoult, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

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

Dated: January 27, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89–2469 Filed 2–1–89; 8:45 am]

BILLING CODE 3510-CW-M

National Technical Information Service

Government-Owned Inventions; Notice of Availability for Licensing

January 30, 1989.

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

Technical and licensing information on specific inventions may be obtained by writing to: Office of Federal Patent Licensing, U.S. Department of Commerce, P.O. Box 1423, Springfield, Virginia 22151.

Please cite the number and title of inventions of interest.

Douglas J. Campion,

Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

Department of Agriculture

SN 7–177,226 Interleukin-2 Encapsulated In And/Or Bound To A Carrier Erythrocyte.
SN 7–229,420 Agents for Non-Formaldehyde Durable Press Finishing and Textile Products Therefrom.

Department of Commerce

SN 7–035,211 (4,789,779) Heat Pipe Oven Molecular Beam Source.

Department of Health and Human Services

SN 6–913,575 (4,788,181) 5-Substituted-2',3'-Dideoxycytidine Compounds With Anti-HTLV–III Activity.
SN 7270,098 Parvovirus Capsids.
SN 7–282,562 Chromatographic Assay of Protein Kinases with Peptide Substrates.
SN 7–283,739 Novel Inhibitor of HIV Infection.
SN E–193–88 Apparatus and Methods for Determining In Vivo Response To Thermal Stimulation In An Unrestrained Subject.
SN E–205–88 Novel Serine Protease Inhibitors and Genes Encoding Same.
SN E–240–88 Horizontal Flow-Through Coil Planet Centrifuge With Multilayer Plural Coils in Eccentric Synchronous Rotation, Suitable For Countercurrent Chromatography.
SN E–281–87 Method For Producing High Quality Chemical Structure Diagrams.

Department of the Interior

SN 7–248,220 Microbial Production of Ultrafine-Grained Magnetite.
SN 7–258,955 Soapfilm Flowmeter Device for Measuring Gas Flow Rates.
SN 7–265,109 Apparatus for Water Desalination and Drip Irrigation of Row Crops.

Tennessee Valley Authority

SN 7–037,492 (4,762,546) Production of High-Grade Nitrogen-Sulfur Suspension Fertilizers.
SN 7–127,029 (4,758,261) Diammonium Phosphate Produced With A High-Pressure Pipe Reactor.

[FR Doc. 89–2386 Filed 2–1–89; 8:45 am]

BILLING CODE 3510-04-M

Intent to Grant Exclusive Patent License; Bordo Citrus Products Cooperative

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Bordo Citrus Products Cooperative, having a place of business in Winter Haven, FL 33882–1152, an exclusive license the United States to practice the invention entitled "Method of Preparing Citrus Fruit Sections With Fresh Fruit Flavor and Appearance" U.S. Patent 4,284,651. The patent rights in this invention have been assigned to the United States of America, as represented by the Secretary of Commerce.

The intended exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The intended license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the intended license would not serve the public interest.

Inquiries, comments, and other materials relating to the proposed license must be submitted to Douglas J. Campion, Associate Director, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

A copy of the instant patent may be purchased from the U.S. Patent and Trademark Office.

Douglas J. Campion,

Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 89–2441 Filed 2–1–89; 8:45 am]

BILLING CODE 3510-04-M

Intent to Grant Exclusive Patent License; Medtech Laboratories Inc.

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Medtech Laboratories Inc., having a place of business in Jackson, WY 83001–1108, an exclusive right in the United States to practice the invention embodied in U.S. Patent 4,393,048, "Protective Gel Composition for Wounds." The patent rights in this invention have been assigned to the United States of America, as represented by the Secretary of Commerce.

The intended exclusive license will be royalty-bearing an will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The intended license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the intended license would not serve the public interest.

Inquiries, comments, and other materials relating to the proposed license must be submitted to Charles Bevelacqua, Director, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

A copy of the instant patent may be purchased from the U.S. Patent and Trademark Office.

Douglas J. Campion,

Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 89–2442 Filed 2–1–89; 8:45 am]

BILLING CODE 3510-04-M

Intent to Grant Exclusive Patent License; ORFA Corp. of America

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to the ORFA Corporation of America, having a place of business in Cherry Hill, NJ 08002, an exclusive license in the United States to practice the invention embodied in U.S. Patent No. 3,814,240, "Separation of Thermaplastic Film and Wastepaper." The patent rights in this invention have been assigned to the United States of America, as represented by the Secretary of Commerce.

The intended exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The intended license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the intended license would not serve the public interest.

Inquiries, comments, and other materials relating to the intended license must be submitted to Charles A. Bevelacqua, Director, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

A copy of the instant patent application may be purchased from the Commissioner of Patents, U.S. Patent and Trademark Office, Washington, DC 20231.

Douglas J. Campion,

Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 89–2483 Filed 2–1–89; 8:45 am]

BILLING CODE 3510-04-M

Intent to Grant Exclusive Patent License; Southern Research Institute

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Southern Research Institute, having a place of business in Birmingham, AL 35255–5305, an exclusive license in the United States to practice the invention entitled "Electrostatic Precipitating System" U.S. Patent 4,518,401. The patent rights in this invention have been assigned to the United States of America, as represented by the Secretary of Commerce.

The intended exclusive license will be royalty-bearing an will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The intended license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the intended license would not serve the public interest.

Inquiries, comments, and other materials relating to the proposed license must be submitted to Charles Bevelacqua, Director, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

A copy of the instant patent may be purchased from the U.S. Patent and Trademark Office.

Douglas J. Campion,

Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 89–2443 Filed 2–1–89; 8:45 am]

BILLING CODE 3410-04-M

National Telecommunications and Information Administration

[Docket No. 90124–9024]

Competitiveness of U.S. Telecommunications Industry and Effects of Foreign Telecommunications Policies and Practices

AGENCY: National Telecommunications and Information Administration (NTIA), Commerce.

ACTION: Notice of inquiry.

SUMMARY: As required by section 1381 of the Omnibus Trade and Competitiveness Act of 1988, NTIA and the International Trade Administration (ITA), U.S. Department of Commerce, will jointly conduct a comprehensive study of the competitiveness of the U.S. telecommunications industry and the effects of foreign telecommunications policies and practices on this industry. This report will provide assistance to the President and Congress in determining what actions might be necessary to preserve the

competitiveness of the U.S. telecommunications industry.

DATE: Comments in response to this request should be submitted not later than April 3, 1989, to receive full consideration.

ADDRESS: Interested parties should submit comments to: Honorable Alfred C. Sikes, Assistant Secretary for Communications and Administration, NTIA, Room 4898, U.S. Department of Commerce, 14th and Constitution Ave., NW., Washington, DC 20230. Please submit four copies of your comments.

FOR FURTHER INFORMATION CONTACT: Joseph F. Kellagher, Telecommunications Policy Analyst, Office of Policy Analysis and Development, NTIA, Room 4725, U.S. Department of Commerce, Washington, DC 20230, (202) 377–1880 or John Henry, Commodity Industry Specialist, Office of Telecommunications, ITA, (202) 377–4466.

SUPPLEMENTARY INFORMATION: .

Purpose and Scope of Inquiry

NTIA and ITA seek comments on all factors relating to the competitiveness of the U.S. telecommunications industry. In particular, we are interested in views on the telecommunications industry's current competitive position in the U.S. and international markets; the criteria that should be used to evaluate competitiveness; the impact of foreign policies, regulations, and practices that affect competition; and the actions that can be taken by the U.S. Government to enhance this industry's competitiveness.

The study will encompass all segments of the telecommunications equipment industry (*i.e.*, network, customer premises, and transmission equipment including microwave, mobile radio, and satellite/earth stations). It will also include value-added or enhanced services, and international telecommunications service. Comments are requested on the appropriateness of these industry segments and on whether there are other segments that should be covered by the study.

We intend to address questions including:

- What criteria should be used to evaluate the competitiveness of the U.S. telecommunications industry?
- What is the competitive position of U.S. telecommunications firms in both the U.S. market and in world markets?
- In what technologies and product markets (equipment or services) do U.S. telecommunications companies maintain a competitive edge?
- What recent industry developments have positively or negatively affected the ability of U.S companies to compete in both the U.S and world markets?
- How and to what degree have (and will) foreign practices affect the competitiveness of this industry: industrial policies, financing, subsidies, trade barriers, investment restrictions, distribution systems, etc.?
- To what extent do macroeconomic developments specifically influence the competitive position of U.S. telecommunications companies, as distinguished from developments which influenced U.S industry in general?
- What options are available to the U.S. Government that will increase the competitiveness of U.S. telecommunications equipment and service providers? What existing policies should be changed?

Authority: Omnibus Trade and Competitiveness Act of 1988, Sec. 1381, Pub. L. 100–418, 102 Stat. 1107, 1224 (1988).

Date: January 26, 1989.

Alfred C. Sikes,

Assistant Secretary of Commerce for Communications and Information.

[FR Doc. 89–2374 Filed 2–1–89; 8:45 am]

BILLING CODE 3510–60–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Changes in Visa Arrangements To Coincide With Implementation of the Harmonized Tariff Schedule; Correction

January 30, 1989.

In the **Federal Register** notice published on December 28, 1988 (53 FR 52464), make the following corrections:

India

At 53 FR 52467, 2nd column, Category 465, add HTS numbers 5701.10.2010 and 5701.10.2090.

Mexico

At 53 FR 52468, 3rd column, Category 369–O, change HTS number 5601.10.0000 to 5601.10.1000.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89–2464 Filed 2–1–89; 8:45 am]

BILLING CODE 3510–DR–M

DEPARTMENT OF DEFENSE

Department of the Army

Military Traffic Management; Defense Transportation Tracking System

AGENCY: Military Traffic Management Command, DOD.

ACTION: Notice only.

SUMMARY: The Department of Defense (DOD) is developing a computer based system called the Defense Transportation Tracking System (DTTS) to electronically track the transportation of munitions. DTTS will receive electronic position and status reports on sensitive cargo movements by a service termed Satellite Motor Surveillance Service (SM).

ADDRESS: Military Traffic Management Command, ATTN: MT–SS, 5611 Columbia Pike, Falls Church, VA 22041–5050.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Jones or CPT Carol Sheffler, HQMTMC, 5611 Columbia Pike, Falls Church, VA 22041–5050, (703) 756–1089.

SUPPLEMENTARY INFORMATION: The purpose of this article is to serve notice to vendors wishing to provide electronic tracking service to DOD.

Due to the potential lethality of DOD munitions shipments, DOD is in the process of instituting a transportation protective service SM. SM is used by DTTS to obtain reports on position and transportation status changes on selected shipments via data link.

SM vendors will be employed by commercial carriers approved by DOD to transport munitions. Vendors will maintain a separate mail box/transfer file to hold DTTS message traffic. On a continuing basis, the vendor will provide the DTTS central computer facility with up-to-date information on status of all commercial carrier vehicles transporting certain specified DOD munitions under SM.

Formats and data element requirements for SM are spelled out in a DOD standard rules publication. A copy of the SM rule may be obtained from HQs, Military Traffic Management Command, Directorate of Inland Traffic, ATTN: MT–INNG, 5611 Columbia Pike, Falls Church, VA 22041–5050.

Two way communication between the driver and the carrier's dispatcher will be required by January 1990. It is recommended the carrier take this into consideration in acquisition of satellite services and equipment. Carriers are encouraged to voluntarily use two way

communication as it becomes available by their SM vendor.

John O. Roach II,

Army Liaison Officer with the Federal Register.

[FR Doc. 89-2495 Filed 2-1-89; 8:45 am]

BILING CODE 3710-08-M

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Environmental Impact Statement; Chattahoochee River

This Notice announces the preparation of a Draft Environmental Impact Statement (DEIS) on the existing and proposed expansion of commercial sand and gravel mining operations in the Chattahoochee River within the bounds of the Chattahoochee River National Recreation Area (CRNRA). The CRNRA extends south along the Chattahoochee River from Buford Dam approximately 48 miles to Peachtree Creek near Atlanta in Gwinnett, Forsyth, Fulton, and Cobb Counties, Georgia. The mining of sand and gravel from the Chattahoochee River within CRNRA requires Department of the Army authorization pursuant to Section 10 of the Rivers and Harbors Act of 1899. Any discharge into waters of the United States associated with the mining also requires authorization pursuant to Section 404 of the Clean Water Act.

Agency: U.S. Army Corps of Engineers, DOD.

Cooperating Agency: National Park Service, DOI.

Action: Notice of Intent to Prepare a Draft Environmental Impact Statement (DEIS).

Summary:

1. *Proposed Action:* Several commercial sand and gravel mining firms currently have Department of the Army permits to mine sand within CRNRA. They have expressed an interest in expanding these existing operations. Also, several inquiries have been made concerning the opening of new mining operations in CRNRA.

2. *Alternatives:* The DEIS will address the proposed continued expansion of commercial sand and gravel mining in CRNRA, several modified plans, and the No Action Alternative.

3. *Scoping Process:* a. In December, 1985, three workshops were held in the metropolitan Atlanta area. The purpose of these workshops was to discuss the impacts of sand mining on the Chattahoochee River and CRNRA. The Cross-Impact Assessment Process (CAP) was used to format the workshops. Attendees at these workshops consisted of representatives of several Federal, State and local agencies, sand miners, and conservation groups. The workshops resulted in the formulation of a list of 35 important variables that should be considered in preparation of the DEIS.

b. Major issues to be addressed in the DEIS include the impacts the continued expansion of sand mining would have on water quality, recreation, fisheries, and aesthetics.

c. No formal assignments have as yet been planned for input into the DEIS for all interested agencies and individuals.

d. A minimum of a 45-day review period for the DEIS will be allowed for all interested agencies and individuals.

4. *Scoping Meetings:* As of the present date, no further scoping meetings are planned.

5. *DEIS:* The DEIS should be available to the public by June, 1989.

6. *Address:* Questions concerning the proposed action and the DEIS can be answered by: Mr. David L. McCullough, Archeologist, Environmental Resources Branch, Planning Division, U.S. Army Engineer District, Savannah, Post Office Box 889, Savannah, Georgia 31402-0889, Telephone: (912) 944-5840 (commercial).

Dated: January 24, 1989.

Ralph V. Locurcio,

Colonel, U.S. Army District Engineer.

[FR Doc. 89-2387 Filed 2-1-89; 8:45 am]

BILLING CODE 3710-HP-M

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Folsom Dam and Reservoir Reoperation Study, CA

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent to prepare a DEIS.

SUMMARY: The action being taken is a study to identify and assess the significance of potential measures to provide interim flood protection to the Sacramento Metropolitan area. Measures to be investigated include reservation of greater flood storage space within the Folsom Reservoir. Interim flood control measures could be implemented for approximately an eight to ten year period, until a long term solution is constructed.

FOR FURTHER INFORMATION CONTACT: Questions regarding this DEIS should be addressed to Mr. Steve Peterson, Planning Division, Corps of Engineers, 650 Capitol Mall, Sacramento, California, 95814-4794, telephone (916) 551-1858.

SUPPLEMENTARY INFORMATION:

1. Proposed Action

The Corps of Engineers is conducting an investigation to identify and assess alternative measures of providing increased flood control to the Sacramento Metropolitan Area until a long term flood protection plan is implemented. Prior investigations have revealed that the area has significantly less flood protection along the American River than previously believed (only 63-year versus 120-year level of protection). Current investigations being conducted by the Corps of Engineers and the Bureau of Reclamation would not result in a long term solution being implemented for eight to ten years. Economic issues and concerns for the safety of residents of the Sacramento Metropolitan Area have precipitated this investigation to identify potential interim flood control measures that can provide some measure of short term increased flood protection. Information obtained in this investigation will be summarized in the draft and final report and provided to the Congress and responsible flood control agencies for their information.

2. Alternatives

Alternatives which have been identified at this stage are discussed in the following paragraphs.

a. No Action. The Sacramento Metropolitan Area would continue with less than FEMA level of protection along the American River.

b. Reoperation of the Existing Flood Control Storage in Folsom Reservoir. This alternative would investigate if changes in the current operations of Folsom Dam and Reservoir could be implemented to increase the level of flood protection for Sacramento.

c. Reservation of more flood control storage within Folsom Reservoir. This alternative would alter the amount of space allocated for seasonal flood control in Folsom Lake. A range of increased flood control storage from 400,000 to 650,000 acre feet would be analyzed. Above 650,000 AF of storage structural modifications would be required to Folsom Dam.

d. Rebuilding a Cofferdam at the site of the Bureau of Reclamation's Auburn Dam Project. This alternative would consider reconstruction of a cofferdam at the site of the previous cofferdam on the North Fork of the American River near the City of Auburn.

e. Utilization of Small, Existing Reservoirs in the upper American River Watershed. This alternative would investigate the use of small water supply

and power generation reservoirs for interim flood control storage.

3. Scoping Process

a. Close coordination is being maintained with Federal, state and local agencies, environmental organizations and concerned individuals and groups. This is being accomplished through inter-agency coordination meetings, fact sheets and information brochures, public meetings and workshops, and informal information sessions with civic and community groups. Through this Notice of Intent, all segments of the affected public and agencies are invited to participate in the investigation process. DEIS scoping meeting notices will be distributed.

b. Significant issues that will be discussed in the DEIS include degree of protection offered by the alternatives, impacts on fish and wildlife resources, recreation, endangered species, vegetation (riparian and upland), esthetics, wild and scenic rivers, lost revenues to hydropower and water supply interest and cumulative impacts of other projects in the area.

c. The U.S. Fish and Wildlife Service will provide a Fish and Wildlife Coordination Act Report to accompany the DEIS.

d. A 45-day review period will be allowed for all interested agencies and individuals to review and comment on the DEIS. All interested persons are encouraged to respond to this notice and provide a current address if you wish to be contacted about the DEIS.

4. Meeting Schedule

Three public information meetings and two scoping workshops will be conducted jointly with the American River Watershed Investigation. The meeting schedule is as follows:

Information Meeting No. 1, 7 February 1989, 7:00 to 9:00 pm, Sacramento Convention Center, El Dorado Room, 1100 14th Street, Sacramento, CA 95814

Information Meeting No. 2, 8 February 1989, 7:00 to 9:00 pm, American Lakes Elementary School, 2800 Stonecreek Drive, Sacramento, CA 95833

Information Meeting No. 3, 9 February 1989, 7:00 to 9:00 pm, Rocklin Community Center, 5480 5th Street, Rocklin, CA 95677

Scoping Workshop No. 1, 14 February 1989, 7:00 to 10:00 pm, Sacramento Convention Center, El Dorado Room, 1100 14th Street, Sacramento, CA 95814

Scoping Workshop No. 2, 15 February 1989, 7:00 to 10:00 pm, Rocklin Community Center, 5480 5th Street, Rocklin, CA 95677

5. Availability

The DEIS is scheduled to be available for public review and comment in September 1989.

Date: January 18, 1989.

Jack A. Le Cuyer,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 89-2494 Filed 2-1-89; 8:45 am]

BILLING CODE 3710-GH-M

Intent To Prepare a Draft Environmental Impact Statement (EIS) for Gulf Intracoastal Waterway (GIWW) Louisiana-Texas Section Feasibility Study

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent to prepare a draft EIS.

SUMMARY: The action is being taken to determine whether to widen, deepen, provide alternate routes, or taken no action along that portion of the GIWW located between the Mississippi River at New Orleans, Louisiana, and the Houston Ship Channel near Galveston, Texas. The reason for this action is to determine if there is an opportunity for improving navigation in this section of the GIWW. The intended effect of any action would be to increase navigational efficiency along the entire route and to relieve vessel congestion in the vicinity of Houma, Louisiana.

FOR FURTHER INFORMATION CONTACT: Questions regarding the proposed action should be addressed to Mr. Stan Green, (504) 862-1486; questions regarding the Draft EIS should be addressed to Mr. Larry Hartzog (504) 862-2524. U.S. Army Corps of Engineers, Planning Division (CELMN-PD-RE) P.O. Box 60267, New Orleans, Louisiana 70160-0267.

SUPPLEMENTARY INFORMATION:

1. Authority

Authority for this study is contained in Congressional resolutions adopted by the Committee on Public Works of the U.S. Senate on 29 September 1972, the Committee on Public Works of the U.S. House of Representatives on 12 October 1972, and the Committee on Public Works of the U.S. Senate on 23 August 1974. The first and second resolutions contain the authority for a Corps review of reports on the GIWW (La.—Texas Section) to determine the advisability of deepening and widening the existing channel while the August 1974 resolution contains authority to study the feasibility of providing erosion protection on the GIWW.

2. Proposed Action

The study will determine the advisability of implementing a number of improvements on the GIWW between the Mississippi River and the Houston Ship Channel. The improvements under study include enlarging the existing channel for the purpose of improving the efficiency of navigation on the waterway, the feasibility of constructing a bypass channel around the city of Houma to relieve vessel congestion, and providing erosion protection at three pilot sites on the GIWW.

3. Alternatives

Three alternatives for enlarging the existing 12-foot by 125-foot GIWW channel are being considered. The first alternative assumes a 16-foot by 150-foot channel from the Mississippi River to the Houston Ship Channel except for the reach from the Atchafalaya River to the Sabine River where the channel would be enlarged to 16 feet by 200 feet. A second alternative involves a 12- by 230-foot channel, which would permit two-way traffic of tows configured with two barges abreast. The third alternative has the same channel width as the second alternative, but with a depth of 16 feet.

There are 4 different alignments for plans involving a bypass around the city of Houma. All of the alignments would pass south of the city. Each of these alignments is being considered with three different channel sizes: 12 by 125 feet, 16 by 150 feet, and 12 by 230 feet.

Three additional plans have been developed to include a hurricane protection levee with a bypass channel south of Houma. An intermediate alignment would begin at Larose, Louisiana, and continue to the south of Cocodrie, Louisiana where the alignment would make a northward turn and rejoin the GIWW, then the levee portion would continue north to the town of Labadieville. A more southerly alignment would again begin at Larose and rejoin the GIWW near the Wax Lake Outlet west of the town of Morgan City, Louisiana. The third and most northerly alternative would begin at Larose and rejoin the GIWW west of Houma and would share the same alignment as the most southerly bypass only alternatives.

4. Scoping Process

a. The study was initiated in 1975, and public meetings where held on 12 November, 16 November, and 17 November in Lafayette, Louisiana; Galveston, Texas; and New Orleans, Louisiana; respectively. A

reconnaissance report was completed in January 1979.

b. Public input for scoping will be achieved throught the distribution of a notice to all segments of the public having an interest in the project. In addition, a news release will be issued to the local media. The notice and release will request submission of views on alternatives and any other project related issues considered significant. The basis for significant issues to be addressed in the EIS will consist of the responses to the public notice and news release. Through this notice of intent and the public notice, all segments of the affected public, including Federal, state, and local agencies, and other interested organizations and individuals will be invited to participate in the planning process.

c. Significant issues that will be discussed in the EIS include business and industrial activity, displacement of people, employment, navigation, tax revenues, property values and services, esthetics, noise, community cohesion, endangered species, wildlife resources, fishery resources, marsh, forest resources, wildlife refuges and management areas, Louisiana natural and scenic streams and bayous, National Register sites, and other cultural resources.

d. The U.S. Department of the Interior will provide a Fish and Wildlife Coordination Act Report to accompany the EIS. Coordination will be maintained with the U.S. Fish and Wildlife Service on endangered species. The Louisiana Department of Natural Resources will be consulted regarding consistency with the Louisiana Coastal Zone Management Act. The Louisiana Department of Wildlife and Fisheries will be contacted regarding any impacts to natural and scenic streams. Coordination will be maintained with the State Historic Preservation Officer.

e. A 45-day period will be allowed for all interested agencies and individuals to review and comment on the draft report and EIS.

5. Meeting Schedule

Public meetings for the specific purpose of scoping are not being considered. A "Scoping Input Request" will be prepared and circulated to interested parties. This request will contain a brief information packet consisting of a description of the proposal, a general list of impacts, alternatives, maps, and drawings. The scoping input will be analyzed and a Scoping Document summarizing the comments will be provided to all respondents. The pertinent issues brought up during scoping will be incorporated into the EIS.

6. Availability

The draft EIS is scheduled to be available to the public in January 1990.

Date: January 10, 1989.

Harold E. Manuel, Jr.,

Major, Corps of Engineers, Temporary District Engineer.

[FR Doc. 89-2492 Filed 2-1-89; 8:45 am]

BILLING CODE 3710-84-M

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for a Proposed Flood Protection Project Along the Snake and Gros Ventre Rivers, Jackson Hole, Teton County, WY

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent to prepare a DEIS.

SUMMARY: The Walla Walla District Corps of Engineers is studying the feasibility of a flood protection project along the Snake and Gros Ventre Rivers in Jackson Hole, Wyoming. The project will protect and maintain Federal and non-Federal levees which have been constructed along the rivers. This project was authorized by the Water Resources Development Act of 1986, Pub. L. 99-662.

FOR FURTHER INFORMATION CONTACT: Comments concerning the project and DEIS should be addressed to Chief, Environmental Resources Branch, Corps of Engineers, Walla Walla District, Walla Walla, Washington 99362-9265. Comments or questions can be telephoned to Ms. Sandra Shelin at (509) 522-6626.

SUPPLEMENTARY INFORMATION:

1. This project is located along the Snake and Gros Ventre Rivers in Jackson Hole, Teton County, Wyoming. Land use in this area has been changing from primarily livestock grazing to recreational and residential development. The Snake and Gros Ventre Rivers in the area are highly braided and tend to spread out during high flows, causing flooding. To prevent flood damage, the Corps of Engineers and state and local entities built during 1957 to 1975, a series of levees along the Snake River from River Mile 961.5 (on the opposite side of the river from Grand Teton National Park) to River Mile 944 and along the Gros Ventre River from the mouth upstream to the Grand Teton National Park boundary.

The Water Resources Development Act of 1986 authorized the Corps of Engineers to take over responsibility for operation and maintenance of the Jackson Hole levees project. The Corps is currently preparing a document that will allow a decision as to how the Corps will implement that authorization.

2. Alternatives to be investigated in the Environmental Impact Statement (EIS) include:

A—No action—The Corps will not carry out a levee maintenance project. The Corps will continue to perform emergency levee repair for levees that are economically justifiable and flood fighting as needed.

B—The Corps will include all Federal and non-Federal levees in the flood protection project, regardless of whether or not the levees are economically justifiable. Maintenance activities will include replacement of eroded riprap material and periodic debris removal from the river channels. A quarry will be developed to provide riprap material.

C—The Corps will include all economically justifiable Federal and non-Federal levees in the levee maintenance project. Maintenance activities will be as described in B above.

D—The Corps will raise in-place selected levees or sections of levees. Federal levees will be raised up to 2 feet. Non-Federal levees will be raised up to 5 feet. Maintenance activities will be as described in B above.

3. Significant issues to be addressed in the DEIS include effects of the alternatives on fisheries, wildlife, endangered species, socioeconomics, and cultural resources. The project will be reviewed under all applicable Federal, state, and local statutes.

4. Affected Federal, state, and local agencies, affected Indian tribes, and interested organizations are invited to participate in scoping for the DEIS. A formal scoping meeting is planned for January 31, 1989 at the Teton County Courthouse in Jackson, Wyoming at 1:00 p.m.

5. The DEIS should be available on or about June 1, 1989.

Dated: January 19, 1989

Donald P. Kurkjian,

Major, CE, Acting Commander.

[FR Doc. 89-2493 Filed 2-1-89; 8:45 am]

BILLING CODE 3710-GC-M

DEPARTMENT OF EDUCATION

[CFDA No. 84.165]

Notice Inviting Applications for New Awards under the Magnet Schools Assistance Program [MSAP] for fiscal year (FY) 1989

Purpose: Provides grants to eligible local educational agencies to support projects in magnet schools that are part of approved desegregation plans.

Deadline for Transmittal of Applications: March 17, 1989.

Deadline for Intergovernmental Review: May 16, 1989.

Applications Available: February 17, 1989.

Available Funds Anticipated: $113,620,000.

Estimated Average Award: $1,959,000.

Estimated Number of Awards: 58.

Project Period: 24 months.

Applicable Regulations: The Magnet Schools Assistance Program Regulations, 34 CFR Part 280, as proposed to be amended (53 FR 45874–45876), and (b) the Education Department General Administrative Regulations, 34 CFR Parts 75, 77, 79, 80 and 85.

SUPPLEMENTARY INFORMATION: It is the policy of the Department of Education not to solicit applications before the publication of final regulations. However, in this case, it is essential to solicit applications based on the notice of proposed rulemaking (NPRM). In reauthorizing this program under Public Law 100–297, Congress directed the Secretary to make awards by June 30 of each fiscal year, to the extent practicable. In order for applicants to have sufficient time to prepare and submit their applications, and for the Department to evaluate the applications, review the required desegregation plans, and make grant awards as quickly as possible, the Secretary must solicit applications before publication of the final regulations.

The closing date for comments on the NPRM was December 29, 1988. The Secretary did not receive a large number of comments. After carefully reviewing these comments, the Secretary does not anticipate making changes in the regulations, as proposed in the NPRM, that would affect the content or evaluation of applications. However, there is one provision of the proposed regulations that appeared to result in both concern and misunderstanding by some persons commenting on the NPRM.

The Magnet Schools Assistance Act requires an applicant to certify that it will "provide a description of the manner in which the local educational agency will continue the magnet schools program after assistance under [the Act] is no longer available." The Secretary interprets this provision as requiring that an applicant provide this description in its application. Accordingly, under proposed § 280.31(g), the Secretary would base part of the evaluation of an application on this description. In making this assessment, the Secretary would look for information that shows the applicant's "commitment to the magnet schools program" and "plan for the gradual assumption of program costs."

The proposed regulation should not be interpreted to mean that an applicant is expected to develop an itemized plan for how it will assume each cost of operating its magnet schools program. The applicant is not expected to prepare a revenue study or otherwise locate all non-MSAP sources of funding for its magnet schools program. One-time costs such as the acquisition of equipment need not be discussed. However, the Secretary is interested in information that shows that the applicant has considered how it could use other resources to continue supporting a magnet schools program and that it is committed to continuing the program. The Secretary believes that the reference to a plan for gradual assumption of program costs is consistent with the statutory language, since it would not be possible for a local educational agency to "describe the manner" in which it will continue the magnet schools program without describing how it will pay for it when it no longer is receiving funds from this program.

All of the comments will be fully addressed in the preamble to the final regulations. If there are any changes in the final regulations, applicants will be given an opportunity to revise or resubmit their applications.

For Applications or Information Contact: Annie R. Mack, U.S. Department of Education, 400 Maryland Avenue, S.W., Room 2059, FOB–6, Washington, D.C. 20202–6440. Telephone: (202) 732–4358.

Program Authority: 20 U.S.C. 3021–3032.

Dated: January 23, 1989.

Beryl Dorsett,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 89–2471 Filed 2–1–89; 8:45 am]

BILLING CODE 4000–01–M

[CFDA No. 84–031]

Strengthening Institutions Program; Notice Inviting Applications for New Awards for Fiscal Year 1989

Purpose of Program: Provide grants to eligible institutions of higher education to improve their academic quality, institutional management, and fiscal stability to enable institutions to become self-sufficient.

Deadline for Transmittal of Applications: April 17, 1989.

Applications Available: Applications will be mailed by March 1, 1989, to the Office of the President of all institutions that are designated eligible to apply for a grant under the Strengthening Institutions Program.

Available Funds: $23,000,000.

Estimated Range of Awards: $20,000 to $25,000 for planning grants; $125,000 to $500,000 for development grants.

Average Size of Awards: $23,000 for planning grants; $185,000 for one- in three-year development grants; $450,000 for four- and five-year development grants.

Project Period: Up to 12 months for planning grants; up to 60 months for development grants.

Estimated Number of Awards: 12 planning grants and 89 development grants.

Special Funding Considerations: In tie-breaking situations described in § 607.23 of the Strengthening Institutions Program regulations, 34 CFR 607.23, the Secretary awards additional points under §§ 607.21 and 607.22 to an application from an institution which has an endowment fund of which the current market type, per FTE student, is less than the average, per FTE student, at similar type institutions; or which has library expenditures, per FTE student, which are less than the average, FTE student, at similar type institutions. For the purposes of these funding considerations, an applicant must be able to demonstrate that the current market value of its endowment fund, per FTE student, or library expenditures, per FTE student, is *less* than the following national average for base year 1985–86.

	Average market value of endowment fund, per FTE	Average library expenditures, per FTE
Two-year public institution	$28	$120
Two-year nonprofit, private institutions	321	105
Four-year public institutions	109	306
Four-year nonprofit, private institutions	955	380

Applicable Regulations: (a) The Education Department General Administrative Regulations, 34 CFR Parts 74, 75, and 77; and (b) the Strengthening Institutions Program Regulations, 34 CFR Part 607.

For Information Contact: Dr. Louis J. Venuto, U.S. Department of Education, 400 Maryland Avenue S.W., Room 3042, ROB–3, Washington, D.C. 20202–5335. Telephone: (202) 732–3314.

Program Authority: 20 U.S.C. 1057.

Dated: January 27, 1989.

Kenneth D. Whitehead,

Assistant Secretary for Postsecondary Education.

[FR Doc. 89–2472 Filed 2–1–89; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

Proposed Consent Order With Thos. P. Reidy, Inc.

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of proposed consent order and opportunity for public comment.

SUMMARY: The Economic Regulatory Administration (ERA) announces a proposed Consent Order between the Department of Energy (DOE) and Thos. P. Reidy, Inc. ("Reidy"). The agreement proposes to resolve matters relating to Reidy's compliance with the federal petroleum price and allocation regulations for the period January 1, 1973 through January 27, 1981. If this Consent Order is made final, Reidy would pay to the DOE five million two hundred thousand dollars ($5,200,000) within thirty (30) days of the effective date of the Consent Order; waive its rights to make any claims in refund proceedings conducted pursuant to 10 CFR Part 205, Subpart V; and assign to DOE and waive Reidy's rights to approximately one hundred seventy thousand dollars ($170,000) currently on deposit on Reidy's behalf resulting from its participation in a prior refund proceeding which distributed moneys received from Gulf Oil Corp.

DOE's Office of Hearings and Appeals (OHA) will be petitioned to implement Special Refund Procedures for distributing moneys received from Reidy. Any persons who claim to have suffered injury from Reidy's alleged overcharges would have the opportunity to submit claims for payment in such proceedings.

Pursuant to 10 CFR 205.199J, ERA will receive written comments on the proposed Consent Order for thirty (30) days following publication of this Notice. ERA will consider all comments received from the public in determining whether to accept the settlement and issue a final Order, renegotiate the agreement and issue a modified agreement as a final Order, or reject the settlement. DOE's final decision will be published in the **Federal Register**, along with a summary and analysis of the significant written comments, as well as any other considerations that were relevant to the final decision.

FOR FURTHER INFORMATION CONTACT: Dorothy Hamid, Economic Regulatory Administration, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–4167.

SUPPLEMENTARY INFORMATION:

I. Resolution of Regulatory Issues.

II. Determination of Reasonable Settlement Amount.

III. Terms and Conditions of the Consent Order.

I. Resolution of Regulatory Issues

Reidy is a product reseller-retailer subject to the audit jurisdiction of ERA to determine compliance with the Federal Petroleum Price and Allocation Regulations. During the period covered by this proposed Order (January 1, 1973 through January 27, 1981), Reidy engaged in, among other things, the sale of motor gasoline, No. 2 fuel oil, No. 6 high sulphur fuel oil, and No. 6 low sulphur fuel oil. On May 3, 1982, ERA issued a Proposed Remedial Order (PRO) to Reidy alleging overcharges in sales of premium gasoline, No. 2 fuel oil, No. 6 high sulphur fuel oil, and No. 6 low sulphur fuel oil. On April 1, 1988, the Department of Energy's Office of Hearings and Appeals (OHA) issued the PRO as a Remedial Order (RO) for $6,342,789.21, plus interest. The RO is currently on appeal before the Federal Energy Regulatory Commission. A second PRO was issued to Reidy on November 1, 1984, for $1,620,210.35, plus interest, alleging overcharges in sales of regular gasoline. This matter is currently pending before the OHA. Reidy's total potential liability is approximately $27 million, including interest.

II. Determination of Reasonable Settlement Amount

To discharge in full Reidy's potential liability for its obligations under the price and allocation regulations, the settlement calls for Reidy to pay $5.2 million, and to assign refunds of approximately $170,000, including accrued interest, which were awarded to Reidy in refund proceedings in *Gulf Oil Corp./Thos. P. Reidy, Inc.*, 15 DOE ¶ 84,154 (1986).[1] As well, Reidy will waive its rights to make any claims for refunds in all other proceedings conducted pursuant to 10 CFR Part 205, Subpart V (Subpart V). Under the terms of the proposed Consent Order the ERA would petition the OHA to implement Special Refund Procedures for disposition of (including the funds assigned to DOE by Reidy) settlement funds pursuant to Subpart V. ERA has preliminary agreed to the settlement amount after considering the factual aspects related to the various issues, assessing the litigation risks associated with establishing the alleged overcharges, and considering the benefit to the public from a significant settlement of numerous issues which would take years of continued litigation to resolve.

The inherent risks in litigation make success on all of the issues problematic, and the necessity for the government to prevail on all of the issues in order to maximize overcharge and interest recovery was an important consideration in ERA's preliminary determination that Reidy's agreement to the terms of a proposed Consent Order constitutes a settlement which is in the public interest.

III. Terms and Conditions of the Consent Order

If the Consent Order is made final, Reidy will pay DOE $5.2 million within thirty (30) days of the effective date of the Consent Order. Reidy will assign its rights to DOE and waive whatever rights Reidy has to moneys as determined in OHA's refund proceeding in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984), which were granted in *Gulf Oil Corp./Thos. P. Reidy, Inc.*, 15 DOE ¶ 84,154 (1986). Additionally, Reidy will waive any claims for refunds in all other Subpart V proceedings.

ERA will petition OHA to implement Special Refund Procedures under the provisions of Subpart V of the regulations. In these proceedings, OHA would develop procedures for the receipt and evaluation of applications for refund in order to distribute the settlement moneys. To ensure that OHA has sufficient information to evaluate the claims, the proposed Consent Order requires that Reidy provide customer

[1] Because of the overcharge claims pending against Reidy, OHA ordered that Reidy's refund be retained in escrow.

identification and purchase volume information to OHA upon request.

Reidy and DOE mutually release each other from claims and actions arising under the subject matters covered by the proposed Consent Order. The proposed Order does not affect the right of any other party to take action against Reidy, or of Reidy or the DOE to take action against any other party.

Submission of Written Comments

The proposed Consent Order cannot be made effective until the conclusion of the public review process, of which this Notice is a part.

Interested parties are invited to submit written comments concerning this proposed Consent Order to: Reidy Consent Order Comments, RG–30, Economic Regulatory Administration, 1000 Independence Avenue, SW., Washington, DC 20585. All comments received by the thirtieth day following publication of this Notice in the **Federal Register**, will be considered before determining whether to adopt the proposed Consent Order as a final Order. Any modifications of the proposed Consent Order which significantly alter its terms or impact will be published for additional comments. If, after considering the comments it has received, ERA determines to issue the proposed Consent Order as a final Order, the proposed Order will be made final and effective by publication of a Notice in the **Federal Register.**

Any information or data considered confidential by the person submitting it must be identified as such in accordance with the provisions of 10 CFR 205.9(f).

Issued in Washington, DC. on January 27, 1989.

Milton C. Lorenz,

Chief Counsel for Enforcement Litigation, Economic Regulatory Administration.

I. Introduction

101. This Consent Order is entered into between Thos. P. Reidy, Inc. ("Reidy") and the United States Department of Energy ("DOE"). Except as otherwise provided herein, this Consent Order settles and finally resolves all civil and administrative claims and disputes, whether or not heretofore asserted, between the DOE, as hereinafter defined, and Reidy, as hereinafter defined, relating to Reidy's compliance with the federal petroleum price and allocation regulations, as hereinafter defined, during the period January 1, 1973, through January 27, 1981 (all the matters settled and resolved by this Consent Order are referred to hereinafter as "the matters covered by this Consent Order").

II. Jurisdiction, Regulatory Authority and Definitions

201. This Consent Order is entered into by the DOE pursuant to the authority conferred upon it by sections 301 and 503 of the Department of Energy Organization Act ("DOE Act"), 42 U.S.C. 7151 and 7193, Executive Order No. 12009, 42 FR 46267 (1977); Executive Order No. 12038, 43 FR 4957 (1978); and 10 CFR 205.199J.

202. The Economic Regulatory Administration ("ERA") was created by section 206 of the DOE Act, 42 U.S.C. 7136. In Delegation No. 0204–4, the Secretary of Energy delegated responsibility for the administration of the federal petroleum price and allocation regulations to the Administrator of the ERA. In Delegation No. 0204–4A, the Administrator delegated to the Special Counsel authority to audit compliance with the federal petroleum price and allocation regulations and to take appropriate enforcement actions based upon such audits.

203. For purposes of this Consent Order, the phrase "federal petroleum price and allocation regulations" means all statutory requirements and administrative regulations and orders regarding the pricing and allocation of crude oil, refined petroleum products, natural gas liquids, and natural gas liquid products, including the entitlements and mandatory oil imports programs, administered by the DOE. The federal petroleum price and allocation regulations include (without limitation) the pricing, allocation, reporting, certification, and recordkeeping requirements imposed by or under the Economic Stabilization Act of 1970, the Emergency Petroleum Allocation Act of 1973, the Federal Energy Administration Act of 1974, Presidential Proclamation 3279, all applicable DOE regulations codified in 6 CFR Parts 130 and 150 and 10 CFR Parts 205, 210, 211, 212, and 213, and all rules, rulings, guidelines, interpretations, clarifications, manuals, decisions, orders, notices, forms, and subpoenas relating to the pricing and allocation of petroleum products. The provisions of 10 CFR 205.199J and the definitions under the federal petroleum price and allocation regulations shall apply to this Consent Order except to the extent inconsistent herewith. Reference herein to "DOE" includes, besides the Department of Energy, the Cost of Living Council, the Federal Energy Office, the Federal Energy Administration, the Office of Special Counsel (OSC), the Economic Regulatory Administration and all predecessor and successor agencies. References in this Consent Order to "Reidy" shall include: (1) Thos. P. Reidy, Inc. and all of its subsidiaries and affiliates, Ramada Oil & Gas Corporation as a successor to Thos. P. Reidy, Inc., (2) all of Reidy's petroleum-related activities as reseller, retailer, or otherwise, and (3) except for purposes of Article IV, *infra*, Reidy's directors, officers, and employees and stockholders.

III. Facts

The stipulated facts upon which this Consent Order is based are as follows:

301. During the period covered by this Consent Order, Reidy was a "reseller-retailer" as that term is defined in the federal petroleum price and allocation regulations and was subject to the jurisdiction of the DOE. Reidy engaged in, among other things, the sale of residual fuel oil, motor gasoline, middle distillates, aviation fuel, propane, and other refined petroleum products.

302. DOE conducted an audit to determine Reidy's compliance with the federal petroleum price and allocation regulations. During the course of the DOE's audit, the enforcement proceedings instituted by the DOE and the negotiations that led to this Consent Order, the DOE raised certain issues with respect to Reidy's application of the federal petroleum price and allocation regulations. The DOE has taken various administrative enforcement actions against Reidy, including the issuance of Notices of Probable Violation, Proposed Remedial Orders and a Remedial Order. Reidy maintained, however, that it had calculated its costs, determined its prices, sold its petroleum products, and operated in all other respects in accordance with the federal petroleum price and allocation regulations. The DOE and Reidy have disagreed in several respects concerning the proper application of the federal petroleum price and allocation regulations to Reidy's activities with respect to the matters covered by the Consent Order, and each has asserted its belief that its respective legal and factual positions on the matters resolved by this Consent Order are meritorious. These positions were emphasized in the intensive review and exchange of information conducted during the audit and subsequent settlement negotiation process. However, in order to avoid the expense of protracted and complex litigation and the disruption of its orderly business functions, Reidy has agreed to enter into this Consent Order.

The DOE believes this Consent Order constitutes a satisfactory resolution of the matters covered herein and is in the public interest.

IV. Remedial Provisions

401. In full and final settlement of all matters covered by this Consent Order and in lieu of all other remedies which have been or might be sought by the DOE against Reidy for such matters under 10 CFR 205.199I or otherwise: (a) Reidy shall pay to the DOE five million two hundred thousand dollars ($5,200,000) within thirty (30) days of the effective date of this Consent Order; and (b) Reidy assigns its rights to DOE and waives whatever rights Reidy has to monies currently on deposit on Reidy's behalf resulting from its participation in OHA's refund proceeding established under *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984), which were granted in *Gulf Oil Corp./Thos. P. Reidy, Inc.*, 15 DOE ¶ 85,154 (1986).

402. The payment pursuant to paragraph 402 shall be by certified or cashier's check made payable to the United States Department of Energy and delivered to the Office of the Comptroller, Office of Washington Financial Services, Cash Management Division, P.O. Box 500, Germantown, Maryland 20874–0550. Concurrent with the settlement payment, Reidy shall send a copy of the payment check to:

Jay F. Thompson, Office of Management and Information Systems, Economic Regulatory Administration, U.S. Department of Energy, 1000 Independence Avenue, SW., Room 5B–148, RG–10, Washington, DC 20585.

403. Payments made by Reidy pursuant to paragraph 401(a) of this Consent Order, as well as those monies currently on deposit as described in paragraph 401(b), shall be distributed by the DOE pursuant to the special refund procedures prescribed by 10 CFR Part 205, Subpart V.

V. Issues Resolved

501. All pending and potential civil and administrative claims, whether or not known, demands, liabilities, causes of action or other proceedings by the DOE against Reidy regarding Reidy's compliance with and obligations under the federal petroleum price and allocation regulations during the period covered by this Consent Order, whether or not heretofore raised by an issue letter, Notice of Probable Violation, Notice of Proposed Disallowance, Proposed Remedial Order, Remedial Order, action in court or otherwise, are resolved and extinguished as to Reidy by this Consent Order.

502. (a) Except as otherwise provided herein, compliance by Reidy with this Consent Order shall be deemed by the DOE to constitute full compliance for administrative and civil purposes with all federal petroleum price and allocation regulations for matters covered by this Consent Order. In consideration for performance as required under this Consent Order by Reidy, the DOE hereby releases Reidy completely and for all purposes from all administrative and civil judicial claims, demands, liabilities or causes of action, including without limitation claims for civil penalties, that the DOE has asserted or might otherwise be able to assert against Reidy before or after the date of this Consent Order for alleged violations of the federal petroleum price and allocation regulations with respect to matters covered by this Consent Order. The DOE will not initiate or prosecute any such administrative or civil judicial matter against Reidy or cause or refer any such matter to be initiated or prosecuted, nor will the DOE or its successors directly or indirectly aid in the initiation of any such administrative or civil judicial matter against Reidy or participate voluntarily in the prosecution of such actions. The DOE will not assert voluntarily in any administrative or civil judicial proceeding that Reidy has violated the federal petroleum price and allocation regulations with respect to the matters covered by this Consent Order or otherwise take any action with respect to Reidy in derogation of this Consent Order. However, nothing contained herein shall preclude the DOE from defending the validity of the federal petroleum price and allocation regulations.

(b) The DOE will not seek or recommend any criminal fines or penalties based on information or evidence presently in its possession for the matters covered by this Consent Order, provided, however, that nothing in this Consent Order precludes the DOE from (1) seeking or recommending such criminal fines or penalties if information subsequently coming to its attention indicates, either by itself or in combination with information or evidence presently known to DOE, that a criminal violation may have occurred or (2) otherwise complying with its obligations under law with regard to forwarding information of possible criminal violations of law to appropriate authorities. Nothing contained herein may be construed as a bar, estoppel or defense against any criminal or civil action brought by any agency of the United States other than the DOE under (i) section 210 of the Economic Stabilization Act of 1970 or (ii) any statute or regulation other than the federal petroleum price and allocation regulations. Finally, this Consent Order does not prejudice the rights of any third party or Reidy in any private action, including an action for contribution by or against Reidy.

(c) Reidy releases the DOE completely and for all purposes from all administrative and civil judicial claims, liabilities, or causes of action that Reidy has asserted or may otherwise be able to assert against the DOE relating to the DOE's administration of the federal petroleum price and allocation regulations. This release, however, does not preclude Reidy from asserting any factual or legal position or argument as a defense to any action, claim, or proceeding brought by the DOE, the United States, or any agency of the United States. Nor does it preclude Reidy from asserting a defense, counterclaim or offset to any action, claim or proceeding brought by any other person.

(d) Reidy hereby releases any and all claims that Reidy may have for refunds pursuant to any special refund procedures implemented pursuant to 10 CFR Part 205, Subpart V. Such proceedings include, but are not limited to, those proceedings implemented for the purpose of distributing consent order funds received from Gulf Oil Corporation, Exxon Corporation and Texaco Inc, as well as refund proceedings implemented to distribute remedial order proceeds or other funds held or to be held by DOE for distribution to purchasers of refined petroleum products or crude oil.

503. (a) Within fifteen (15) days after the Effective Date of this Consent Order, Reidy and the DOE will file or cause to be filed appropriate pleadings and will take all other steps necessary to withdraw all claims and dismiss with prejudice all proceedings covered by this Consent Order then pending before the DOE's Office of Hearings and Appeals or the Federal Energy Regulatory Commission, and to dismiss with prejudice any court proceeding then pending or subsequently filed involving an appeal from or seeking review of a decision by the OHA or the FERC in any such proceeding.

(b) Within ten (10) days of the effective date of this Consent Order, the DOE shall request the Department of Justice to withdraw formally its letters sent in August 1988 to Reidy relating to Reidy's compliance with the regulations during the period of price controls.

504. Execution of this Consent Order constitutes neither an admission by

Reidy nor a finding by the DOE of any violation by Reidy of any statute or regulation. The DOE has determined that it is not appropriate to seek to impose civil penalties for the matters covered by this Consent Order, and the DOE will not seek any such civil penalties. None of the payments or expenditures made by Reidy pursuant to this Consent Order are to be considered for any purpose as penalties, fines, or forfeitures or as settlement of any potential liability for penalties, fines or forfeitures.

505. Notwithstanding any other provision herein, with respect to the matters covered by this Consent Order, the DOE reserves the right to initiate an enforcement proceeding or to seek appropriate penalties for any newly discovered regulatory violations committed by Reidy, but only if Reidy has concealed facts relating to such violations. The DOE also reserves the right to seek appropriate judicial remedies, other than full rescission of this Consent Order, for any misrepresentation of fact material to this Consent Order during the course of the audit or the negotiations that preceded this Consent Order or upon discovery of information that is materially inconsistent with the information which has been furnished by Reidy upon which this agreement is based.

VI. Recordkeeping, Reporting and Confidentiality

601. Reidy shall maintain such records as are necessary to demonstrate compliance with the terms of this Consent Order. To assist DOE in the distribution of the monies paid pursuant to this Consent Order, Reidy shall also retain sales volume data and customers' names and addresses regarding its sales of crude oil and refined petroleum products for the transactions covered by this Consent Order until thirty (30) days after final distribution by DOE of such monies. If requested, Reidy shall make such information available to DOE. Except as otherwise provided in this paragraph, upon timely payment to DOE of the amount required to be paid under paragraph 402 of this Consent Order, Reidy is relieved of its obligation to comply with the recordkeeping requirements of the federal petroleum price and allocation regulations relating to the matters settled by this Consent Order.

602. Except for formal request for information regarding other firms subject to the DOE's information gathering and reporting authority, Reidy will not be subject to any audit requests, report orders, subpoenas, or other administrative discovery by DOE relating to Reidy's compliance with the federal petroleum price and allocation regulations relating to the matters settled by this Consent Order.

603. The DOE will treat sensitive commercial and financial information provided by Reidy pursuant to negotiations which were conducted with respect to this Consent Order or obtained by the DOE in its audit of Reidy and related to matters covered by this Consent Order as confidential and proprietary and will not disclose such information unless required to do so by law, including a request by a duly authorized committee or subcommittee of Congress. If a request or demand for release of any such information is made pursuant to law, the DOE will claim any privilege or exemption reasonably available to it. The DOE will provide Reidy with ten (10) days actual notice, if possible, of any pending disclosure of such information, unless prohibited or precluded from doing so by law or request of Congress. The DOE will retain the audit information which it has acquired during its review of Reidy's compliance with the federal petroleum price and allocation regulations in accordance with the DOE's established records retention procedures. Notwithstanding the otherwise confidential treatment afforded such information by the terms of this Consent Order, the DOE will make such information available to the Department of Justice ("DOJ") in response to a request pursuant to the DOJ's statutory authority by a duly authorized representative of the DOJ. If requested by the DOJ, the DOE shall not disclose that such a request has been made. Nothing in this paragraph shall be deemed to waive or prejudice any right Reidy may have independent of this Consent Order regarding the disclosure of sensitive commercial and financial information.

VII. Contractual Undertaking

701. It is the understanding and express intention of Reidy and the DOE that this Consent Order constitutes a legally enforceable contractual undertaking that is binding on the parties and their successors and assigns. Notwithstanding any other provision herein, Reidy (and its successors and assigns) and the DOE each reserves the right to institute a civil action in an appropriate United States district court, if necessary, to secure enforcement of the terms of this Consent Order, and the DOE also reserves the right to seek appropriate penalties and interest for any failure to comply with the terms of this Consent Order. The DOE will undertake the defense of the Consent Order, as made effective, in response to any litigation challenging the Consent Order's validity in which the DOE is named a party. Reidy agrees to cooperate with the DOE in the defense of any such challenge.

VIII. Final Order

801. Upon becoming effective, this Consent Order shall be a final order of DOE having the same force and effect as a remedial order issued pursuant to Section 503 of the DOE Act, 42 U.S.C. 7193, and 10 CFR 205.199B. Reidy hereby waives its right to administrative or judicial review of this Order, but Reidy reserves the right to participate in any such review initiated by a third party.

IX. Effective Date

901. This Consent Order shall become effective as a final order of the DOE upon notice to that effect being published in the **Federal Register**. Prior to that date, the DOE will publish notice in the **Federal Register** that it proposes to make this Consent Order final and, in that notice, will provide not less than thirty (30) days for members of the public to submit written comments. The DOE will consider all written comments to determine whether to adopt the Consent Order as a final order, to withdraw agreement to the Consent Order, or to attempt to renegotiate the terms of the Consent Order.

902. Until the Effective Date, the DOE reserves the right to withdraw consent to this Consent Order by written notice to Reidy, in which event this Consent Order shall be null and void. If this Consent Order is not made effective on or before the one hundred fiftieth (150th) day following execution by Reidy, Reidy may, at any time thereafter until the Effective Date, withdraw its agreement to this Consent Order by written notice to the DOE, in which event this Consent Order shall be null and void.

I, the undersigned, a duly authorized representative of Reidy, hereby agree to and accept on behalf of Reidy the foregoing Consent Order.

Thomas P. Reidy,

President and Chief Executive Officer, Ramada Oil & Gas Corporation.

Dated: December 27, 1988.

I, the undersigned, a duly authorized representative of DOE, hereby agree to and accept on behalf of the DOE the foregoing Consent Order.

Milton C. Lorenz,

Chief Counsel, Economic Regulatory Administration.

Dated: January 13, 1989.

[FR Doc. 89-2501 Filed 2-1-89; 8:45am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER89-154-000 et al.]

Mississippi Power & Light Co. et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

January 30, 1989.

Take notice that the following filings have been made with the Commission:

1. Mississippi Power & Light Company

[Docket No. ER89-154-000]

Take notice that Mississippi Power & Light Company (MP&L), on December 28, 1988, tendered for filing an extension of a letter agreement for sale of transmission service to Cajun Electric Power Cooperative, Inc.

MP&L requests an effective date of January 1, 1989, for the extension of the letter agreement, and therefore requests waiver of the Commission's notice requirements.

Comment date: February 13, 1989, in accordance with Standard Paragraph E at the end of this document.

Southwestern Electric Company

[Docket No. ER89-165-000]

January 30, 1989.

Take notice that on December 30, 1988, Southwestern Electric Power Company (SWEPCO) tendered for filing an amendment (Amendment), dated December 5, 1988, to a letter agreement, dated November 17, 1987, between SWEPCO and City Utilities of Springfield, Missouri (Springfield). The Amendment provides for the continued exchange of replacement energy between SWEPCO and Springfield beyond the original December 31, 1988 termination date.

SWEPCO requests an effective date of January 1, 1989 to assure that there is no break in service to Springfield and, accordingly, requests waiver of the Commission's notice requirements. Copies of the filing were served upon Springfield, the Arkansas Public Service Commission, the Louisiana Public Service Commission, the Missouri Public Service Commission and the Public Utility Commission of Texas.

Comment date: February 31, 1989, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. 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. 89-2474 Filed 2-1-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP89-696-000 et al.]

Transwestern Pipeline Co. et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Transwestern Pipeline Company

[Docket No. CP89-696-000]

January 26, 1989.

Take notice that on January 25, 1989, Transwestern Pipeline Company (Transwestern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP 89-696-000 a request pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a transportation service for Chevron U.S.A., Inc. (Chevron), a producer, under the blanket certificate issued in Docket No. CP88-133-000, pursuant to Section 7(c) 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.

Transwestern states that pursuant to a transportation agreement dated October 24, 1988, under its Rate Schedule ITS-1, it proposes to transport for Chevron up to 150,000 MMBtu per day equivalent of natural gas. Transwestern states that it would receive the gas at existing receipt points in New Mexico, Texas and Oklahoma, and that it would transport and deliver the gas in California, New Mexico, Oklahoma and Texas.

Transwestern advises that service under § 284.223(a) commenced November 1, 1988, as reported in Docket No. ST89-1865 (filed January 23, 1989). Transwestern further advises that it would transport 112,500 MMBtu on an average day and 54,750,000 MMBtu annually.

Comment date: March 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

2. Columbia Gas Transmission Corporation

[Docket No. CP89-639-000]

January 27, 1989.

Take notice that on January 17, 1989, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP89-639-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing firm natural gas sales service to Virginia Natural Gas, Inc. (Virginia Natural), a new wholesale customer, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that Columbia proposes to initiate firm natural gas sales service to Virginia Natural of 5,000 dekatherm per day of contract demand under Columbia's contract demand service rate schedule, commencing December 1, 1989. The seasonal entitlement associated with such service would be 1,095,000 dekatherm per year.

It is alleged that Columbia would deliver such natural gas to Commonwealth Gas Pipeline Corporation (Commonwealth) for the account of Virginia Natural, at an existing interconnection between Columbia and Commonwealth at Bickers, Virginia. Commonwealth would transport such natural gas for Virginia Gas to existing points of delivery between Commonwealth and Virginia Gas.

It is claimed that no additional facilities are required by Columbia in order to render the proposed service. Columbia has been advised by Commonwealth and Virginia Gas that no new or additional facilities would be constructed to effectuate the proposed service.

Columbia estimates that the non-gas revenues associated with proposed service to be $614,960 annually.

Comment date: February 17, 1989, in accordance with Standard Paragraph F at the end of this notice.

3. Commonwealth Gas Pipeline Corporation

[Docket No. CP89-657-000]

January 27, 1989.

Take notice that on January 17, 1989, Commonwealth Gas Pipeline Corporation (Commonwealth), 800 Moorefield Park, Richmond, Virginia

23236, filed in Docket No. CP89–657–000 an application pursuant to § 284.224 of the Commission's Regulations for a blanket certificate of public convenience and necessity authorizing the transportation of natural gas, all as more fully set forth in the application on file with the Commission and open to public inspection.

It is stated that Commonwealth agrees to comply with the conditions set forth in § 284.222(e) and understands that any transaction authorized under a blanket certificate shall be subject to the same rates and charges, terms, conditions and reporting requirements that would apply if the transactions were authorized for an intrastate pipeline by subparts C, D and E of Part 284 of the Commission's Regulations.

Comment date: February 17, 1989, in accordance with Standard Paragraph F at the end of this notice.

4. Southern Natural Gas Company

[Docket No. CP89–700–000]

January 27, 1989.

Take notice that on January 25, 1989, Southern Natural Gas Company (Southern) filed in Docket No. CP89–700–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations for authorization to provide interruptible transportation services for Sonat Marketing Company (Sonat), a marketer, under its blanket certificate issued in Docket No. CP88–316–000 under Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Southern proposes to transport natural gas for Sonat on an interruptible basis under Southern's Rate Schedule IT. Southern states that it would transport up to 4,200 MMBtu of natural gas on a peak day, 800 MMBtu of natural gas on an average day, and 292,000 MMBtu of natural gas on an annual basis. Southern asserts that no new facilities are required to implement the proposed transportation service.

Southern states that it commenced the transportation service pursuant to the 120-day self-implementing provision of § 284.223(a)(1) of the Commission's Regulations on December 1, 1988, as reported in Docket No. ST89–1542.

Comment date: March 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

5. Williams Natural Gas Company

Docket No. CP89–670–000]

January 27, 1989.

Take notice that on January 19, 1989, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89–670–000, 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 its blanket certificate issued in Docket No. CP86–631–000, pursuant to section 7 of the Natural Gas Act for Union Pacific Resources Company (Union Pacific), all as more fully set forth in the request on file with the Commission and open to public inspection.

Williams proposes to transport up to a maximum of 15,000 MMBtu of natural gas per day for Union Pacific from various receipt points in Wyoming to various delivery points on Williams' pipeline system in Kansas. Williams anticipates transporting up to 15,000 MMBtu on a peak day and average day, and up to 5,475,000 MMBtu annually for Union Pacific. Williams explains that service commenced December 1, 1988 under Section 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89–1654–000.

Comment date: March 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

Columbia Gas Transmission Corporation

[Docket No. CP89–636–000]

January 27, 1989.

Take notice that on January 17, 1989, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, filed in Docket No. CP89–636–000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of facilities to render firm sales service to North Carolina Natural Gas Corporation (NCN), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that Columbia would provide firm natural gas sales service to NCN of 25,000 dekatherms per day of contract demand under its contract demand service rate schedule with a seasonal entitlement of 5,475,000 dekatherm per year commencing on December 1, 1989. To provide such service for NCN, Columbia proposes to construct and operate the following facilities.

(1) 7.5 miles of 16-inch pipeline extending from a proposed interconnection with Commonwealth Gas Pipeline Corporation (Commonwealth) in Greensville County, Virginia to a proposed interconnection with NCN in Northampton County, North Carolina;

(2) Three 400 horsepower compressor units at the new Pleasant Hill Compressor station in Northampton County;

(3) Measuring and regulating station facilities in Northampton County; and

(4) Initiate compression service for NCN.

It is asserted that Columbia would deliver its sales quantities to Commonwealth at an existing interconnection of the facilities of Columbia and Commonwealth located at Bickers in Greene County, Virginia for transportation under section 284.224 of the Commission's Regulations and redelivery to Columbia at a proposed interconnection of Commonwealth's facilities and the subject facilities. It is alleged that Commonwealth is a Hinshaw pipeline subject to the jurisdiction of the Virginia Corporation Commission. The 7.5 miles of 16-inch pipeline proposed by Columbia would extend from Commonwealth's system in Virginia to NCN's facilities in North Carolina. Columbia would deliver its sales quantities to NCN at the outlet side of the metering and regulating facilities to be installed at the interconnection.

It is claimed that in recent years, NCN has experienced substantial load growth in its market areas. NCN is served only by Transcontinental Gas Pipe Line Corporation (Transco). It is asserted that Transco is the only interstate gas pipeline currently serving North Carolina distribution companies. NCN must rely upon Transco for all of NCN's natural gas service, be it for sales service or transportation service. It is alleged that the North Carolina Public Service Commission is encouraging the local distribution companies subject to its jurisdiction to acquire natural gas supplies from alternative interstate gas pipelines in order to provide diversification of gas supples for the state of North Carolina.

The proposed facilities are estimated to cost $7,141,000, including the Commission's filing fees. Columbia states that it would finance the construction of the proposed facilities with funds generated from internal sources. Columbia estimates that the non-gas revenues associated with its proposal would be approximately $3,248,048 and the cost of service associated is approximately $2,184,133 resulting in the non-gas revenues exceeding the cost of service by approximately $1,063,915.

Comment date: February 17, 1989, in accordance with Standard Paragraph F at the end of this notice.

Panhandle Eastern Pipe Line Company

Docket No. CP89-598-000]

January 30, 1989.

Take notice that on Januuary 12, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas, 77251, filed in Docket No. CP89-598-000, an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to partially abandon sales service to Southeastern Michigan Gas Company (SEMCO), an existing jurisdictional sales customer, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Panhandle states that SEMCO has elected under § 284.10 of the Commission's Regulation's to convert a portion of its daily Contract Demand (CD) to firm transportation effective as of November 1, 1988. Panhandle explains that the firm transportation would be rendered under the terms and conditions of its Rate Schedule PT-Firm.

The proposed abandonment, it is said, would reduce the annualized total CD from 14,251,455 Mcf to 13,333d,845 Mcf.

Comment date: February 21, 1989, in accordance with Standard Paragraph F at the end of this notice.

Southern Natural Gas Company

Docket No. CP89-698-000]

January 30, 1989.

Take notice that on January 25, 1989, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35302, filed n docket No. CP89-698-000 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. CP88-316-000 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.

Southern proposes to transport natural gas for Chevron U.S.A., Inc. (Chevron) pursuant to Rate Schedule IT. Southern explains that service commenced December 1, 1988, under Section 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-3228. Southern explains that the peak day quantity would be 35,000 MMBtu, the average daily quantity would be 30,000 MMBtu, and that the annual quantity would be 10,950,000 MMBtu. Southern explains that it would receive natural gas for Chevron's account at receipt points in Eugene Island Blocks 64 and 74, offshore Louisiana, for delivery to a point of interconnection between Southern and United Gas Pipe Line Company in Eugene Island Block 51, offshore Louisiana.

Comment date: March 16, 1989, in accordance with Standard Paragraph G at the end of the notice.

9. Algonquin Gas Transmission Company

[Docket No. CP89-656-000]

January 30, 1989.

Take notice that on January 17, 1989, Algonquin Gas Transmission Company (Applicant), P.O. Box 2521, Houston, Texas 77252, filed in Docket No. CP89-656-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing a new firm transportation service to an existing resale customer and the construction and operation of facilities to implement the services, all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicant requests authorization to initiate a firm transportation service for Providence Gas Company (Providence) of 21,063 MMbtu per day under Applicant's proposed Rate Schedule AFT-3. In order to implement the proposed service, Applicant proposes to construct (1) 2.0 miles of 36-inch pipeline loop in Mansfield and Chaplin, Connecticut, (2) 1.6 miles of 24-inch pipeline loop on its existing G-12 System in East Providence, Rhode Island, (3) 2.1 miles of 16-inch pipeline loop on its existing G-3 System near New Bedford, Massachusetts, (4) 3.8 miles of new 12-inch pipeline lateral from its G-1 System to the new North Portsmouth, Rhode Island meter station on Aquidneck Island and (5) a new meter station on Aquidneck Island which would be designated as the North Portsmouth Meter Station. Applicant estimates the cost to construct the proposed facilities to be $17,677,000. Applicant proposes to finance the construction costs with bank financing equal to 75 percent of the total costs and equity contributions equal to 25 percent of the total costs.

Applicant states that it would receive the quantities of natural gas on behalf of Providence at a proposed point of interconnection with Columbia Gas Transmission Company (Columbia) in Morris County, New Jersey. Applicant states that Columbia has requested the proposed interconnection in the pending Docket No. CP88-163-000 currently on file with the Commission.[1] From this point of receipt, Applicant would transport and deliver the quantities of natural gas to Providence at either the existing Dey Street, East Providence Meter Station or at the proposed new meter station in North Portsmouth, Rhode Island; it is stated. It is further explained that the transportation would be implemented in two phases. The first phase of 10,000 MMBtu would commence on November 1, 1989 with deliveries at the existing Dey Street Meter Station and the second phase of 11,063 MMBtu to the proposed North Portsmount Meter Station.

Since the proposed firm transportation service under Rate Schedule AFT-3 requires the construction of facilities, Applicant states that it would design a firm demand charge to recover its investment in the proposed facilities and the annual cost of operating the proposed facilities on an incremental basis. Applicant explains that it will file an initial rate after the proposed facilities are constructed and actual costs are determined. No term for the requested Rate Schedule AFT-3 service was proposed by Applicant.

Comment date: February 21, 1989, in accordance with Standard Paragraph F at the end of this notice.

10. Columbia Gas Transmission Corporation

[Docket Nos. CP88-129-003 and CP88-163-001]

January 30, 1989

Take notice that on January 13, 1989, Columbia Gas transmission Corporation (Applicant), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, filed in Docket Nos. CP88-129-003 and CP88-163-001 an amendment to its pending applications filed in Docket Nos. CP88-129-000, CP88-129-001, CP88-129-002 and CP88-163-000 pursuant to Section 7(c) of the Natural Gas Act to permit it to construct and operate a 20-inch pipeline and appurtenant facilities in lieu of the 16-inch pipeline previously proposed and to provide firm services to three customers all as more fully set forth in the amendment on file with the Commission and open to public inspection.

In Docket Nos. CP88-129-000, CP88-129-001, CP88-129-002 and CP88-163-000, Applicant requested authorization

[1] Columbia is requesting authority in Docket No. CP88-163-000 to provide 50,000 MMBtu per day of firm service to Providence. By this application, Applicant seeks to render up to 21,063 MMBtu of firm service on behalf of Providence. In order to enable Providence to receive the full 50,000 MMBtu per day, Applicant states that Providence has requested to convert 28,937 MMBtu per day of its existing entitlements under Applicant's Rate Schedule WS-1 to firm transportation service. Applicant explains that it would make a subsequent filing to implement such conversion in the future.

to initiate firm sales services to New Jersey Natural Gas Company (NJN) of up to 10,000 dekatherms (dt) per day and to Providence Gas Company (Providence) of up to 10,000 dt per day both to be implemented under Applicant's Rate Schedule CDS. Therein Applicant stated that Elizabethtown Gas Company (Elizabethtown) had requested firm natural gas transportation service under Applicant's Rate Schedule FTS of up to 20,000 dt per day and an interruptible transportation service under Rate Schedule ITS of up to 2,200 Mdt annually. In addition, Applicant stated that Providence had requested a firm natural gas transportation service under Rate Schedule FTS of up to 40,000 dt per day. Applicant noted that all the transportation services would be self-implemented under its Order Nos. 436 and 500 blanket transportation certificate. In order to provide the requested services, Applicant proposed to extend its main transmission system from a point located near Hellertown, Northampton County, Pennsylvania, to Morris County, New Jersey where it would interconnect with the facilities of Algonquin Gas Transmission Company. The proposed extension would have consisted of the construction of approximately 57.5 miles of 16-inch pipeline and four interconnecting measuring facilities at a total estimated cost of $42,170,000.

Applicant's amending application, Docket Nos. CP88–129–003 and CP88–162–001, proposes a change to the size of the pipeline from 16-inch line to a proposed 20-inch pipeline. Applicant alleges the increased size is more efficient in terms of deliverability and cost; further Applicant alleges that the environmental impact of constructing a 20-inch is similar to that of the installation of a 16-inch pipeline. Applicant estimates that the total cost to construct the proposed 20-inch pipeline is $51,507,100, an increase of approximately $9.3 million over the previously proposed 16-inch. Applicant states that it would finance the proposed construction of facilities through internally generated funds or through existing credit agreements.

Comment date: February 21, 1989, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

11. Distrigas Corporation Distrigas of Massachusetts Corporation.

[Docket No. CP89–675–000]

January 30, 1989.

Take notice that on January 17, 1989, Distrigas Corporation (Distrigas), 950 Winter Street, Waltham, Massachusetts 02254–9073 and Distrigas of Massachusetts Corporation (DOMAC), Two Oliver Street, Boston, Massachusetts 02109, jointly filed an application for authority to abandon service, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that Distrigas seeks authority to abandon its sales service to DOMAC undertaken pursuant to the terms of Distrigas' Special Rate Schedule No. 1 Distrigas stated that new sales authority granted Distrigas by the Commission's December 16, 1988, Order in Docket No. CP88–587–000 makes Distrigas Special Rate Schedule No. 1 no longer necessary. Additionally, Distrigas stated that no further sales of LNG under Special Rate Schedule No. 1 are contemplated.

It is further stated the DOMAC seeks authority to abandon the services described in its Rate Schedules GS–1, TS–1, I–1 and SS–1, and seeks authority to cancel those Rate Schedules and related tariff sheets set out at Exhibit X to its Application. DOMAC stated that those services authorized by the Commission's December 16, 1988, Order in Docket No. CP88–587–000. DOMAC stated that the old services are no longer utilized and that DOMAC's former customers under those rate schedules support the request for abandonment.

It is alleged that Distrigas and DOMAC have requested expedited treatment of this application pursuant to Rules 801 and 802 of the Commission's Rules of Practice and Procedure. Distrigas and DOMAC have waived the intermediate decision procedure and, if their request for shortened procedure is granted, have waived the right to oral hearing and the right to file exceptions to the decision of the Commission.

Comment date: February 21, 1989, in accordance with Standard Paragraph F at the end of this notice.

12. Panhandle Eastern Pipe Line Company

[Docket No. CP89–596–000]

January 30, 1989.

Take notice that on January 12, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas, 77251, filed in Docket No. CP89–596–000, an application pursuant to Section 7(b) of the Natural Gs Act for permission and approval to partially abandon sales service to Citizens Gas Fuel Company (Citizens), an existing jurisdictional sales customer, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Panhandle states that Citizens has elected under Section 284.10 of the Commission's Regulations to convert a portion of its daily Contract Demand (CD) to firm transportation effective as of October 1, 1988. Panhandle explains that the firm transportation would be rendered under the terms and conditions of its Rate Schedule PT–Firm.

The proposed abandonment, it is said, would reduce the annualized total CD from 4,398,810 Mcf to 4,115,570 Mcf.

Comment date: February 21, 1989, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraph

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE. Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be necessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the

Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 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 tested as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 2475 Filed 2-1-89;8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-53-000]

Canadian Petroleum Association; Petition for Expedited Declaratory Order

January 30, 1989.

Take notice that on January 17, 1989, the Canadian Petroleum Association (CPA) filed a petition for a declaratory order interpreting 18 CFR 154.303(e) of the Commission's Regulations to determine the date by which Great Lakes Gas Transmission Company (Great Lakes) must file tariff sheets establishing new base tariff rates (BTRs) in a general rate case pursuant to section 4(e) of the Natural Gas Act.

CPA states that Great Lakes filed revised tariff sheets in its last general rate case on December 31, 1985 in Docket No. RP86-35-000. On January 30, 1986, the Commission issued an order suspending the effectiveness of Great Lakes' proposed rates until July 1, 1986. *Great Lakes Gas Transmission Co.*, 34 FERC ¶ 61,113 (1986). CPA states that in compliance with the Commission's order of January 30, 1986, Great Lakes filed revised tariff sheets to implement the rate determination methodology for certain of Great Lakes' Rate Schedules. The Commission, on April 2, 1986, accepted Great Lakes' revised tariff sheets, to become effective July 1, 1986. *Great Lakes Gas Transmission Co.*, 35 FERC ¶ 61,013 (1986).

On July 15, 1986, Great Lakes filed a Stipulation and Agreement (First Stipulation and Agreement) in settlement of certain issues, reserving others for hearing. On May 5, 1987, the Commission issued an order modifying and approving Great Lakes' First Stipulation and Agreement. *Great Lakes Gas Transmission Co.*, 39 FERC ¶ 61,118, *reh'g. den.* 40 FERC ¶ 61,011 (1987). CPA states that on August 17, 1987, however, Great Lakes filed a letter advising the Commission that it would not accept the First Stipulation and Agreement because of a modification imposed by the Commission concerning the effective date of any changes later found appropriate for Great Lakes' minimum commodity bill.

On December 14, 1987, Great Lakes filed a new Stipulation and Agreement in Settlement of Rate Proceedings (Second Stipulation and Agreement).[1] The tariff sheets submitted with this agreement had an effective date of August 1, 1987. CPA states that the Second Stipulation and Agreement is silent on the issue of when a new 36-month period commences. However, it notes that Article XII provides that the Agreement shall be effective as of July 1, 1986, and "shall terminate on the date that a subsequent base tariff rate change filing by Great Lakes under Section 4 of the Natural Gas Act is made effective or on the effective date of any change in Great Lakes' base tariff rates resulting from a rate proceeding subsequently instituted by the Commission with respect to Great Lakes' rates, whichever shall first occur."

CPA states that Great Lakes alleges it need not file a new general rate case until a date required to allow new rates to become effective on August 1, 1990. CPA states that this is within 36 months from the effective date of the tariff sheets submitted with the Second Stipulation and Agreement rather than 36 months from the effective date of the Second Stipulation and Agreement (July 1, 1989).

CPA states that the issue presented is when must Great Lakes file its next general rate case? This decision requires interpretation of § 154.303(e) of the Commission's regulations which states that pipelines electing to use purchased gas adjustment provisions must file their base tariff rates and supporting comprehensive, updated cost studies at least every three years. Specifically, an interpretation of § 154.303(e)(ii)(C)(2) is required, to determine what date triggers the 36-month filing requirement for Great Lakes: the July 1, 1986 date when its rates became effective pursuant to the Commission's suspension order or the August 1, 1987 date when settlement rates took effect?

CPA states that the urgency of interpreting § 154.303(e) is best revealed by the statistic that, in 1987, Great Lakes' return on equity approximated 40.5 percent and that the magnitude of Great Lakes' return on equity—when compared to the FERC authorized return on equity of 15.5 percent through July 31, 1987, and 13.5 percent for the balance of the settlement, is *prima facie* evidence that the rates generating such a return do not comport with the "just and reasonable" standard of the Natural Gas Act.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1989)). All such motions or protests should be filed on or before February 13, 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. 89-2476 Filed 2-1-89; 8:45 am]

BILLING CODE 6717-01-M

[1] The Second Stipulation and Agreement was approved by the Commission on April 6, 1988. Great Lakes Gas Transmission Co., 43 FERC ¶ 61,313 (1988).

[Docket No. RE84-2-001]

Nevada Power Co.; Application for Exemption

January 30, 1989.

Take notice that Nevada Power Company filed an application on December 23, 1988 for exemption from requirements of Part 290 of the Federal Energy Regulatory Commission's (FERC) regulations concerning collection and reporting of cost of service information under section 133 of the Public Utility Regulatory Policies Act (PURPA), Order No. 48 (44FR58687, October 11, 1979). Exemption is sought from the requirement to file on or prior to June 30, 1990 and biennially thereafter, information on the costs of providing electric service as specified in Subparts B, C, D, and E of Part 290.

Copies of the application for exemption are on file with FERC and are available for public inspection. FERC's regulations require that said utility also apply to any state regulatory authority having jurisdiction over it to have the application published in any official

state publication in which electric rate change applications are usually noticed, and that the utility publish a summary of the application in newspapers of general circulation in the affected jurisdiction.

Any person desiring to present written views, arguments, or other comments on the application for exemption should file such information with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW, Washington, DC 20426, on or before 45 days following the date this notice is published in the **Federal Register**. Within that 45 day period, such person must also serve a copy of such comments on: Mr. Connell Marsden, Vice President, Rates and Regulations, 6226 West Sahara Ave., Las Vegas, Nevada 89151.

Lois D. Cashell,

Secretary.

[FR Doc. 89-2477 Filed 2-1-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RE80-57-002]

Oklahoma Gas & Electric Co.; Application for Exemption

January 30, 1989.

Take notice that Oklahoma Gas & Electric Company filed an application on December 21, 1988 for exemption from requirements of Part 290 of the Federal Energy Regulatory Commission's (FERC) regulations concerning collection and reporting of cost of service information under Section 133 of the Public Utility Regulatory Policies Act (PURPA), Order No. 48 (44FR58687, October 11, 1979). Exemption is sought from the requirement to file on or prior to June 30, 1990 and biennially thereafter, information on the costs of providing electric service as specified in Subparts B, C, D, and E of Part 290.

Copies of the application for exemption are on file with FERC and are available for public inspection. FERC's regulations require that said utility also apply to any state regulatory authority having jurisdiction over it to have the application published in any official state publication in which electric rate change applications are usually noticed, and that the utility publish a summary of the application in newspapers of general circulation in the affected jurisdiction.

Any person desiring to present written views, arguments, or other comments on the application for exemption should file such information with the Federal Energy Regulatory Commission, 825 North Capitol Street NW, Washington, DC 20426, on or before 45 days following the date this notice is published in the **Federal Register**. Within that 45 day period, such person must also serve a copy of such comments on: Mr. William L. Wylie, Manager of Rates & Contracts, Oklahoma Gas & Electric Company, 321 North Harvey, P.O. Box 321, MC226, Oklahoma City, Oklahoma 73101.

Lois D. Cashell,

Secretary.

[FR Doc. 89-2478 Filed 2-1-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EC88-2-004]

Utah Power & Light Co., PacifiCorp, PC/UP&L Merging Corp.; Compliance Filing

Issued January 27, 1989.

Before Commissioners: Martha O. Hesse, Chairman; Charles G. Stalon and Charles A. Trabandt.

On January 6, 1989, Utah Power & Light Company, PacifiCorp, and PC/UP&L Merging Corporation (collectively referred to as Applicants) made a compliance filing pursuant to Opinion No. 318.[1]

In Opinion No. 318, the Commission conditionally granted approval of the merger application filed by the Applicants pursuant to section 203 of the Federal Power Act. The Commission stated that within 60 days of the issuance of Opinion No. 318, the Applicants shall make their compliance filing.[2] We further stated that if any requests for rehearing were pending at the expiration of the 60-day period, the compliance filing shall be made within 15 days of the date the Commission disposes of such request[s].[3]

Although the Applicants did not seek rehearing of opinion No. 318, various other entities have requested rehearing. Those requests are now pending before the Commission. Since we intended that a compliance filing would be made only after requests for rehearing had been addressed, we will take no action on the compliance filing until we have disposed of the rehearing requests.[4] The Applicants will have 15 days from the date of the order on rehearing to amend or refile their compliance filing. Comments will be due 30 days from the date of the amended or refiled compliance filing.

In Opinion No. 318, the Commission also stated that the merged company was required to identify, as part of its compliance filing, that portion of its total transfer capacity that could be used for firm deliveries by wheeling customers at particular points of delivery.[5] This capacity was designated Remaining Existing Capacity (REC).[6] The Applicants announced the REC in their compliance filing.[7] They requested that the 90-day period for utilities seeking status as Qualifiying Entities [8] in the allocation of the REC begin upon publication of notice of that announcement. We will reject that request. As discussed above, we are requiring that the Applicants amend or refile their compliance filing. Since the designation of REC is part of that compliance filing, the 90-day period has not begun. Moreover, it will not begin until the Commission issues an order setting forth when it will begin.

The Commission Orders

(A) The Applicants are hereby directed to amend or refile their compliance filing in this proceeding within 15 days after the issuance of an order disposing of the pending requests for rehearing. Comments on the amended or refiled compliance filing shall be due 30 days from the date of such amendment or refiling.

(B) The Secretary is hereby directed to publish a copy of this order in the **Federal Register**.

---

[1] Utah Power & Light Company, PacifiCorp and PC/UP&L Merging Corporation, Opinion No. 318, 45 FERC ¶ 61,095 (1988).

[2] 45 FERC at 61,309.

[3] *Id.*

[4] The Applicants filed an offer of settlement in this proceeding on January 9, 1989. Since the issues raised in the offer of settlement bear upon the issues raised in the requests for rehearing, we will address the offer of settlement in the rehearing order. Moreover, the offer of settlement cannot be addressed in this order since, pursuant to the Commission's Rule of Practice and Procedure, comments and reply comments on the offer of settlement are not due until January 30, 1989 and February 8, 1989, respectively. 18 C.F.R. § 385.602 (1988).

[5] 45 FERC at 61,291.

[6] *Id.*

[7] Notice of the announcement of Remaining Existing Capacity (Announcement) was published in the **Federal Register** with comments due on or before January 31, 1989. 54 FR 3122 (1989), *errata issued* January 23, 1989. Various entities filed requests to extend the comment period beyond January 31, 1989. *See, e.g.*, Answer of Sierra Pacific Power Company, filed January 23, 1989. As discussed above, however, we have extended the period for comments on the compliance filing to 30 days from the date the compliance filing is amended or refiled. Since the Announcement is part of that compliance filing, the extension of time for comments applies to the Announcement as well. Thus, we will deny as moot the request to extend the comment period.

[8] As set forth in Opinion No. 318, during the 90-day period, any entity announcing an executed contract for use of the merged company's transmission system shall be designated a "Qualifying Entity" for purposes of the allocation process.

By the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 89-2479 Filed 2-1-89; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-44524; FRL-3513-4]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the receipt of test data on hydroquinone (CAS No. 123-31-9) and dichlorobenzenes (CAS Nos. 95-50-1 and 106-46-7), submitted pursuant to final test rules under the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: Section 4(d) of TSCA requires EPA to publish a notice in the **Federal Register** reporting the receipt of test data submitted pursuant to test rules promulgated under section 4(a) within 15 days after it is received.

I. Test Data Submissions

Test data for hydroquinone were submitted by the Chemical Manufacturers Association pursuant to a test rule at 40 CFR 799.2200. They were received by EPA on January 12, 1989. The submissions describe a range finding study to evaluate toxicity of hydroquinone in the pregnant rabbit and a developmental toxicity study in rabbits with hydroquinone. Developmental toxicity testing is required by this test rule. Hydroquinone is produced in a photographic grade for use as a developing agent and in a technical grade which is primarily used as a chemical intermediate in the production of rubber chemicals.

Test data for dichlorobenzenes were submitted by the Chemical Manufacturers Association pursuant to a test rule at 40 CFR 799.1052. They were received by EPA on January 23, 1989. The submissions describe an inhalation two-generation reproduction study in rats with orthodichlorobenzene and a two-generation reproduction study of inhaled para-dichlorobenzene in Sprague-Dawley rats. Reproductive and fertility effects testing is required by this test rule. Dichlorobenzenes are used as organic and dye intermediates and in solvents, fumigants and insecticides.

EPA has initiated its review and evaluation process for these data submissions. At this time, the Agency is unable to provide any determination as to the completeness of the submission.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPTS-44524). This record includes copies of all studies reported in this notice. The record is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Public Docket Office, Rm. NE-G004, 401 M St., SW., Washington, DC 20460.

Authority: 15 U.S.C. 2603

Dated: January 24, 1989.

Joseph J. Merenda,

Director, Existing Chemical Assessment Division, Office of Toxic Substances.

[FR Doc. 89-2426 Filed 2-1-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-010896-002.
Title: Maryland Port Administration Terminal Agreement.
Parties: Maryland Port Administration (MPA), Moller Steamship Company, Inc. (Maersk).

Synopsis: The agreement provides that MPA will grant Maersk a discount of $50.00 per loaded container moved by Maersk into and out of the Port of Baltimore (the Port) and drayed to and from either CSX or CONRAIL railheads in Baltimore. The $50 discount is restricted to containers moving between the Port and Louisville, Kentucky or Chicago, Illinois or Detroit, Michigan and will expire May 31, 1989.

Agreement No.: 224-010968-002.
Title: Mayland Port Administration Terminal Agreement.
Parties: Maryland Port Administration (MPA), Hapag-Lloyd AG/Atlantic Division (HL).

Synopsis: The agreement provides that MPA will grant HL a discount of $50.00 per loaded container moved by HL into and out of the Port of Baltimore (the Port) and drayed to and from either CSX or CONRAIL railheads in Baltimore. The $50 discount is restricted to containers moving between the Port and Louisville, Kentucky or Chicago, Illinois or Detroit, Michigan.

Agreement No.: 224-011032-001.
Title: Port of Seattle Terminal Lease Agreement.
Parties: Port of Seattle, Stevedoring Services of America (SSA).

Synopsis: The basic Agreement is amended to reflect that SSA's terminal area has been shifted southward to include 4 acres adjacent to the South premises line while relinquishing 4 acres of other terminal area to accommodate the construction of an entry gate for Terminal 42. The shift does not change SSA's number of leased acres (approximately 25 acres) including preferential use of approximately 2 acres of ship berthage.

Agreement No.: 224-200214.
Title: San Francisco Terminal Agreement.
Parties: City of San Francisco (SF), China Ocean Shipping Company (COSC).

Synopsis: The Agreement provides that COSC will use the Port of San Francisco as its regularly scheduled California port of call and pay SF reduced charges for dockage and wharfage. It also provides that in consideration of these reduced terminal charges, COSC will guarantee SF an annual minimum of 31 vessel calls and 8,501 full twenty-foot equivalent units. Breakbulk cargo will be assessed wharfage at $2.42 per 1,000 kilos or per cubic meter.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: January 27, 1989.

[FR Doc., 89-2376 Filed 2-1-89; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-003935-002.
Title: South Carolina State Ports Authority Terminal Agreement.
Parties: South Carolina State Ports Authority, Puerto Rico Maritime Shipping Authority.

Synopsis: The Agreement adjusts the annual minimum wharfage guarantee and throughput agreement and berth guarantee. It allows for acreage reduction under certain conditions, and revises the preferential berthing schedule.

Agreement No.: 224-010951-002.
Title: Maryland Port Administration Terminal Agreement.
Parties: Maryland Port Administration (MPA), Polish Ocean Lines, Inc. (POL).

Synopsis: The agreement provides that MPA will grant POL a discount of $50.00 per loaded container moved by POL into and out of the Port of Baltimore (the Port) and drayed to and from either CSX or CONRAIL railheads in Baltimore. The $50 discount is restricted to containers moving between the Port and Louisville, Kentucky or Chicago, Illinois or Detroit, Michigan.

Agreement No.: 224-200073-002.
Title: Maryland Port Administration Terminal Agreement.
Parties: Maryland Port Administration (MPA), Clark Maryland Terminals, Inc. (Clark).

Synopsis: The agreement provides that MPA will grant Clark a discount of $50.00 per loaded container moved by Clark into and out of the Port of Baltimore (the Port) and drayed to and from either CSX or CONRAIL railheads in Baltimore. The $50 discount is restricted to containers moving between the Port and Louisville, Kentucky or Chicago, Illinois or Detroit, Michigan and will expire May 31, 1989.

Agreement No.: 224-200215.
Title: New York and New Jersey Terminal Agreement.
Parties: Port Authority of New York and New Jersey (Authority), COSCO North America, Inc. (COSCO).

Synopsis: The Agreement provides for the Authority to make payments to COSCO of $25 per import and $50 per export container loaded to or unloaded from COSCO's vessels at a marine terminal in the Port of New York and New Jersey.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: January 27, 1989.

[FR Doc. 89-2375 Filed 2-1-89; 8:45 am]

BILLING CODE 6730-01-M

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the commission regarding a pending agreement.

Agreement No.: 202-010776-041

Title: Asia North America Eastbound Rate Agreement

Parties: American President Lines, Ltd., Kawasaki Kisen Kaisha, Ltd., A.P. Moller-Maersk Line, Mitsui, O.S.K. Lines Ltd., Neptune Orient Lines, Ltd., Nippon Liner System, Ltd., Nippon Yusen Kaisha Line, Orient Overseas Container Lines, Inc., and Sea-Land Service, Inc.

Synopsis: The proposed modification would clarify the members' authority to interact with the presently effective Transpacific Discussion Agreement, and at such time as it becomes effective, the pending Transpacific Stabilization Agreement.

Agreement No.: 232-011229

Title: HKIL/ANZDL Space Charter and Sailing Agreement

Parties: Hong Kong Islands Line America S.A. Australia New Zealand Direct Line

Synopsis: The proposed Agreement would permit the parties to discuss, exchange information, establish common rates, rules and conditions of service, rationalize sailings, and cross-charter space on the parties' vessels opeating in the trade between ports on the West Coast of North America and inland and coastal points served via such ports, and ports in Australia and New Zealand and inland and coastal points served via such ports.

By Order of the Federal Maritime Commission

Dated: January 30, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89-2465 Filed 2-1-89; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

January 27, 1989.

Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act of 1980, as per 5 CFR 1320.9, "to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320.9." Board-approved collections of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the SF 83 and supporting statement and the approved collection of information instrument(s) will be placed into OMB's public docket files. The following reports, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final

approval under OMB delegated authority.

DATE: Comments must be received on or before February 24, 1989.

ADDRESS: Comments, which should refer to the OMB Docket number (or Agency form number in the case of a new information collection that has not yet been assigned an OMB number), should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551, or delivered to room B–2223 between 8:45 a.m. and 5:15 p.m. Comments received may be inspected in room B–1122 between 8:45 a.m. and 5:15 p.m., except as provided in § 261.6(a) of the Board's Rules Regarding Availability of Information, 12 CFR 261.6(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the request for clearance (SF 83), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below. Federal Reserve Board Clearance Officer—Frederick J. Schroeder—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3822).

Proposal to approve under OMB delegated authority the extension without revision of the following report:

1. *Report Title:* Notification of Foreign Branch Status.
Agency Form Number: FR 2058.
OMB Docket Number: 7100–0069.
Frequency: Event-generated.
Reporters: State member banks, Edge and Agreement Corporations, and bank holding companies.
Annual Reporting Hours: 29.
Estimated Average Hours per Response: 0.25.
Number of Respondents: 116.
Small business are affected.

General Description of Report:

This information collection is mandatory (12 U.S.C. 321, 601, 602, 615, and 1844(c)) and is not given confidential treatment.

This report notifies the Federal Reserve of the opening, closing, or relocation of a foreign branch of state member banks, Edge and Agreement corporations, or bank holding companies. This information enables the Federal Reserve to ensure the safety and soundness of the U.S. banking system.

Board of Governors of the Federal Reserve System, January 27, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89–2397 Filed 2–1–89; 8:45 am]

BILLING CODE 6210–01–M

Citizens Dimension Bancorp, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has 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 225.24) 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)).

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 to the Reserve Bank indicated for that application 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.

Comments regarding this application must be received not later than February 24, 1989.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Citizens Dimension Bancorp, Inc.*, Muskogee, Oklahoma; to acquire an additional 2.73 percent of the voting shares of Charter Bancshares, Inc., Oklahoma City, Oklahoma and thereby indirectly acquire Charter National Bank, Oklahoma City, Oklahoma.

Board of Governors of the Federal Reserve System, January 27, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89–2398 Filed 2–1–89; 8:45 am]

BILLING CODE 6210–01–M

First Brundidge Bankshares, Inc.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 17, 1989.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *First Brundidge Bankshares, Inc.*, Brundidge, Alabama; to engage *de novo* through its subsidiary, First Brundidge Insurance Agency, Inc., Brundidge, Alabama, in insurance activities pursuant to § 225.25(b)(8)(iii) of the Board's Regulation Y. These activities

will be conducted in the city of Brundidge, Alabama.

Board of Governors of the Federal Reserve System, January 27, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-2399 Filed 2-1-89; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control; Acquisitions of Shares of Banks or Bank Holding Companies; Richard F. Nogle, et al.

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act [12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 16, 1989.

A. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Richard F. Nogle* and Beverly J. Nogle, jointly, both of Chanute, Kansas; to acquire 100 percent of the voting shares of Fall River Bankshares, Inc., Fall River, Kansas, and thereby indirectly acquire Fall River State Bank, Fall River, Kansas.

B. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Douglas MacDonald,* Laredo, Texas; to acquire 9.36 percent of the voting shares of Southshares, Inc., Laredo, Texas, and thereby indirectly acquire South Texas National Bank, Laredo, Texas.

Board of Governors of the Federal Reserve System, January 27, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-2400 Filed 2-1-89; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Immunization Practices Advisory Committee; Meeting

Action: Notice of meeting.

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control announces the following Committee meeting:

Name: Immunization Practices Advisory Committee.

Time and Date:
February 21, 1989, 8:30 a.m.-5 p.m.
February 22, 1989, 8:30 a.m.-1 p.m.

Place: Conference Room 207, Centers for Disease Control, 1600 Clifton Road, NE., Atlanta, Georgia 30333.

Status: Open.

Purpose: The Committee is charged with advising on the appropriate uses of immunizing agents.

Matters To Be Discussed: The Committee will discuss Hepatitis B, pneumococcal, influenza, and other vaccines; ACIP statement on mumps; implications of the new ACIP recommendations on measles; adult immunization; and will consider other matters of relevance among the Committee's objectives. Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Cheryl Counts, Staff Assistant, Centers for Disease Control (1-2047), 1600 Clifton Road, NE., Mailstop D22, Atlanta, Georgia 30333, Telephones: FTS: 236-3701; Commercial: (404) 639-3701.

Dated: January 27, 1989.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 89-2401 Filed 2-1-89; 8:45 am]

BILLING CODE 4160-18-M

Health Resources and Services Administration

Emergency Medical Services for Children Demonstration Grants

AGENCY: Health Resources and Services Administration, PHS, HHS.

ACTION: Notice of availability of funds.

SUMMARY: The Health Resources and Services Administration (HRSA) announces that up to $2 million is available for grants under section 1910 of the Public Health Service (PHS) Act, 42 U.S.C. 300w-9, which authorizes the Department to make grants to States or accredited schools of medicine in States to support demonstration projects for the expansion and improvement of emergency medical services (EMS) for children. Up to four awards will be made under this notice. HRSA, through this notice, invites eligible applicants to apply for these grants. Funds were appropriated by Pub. L. 100-436.

DATE: To receive consideration, applications for the EMS for Children grants must be received by the close of business April 18, 1989, by the Grants Management Officer, at the address listed below. Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date, or

2. Postmarked on or before the deadline date, and received in time for submission to the review group. A legibly dated receipt from a commerical carrier or the U.S. Postal Service will be accepted in lieu of postmark. private metered postmarks shall not be acceptable as proof of timely mailing. Applications received after the deadline will be considered late applications and will be returned to the applicant.

ADDRESS: Grant applications (PHS form 5161-1, with revised facesheet HHS Form 424, approved under OMB #0348-0006) and additional information regarding business, administrative or fiscal issues related to the awarding of grants under this notice may be obtained from: Mr. Waddell Avery, Grants Management Officer, Bureau of Maternal and Child Health and Resources Development (BMCHRD), Health Resources and Services Administration (HRSA), Room 11A-18, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, 301-443-1440.

FOR FURTHER INFORMATION CONTACT: Requests for technical or programmatic information should be in writing and directed to the Director, Office of Maternal and Child Health, Bureau of Maternal and Child Health and Resources Development, Health Resources and Services Administration, Room 9-11, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, 301-443-2170.

SUPPLEMENTARY INFORMATION: The Emergency Medical Services for Children statute (section 1910 of the PHS Act, as amended), establishes a program of grants to States and accredited medical schools for demonstration projects for the expansion and improvement of EMS for children who need treatment for critical illnesses and injuries. For purposes of this grant program, the term "State" includes the

50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, The Northern Mariana Islands, Guam, American Samoa, the Republic of Palau, the Republic of the Marshall Islands, and the Federated States of Micronesia. The term "school of medicine" for purposes of this program is defined as having the same meaning set forth in section 701(4) of the PHS Act (42 U.S.C. 292a(4). "Accredited" in this context has the same meaning set forth in section 701(5) of the PHS Act (42 U.S.C. 292a(5).

By statute, the grant period is for up to two years, subject to annual evaluation by the Secretary. Also, by statute no more than one grant can be made within a State—either to the State or an accredited medical school—in any given year. Another statutory provision limits the total number of grants which may be made in any fiscal year to four.

It is the intent of this grant program to stimulate the initiation or expansion of ongoing efforts in the States to reduce the problems of life-threatening pediatric trauma and critical illness. The Department does not intend to award demonstration grants which would duplicate grants previously funded under the Emergency Medical Services Systems Act of 1972 or which would be used simply to increase the availability of EMS funds allotted to the State under the Preventive Health Services Block grants.

Eligible Applicants

Applications for funding under section 1910 will be accepted from States and accredited schools of medicine. Applicants are encouraged to seek the participation and support of interested entities within the State, such as local government and health and medical organizations in the private sector, in developing the proposed demonstration project.

Application Evaluation Criteria

An appliction will be evaluated by consideration of the following factors:

(1) The adequacy of the applicant's description of the problem of pediatric trauma and critical illness in the State. The adequacy of sections of the application devoted to the special problems of (a) handicapped children and families; and (b) minority children and families (including Native Americans).

(2) The appropriateness of project outcome objectives in relation to the specific nature of the problems identified by the applicant.

(3) The soundness (in relation to the state of the art), appropriateness, comprehensiveness, cost effectiveness and responsiveness of the proposed methodology for achieving project goals and outcome objectives.

(4) The soundness of the plan for evaluating progress in achieving project outcome objectives.

(5) The extent of collaboration and coordination with other appropriate organizations involved in emergency medical services (EMS), health care, and public health and safety (e.g., injury prevention activities, the State EMS agency, the State Maternal and Child Health program, highway safety, rehabilitation programs) and the degree of involvement of the "community" (e.g., private sector, voluntary organizations).

(6) The soundness of the proposal, as set forth in the application, in terms of fiscal management, effective use of personnel, and ability to complete the proposal within the granted period.

(7) The extent to which the applicant's work under the grant is likely to demonstrate approaches to the reduction of the consequences of the pediatric life-threatening trauma and critical illness that will be useful and broadly applicable in other communities.

(8) The extent to which the applicant proposes to employ products and expertise of Emergency Medical Services for Children (EMSC) programs in other States, especially of current and former grantees of the Federal FMSC program. Such resources include, but are not limited to, technical assistance and consultation.

Allowable Costs

The basis for determining the allowability and allocability of costs charged to PHS grants is set forth in 45 CFR 92.22. The five separate sets of cost principles prescribed for grant recipients are: (1) OMB Circular A–87 for State and local governments; (2) OMB Circular A–21 for institutions of higher education; (3) 45 CFR Part 74, Appendix E for hospitals; (4) OMB Circular A–122 for nonprofit organizations; and (5) 48 CFR chapter 1, subpart 31.2 for for-profit (commercial) organizations.

Reporting Requirements

A successful applicant under this notice will submit reports in accordance with the provisions of the general regulations which apply under 45 CFR Part 74, Subpart J—Monitoring and Reporting of Program Performance, and Part 92.40 which applies to State and local governments.

Executive Order 12372

This program is subject to the provisions of Executive Order 12372; Intergovernmental Review of Federal Programs, 45 CFR Part 100. Executive Order 12372 allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application packages to be made available under this notice will contain a listing of States which have chosen to set up such a review system and will provide a point of contact in those States for the review. Applicants should promptly contact their State single point of contact (SPOC) and follow their instructions prior to the submission of an application. The SPOC has 60 days after the deadline date to submit its review comments.

OMB Catalog of Federal Domestic Assistance

The OMB Catalog of Federal Domestic Assistance number is 13.127.

Date: December 20, 1988.

John H. Kelso,

Acting Administrator.

[FR Doc. 89–2410 Filed 2–1–89; 8:45 am]

BILLING CODE 4160–15–M

Public Health Service

National Toxicology Program; Chemicals (6) Nominated for Toxicological Studies, Formamide, etc.; Request for Comments

SUMMARY: On December 1, 1988, the Chemical Evaluation Committee (CEC) of the National Toxicology Program (NTP) met to review six chemicals nominated for toxicology studies and to recommend the types of studies to be performed, if any. With this notice, the NTP solicits public comments on the six chemicals.

FOR FURTHER INFORMATION CONTACT: Dr. Victor A. Fung, Chemical Selection Coordinator, National Toxicology Program, Room 2B55, Building 31, Natioinal Institutes of Health, Bethesda, Maryland 20892, (301) 496–3511.

SUPPLEMENTARY INFORMATION: As part of the chemical selection process of the National Toxicology Program, nominated chemicals which have been reviewed by the NTP Chemical Evaluation Committee (CEC) are published with request for comment in the Federal Register. This is done to encourage active participation in the NTP chemical evaluation process, thereby helping the NTP to make more informed decisions as to whether to select, defer or reject chemicals for toxicology study. Comments and data submitted in response to this request are reviewed and summarized by NTP technical staff, are forwarded to the

NTP Board of Scientific Counselors for use in their evaluation of the nominated chemicals, and then to the NTP Executive Committee for decision-making. The NTP chemical selection process is summarized in the **Federal Register**, April 14, 1981 (46 FR 21828), and also in the NTP FY 1988 *Annual Plan*, pages 16–19.

On December 1, 1988, the CEC met to evaluate six chemicals nominated to the NTP for toxicological studies. The following table lists the chemicals, their Chemical Abstract Service (CAS) registry numbers, and the types of toxicological studies recommended by the CEC at the meeting.

Chemical	CAS registry No.	Committee recommendations
Formamide	75–12–7	Carcinogenicity. Reproductive effects.
N-Methylformamide.	123–39–7	*Salmonella* assay.
Dimethylformamide.	68–12–2	Reproductive effects.
Indium phosphide.	22398–80–7	Stability studies. Toxicity including immunotoxicity. Carcinogenicity.
N-Methylpyrrolidone.	872–50–4	Quantitative dermal absorption studies. Reproductive effects. Carcinogenicity.
Tremolite (non-asbestiform).	14567–73–8	Carcinogenicity.

Three of the six chemicals have been previously selected for other types of toxicology studies by the NTP. Formamide was non-mutagenic in *Salmonella*, and negative for sex-linked recessive lethal mutations in Drosophila. Dimethylformamide was non-mutagenic in *Salmonella*, positive in the mouse lymphoma assay in one study and non-mutagenic in two other independent studies, and negative for chromosomal aberrations and sister chromatid exchanges in Chinese hamster ovary cells. Dimethylformamide was previously selected by NTP for inhalation carcinogenicity studies in rats and mice. N-Methylpyrrolidone was non-mutagenic in *Salmonella*.

Asbestos tremolite was negative in NTP feeding carcinogenicity studies in male and female rats.

Interested parties are requested to submit pertinent information. The following types of data are of particular relevance:

(1) Modes of production, present production levels, and occupational exposure potential.

(2) Uses and resulting exposure levels, where known.

(3) Completed, ongoing and/or planned toxicologic testing in the private sector including detailed experimental protocols and results, in the case of completed studies.

(4) Results of toxicological studies of structurally related compounds.

Please submit all information in writing by March 6, 1989. Any submissions received after the above date will be accepted and utilized where possible.

Dated: January 26, 1989.

David P. Rall,

Director, National Toxicology Program.

[FR Doc. 89–2407 Filed 2–1–89; 8:45 am]

BILLING CODE 4140–01–M

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of Penicillin VK

The HHS' National Toxicology Program today announces the availability of the Technical Report describing the toxicology and carcinogenesis studies of penicillin VK, a widely used antibiotic for treatment of gram-positive coccal infections.

Two-year toxicology and carcinogenesis studies were conducted by administering penicillin VK in corn oil by gavage to 50 rats of each sex and 50 mice of each sex at doses of 0, 500 or 1,000 mg/kg 5 days per week for 104 weeks.

Under the conditions of these 2-year gavage studies, there was no evidence of carcinogenic activity [1] of penicillin VK for F344/N rats or for B6C3F$_1$ mice administered 500 or 1,000 mg/kg penicillin VK in corn oil by gavage, 5 days per week for 2 years. Nonneoplastic lesions were seen in the glandular stomach of dosed mice. Decreased survival of low and high dose male rats and of high dose female rats reduced the sensitivity of the studies for determining the presence or absence of a carcinogenic response in this species.

The study scientist for these studies is Dr. June K. Dunnick. Questions or comments about the contents of this Technical Report should be directed to Dr. Dunnick at P.O. Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541–4811; FTS: 629–4811.

[1] The NTP uses five categories of evidence of carcinogenic activity to summarize the strength of the evidence of carcinogenicity observed in each animal study: two categories for positive results ("clear evidence" and "some evidence"), one category for uncertain findings ("equivocal evidence"); one category for no observable effects ("no evidence"); and one category for experiments that cannot be evaluated because of major flaws ("inadequate study").

Copies of *Toxicology and Carcinogenesis Studies of Penicillin VK in F344/N Rats and B6C3F$_1$ Mice (Gavage Studies)* (TR 336) are available without charge from the NTP Public Information Office, MD B2–04, P.O. Box 12233, Research Triangle Park, NC 27709. Telephone: (919) 541–3991; FTS: 629–3991.

Dated: January 25, 1989.

David P. Rall,

Director.

[FR Doc. 89–2406 Filed 2–1–89; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–967–4230–15; AA–8447–B; AA–8447–A2]

Alaska Native Claims Selection; Eyak Corp.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613a, will be issued to The Eyak Corporation for approximately 3,820 acres. The lands involved are in the vicinity of Eyak, Alaska.

Copper River Meridian, Alaska

T. 15 S., R. 2 W. (Partially Surveyed)
Secs. 3 to 6;
Secs. 8 and 9.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the CORDOVA TIMES. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 701 C Street, Box 13, Anchorage, Alaska 99513 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until March 6, 1989 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart

E, shall be deemed to have waived their rights.

Terry R. Hassett,

Chief, Branch of KCS Adjudication.

[FR Doc. 89-2500 Filed 2-1-89, 8:45 am]

BILLING CODE: 4310-JA-M

[ES-970-09-4120-04; ALES 38333]

Coal Exploration License; Alabama

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of invitation.

SUMMARY: Coal Exploration License Application ALES 38333. Members of the public are hereby invited to participate with River King Energy Company in a program for the exploration of coal deposits owned by the United States of America in the following described lands located in Jefferson County, Alabama:

Huntsville Meridian, Alabama

T. 17 S., R. 6 W.
Sec. 26, S½SE¼.

Total acres: 80.00 more or less.

Any party electing to participate in this exploration program shall notify, in writing, both the State Director, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304; and River King Energy Company, Inc., P.O. Box 1101, Jasper, Alabama 35502. Such written notice must refer to serial number ALES 38333 and must be received no later than 30 calendar days after publication of this Notice in **Federal Register.** This Notice will be published once a week for 2 consecutive weeks. The proposed exploration program is fully described and will be conducted pursuant to an exploration plan to be approved by the Bureau of Land Management. Copies of the exploration plan as submitted by River King Energy Company, Inc. may be examined during normal business hours at the Bureau of Land Management, Eastern States Office, 350 South Pickett Street, Alexandria, Virginia.

ADDRESS: Inquiries should be sent to: State Director, Bureau of Land Management, Eastern States Office, 350 South Pickett Street, Alexandria, Virginia 22304.

FOR FURTHER INFORMATION CONTACT: Ms. Frances Javes, Branch of Minerals Adjudication at (703) 461-1455.

G. Curtis Jones,

State Director.

[FR Doc. 89-2427 Filed 2-1-89; 8:45 am]

BILLING CODE 4310-GJ-M

Fortymile River Final Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: Pursuant to section 102(2)c of the National Environmental Policy Act of 1969, as amended, the Department of the Interior, Bureau of Land Management (BLM) prepared a final environmental impact statement (FEIS) covering placer mining within the drainage of the Fortymile National Scenic and Recreational River.

The drainage area is located approximately 120 miles southeast of Fairbanks, Alaska, and encompasses nearly 3.1 million acres of land.

Primarily, the issues addressed are the cumulative impacts of multiple mining operations on the environment (particularly water quality), subsistence uses in and around the study area, and BLM permitting and monitoring procedures under the Alaska National Interest Lands Conservation Act.

Comments on the draft EIS have been considered in the preparation of this document. A proposed action and four alternatives present management options ranging from emphasis on enforcement of regulations under 43 CFR Part 3809 to a "no mining" alternative. The proposed action has been modified from the draft document to include enforcement of water quality standards of the Environmental Protection Agency and the State of Alaska, and to emphasize reclamation. The environmental consequences of all the alternatives are analyzed and presented.

DATES: The 30-day waiting period for the FEIS will begin on the day that the Environmental Protection Agency publishes its Notice of Availability.

FOR FURTHER INFORMATION CONTACT: Howard Levine, Project Manager, U.S. Bureau of Land Management, Alaska State Office, Section 918, 222 West 7th Avenue, #13, Anchorage, Alaska 99513, or at (907) 271-3114.

Lester K. Rosenkrance,

Acting State Director.

[FR Doc. 89-2404 Filed 2-1-89; 8:45 am]

BILLING CODE 4310-JA-M

[CA-940-09-4212-10-CACA 22929]

Conveyance of Mineral Interests in California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Segregative Effect—Conveyance of the Reserved Mineral Interests.

SUMMARY: This notice will describe lands inadvertently omitted from the land description in a conveyance of mineral interest application.

FOR FURTHER INFORMATION CONTACT: Judy Bowers, BLM California State Office, 2800 Cottage Way, Room E-2841, Federal Office Building, Sacramento, California 95825 (916) 978-4815.

The land description for serial No. CACA 22929 53 FR 39352, October 6, 1988, is hereby corrected by adding the following lands which total 80 acres:

T. 4 S., R. 16 E., Mount Diablo Meridian,
Sec. 36, NE¼SE¼, SW¼SE¼.

Date: January 25, 1989

Nancy J. Alex

Chief, Lands Section, Branch of Adjudication & Records.

[FR Doc. 89-2486 Filed 2-1-89; 8:45 am]

BILLING CODE 4310-40-M

[CA-067-09-4333-10]

Route of Travel Designations for West Mesa Limited Use Area; Imperial County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Designation of routes of travel.

SUMMARY: The purpose of these route designations is to provide for the management and protection of public land resources, persons and property using the public lands, and to minimize conflicts among the various uses of those lands. The "California Desert Conservation Area Plan" (1980) calls for vehicle access that avoids or minimizes damage or degradation of the natural, cultural, and aesthetic values of the desert. The Plan also states that the Bureau of Land Management (BLM) should provide a reasonable network of "routes of travel" which meet the needs of desert users, including commercial users, private landowners, and other public land managing agencies in the California Desert Conservation Area.

The West Mesa area of the El Centro Resource Area was brought under BLM management through a 1985 amendment to the California Desert Plan and an associated cooperative agreement between the BLM, the Bureau of Reclamation, and the U.S. Navy. This area was designated either "Open" or "Limited Use" by the 1985 Plan amendment and an "Area of Critical Environmental Concern" (ACEC) by amendment to the Plan in 1987. The designation of a portion of the West Mesa area as "Limited Use" is due to its importance as habitat for a Federal candidate II threatened wildlife species

(Flat-tailed horned lizard) and because of sensitive archaeological resources. The West Mesa Limited Use Area will be a zone in which motor vehicle travel is restricted to a system of approved routes and where all uses in the designated area will be compatible with the management and protection of the significant natural and cultural resources present.

A public comment period on the draft route designations was held between June 27, 1988 and August 10, 1988. Public input and BLM resource inventory data was utilized in making preliminary final route of travel decisions.

Public comments on preliminary final route decisions ended December 23, 1988. All comments received on the preliminary final decisions supported the decisions. The majority of routes in the West Mesa Limited Use Area are approved for use. However, some routes have been closed to all motorized vehicle use to protect public safety by limiting access to active Navy target zones, and manage sensitive wildlife and cultural resources. These routes are described in detail in "West Mesa Vehicle Route Designation Decisions/ Rationale" and "Preliminary Final Decisions for West Mesa Limited Use Area Route of Travel Designations." These documents include detailed maps of these routes and are available for public review in the El Centro Resource Area Office and the California Desert District Office in Riverside, California.

EFFECTIVE DATE: These route designations will be effective February 15, 1989 and will remain in effect until rescinded or modified by the authorized officer. Enforcement of these decisions will be implemented as routes are signed and information made available to the public.

FOR FURTHER INFORMATION CONTACT: Greg Hill, Outdoor Recreation Planner, Bureau of Land Management, El Centro Resource Area, 333 South Waterman Avenue, El Centro, California 92243, (619) 352–5842 (FTS 895–6616).

SUPPLEMENTARY INFORMATION: The authority for establishing vehicle route designations are provided in the Federal Land Policy and Management Act (43 U.S.C. 1701 *et seq.*), Executive Order 11644 (Use of Off-Road Vehicles on the Public Lands), and 3 CFR 74.332 as amended by Executive Order 11989, 42 FR 26959 (May 25, 1977).

Any person who violates or fails to comply with vehicle route designations as governed by 43 CFR Part 8341, is subject to arrest, conviction, and punishment pursuant to appropriate laws and regulations. Such punishment may be a fine of not more than $1,000.00 and/or imprisonment for not longer than twelve months.

Date: January 25, 1989.

Wesley T. Chambers,

District Manager.

[FR Doc. 89–2368 Filed 2–1–89; 8:45 am]

BILLING CODE 4310–40–M

[WY–920–09–4111–15; WYW103575]

Proposed Reinstatement of Terminated Oil and Gas Lease; Wyoming

January 26, 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 WYW103575 for lands in Washakie County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5 per acre, or fraction thereof, per year and 16⅔ 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 WYW103575 effective August 1, 1988, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Andrew L. Tarshis,

Chief, Leasing Section.

[FR Doc. 89–2389 Filed 2–1–89; 8:45 am]

BILLING CODE 4310–22–M

[NV–930–09–4212–11; N–41952]

Realty Action; Lease or Sale of Public Land for Recreation and Public Purposes; Douglas County, NV

AGENCY: Bureau of Land Management.

ACTION: Notice of realty action classifying public land.

SUMMARY: The following described 10 acres of public land have been examined and identified as suitable to be classified for lease or sale under the Recreation and Public Purposes Act, as amended (43 U.S.C. 869, et seq.):

Mount Diablo Meridian, Nevada

T. 11 N., R. 21 E.,
Sec. 17, W½W½NW¼NW¼.

A 5-year lease with the option to renew or to purchase upon substantial development will be offered to Douglas County. The 10 acres of land would be used for expansion of the China Spring Youth Camp for juvenile offenders. It would be used for the Camp director and staff quarters, expansion of the existing vegetable gardens and development of livestock corrals and animal pens.

The land is not required for federal purposes. Classification and issuance of a lease is consistent with Bureau planning for this area and would be in the public interest.

The lease and/or patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior.

Detailed information concerning this action is available for review at the Bureau of Land Management Carson City District Office.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all forms of appropriation under the public land laws, including location under the general mining laws, but not the Recreation and Public Purposes Act, the mineral leasing laws, and material sales. The segregative effect will terminate as specified in an opening order to be published in the **Federal Register.**

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, 1535 Hot Springs Road, Suite 300, Carson City, Nevada 89706. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification of the land described in this notice will become effective 60 days from the date of publication in the **Federal Register.**

Dated: January 13, 1989.

James W. Elliott,

District Manager.

[FR Doc. 89–2482 Filed 2–1–89; 8:45 am]

BILLING CODE 4310–HC–M

[CA–010–09–4212–13; CA 23982]

Realty Action; Exchange of Public and Private Lands in El Dorado, Nevada, Placer, San Diego, Tuolumne, Yuba and Mono Counties, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Amendment of notice of realty action; exchange of public and private lands (CA 23982).

SUMMARY: This document amends the Notice of Realty Action (CA 23982) published in Vol. 54, No. 2, pages 192 and 194, January 4, 1989. The subject heading was incorrect and should read as set forth above. Nevada refers to a county in California. The above notice is further amended to include additional public lands that are being considered for exchange; the additional (selected) public lands are described as follows:

Nevada County, California

T. 16 N., R. 7 E., M.D.M.
Sec. 25, SE¼.
T. 16 N., R. 8 E., M.D.M.
Sec. 19, S½NE¼;
Sec. 29, All public land in S½SW¼;
Sec. 30, All public land;
Sec. 31, All public land in NE¼.
T. 16 N., R. 9 E., M.D.M.
Sec. 8, Lot 1 and mineral survey 2861.

Aggregating approximately 930.00 acres, more or less.

SUPPLEMENTARY INFORMATION: Publication of this notice in the **Federal Register** segregates the above described public lands from settlement, location and entry under the public land laws and the mining laws for a period of two (2) years from the date of first publication.

DATE: On or before March 20, 1989, interested parties may submit comments to the District Manager, c/o Area Manager, Folsom Resource Area Office, 63 Natoma Street, Folsom, California 95630.

FOR FURTHER INFORMATION CONTACT: Mike Kelley, Folsom Resource Area Office, (916) 985–4474, or at the address listed above.

Date: January 24, 1989.

Simotha Vickers,

Acting District Manager.

[FR Doc. 89–2432 Filed 2–1–89; 8:45 am]

BILLING CODE 4310–40–M

[CA–010–09–4212–13; CA 22479]

Realty Action; Termination of Proposed Exchange of Public Lands in Placer and Yuba Counties, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action; termination of proposed exchange of public lands (CA 22479).

SUMMARY: This Notice is to advise the public that the proposed exchange of public lands (CA 22479) is terminated.

SUPPLEMENTARY INFORMATION: The publication of a notice of realty action in the **Federal Register** on May 19, 1988, Vol. 53, No. 97, page 17984, proposed the exchange of public lands in Placer and Yuba Counties, California. The Notice segregated the public lands from settlement, location and entry under the public land laws and the mining laws. The proposed exchange has been terminated and the segregation of the land no longer serves a purpose. Upon publication of this Notice the segregation imposed by this proposed exchange (CA 22479) will be terminated for the following described lands:

Placer County, California

T. 15 N., R. 10 E., M.D.M.
Sec. 14, Lot 1, N½NE¼;
Sec. 23, S½S½NE¼, N½SE¼, SW¼SE¼, NW¼SE¼SE¼;
Sec. 26, Lots 1,2,6,9,11, W½NW¼SW¼, SW¼SW¼, S½SE¼SW¼;
Sec. 5, W½NE¼, N½N½NW¼, SW¼NW¼NW¼, W½SW¼NW¼.

Yuba County, California

T. 19, N., R. 6 E., M.D.M.
Sec. 13, Lots 1–7, inclusive, NW¼NW¼.

Containing 643.61 acres, more or less.

The above described lands are currently segregated by another exchange (CA 23982) and the status of the land, insofar as its availability for appropriation under the general land laws, will not be changed.

At 10:00 a.m. March 3, 1989, the following described lands will be open to the public land laws generally, subject to valid existing rights, the provision of existing withdrawals and the requirements of applicable law. These lands will also be opened to mineral location under the United States mining laws. The lands have been and continue to be open to application and offers under the mineral leasing laws.

Placer County, California

T. 15 N., R. 10 E., M.D.M.
Sec. 22, E½SE¼, SW¼SE¼.

Containing 120.00 acres, more or less.

All valid applications received at or prior to 10:00 a.m. on March 3, 1989, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

FOR FURTHER INFORMATION CONTACT: Michael G. Kelley, Realty Specialist, Bureau of Land Management, Folsom Resource Area, 63 Natoma Street, Folsom, California 95630: (916) 985–4474.

Date: January 24, 1989.

Simotha Vickers,

Acting District Manager.

[FR Doc. 89–2433 Filed 2–1–89; 8:45 am]

BILLING CODE 4310–40–M

[CO–942–09–4520–12]

Colorado; Filing of Plats of Survey

January 27, 1989.

The plats of survey of the following described land, will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10:00 a.m., January 27, 1989.

The plat representing the dependent resurvey of portions of the west boundary and subdivisional lines and the subdivision of sections 17, 19, and 20, T. 14 S., R. 93 W., Sixth Principal Meridian, Colorado, Group No. 842, was accepted January 9, 1989.

This survey was executed to meet certain administrative needs of this Bureau.

The plat representing the dependent resurvey of a portion of the subdivisional lines and the subdivision of sections 22, 23, and 27, T. 2 S., R. 90 W., Sixth Principal Meridian, Colorado, Group No. 840, was accepted November 25, 1988.

The plat representing the dependent resurvey of a portion of the subdivision of section 8 and a metes-and-bounds survey in section 8, T. 5 S., R. 80 W., Sixth Principal Meridian, Colorado, Group No. 904, was accepted December 30, 1988.

These surveys were executed to meet certain administrative needs of the U.S. Forest Service.

The plat representing the corrective dependent resurvey of a portion of the subdivisional lines, T. 36 N., R. 7 W., New Mexico Principal Meridian, Colorado, Group No. 869, was accepted January 10, 1989.

This survey was executed to comply with the Interior Board of Land Appeals approval of the settlement agreement: *Peter Paul Groth*, 99 IBLA 99 104 (1987).

All inquiries about this land should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado, 80215.

Jack A. Eaves,

Chief, Cadastral Surveyor for Colorado.

[FR Doc. 89–2392 Filed 2–1–89; 8:45 am]

BILLING CODE 4310–JB–M

[ID–030–09–4212–13; I–25586]

Realty Action; Private Exchange Involving Public Lands in Jefferson County, ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Private exchange involving public lands in Jefferson County, Idaho.

The surface estate of the following described public land has been found suitable for disposal by exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2756, 43 U.S.C. 1716):

Boise Meridian, Idaho

T. 7 N., R. 37 E.
Sec. 17, SE¼NW¼;
Sec. 18, NE¼SE¼.

The area described contains 80 acres, more or less.

The publication of this notice in the **Federal Register** will segregate the public lands described above to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. The segregative effect will terminate upon issuance of patent to the State of Idaho or upon expiration of two years from the effective date, or by publication of a Notice of Termination by the Authorized Officer, whichever comes first.

In exchange for these lands the United States will acquire the following described lands in Fremont and Jefferson Counties, Idaho from Dyle Robertson:

Boise Meridian, Idaho

T. 7 N., R. 37 E.
Sec. 28, NE¼SW¼;
T. 8 N., R. 39 E.
Sec. 18, SE¼NW¼.

The area described contains 80 acres, more or less.

This exchange is consistent with BLM and local planning for the lands involved. The public interest will be well served by completing the exchange.

The value of the lands to be exchanged is equal.

The patent, when issued, will contain the following reservation to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890, (26 Stat. 391; 43 U.S.C. 945).

Detailed information concerning the exchange, including the environmental assessment is available for review at the Idaho Falls District, Bureau of Land Management, 940 Lincoln Road, Idaho Falls, Idaho 83401.

For a period of 45 days from the date of publication of this notice, interested parties may submit comments to the District Manager, Idaho Falls District, at the above address. In the absence of timely objections, this proposal shall become the final determination of the Department of the Interior.

Dated: January 24, 1989.

Lloyd H. Ferguson,

District Manager.

[FR Doc. 89-2434 Filed 2-1-89; 8:45 am]

BILLING CODE 4310-GG-M

[ID-942-09-4730-12]

Idaho; Filing of Plats of Survey

The plat of survey of the following described land, was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 10:00 a.m., January 27, 1989.

The plat representing the dependent resurvey of a portion of the subdivisional lines and a portion of the restored original meanders of the left bank of the Snake River; the subdivision of section 16 and the survey of certain irregular lots in section 16, T. 3N., R. 41 E., Boise Meridian, Idaho, Group 696, was accepted January 23, 1989.

This survey was executed to meet certain administrative needs by this Bureau.

All inquiries about this land should be sent to the Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

January 27, 1989.

[FR Doc. 89-2393 Filed 2-1-89; 8:45 am]

BILLING CODE 4310-GG-M

[CA-940-09-4214-10; CACA 18158 and CACA 24047]

Cancellation of Withdrawal Application and Proposed Withdrawal; California

January 27, 1989.

SUMMARY: The Bureau of Land Management has cancelled its application CACA 18158 to withdraw 8,320 acres of public land from appropriation under the public land laws, including the mining laws, to provide a security zone to protect the highly classified Sea Site I electronic warfare installation at the Naval Weapons Center, China Lake. The lands are included in the China Lake Unification withdrawal application which is presently under consideration by the Congress. The segregation imposed by application CACA 18158 terminated January 17, 1988, by operation of law. The U.S. Department of the Navy has filed an application for the same land for a temporary withdrawal in aid of legislation in conjunction with and a part of the aforesaid military withdrawal application. The withdrawal is requested for a period of 5 years pending Congressional action. This notice closes the lands for up to 2 years from appropriation under the public land laws, including the mining laws. The land has been and will remain open to mineral leasing.

EFFECTIVE DATE: February 2, 1989.

ADDRESS: Comments should be sent to the California State Director, BLM, 2800 Cottage Way, Sacramento, California 95825.

FOR FURTHER INFORMATION CONTACT: Viola Andrade, BLM California State Office, 916-978-4815.

SUPPLEMENTARY INFORMATION: Withdrawal application CACA 18158 is hereby cancelled. The Notice of Proposed Withdrawal and Opportunity for a Public Hearing was published in the **Federal Register** on January 17, 1986 (51 FR 2585).

1. The segregative effect imposed by application CACA 18158 terminated on January 17, 1988, as to the following described land:

Mount Diablo Meridian

T. 27 S., R. 43 E.,
Secs. 31 to 34, inclusive.
T. 28 S., R. 43 E.,
Secs. 4 to 9, inclusive;
Secs. 17 to 19, inclusive.

The area described contains 8,320 acres in San Bernardino County.

2. On January 6, 1989, the U.S. Department of the Navy filed an application to withdraw the land described in paragraph 1 from settlement, sale, location, or entry under the general land laws, including the mining laws, subject to valid existing rights.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management.

Public meetings were held in Ridgecrest, California, on February 6 and 16, 1984, and in Lancaster, California, on November 15, and 16, 1984, in connection with the China Lake Unification withdrawal application.

The application will be processed in accordance with the regulations set forth in 43 CFR Part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or cancelled or the withdrawal is approved prior to that date. No type of temporary land use will

be permitted during this segregative period.

The temporary segregation of the lands in connection with this withdrawal application shall not affect the administrative jurisdiction over the lands, and the segregation shall not have the effect of authorizing any use of the lands by the Department of the Navy.

Nancy J. Alex,

Chief, Lands Section, Branch of Adjudication and Records.

[FR Doc. 89-2390 Filed 2-1-89; 8:45 am]

BILLING CODE 4310-40-M

[CO-930-09-4220-10; COC-49496]

Proposed Withdrawal; Opportunity for Public Meeting; Colorado

January 25, 1989.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Department of Energy has requested withdrawal of public land near Gunnison, Colorado, for 5 years. The land is proposed as a permanent disposal site for radioactive uranium mill tailings. If this site is designated for permanent disposal, Administrative Jurisdiction will be transferred to Department of Energy for management. This notice will segregate the land from operation of the public land laws, including location and entry under the mining laws for up to 2 years. The land will continue to be open to mineral leasing.

DATE: Comments on this proposed withdrawal or requests for a public meeting must be received on or before May 3, 1989.

ADDRESS: Bureau of Land Management, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius at (303) 236-1768.

SUPPLEMENTARY INFORMATION: The Department of Energy filed application on January 6, 1989, to withdraw the following described public land from settlement, sale, location or entry under the public land laws, including the mining laws, subject to valid existing rights, pursuant to the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714:

New Mexico Principal Meridian

Landfill Site

T. 49 N., R. 1 E.,
Sec. 10, E½SE¼SW¼, SW¼SE¼;
Sec. 14, S½SW¼NW¼, N½NW¼SW¼;
Sec. 15, W½NE¼NE¼, W½NE¼, SE¼NE¼, E½E½NW¼, NE¼NE¼ SW¼, N½N½SE¼.

The area described aggregates approximately 330 acres in Gunnison County, Colorado.

The purpose of this withdrawal is to segregate the land and provide for protection until requirements are completed for a permanent transfer of administrative jurisdiction to the Department of Energy under the authority of the Uranium Mill Tailings Radiation Control Act of 1978; 92 Stat. 3021, 42 U.S.C. 7901, as amended.

Effective on the date of publication, these lands are segregated from all forms of appropriation under the public land laws, including the mining laws. The lands remain open to mineral leasing subject to concurrence by the Department of Energy, the Nuclear Regulatory Commission, and the Department of the Interior. The lands will remain open to surface uses which are compatible with the project until the withdrawal is final and until construction is started.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with this proposed withdrawal. If the authorized officer determines that a meeting should be held, the meeting will be scheduled and conducted in accordance with the Bureau of Land Management Manual, section 2351.16B.

All persons who desire to submit comments, suggestions, or objections, or who desire a public meeting for the purpose of being heard on this proposed action must submit a written request to the Colorado State Director within 90 days of the publication of this notice.

This application will be processed in accordance with the regulations set forth in 43 CFR Part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated from operation of the public land laws as specified above unless the application is denied or cancelled or the transfer of administrative jurisdiction takes place prior to that date.

The temporary segregation of this land in connection with the application shall not affect the administrative jurisdiction over the land and will not authorize any use of the land by the Department of Energy.

Jenny Saunders,

Acting Chief, Branch of Realty Programs.

[FR Doc. 89-2391 Filed 2-1-89; 8:45 am]

BILLING CODE 4310-JB-M

Bureau of Reclamation

Proposed Milltown Hill Dam and Reservoir, Elk Creek Division, Umpqua River Project, OR

AGENCY: Bureau of Reclamation (USBR), Interior.

ACTION: Notice of intent to prepare a draft environmental impact statement.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, the Bureau of Reclamation (Reclamation) proposes to prepare a draft environmental impact statement (EIS) on the proposed Milltown Hill Dam and Reservoir, Elk Creek Division, Umpqua River Project, Oregon. Reclamation and Douglas County, Oregon, propose to develop a dam, reservoir, powerhouse, and related facilities within the Elk Creek basin. The purpose of the project is to provide municipal, rural, domestic, and industrial water supplies; to provide full and supplemental irrigation service for commercial and small tract irrigation for about 5,300 acres; to provide instream flows and other habitat improvements to enhance anadromous fish production; and to provide flood control to lands and improvements along the flood plain. The project will also provide increased recreation opportunities and enhance certain wildlife values.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Prange, Environmental Specialist, Bureau of Reclamation (Code: PN-150), Federal Building and U.S. Courthouse, Box 043, 550 West Fort Street, Boise, ID 83724; Telephone: (208) 334-1208.

SUPPLEMENTARY INFORMATION: Previous studies performed by Douglas County in the Elk Creek basin indicated that a dam and reservoir near the Milltown Hill site provided the most cost effective method for meeting the basin's water needs. Various dam sizes are being considered at two sites near Milltown Hill. The proposal involves a 36,000 acre-foot reservoir impounded by a dam at a site about 480 feet downstream of the Walker Creek confluence (SE1/4 of Sec. 4, T. 23 S., R. 4 W., W.M.). As presently conceived, the dam would have a crest elevation of 803 feet and a structural height of about 215 feet. The crest length would total about 1,065 feet. Implementing this alternative would require acquisition of about 2,360 acres of dryland pasture now in private ownership.

Two alternatives, involving smaller reservoirs, will also be considered in the EIS. These alternatives would eliminate commercial irrigation to the Yoncalla

Valley area yielding a total irrigated area of about 2,800 acres and would reduce the amount of water available for instream flows. One alternative would result in a reservoir sized at about 13,000 acre-feet at the same location as the preferred alternative. The second alternative would result in a reservoir of about 15,000 acre-feet at site 3,000 feet upstream. The second alternative would require more storage due to a loss of inflow from Walker Creek. Implementing either of these alternatives would require acquisition of about 1,000 acres of dryland pasture now in private ownership. A no action alternative will also be included in the EIS.

The draft EIS is expected to be completed and available for review and comment by the end of 1989.

The present investigation began in late 1985. Since that time, Douglas County and Reclamation have held public meetings to discuss study progress with interested individuals. Douglas County and Reclamation have also maintained coordination with resource management agencies having an interest in the study. Douglas County sponsored a field trip in August 1988 for interested environmental groups and agencies. Additional public meetings will be scheduled to encourage public and agency involvement in the study and the environmental analysis. This process has provided and will continue to provide considerable opportunity for addressing the alternatives and related environmental issues. Therefore, no formal scoping meetings are planned in connection with preparation of the draft EIS.

Anyone interested in more information concerning the study or who has suggestions as to significant environmental issues should contact Mr. Richard Prange at the above address.

Joe D. Hall,

Deputy Commissioner.

[FR Doc. 89-2405 Filed 2-1-89; 8:45 am]

BILLING CODE 4310-09-M

Minerals Management Service

Development Operations Coordination Document; Mark Producing

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that Mark Producing has submitted a DOCD describing the activities it proposes to conduct on Leases OCS-G 7660 and 7661, Blocks 282 and 283, respectively, East Cameron Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Morgan City, Louisiana.

DATE: The subject DOCD was deemed submitted on January 20, 1989. Comments must be received within 15 days of the publication date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Mr. W. Williamson; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2874.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective May 31, 1988 (53 FR 10595).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: January 23, 1989.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 89-2437 Filed 2-1-89; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Walter Oil & Gas Corp.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that Walter Oil and Gas Corporation has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 5547, Block 160, Ship Shoal Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Morgan City, Louisiana.

DATE: The subject DOCD was deemed submitted on January 26, 1989. Comments must be received within 15 days of the publication date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Mr. Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section,

Exploration/Development Plans Unit; Telephone (504) 736-2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective May 31, 1988 (53 FR 10595).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: January 26, 1989.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 89-2394 Filed 2-1-89; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Chesapeake and Ohio Canal National Historical Park Commission; Meeting

Notice is hereby given in accordance with Federal Advisory Committee Act that a meeting of the Chesapeake and Ohio Canal National Historical Park Commission will be held Saturday, March 11, 1989, at the YMCA in Brunswick, Maryland.

The Commission was established by Pub. L. 91-664 to meet and consult with the Secretary of the Interior on general policies and specific matters related to the administration and development of the Chesapeake and Ohio Canal National Historical Park.

The members of the Commission are as follows:

Mrs. Sheila Rabb Weidenfeld, Chairman, Washington, DC
Mrs. Dorothy Tappe Grotos, Arlington, Virginia
Mr. Samuel S.D. Marsh, Bethesda, Maryland
Mr. Keith A. Kirk, Hancock, Maryland
Mr. James F. Scarpelli, Sr., Cumberland, Maryland
Ms. Elise B. Heinz, Arlington, Virginia
Professor Charles P. Poland, Jr., Chantilly, Virginia
Captain Thomas F. Hahn, Shepherdstown, West Virginia
Colonel Ralph Albertazzie, Martinsburg, West Virginia
Mr. Rockwood H. Foster, Washington, DC
Mr. Barry A. Passett, Washington, DC
Mrs. Jo Reynolds, Potomac, Maryland
Ms. Nancy C. Long, Glen Echo, Maryland
Mrs. Minny Pohlmann, Dickerson, Maryland
Dr. James H. Gilford, Frederick, Maryland
Mr. Edward K. Miller, Hagerstown, Maryland
Mrs. Sue Ann Sullivan, Williamsport, Maryland
Mrs. Josephine L. Beynon, Cumberland, Maryland
Mr. Robert L. Ebert, Cumberland, Maryland

Matters to be discussed at this meeting include:

1. Old and new business
2. Superintendent's report
3. Committee reports, Plans and Projects Committee, Recreation Policies and Issues Committee, Resource Protection Committee
4. Public comments

The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning the matters to be discussed. Persons wishing further information concerning this meeting, or who wish to submit written statements, may contact Richard L. Stanton, Superintendent, C&O Canal National Historical Park, P.O. Box 4, Sharpsburg, Maryland 21782.

Minutes of the meeting will be available for public inspection six (6) weeks after the meeting at Park Headquarters, Sharpsburg, Maryland.

Date: January 26, 1989.

Robert Stanton,

Regional Director, National Capital Region.

[FR Doc. 89-2485 Filed 2-1-89; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-234 (Final—Court Remand)]

Carbon Steel Structural Shapes From Norway; Court Remand

AGENCY: United States International Trade Commission.

ACTION: Remand proceedings.

SUMMARY: The Commission hereby gives notice that is staying the remand proceedings in Carbon Steel Structural Shapes from Norway, Inv. No. 731-TA-234 (Final) in accordance with the United States Court of International Trade's (CIT) order dated December 22, 1988. The Commission began these remand proceedings on November 30, 1988 (53 FR 52513, December 28, 1988) pursuant to CIT order granting the Commission 75 days from November 30, 1988, in which to reach a remand determination consistent with *Chaparral Steel Company* v. *United States*, Slip Op. 88-129 (September 28, 1988). On December 22, 1988, however, the CIT amended its order remanding the case to the Commission in order to allow for an immediate appeal to the U.S. Court of Appeals for the Federal Circuit (Federal Circuit), and stayed all further proceedings before the Commission and the CIT pending the Federal Circuit's resolution of the controlling question of law or its denial of permission for interlocutory appeal. Accordingly, the Commission is staying these remand proceedings in conformity with the CIT order.

EFFECTIVE DATE: December 22, 1988.

FOR FURTHER INFORMATION CONTACT: Craig McKee (202-252-1117), Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20426. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

Authority: This investigation, conducted under authority of the Tariff Act of 1930, title VII, is stayed by order of the CIT. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR § 207.20).

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: January 30, 1989.

[FR Doc. 89-2497 Filed 2-1-89; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-290; Sub-59X]

Central of Georgia Railroad Co.; Discontinuance Exemption for Operations Between Griffin and Senoia, GA

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to discontinue service over its 12.7-mile line of railroad between milepost C-257.4 near Griffin and milepost C-270.1 at Senioa, GA.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years and that overhead traffic has been rerouted; and (2) no formal complaint filed by a user of rail service on the line (or a State or local governmental entity acting on behalf of such user) regarding cessation of service

over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The approrpiate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the discountinuance shall be protected pursuant to *Oregon Short Line R. Co.—Abandonment-Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been recieved, this exemption will be effective March 4, 1989 (unless stayed pending reconsideration). Petitions to stay regarding matters that do not involve environmental issues [1] and formal expressions of inent to file an offer of financial assistance under 49 CFR 1152.27(c)(2) [2] must be filed by February 13, 1989. Petitions for reconsideration, must be field by February 22, 1989 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washignton, DC 20423.

A copy of any petition filed with Commission should be sent to applicant's representative: Roger A. Peterson, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510—2191.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this discontinuance.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by February 7, 1989. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275–7316. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental conditions will be imposed, where appropriate, in a subsequent decision.

Decided: January 27, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89–2428 Filed 2–1–89; 8:45 am]

BILLING CODE 7035-01-M

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on evnironmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 4 I.C.C.2d 400 (1988). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C. 2d 164 (1987), and final rules published in the* **Federal Register** on December 22, 1987 (52 FR 48440–48446).

[Finance Docket No. 31400]

Chicago and North Western Transportation Co.; Trackage Rights Exemption; Burlington Northern Railroad Co.

Burlington Northern Railroad Company has agreed to grant overhead trackage rights to Chicago and North Western Transportation Company over its line between milepost 203.12 at Casper, WY and milepost 134.61 at Orin, WY. The trackage rights became effective on or after January 20, 1989.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with th Commission and served on: Mack H. Shumate, Jr., Chicago and North Western Transportation Company, One North Western Center, Chicago, IL 60606.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Dated: January 25, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89–2429 Filed 2–1–89; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Federal Water Pollution Control Act; Jacquin Florida Distilling Co.

In accordance with Justice Department policy, 28 CFR 50.7, notice is hereby given that on December 6, 1988, a proposed Consent Decree in *United States v. Jacquin Florida Distilling Company*, Civil Action No. 87–1209–Civ–T–[illegible] was lodged with the United States District Court, Middle District of Florida. The proposed Consent Decree concerns Jacquin's violations of its National Pollution Discharge Elimination System (NPDES) permit. Under the Consent Decree, Jacquin is required to pay a penalty of $120,000, and come into full compliance with the Federal Water Pollution Control Act. Stipulated penalties are provided for in the event Jacquin fails to comply with the terms of the Consent Decree. The Consent Decree terminates when the Jacquin fulfills all the conditions of the Decree, including payment of the civil penalty and any stipulated penalties which may be due, and has been in compliance with all the terms and conditions of the Consent Decree for a period of one year.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to Jacquin Florida Distilling Company, D.O.J. 90–5–1–1–2760.

The proposed Consent Decree may be examined at the office of the United States Attorney, Middle District of Florida, United States Courthouse, Tampa, Florida and at the Region IV, Office of the Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.40 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89–2490 Filed 2–1–89; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

[Docket No. 88-92]

Kissena Pharmacy, Inc., Flushing, NY; Hearing

Notice is hereby given that on September 1, 1988, the Drug Enforcement Administration, Department of Justice, issued to Kissena Pharmacy, Inc., an Order to Show Cause as to why the Drug Enforcement Administration should not revoke your DEA Certificate of Registration, AK8695148 and deny any pending applications for renewal.

Thirty days having elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Friday, February 3, 1989, commencing at 10:00 a.m., at the United States Court of Appeals for the Federal Circuit, Courtroom 2, 717 Madison Place NW., Washington, DC.

Dated: January 27, 1989.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 89-2411 Filed 2-1-89; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 88-83]

Jay Blaine Sorenson, D.D.S., Salt Lake City, UT; Hearing

Notice is hereby given that on August 30, 1988, the Drug Enforcement Administration, Department of Justice, issued to Jay Blaine Sorenson, D.D.S., an Order to Show Cause as to why the Drug Enforcement Administration should not deny your application for a DEA Certificate of Registration.

Thirty days having elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Thursday, February 23, 1989, commencing at 9:30 a.m., at the State Court, Metropolitan Hall of Justice, Courtroom 301, 240 East, 400 South, Salt Lake City, Utah.

Dated: January 26, 1989.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 89-2412 Filed 2-1-89; 8:45 am]

BILLING CODE 4410-09-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (89-04)]

NASA Advisory Council (NAC), Aerospace Medicine Advisory Committee (AMAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aerospace Medicine Advisory Committee.

DATE AND TIME: February 8, 1989; 8:30 a.m. to 5 p.m., February 9, 1989, 8:30 a.m. to 5 p.m., and February 10, 1989, 8:30 a.m. to 12 noon.

ADDRESS: NASA Headquarters, Room 226A, 600 Independence Avenue, SW, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Janis Stoklosa, Code EBM, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-1540).

SUPPLEMENTARY INFORMATION: The Aerospace Medicine Advisory Committee consults with and advises the NASA Office of Space Science and Applications (OSSA) on long range planning of aerospace medicine research. The Committee will meet to discuss the Extended Duration Orbiter, Extended Duration Crew Operations, Life Sciences Subcommittee Working Group activities, and Space Science and Applications Advisory Committee activities. The Committee is chaired by Dr. Harry C. Holloway and is composed of 24 members. The meeting will be open to the public up to the seating capacity of the room (approximately 40 people including members of the Subcommittee). It is imperative that the meeting be held on these dates, February 8, 9, and 10, 1989, to accommodate the scheduling priorities of the key participants.

Type of Meeting: Open.

Agenda

Wednesday, February 8

8:30 a.m.—Opening Remarks.
9:15 a.m.—Charge to AMAC.
10:30 a.m.—Extended Duration Orbiter (EDO) Overview and Discussion.
5 p.m.—Adjourn.

Thursday, February 9

8:30 a.m.—Extended Duration Crew Operations (EDCO) Overview and Discussion.
2 p.m.—Life Sciences Subcommittee Working Group Activities.
3 p.m.—Life Sciences Program Plan.
4 p.m.—Office of Aeronautics and Space Technology Investment in Life Sciences.
5 p.m.—Adjourn.

Friday, February 10

8:30 a.m.—NASA Advisory Council Activities.
9:15 a.m.—Space Science and Applications Advisory Committee Activities.
10:00 a.m.—Life Support Management Working Group Activities.
10:45 a.m.—Wrap-Up Discussion.
12:00 noon—Adjourn.

Ann Bradley,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 89-2377 Filed 2-1-89; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Arts.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATE: Comments on this information collection must be submitted by March 6, 1989.

ADDRESSES: Send comments to Mr. Jim Houser, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., Room 3002, Washington, DC 20503; (202-395-7316). In addition, copies of such comments may be sent to Mrs. Anne C. Doyle, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202-682-5401).

FOR FURTHER INFORMATION CONTACT: Mrs. Anne C. Doyle, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202-682-5401) from whom copies of the documents are available.

SUPPLEMENTARY INFORMATION: The Endowment requests a review of the

revision of a currently approved collection. This entry is issued by the Endowment and contains the following information: (1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) the average burden hours per response; (7) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

Title: FY 90/91 Advancement Program Application Guidelines

Frequency of Collection: One-time

Respondents: Non-profit institutions

Use: Guideline instructions and applications elicit relevant information from non-profit organizations applying for funding under specific Program categories. This information is necessary for fair, thorough and in-depth consideration of competing proposals in the peer review process.

Estimated Number of Respondents: 150

Average Burden Hours per Response: 32

Total Estimated Burden: 4,800

Anne C. Doyle,

Administrative Services Division National Endowment for the Arts.

[FR Doc. 80-2484-Filed 2-1-89; 8:45am]

BILLING CODE 7537-01-M

Institute of Museum Services Professional Services Program; Availability of Funds

AGENCY: Institute of Museum Services, NFAH.

ACTION: Notice of availability of funds, types of projects encouraged for Fiscal Year 1989.

SUMMARY: For fiscal year 1989, $250,000 is available through the Professional Services Program of the Institute of Museum Services. The deadline for submission of applicable proposals is April 7, 1989.

Nature of Program: Through the Professional Services Program, the IMS offers cooperative agreements to private, non-profit professional museum services related organizations which submit proposals for projects that will benefit and strengthen services of the museum commuity at large. Section 206(b), Title II of the Museum Services Act, Pub. L. 94-462 contains authority for this program. (20 U.S.C. 965).

SUPPLEMENTARY INFORMATION: For the fiscal year 1989 Professional Services award cycle, along with other applications under the program, IMS is particularly interested in receiving from professional museum organizations proposals designed to enhance the effectiveness of museum trustees. In light of policy guidance from the National Museum Services Board and other information, IMS concludes that there is a need among museums generally to enhance the vital role of museum trustees in the provision of museum services. IMS believes that sound proposals under the Professional Services Program to strengthen that role would help to serve this need and would promote the purposes of that program and of the Museum Services Act generally. Proposals for projects that would enhance the interaction and working relationships between museum trustees and museum administrators and would increase trustees' understanding of the mission and functions of the museum and their responsibilities in regard to those functions are encouraged among others. Proposals designed to stimulate a mentorship approach to the strengthening of the museum trustee role are encouraged.

While IMS invites the submisson of applications involving such proposals, applicants are advised that, under current regulations, these proposals must be reviewed, along with other applications, in accordance with the procedures and criteria applicable to the Professional Services Program found in 45 CFR 1180.77 (53 FR 31336, Aug. 18, 1988) and cannot receive special consideration in the review process or in funding decisions. IMS interprets the regulations in § 1180.77 as permitting the submission of groups applications by professional museum organizations.

Deadline Date for Transmittal of Applications: An application for a cooperative agreement must be mailed or hand-delivered by Friday, April 7, 1989.

Applications Delivered by Mail: An application sent by mail must be addressed to the Insitute of Museum Services, 1100 Pennsylvania Avenue, NW., Room 609, Washington, DC 20506.

An applicant must be prepared to show one of the following as proof of timely 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 dated proof of mailing acceptable to the Director of IMS.

If any application is mailed through the U.S. Postal Service, the Director does not accept either of the following as proof of mailing: (1) A private metered postmark; or (2) a mail receipt that is not date-cancelled by the U.S Postal Service.

Applications Delivered by Hand: An application that is hand-delivered must be taken to the Institute of Museum Services, Old Post Office Building, 1100 Pennsylvania Avenue, NW., Room 609, Washington, DC 20506.

IMS will accept a hand-delivered application between 9:00 a.m. and 4:00 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays.

An application that is hand-delivered will not be accepted after 4:30 p.m. on the deadline date.

Program Information and Applicable Regulations: Program information is contained in the following: final regulations published August 18, 1988 in **Federal Register** vol. 53, no. 160, pages 31336-31339.

Available Funds: $250,000 is available for FY 1989. IMS makes matching Professional Services cooperative agreements of no more than $50,000 in Federal funds. In exceptional circumstances applicable to a particular applicant, the Director, upon consultation with the Board, may waive the matching requirement.

APPLICATION FORMS: IMS mails application forms and program information in a PSP Application Packet to museum services organizations on its mailing list. Applicants may obtain Application Packets by writing or telephoning the Institute of Museum Services, 1100 Pennsylvania Avenue, NW., Room 609, Washington, DC 20506, (202/786-0539).

FURTHER INFORMATION: For further information contact Rebecca W. Danvers, Institute of Museum Services, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Telephone: (202) 786-0536.

Dated: January 30, 1989.

(Catalogue of Federal Domestic Assistance No. 45.301 Institute of Museum Services)

Lois Burke Shepard,

Director, Institute of Museum Services.

[FR Doc. 89-2470 Filed 2-1-89; 8:45 am]

BILLING CODE 7036-01-M

NUCLEAR REGULATORY COMMISSION

Applications for Licenses To Export Nuclear Facilities or Materials

Pursuant to 10 CFR 110.70(b) "Public notice of receipt of an application", please take notice that the Nuclear Regulatory Commission has received the following application for an export license. A copy of the application is on file in the Nuclear Regulatory Commission's Public Document Room located at 2120 L Street, NW., Washington, DC.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the **Federal Register.** Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant; the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; the Secretary, U.S. Nuclear Regulatory Commission; and the Executive Secretary, U.S. Department of State, Washington, DC 20520.

In its review of applications for licenses to export production or utilization facilities, special nuclear materials or source material, noticed herein, the Commission does not evaluate the health, safety or environmental effects in the recipient nation of the facility or material to be exported. The table on the following page lists the new major application.

For the Nuclear Regulatory Commission.

Dated this 27th day of January 1989 at Rockville, Maryland.

Marvin R. Peterson,

Assistant Director for International Security, Office of Governmental and Public Affairs.

NRC Export Application

	Description of item to be exported	Country of destination
Name of applicant: Washington Public Power Supply System Date of application: 01/20/89 Date received: 01/25/89 Application Number: XR151	Civilian nuclear power plant—1300 MWe	People's Republic of China.

[FR Doc. 89-2447 Filed 2-1-89; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Meeting Agenda

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on February 9-11, 1989, in Room P-114, 7920 Norfolk Avenue, Bethesda, Md. Notice of this meeting was published in the **Federal Register** on January 26, 1989.

Thursday, February 9, 1989

8:30 A.M.-8:45 A.M.: Comments by ACRS Chairman (Open)—The ACRS Chairman will report briefly regarding items of current interest.

8:45 A.M.-10:15 A.M.: Decay Heat Removal (Open)—Briefings and discussion regarding proposed NRC staff resolution of Generic Issue 99, "Improved Reliability of RHR Capability in PWRs."

10:30 A.M.-12:00 Noon: NRC Severe Accident Policy (Open)—Briefing by NRC Staff regarding status of implementation for future LWRs.

1:00 P.M.-2:30 P.M.: Quantitative Safety Goals (Open)—Discuss proposed ACRS report regarding the proposed implementation plan for this matter.

2:45 P.M.-4:15 P.M.: Resolution of Generic Issues 70, "PORV Reliability" and 94, "Low Temperature Overpressure Protection." (Open)—Meeting with NRC Staff representatives to hear and discuss proposed resolution of these generic issues.

4:15 P.M.-5:00 P.M.: NRC Safety Research Program (Open)—Discuss proposed ACRS annual report to the U.S. Congress regarding the NRC safety research program and budget.

5:00-6:00 P.M.: Containment Design Criteria (Open)—Discuss proposed ACRS action regarding development of design criteria for nuclear power plant containments.

Friday, February 10, 1989

8:30 A.M.-10:30 A.M.: Human Factors (Open)—Briefing by NRC Staff regarding revised human factors research program plan.

10:45 A.M.-12:00 Noon: NRC Safety Goal Policy (Open)—Discuss proposed ACRS report regarding the proposed implementation plan for this matter.

1:00 P.M.-1:45 P.M.: Application of Leak Before Break Concept (Open)—Briefing and discussion as appropriate of proposed NRC position regarding the scope of application of the leak before break concept.

1:45 P.M.-2:15 P.M.: Anticipated ACRS Activities (Open)—Discuss anticipated subcommittee activities and items proposed for consideration by the full Committee.

2:30 P.M.-4:00 P.M.: Standardization and Licensing Reform (Open)—Review proposed NRC rule and statement of considerations regarding 10 CFR Part 52, Early Site Permits; Standard Design Certifications; and Combined Licenses for Nuclear Power Plants (tentative).

4:00 P.M.-4:45 P.M.: Appointment of ACRS Members (Open/Closed)—Discuss status of appointment of new member(s) and reappointment of current member(s).

Portions of this session will be closed as appropriate to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy.

4:45 P.M.-6:00 P.M.: NRC Regulatory Process (Open)—Discuss proposed ACRS consideration of the NRC regulatory process.

Saturday, February 11, 1989

8:30 A.M.-12:00 Noon: Preparation of ACRS Reports (Open)—Discuss proposed reports to NRC regarding items considered during this meeting and the annual research report to the U.S. Congress.

1:00 P.M.-2:00 P.M.: ACRS Subcommittee Reports (Open/Closed)—Hear and discuss reports of designated subcommittee chairmen and members regarding the status of recent activities.

Portions of this session will be closed as necessary to discuss Proprietary Information applicable to the matters being discussed.

1:00 P.M.-3:30 P.M.: Miscellaneous (Open)—Complete discussion of items considered during this meeting.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 27, 1988 (53 FR 43487). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS

Executive Director as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley, prior to the meeting. In view of the possiblity that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with subsection 10(d) Pub. L. 92–463 that it is necessary to close portions of this meeting as noted above to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy [5 U.S.C. 552b(c)(6)] and to discuss Proprietary Information applicable to the matters being considered [5 U.S.C. 552b(c)(4).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 301/492–8049), between 8:15 A.M. and 5:00 P.M.

Date, January 30, 1989.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 89–2448 Filed 2–1–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–320]

Meeting of the Advisory Panel for the Decontamination of Three Mile Island, Unit 2; GPU Nuclear Corp.

Notice is hereby given pursuant to the Federal Advisory Committee Act that the Advisory Panel for the Decontamination of Three Mile Island, Unit 2 (TMI–2) will be meeting on February 16, 1989 from 7:00 p.m. to 10:00 p.m. at the Holiday Inn, 23 S. Second Street, Harrisburg, Pennsylvania. The meeting will be open to the public.

At this meeting, the Panel will receive a status report on the progress of defueling from the licensee, GPU Nuclear Corporation. The licensee will also describe the processed water disposal system and discuss the cleanup schedule and proposed funding for the remainder of the cleanup. Members of the public will be given the opportunity to address the Panel.

Further information on the meeting may be obtained from Dr. Michael T. Masnik, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–1373.

Dated at Rockville, Maryland, this 30th day of January 1989.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 89–2449 Filed 2–1–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–458]

Gulf States Utilities; Withdrawal of Applications for Amendments to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the December 12, 1988 request of Nebraska Public Power District (the licensee), to withdraw portions of its July 10, 1987 and March 4, 1988 applications for proposed amendments to Facility Operating License No. DPR–46, which authorizes operation of the Cooper Nuclear Station, located in Nemaha County, Nebraska.

The proposed amendments would have revised the Cooper Nuclear Station Technical Specifications to make Fire Area Barrier and Penetration Fire Seals Limiting Conditions for Operation and Surveillance Requirements applicable only to those seals and barriers which form the boundary of fire areas. The Commission has considered the December 12, 1988 letter and has determined that permission to withdraw portions of the July 10, 1987 and March 4, 1988 applications for amendments should be granted.

For further details with respect to this action, see (1) the applications for amendments dated July 10, 1987 and March 4, 1988; and (2) the Nebraska Public Power District letter dated December 12, 1988 withdrawing portions of the July 10, 1987 and March 4, 1988 applications for license amendment. The above documents are available for public inspection at the Commission Public Document Room, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room located at the Auburn Public Library, 118 15th Street, Auburn Nebraska 68305.

Dated at Bethesda, Maryland, this 24th day of January 1989.

For the Nuclear Regulatory Commission.

Paul W. O'Connor,

Project Manager Project Directorate—IV Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89–2450 Filed 2–1–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–498]

Houston Lighting & Power Co.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–76, issued to Houston Lighting & Power Company (the licensee), for operation of the South Texas Project, Unit 1, located in Matagorda County, Texas.

The proposed amendment would revise the Unit 1 Technical Specifications to incorporate the Unit 1/Unit 2 Combined Technical Specifications which are to be issued with the Unit 2 full power license. At the time Unit 2 receives an operating license, Houston Lighting & Power Company (HL&P) will receive Technical Specifications that are applicable for both units, i.e., Combined Technical Specifications. To implement the Combined Technical Specifications on Unit 1, the Unit 1 license requires an administrative change.

The Commission has provided guidance for the application of criteria for no significant hazards consideration determination by providing examples of amendments that are considered not likely to involve significant hazards considerations (51 FR 7751). These examples include example (i), A purely administrative change to technical specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an error or a change in nomenclature.

The proposed changes for the Combined Technical Specifications are administrative in nature, and, therefore, are within the scope of the example. Since the changes are encompassed by an example for which no significant hazards consideration exists, the staff has made a proposed determination that this section of the amendment involves no significant hazards consideration.

The staff has reviewed the proposed amendment and the licensee's no significant hazards consideration

determination. Based on the review of the proposed areas of change and the above discussions, the staff proposes to determine that the proposed amendment does not involve a significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration and Resource Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P–216, Philips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 8:15 am to 4:00 pm. Copies of written comments may be examined at the NRC Public Document Room, 2120 L Street NW., Washington, DC 20555. The fillings of requests for hearing and petitions for leave to intervene is discussed below.

By March 6, 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 participates as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene must 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 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 must set forth with particularity the interest of the petitoner 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 petitoner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitoner'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 petitoner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which the 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, the petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the request for amendment involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and state comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, 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 (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Jose A. Calvo: 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-Rockville, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Jack R. Newman, Esq., Newman & Holtzinger, P.C., 1615 L Street, NW., Washington, DC 20036, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated January 17, 1989 which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the Wharton Junior College Library, J.M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488 and Austin Public Library, 810 Gudalupe Street, Austin, Texas 78701.

Dated at Rockvile, Maryland, this 19th day of January 1989.

For the Nuclear Regulatory Commission.

Jose A. Calvo,

Director, Project Directorate—IV, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89-2451 Filed 2-1-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-267]

Public Service Co. of Colorado (Fort St. Vrain Nuclear Generating Station); Exemption

I

Public Service Company of Colorado (the licensee) is the holder of Facility Operating License No. DPR-34 that authorizes operation of the Fort St. Vrain Nuclear Generating Station. The license provides, among other things, that it is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

II

On November 10, 1988, the Nuclear Regulatory Commission (NRC) published in the **Federal Register** (53 FR 45447) a final rule amending 10 CFR Parts 2, 70 and 73. These amendments dealt with physical protection and security personnel performance regulations and its design basis threat for fuel facilities possessing formula quantities of strategic special nuclear material (SSNM) to require protection equivalent to that in place at comparable Department of Energy (DOE) fuel facilities. These changes have been prompted by a recent study that compared NRC's security requirements for SSNM with DOE's recently upgraded security system. The changes are also supported by findings from reviews of safeguards event reports, Regulatory Effectiveness Reviews, and inspection reports. The amendments provide greater assurance that physical protection measures at these fuel facilities can protect against theft. It was the NRC's intent that these amendments to its physical protection regulations only apply to licensed fuel facilities possessing formula quantities of SSNM. These facilities are: General Atomics, La Jolla, California; Nuclear Fuel Services, Erwin, Tennessee; Babcock and Wilcox, Lynchburg, Virginia; and United Nuclear Corporation, Montville, Connecticut. Although the Fort St. Vrain reactor (Colorado) uses high enriched uranium fuel, it is not subject to these upgrades because of the extensive processing required to yield weapons usable material and because of the weight of the fuel elements and their low concentration of uranium. In issuing this amendment, the NRC stated; "Pursuant to 10 CFR 73.5, the Commission will initiate an exemption from the new requirements for Fort St. Vrain."

III

Pursuant to 10 CFR Part 73.5, "The Commission may, upon application of any interested person or upon its own initiative, grant such exemptions from the requirements of the regulations in this part as it determines are authorized by law and will not endanger life or property or the common defense and security, and are otherwise in the public interest."

The purpose of the proposed amendments was to assure that SSNM in NRC licensed fuel facilities are provided with a comparable level of protection to DOE facilities. To achieve this objective, reviews have been conducted periodically by joint NRC/DOE review teams. The findings from the most recent review (1986) indicated that DOE has placed increased emphasis on guard weaponry, training, and tactical response exercises and has upgraded some physical security measures. To maintain comparability with DOE as well as to repond to recent NRC security reviews, the NRC has amended its physical protection regulations for SSNM to include the following: (1) Security system performance evaluation through tactical response exercises, (2) night firing qualification for guards using all assigned weapons; (3) search of 100 percent of entering personnel and packages (for explosives, firearms, and incendiary devices), (4) posting of armed guards at control points, (5) providing two separate physical personnel barriers around the protected area, and (6) revision of the design basis threat at these fuel facilities to include land vehicle use by adversaries attempting to commit theft and require the implementation of countermeasures to prevent forcible vehicle entry into the protected area. These amendments will provide greater assurance that security systems and security force capabilities at these facilities are comparable to those used by DOE.

However, situation at the Fort St. Vrain Nuclear Generating Station was found to be substantially different. Fuel elements containing 93.15% enriched uranium fuel at Fort St. Vrain are located in the core or in storage. Only fresh fuel in storage is important to this physical protection requirements. Fresh fuel elements are stored in a substantial building, located within the reactor protected area, that is locked and protected by alarms and guards. The fuel elements are hexagonal right prisms approximately 14 inches across and 31 inches high, each weighing about 280 pounds. The fuel consists of particles composed of uranium and thorium dicarbides coated with several highly retentive layers of carbon and silicon carbide. The particles are bonded with a carbonaceous matrix into rods, which are sealed in the fuel holes of the elements. The fuel for each element consists of 120 fuel rods, and each fuel element contains up to 0.9 kg of uranium. The fuel elements are designed to retain their integrity at temperatures up to 5000 °F. The end result is that the fissile material is highly diluted by graphite and other materials. Recovery of the fissile material is made difficult by the inert and refractory nature of the carbon and silicon carbide coatings and by the presence of thorium. Therefore, due to the fuel element weight and to the extensive processing needed to yield weapons usable material, the fuel is unattractive from a theft point of view.

With respect to the revised design basis threat which allows adversaries use of a land vehicle for transport, additional measures to protect against use of a vehicle are not needed for the following reasons. Since a single fuel element contains, at most, about 0.9 kg of high enriched uranium, it follows that an adversary seeking a formula quantity would have to gain control over and load onto his vehicle a number of fuel elements. In view of current requirement for armed responders at Fort St. Vrain, the Commission believe that the response force could regain control of the fuel elements before an adversary team could identify and load a formula quantity of uranium contained in fuel elements onto a vehicle and escape.

Therefore, it is appropriate to grant an exemption under 10 CFR 73.5 from the revision to Part 73 covered in the November 10, 1988 rulemaking.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 73.5 that an exemption as described in Section III is authorized by law, will not present an undue risk to public health and safety, and is consistent with the common defense and security, and are otherwise in the pubic interest.

Therefore, the Commission hereby grants the following exemption.

Public Service Company of Colorado is exempt from the increased requirements of 10 CFR Part 73 as amended November 10, 1988 at 53 FR 45447, concerning safeguards requirements for fuel facilities possessing

formula quantities of strategic special nuclear materials.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not result in any significant environmental impact.

This exemption is effective upon issuance.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 19th day of January 1989.

Gary M. Holahan,

Acting Director Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89–2452 Filed 2–1–89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-327]

Tennessee Valley Authority, Sequoyah Nuclear Plant, Unit 1; Exemption

I

The Tennessee Valley Authority (the licensee) holds Facility Operating License Nos. DPR 77 and DPR–79, which authorize operation of the Sequoyah Nuclear Plant, Units 1 and 2 (the facility, Units 1 and 2). The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The facility consists of two pressurized water reactors located on the licensee's site in Hamilton County, Tennessee.

II

Section 50.46(a)(1) to 10 CFR Part 50 requires, in part, that for a pressurized light-water reactor, its plant-specific ECCs cooling performance shall be calculated in accordance with an acceptable evaluation model and for plant operating conditions. Furthermore, § 50.46(b)(1) requires that the calculated maximum fuel element cladding temperature or peak clad temperature (PCT) from the ECCS performance during design basis accidents shall not exceed 2200°F.

In its application for relief, the licensee stated that it was requesting an exemption from 10 CFR 50.46 for the operating Cycle 4 for Units 1 and 2. The request was for the licensee not to have to submit for operating Cycle 4 a calculated ECCS cooling performance analysis, using an approved Upper Head Injection (UHI) model and Cycle 4 plant operating conditions. The licensee would submit, for the beginning of operating Cycle 5, a calculated ECCS cooling performance using approved non-UHI models and Cycle 5 and beyond plant conditions for both units. The UHI system is presently planned to be removed during the Cycle 4 refueling outage, prior to operating Cycle 5, for both units.

By letter dated October 26, 1988, the Commission granted the licensee a temporary exemption until May 31, 1989 for Sequoyah Unit 1, from the above requirement in 10 CFR 50.46(a)(1) for a plant-specific calculated ECCS cooling performance analysis for operating Cycle 4. The licensee, in its request for this temporary exemption dated September 19, 1988 and the supporting documentation submitted in letters dated August 15 and September 21, 1988, informed the Commission that the existing ECCS cooling performance calculations using the UHI calculation model for Unit 1, as discussed in Section 15.4 of the Final Safety Analysis Report (FSAR), were no longer representative of the plant conditions for operating Cycle 4 for Unit 1. The licensee also stated that there were corrections needed for the UHI model. The licensee requested this temporary exemption to allow Unit 1 to operate in Cycle 4 until it could submit a plant-specific ECCS cooling performance based on plant operating conditions and with an approved UHI model but no later than May 31, 1989. The Commission granted this temporary exemption until May 31, 1989.

Since being granted the temporary exemption for Unit 1, the licensee has reevaluated the resources needed to perform the analysis of ECCS performance for operation with UHI. The licensee estimated that the cost of performing the UHI/ECCS analysis is more than $1.1 million. The licensee states that resources of this magnitude are inconsistent with its plan to remove UHI at Units 1 and 2 in their respective Cycle 4 refueling outage. This outage follows the operating Cycle 4 for each unit.

Because both units will still have the UHI system in operation during the operating Cycle 4, the ECCS performance for both units for Cycle 4 would have to include an approved UHI calculation model without errors to be in conformance with 10 CFR 50.46(a)(1). Therefore, this required ECCS performance analysis with an approved UHI calculation model would be needed for one operating cycle if UHI is removed in the Cycle 4 refueling outage.

Operating Cycle 4 for Unit 1 began in November 1988 and for Unit 2 is currently scheduled to begin on or about March 31, 1989. The Cycle 4 refueling outage for each unit will begin approximately 18 months later.

The licensee stated that the cost of an non-UHI/ECCS analysis would be about $670,000. The licensee stated that the expenditure of resources for the UHI/ECCS analysis would delay the availability of resources needed to support removal of UHI from each unit and could, therefore, delay the present schedule for removing UHI in the Cycle 4 refueling outage for each unit.

The licensee further stated that the performance of the UHI/ECCS analysis would be a poor utilization of its resources, as well as NRC resources in reviewing the UHI/ECCS analysis, because of the age of the UHI model. The UHI evaluation model is not currently available for use and would require extensive resources to verify and validate on the current Westinghouse Corporation computer system and, therefore, resources directed at the UHI/ECCS analysis would be directed toward "old" methodologies and technologies. The licensee further stated that Sequoyah is the last commercial plant utilizing the UHI design in this country and this would force the licensee to bear by itself the full burden for these resource expenditures.

The licensee discussed the safety significance of removing UHI from each unit. The removal of UHI will result in significant operation/maintenance improvements. During refueling outages, approximately four days of critical path work is required for disassembling, reassembling, and testing of UHI connections to the reactor vessel head. Deletion of this work would also result in decreased personnel exposure (approximately 59 person-rem each outage). The removal of UHI would also provide operation/maintenance improvement by the deletion of the surveillance requirements associated with UHI operability. UHI removal will also provide a safety benefit by removing the potential for injecting nitrogen into the reactor coolant system. Although injected nitrogen could occur only if multiple failures prevented the automatic isolation system from functioning properly, injected nitrogen could form voids in the reactor coolant system that might impede natural circulation and core cooling.

The licensee, in its letters dated November 3 and December 5, 1988, provided an assessment demonstrating the safe operation of Units 1 and 2 without the additional analysis required by 10 CFR 50.46(a)(1). The large break loss-of-coolant (LOCA) ECCS analysis for Unit 1, as documented in FSAR Section 15.4.1, was performed with the Westinghouse 1974 Evaluation Model. It

resulted in a PCT of 2113°F. This analysis was based on a heat flux hot channel factor ($F_q(z)$) of 2.32, a discharge coefficient (Cd) of 0.6, and a lower bounding value of UHI water volume delivery of 900 cubic feet (ft^3).

In a TVA Condition Adverse to Quality Report (CAQR), the licensee identified that the current level switches used in the UHI system for both units potentially may allow more water to be injected during a postulated accident than the analytical limit of 1,130.5 ft^3. The over injection of water can result in the accidental injection of nitrogen into the reactor coolant system. Nitrogen in the reactor coolant system could result in the restriction of heat removal from the fuel cladding. TVA implemented two corrective actions to resolve the above mentioned CAQR. Specifically, the first is a proposed actual reduction in the total amount of water injected by the UHI system from the current minimum requirement of 900 ft^3, thereby, decreasing the probability of over injecting water from the UHI system. The reduction of the lower bounding value for UHI water volume delivery changes some of the original assumptions of the ECCS analysis. The second CAQR corrective action calls for the replacement of the level switches with modified switches whose characteristics present less instrument setpoint drift.

The licensee has performed a sensitivity assessment of the impact of delivering 50 ft^3 less of UHI water for the existing analysis to demonstrate that the PCT would remain below the regulatory limit of 2200°F. This assessment was provided to the Commission by submittals dated August 15 and 17[1], and December 2, 1988, for Units 1 and 2, respectively. These submittals requested a change in Units 1 and 2 Technical Specifications (TS) on the UHI accumulator level switch setpoint. These requested TS changes proposed a reduction in the total amount of water injected by the UHI system discussed below. The sensitivity assessment of delivering 50 ft^3 less UHI water was submitted also to support the requested TS changes.

The licensee stated that the magnitude of errors in the sensitivity studies is no more than those introduced through the use of the UHI evaluation model computer code. The sensitivities were determined from multiple runs of the UHI model. The multiple runs were performed to determine the effects on PCT on varying input parameters such as delivered UHI water volume, heat flux hot channel factor, and steam generator tube plugging. Therefore, because the sensitivities were determined directly from the UHI evaluation model, the error associated with them is inherent to the computer code.

Additionally, the license pointed out that confidence in the available PCT margin can be drawn from the new Appendix K rule to 10 CFR Part 50, "ECCS Evaluation Models" and from the loss-of-fluid test (LOFT) results. A summary of the rule changes as printed in the September 16, 1988, **Federal Register** acknowledged that " . . . the existing evaluation modesl are known to contain a large degree of overall conservatism . . . ." The LOFT results indicated that PCT margin on the order of hundreds of degrees existed between predicted and experimentally measured PCTs.

The calculations showed that the new PCT was 2198°F. To provide assurance that Unit 1 is below the PCT Limit of 2200°F, the licensee has limited the heat flux hot channel factor, $F_Q(z)$, by administrative control, to a value of 2.15, and lowered the steam generator tube plugging limit from 10 to 5 percent. The licensee has stated that these two changes result in lowering the PCT to 109°F below the limit of 2200°F. The licensee has proposed a reduction in the current $F_Q(z)$ limit in the Units 1 and 2 Technical Specifications from 2.237 to 2.15 in submittals dated September 21 and December 2, 1988, respectively, for Units 1 and 2.

The licensee, therefore, contends that the performance of the confirmatory UHI/ECCS analysis will provide no significant benefit and its resources could be better utilized if directed at discretionary operation/maintenance improvements. Such discretionary improvements include the deletion of the boron injection tank (BIT) as discussed in Generic Letter 85–16. The licensee is also investigating discretionary operation/maintenance improvements associated with the ice condenser. These include reduced ice weight analyses and increased ice weighing intervals. The implementation of standardized, improved, and restructured technical specifications at SQN is also a discretionary operation/maintenance improvement. Many factors could affect the availability of funds for discretionary projects; for example, the recent Unit 1 forced outage to repair the United 1 main generator will alter the priorities placed on discretionary improvements.

Based on the above discussion, and the licensee's assessment of the impact on the calculated PCT with 5 percent steam generator tube plugging and reduction of $F_Q(z)$ to a value of 2.15, the staff finds that an exemption is justified. This is a one-time temporary exemption from the requirement of 10 CFR 50.46(a)(1) for both Units 1 and 2 regarding having a calculated plant specific ECCS cooling performance evaluation using plant operating conditions and an acceptable evaluation model for operating Cycle 4. The ECCS cooling performance analysis required by 10 CFR 50.46(a)(1) would be a confirmatory analysis that the PCT for both units are below the regulatory limits. The basis for this exemption does not apply beyond operating Cycle 4 because the existing analysis for both units are for operation with UHI and the licensee will be removing the UHI system in the Cycle 4 refueling outage. The staff also finds acceptable the licensee's schedule for completing and submitting the ECCS re-analysis for operating Cycle 5.

III

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, this exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission further determines that special circumstances, as provided in 10 CFR 50.12(ii), are present justifying the exemption; namely, that the application of the regulation in the particular circumstances for operating Cycle 4 for both units would not serve and is not necessary to achieve the underlying purpose of the rule. The application of the regulation is not necessary, during operating Cycle 4 for each unit, to assure the integrity of the fuel cladding in the event of a postulated design basis LOCA because the operational restrictions to be imposed on the units by the licensee will assure that the PCT for the units remain below the limit of 2200°F set forth in 10 CFR 50.46(b). Compliance with the rule would result in the expenditure of resources which are not consistent with the licensee's long term plans for the units and which could be better utilized elsewhere for safety improvements to the units.

Accordingly, the Commission hereby grants an exemption from 10 CFR Part 50.46(a)(1) for Sequoyah Units 1 and 2 for operating Cycle 4 as described above, provided:

1. Heat flux hot channel factor, $F_Q(z)$ shall not exceed 2.15.

[1] The submittal dated August 17, 1988, is a duplicate of the submittal dated August 15, 1988.

2. Steam Generator Tube Plugging shall not exceed five percent.

3. The licensee shall complete a plant-specific ECCS analysis for Units 1 and 2 and shall submit the results of such an analysis for each unit before the unit enters its operating Cycle 5.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this Exemption will have no significant impact on the environment.

For further details with respect to this action, see the request for exemption dated November 3, 1988, and the supporting information submitted in letters dated December 2 and 5, 1988, which are available for public inspection at the Commission's Public Document Room, Gelman Building, 2120 L Street, NW., Washington, D.C., and the Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

This Exemption is effective upon issuance.

Dated at Rockville, Maryland, this 26th day of January, 1989.

For the Nuclear Regulatory Commission.

B.D. Liaw, Director,

TVA Projects Division, Office of Nuclear Reactor Regulation.

[FR Doc. 89-2453 Filed 2-1-89; 8:45 am]

BILLING CODE 7590-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area No. 2330]

Declaration of Disaster Loan Area; California

Los Angeles County, and the contiguous counties of Kern, Orange, San Bernardino, and Ventura, in the State of California, constitute a disaster area as a result of damages from severe winds and fires which occurred between December 7 and December 9, 1988. Applications for loans for physical damage as a direct result of these fires may be filed until the close of business on March 27, 1989, and for economic injury as a direct result of these fires until the close of business on October 26, 1989, at the address listed below: Disaster Area 4 Office, Small Business Administration, P.O. Box 13795, Sacramento, CA 95853-4795, or other locally announced locations.

The interest rates are:

	Percent
Homeowners With Credit Available Elsewhere	8.000
Homeowners Without Credit Available Elsewhere	4.000
Businesses With Credit Available Elsewhere	8.000
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000
Businesses and Non-Profit Organizations (EIDL) Without Credit Available Elsewhere	4.000
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	9.125

The number assigned to this disaster is 233005 for physical damage and for economic injury the number is 671100.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Date: January 26, 1989.

James Abdnor,

Administrator.

[FR Doc. 89-2462 Filed 2-1-89; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice CM-8/1254]

U.S. Organization for International Telegraph and Telephone Consultative Committee (CCITT) Study Group C; Meeting

The Department of State announces that Study Group C of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet February 17, 1989 at 3:00 p.m. at the Sheraton Orlando North (formerly Sheraton Maitland), Florida. The time, date and site was chosen to coincide with the ANSI TIXI meeting taking place at same location.

This meeting will deal with fiber optic systems issues related to the Synchronous Digital Hierarchy that are of mutual interest between TIXI and Study Group XV. Specific contributions prepared for Study Group XV by TIXI are anticipated. It will not cover fiber and fiber cable issues. Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. Prior to the meeting, persons who plan to attend should so advise Miss Cindy Perfumo, AT&T Telephone: (201) 234-4047.

Date: January 19, 1989.

Earl S. Barbely,

Director, Office of Telecommunications and Information Standards; Chairman U.S. CCITT National Committee.

[FR Doc. 89-2438 Filed 2-1-89; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice CM-8/1256]

The U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) Study Group D; Meeting

The Department of State announces that Study Group D of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on February 23, 1989 at 10:00 a.m. in Room 1912, Department of State, 2201 C Street NW., Washington, DC.

Study Group D deals with data communications.

The purpose of the meeting will be to review and approve U.S. Contributions and consider nomination of delegates to the upcoming meeting of Study Group XVII, scheduled to begin on March 13, 1989. The meeting may also consider contributions available for the first meeting of Study Group VIII, beginning 12 April 1989, and contributions for the Study Group VII meeting in July, 1989 as well as any other issues related to Study Group D interests.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. Prior to the meeting, persons who plan to attend should so advise the office of Mr. Earl Barbely, State Department, Washington, DC., telephone (202) 647-5220. All attendees must use the C Street entrance to the building.

Date: January 23, 1989.

Earl S. Barebely,

Director, Office of Telecommunications and Information Standards; Chairman U.S. CCITT National Committee.

[FR Doc. 89-2439 Filed 2-1-89; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice CM-8/1255]

Shipping Coordinating Committee, Subcommittee on Safety of Navigation; Meeting

The Working Group on Safety of Navigation of the Subcommittee on Safety of Life at Sea (SOLAS) will hold an open meeting at 9:30 a.m. on Wednesday, February 22, 1989, in room 6103 at Coast Guard Headquarters, 2100 Second Street SW., Washington, DC.

The purpose of the meeting is to report on the progress of the

Subcommittee on Safety of Navigation of the International Maritime Organization, at its 35th session (January 23–27, 1989) and begin preparing U.S. positions for the 36th session of the Subcommittee. Items of principal interest on the agenda are:

—Decisions of other IMO bodies
—Routing of ships
—Reconsideration of Rule 10(d) of the Collision Regulations
—Infringement of safety zones around offshore structures
—World-wide navigation system
—Electronic chart display systems
—Navigational aids and related equipment including:

1. guidelines on the use of radar transponders on ships for safety purposes;
2. coding scheme for radar beacons and transponders;
3. unification of ARPA symbols; and
4. revision of resolution A.223(VII)—Performance standards for radio direction-finding systems

—Revision of resolution A.530(13)
—Officer of the navigational watch acting as the sole look-out
—Ship reporting systems and reporting requirements
—Work programme
—Any other business.

Members of the general public may attend up to the seating capacity of the room.

For further information contact Mr. Edward J. LaRue, Jr., U.S. Coast Guard (G–NSR–3), Washington, DC 20593–0001, Telephone: (202) 267–0416.

Thomas J. Wajda,

Chairman, Shipping Coordinating Committee.

Dated: January 13, 1989.

[FR Doc. 89–2440 Filed 2–1–89; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. 25790; Notice No. 89–3]

Aircraft Fleet Modernization

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of request for public comment.

SUMMARY: The Federal Aviation Administration (FAA) requests comments, suggestions, and information for updating its 1986 Report to Congress, *Alternatives Available to Accelerate Commercial Aircraft Fleet Modernization.* Specific comment is sought regarding options and alternatives for phasing out operations of Stage 2 aircraft and replacing them with Stage 3 aircraft.

DATES: Comments must be received on or before March 6, 1988.

ADDRESS: Written comments must be mailed or delivered, in duplicate, to the Federal Aviation Administration, Office of Chief Counsel, ATTN: Rules Docket (AGC–10), Room 915G, Docket No. 25790, 800 Independence Avenue, SW., Washington, DC 20591. Comments must be marked "Docket No. 25790." The comments may be reviewed in Room 915G between 8:30 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Tony Fazio, Office of Environment, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, Telephone, (202) 267–3564.

SUPPLEMENTARY INFORMATION:

Background

The Appropriations Committee of the U.S. House of Representatives, in its oversight of the FAA's discharge of its environmental responsibilities, included the following statement in House Report 100–691.

> In H. Rept 99–256, accompanying the fiscal year 1986 Appropriations Act, the Committee requested FAA to report on various alternative policy options that might accelerate the modernization of the commercial aircraft fleet so as to reduce aircraft noise levels still adversely affecting many metropolitan areas. FAA's report, dated April 11, 1986, listed a number of options that could encourage or require replacement of noisier Stage 2 aircraft with quieter, more modern Stage 3 aircraft but offered no recommendation as to whether the federal government should take steps to achieve that objective:
>
> A number of events occurred in the two years since that report, *Alternatives Available to Accelerate Commercial Aircraft Fleet Modernization*, was completed that suggest that it should now be updated. Technology for the reengining of Stage 2 aircraft to Stage 3 noise levels has been advanced and additional communities have felt the need to impose local noise regulations in the absence of any national program of noise relief. Most importantly, debate as to the appropriate "useful life" of Stage 2 transport aircraft for noise or safety reasons has been reopened by the recent Aloha Airlines incident involving an older B–737 aircraft.
>
> The committee directs the FAA to update its past report within nine months and, after consultation with interested parties, to discuss whether public policy in both aircraft noise abatement and aviation safety might be advanced by imposing a deadline, to be determined through rulemaking, for operations of older Stage 2 aircraft in the fleet.

In response to this direction, the FAA has decided to open a public docket to afford all interested parties an opportunity to present their views on the subject.

Issues: The FAA seeks information on workable and practical alternatives (and combinations thereof) to best achieve the ends described by the Committee. The FAA also invites the submission of any available corroborative data which demonstrates the efficacy of these alternatives.

No reasonable linkage between limiting operation, for noise abatement purposes, of Stage 2 airplanes with the safety of aging airplanes has been established. Inspection and structural repair and replacement actions are being implemented to assure safety of aging aircraft without imposing useful life limits, but the FAA is also continuing to study the aging aircraft issue and may be developing further programs and recommendations on this matter.

Among the alternatives that might be considered are those described in the following paragraphs. They are included only to stimulate consideration of a wide range of possible alternative actions and, as such, do not themselves represent proposals or suggestions from the FAA. The public is invited to submit additional alternatives.

Possible Alternative Areas for Consideration

Policy Options. Should a national program to accelerate the phase out of Stage 2 aircraft be developed? If so, should the program be linked to a program which bars further limitations on Stage 2 aircraft operations during the phase-out period at:

All U.S. airports?
All international airports?
All non-noise-sensitive airports?

How should the accelerated phase-out be coordinated with the restrictions on operational limitations?

Technology Options. What is the economic and technical feasibility of retrofit and/or re-engining programs for various current Stage 2 airplanes? What progress has been made in the development of noise abatement technology, and could that technology support aircraft noise standards more stringent than Stage 3?

Regulatory Options. If a policy were adopted for limiting further operation of Stage 2 aircraft, how might such regulations be crafted? For instance, such actions might include setting age limits for specific aircraft or engine types, limiting the number of operating cycles, or simply setting one or more

specific date(s) for cessation of operations. Other regulatory options might include limitations on future production or import (registration). If further study shows a need for more costly inspection and maintenance programs to assure safety of older aircraft, how would the economics of those programs affect decisions on early phase out of Stage 2 aircraft?

Financial Options. Should any financial incentives be considered to support accelerating the conversion of U.S. fleets? If so, would incentives, such as, depreciation or investment tax credits for quite Stage 3 aircraft, Federal or local noise fees and surcharges, or establishment of a Noise Trust Fund to underwrite new aircraft purchases be appropriate? Under what conditions would the economies of operation of Stage 3 aircraft compensate for the added capital cost of early replacement?

J.E. Densmore,

Director, Office of Environment.

[FR Doc. 89-2498 Filed 1-30-89; 5:08 pm]

BILLING CODE 4910-13-M

Saint Lawrence Seaway Development Corporation

Advisory Board; Meeting

Pursuant to section 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 1:00 p.m., March 1, 1989, at the Corporation's Washington, DC Office at 400 7th Street SW., Washington, DC. 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 February 22, 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 January 25, 1989.

Paul A. Maroun,

Advisory Board Liaison.

[FR Doc. 89-2489 Filed 2-1-89; 8:45 am]

BILLING CODE 4910-61-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: January 30, 1989.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220. (This submission is a correction to FR Doc. 88-26575 Filed 11-16-88.)

Internal Revenue Service

OMB Number: 1545-0013
Form Number: 56
Type of Review: Revision
Title: Notice Concerning Fiduciary Relationship
Description: Form 56 is used to inform IRS that a person is acting for another person in a fiduciary capacity so that IRS may mail to the fiduciary tax notices concerning the person for whom the fiduciary is acting. The data is used to ensure that the fiduciary relationship is established or terminated and to mail or discontinue mailing designated tax notices to the fiduciary.
Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations
Estimated Number of Respondents: 25,000
Estimated Burden Hours Per Response/ Recordkeeping:
Recordingkeeping, 8 minutes
Learning about the law of the form, 32 minutes
Preparing the form, 46 minutes
Copying, assembling and sending the form to IRS, 15 minutes
Frequency of Response: On occasion
Estimated Total Recordkeeping/ Reporting Burden: 292,000 hours
Clearance Officer: Garrick Shear, (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 89-2480 Filed 2-1-89; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: January 27, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0112
Form Number: 1099-INT
Type of Review: Extension
Title: Statement for Recipients of Interest Income
Description: This form is used for reporting interest income paid, as required by sections 6049 and 6041 of the Internal Revenue Code. It is used to verify that payees are correctly reporting their income.
Respondents: Individuals or households, State or local governments, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations
Estimated Number of Respondents: 747,973
Estimated Burden House Per Response: 11 minutes
Frequency of Response: Annually
Estimated Total Reporting Burden: 57,001,483 hours

OMB Number: 1545-0117
Form Numbers: 1099-OID
Type of Review: Extension
Title: Statement for Recipients of Original Issue Discount
Description: The form is used for reporting original issue discount as

required by section 6049 of the Internal Revenue Code. It is used to verify that income earned on discount obligations is properly reported by the recipient.
Respondents: Businesses or other for-profit, Small businesses or organizations
Estimated Number of Respondents: 8,122
Estimated Burden House Per Response: 10 minutes
Frequency of Response: Annually
Estimated Total Reporting Burden: 429,690 hours

OMB Number: 1545-0742
Form Numbers: None
Type of Review: Extension
Title: Public Inspection of Exempt Organizations' Returns
Description: Section 6104(b) authorizes the Service to make available to the public the returns required to be filed by exempt organizations. The information requested in Treasury Reg. §301.6104(b)-1 (b)(4) is necessary in order for the Service not to disclose confidential business information furnished by businesses which contribute to exempt black lung trusts.
Respondents: Businesses or other for-profit
Estimated Number of Respondents: 22
Estimated Burden House Per Response: 1 hour
Frequency of Response: Annually
Estimated Total Reporting Burden: 22 hours
Clearance Officer: Garrick Shear, (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 89-2481 Filed 2-1-89; 8:45 am]
BILLING CODE 4810-25-M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 21
Thursday, February 2, 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).

COMMISSION ON CIVIL RIGHTS

January 31, 1989.

PLACE: 1121 Vermont Avenue, NW., Room 516, Washington, DC 20425.

DATE AND TIME: Friday, February 10, 1989, 9:00 a.m.–5:00 p.m.

STATUS OF MEETING: Open to the public.

MATTERS TO BE CONSIDERED:

I. Aproval of Agenda
II. Approval of Minutes of January Meeting
III. Announcements
IV. SAC Reports and Interim Appointments
Implementation in Colorado of the Immigration Reform and Control Act
Legal Assistance Available to Minority Prisoners in Delaware
Civil Rights Issues in Maine
Arkansas SAC Interim Appointments
Nebaska SAC Interim Appointments
Wisconsin SAC Interim Appointments
V. Discussion and Action—Program Planning for FY '89-'90
VI. Commission Subcommittee Reports
VII. Commission Reorganization
VIII. Staff Director's Report
IX. Future Agenda Items

PERSON TO CONTACT FOR FURTHER INFORMATION: John Eastman, Press and Communications Division, (202) 376–8312.

William H. Gillers,
Solicitor.

[FR Doc. 89–2545 Filed 1–31–89; 12:43 pm]
BILLING CODE 6335-01-M

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, February 7, 1989, 10:00 a.m.

PLACE: 999 E. Street, NW. Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.
* * * * *

DATE AND TIME: Thursday, February 9, 1989, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of Dates for Future Meetings.
Correction and Approval of Minutes.
Certification for Payment of 1988 Primary Matching Funds.
Advisory Opinion 1987–31 (Reconsideration) Terry Claassen on behalf of the Chicago Board Options Exchange
Administrative Matters
* * * * *

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone: 202–376–3155.

Marjorie W. Emmons,
Secretary of the Commission.

[FR Doc. 89–2523 Filed 1–31–89; 10:52 am]
BILLING CODE 6715-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of February 6, 1989.

A closed meeting will be held on Tuesday, February 7, 1989, at 2:30 p.m. Open meeting will be held on Wednesday, February 8, 1989, at 9:30 a.m., in Room 1C30.

The Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Cox, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, February 7, 1989, at 2:30 p.m., will be:

Institution of injunctive actions.
Settlement of administrative proceeding of an enforcement nature.
Institution of administrative proceedings of an enforcement nature.
Opinion.

The subject matter of the open meeting scheduled for Wednesday, February 8, 1989, at 9:30 a.m., will be:

Consideration of a rule proposal that would impose suitability and written agreement requirements on broker-dealers who solicit purchases of certain securities that are not registered on a national securities exchange or authorized for quotation in the NASDAQ system (the "Penny Stock Fraud Rule"). For further information, please contact Dan Gray at (202) 272–2848.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Karen Burgess at (202) 272–2000.

Jonathan G. Katz,
Secretary.

January 27, 1989.

[FR Doc. 89–2570 Filed 1–31–89; 2:42 pm]
BILLING CODE 8010-01-M

Corrections

Federal Register
Vol. 54, No. 21
Thursday, February 2, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[FRL-3501-9]

Standards of Performance for New Stationary Sources; Polypropylene, Polyethylene, Polystyrene, and Polyethlylene terephthalate) Manufacturing Industry; Revisions to the Basis of the Proposed Standards for Polypropylene and Polyethylene Manufacturing

Correction

In proposed rule document 89-140 beginning on page 890 in the issue of Tuesday, January 10, 1989, make the following corrections:

1. On page 890, in the 2nd column, the 10th line from the bottom should read "contact EPA by January 26, 1989.".

2. On page 891, in the first column, in the ninth line from the bottom, "polypropylene" was misspelled.

3. On the same page, in the second column, in the 17th and 18th lines from the top, "polyethylene" was misspelled.

4. On page 893, in the second column, in the ninth line from the top, "lower" should read "lowering".

5. On the same page, below the table 1a heading, under "A. Exemptions", in item 1, "steams" should read "streams"; in the first column of the table, in item 4, "rate" should read "range"; in the second column, items 1 and 2 should appear in the third column under item 2; and in the third column, item 1, in the second line insert a comma before "control".

6. On page 894, in Table 1b, in the second column, the second item should read "5.5<20"; in the third column, in the first item 2, in the second line, "scfjm" should read "scfm" and in the third item 2, in the first line, insert a comma affter "Mg/yr.".

7. On page 895, in the first column, in the last line insert a comma after "construction".

8. On page 901, in the 3rd column, in the 1st complete paragraph, in the 31st line insert "percent" after "weight".

9. On page 902, in the 1st column, in the 2nd complete paragraph, in the 21st line, "international" should read "intentional".

10. On page 905, in the first column, in the first complete paragraph, in the seventh line, "calculate" should read "calculated".

11. On the same page, in the third column, in the sixth line from the top, "control" should read "decontrol".

§ 60.560 [Corrected]

12. On page 906, in the second column, in § 60.560(a)(1)(ii), in the first line, "law" should read "low".

13. On the same page, in table 1, in the 3rd column, the 4th entry should read "1.57[b]"; the 26th entry should read "1.80[h,i,j]"; and the 27th entry should read "3.92[h,i,k]".

14. On the same page, under the table in the footnote section, in footnote i, "Includes" was misspelled.

15. On page 907, in the heading of table 2, remove "(Date of Proposal in Federal Register)" and insert January 10, 1989".

16. On page 908, in Table 3, each item 2 in the fourth column should be aligned to correspond with each item 2 in the third column.

17. On page 909, in Table 4, in the second column, the first entry should read "5.5 < 20"; and in the fourth column, the last entry should read "§ 60.562-1(a)(1)(i), (ii) or (iii)".

18. On the same page, in the second page column, in the second table column, the first entry should read as follows: 47 + 30(0.6 − weight percent VOC).

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6696

[CO-930-09-4214-10; C-48465]

Withdrawal of Public Lands and Reserved Minerals for Protection of Scenic and Recreational Values in the Ruby Canyon of the Colorado River; Colorado

Correction

In rule document 89-14 beginning on page 124 in the issue of Wednesday, January 4, 1989, make the following corrections:

1. On page 124, in the second column, under **SUMMARY**, in the eighth line, "Regulation" should read "Designation".

2. On the same page, in the third column, under T. 10 S., R. 103 W., the ninth line should read "W½NE¼NE¼".

3. On the same page, in the same column, under T. 10 S., R. 103 W., the fifteenth line should read "Sec. 19, lots 1,3,4, NW¼NE¼, NW½SW¼NE¼".

4. On the same page, in the same column under **Sixth Principal Meridian**, the 22nd line should read "T. 10 S., R. 104 W".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88N-0432]

Animal Drug Export; Melatonin Implants for Mink

Correction

In notice document 88-29216 appearing on page 51321 in the issue of Wednesday, December 21, 1988, make the following corrections:

1. In the second column, under **FOR FURTHER INFORMATION CONTACT**, in the second line, "(HFVM142)" should read "(HFV-142)"

2. In the same column, under **SUPPLEMENTARY INFORMATION**, in the 26th line, "8983" should read "8938".

3. In the same column, in the last line, "January 21, 1989" should read "January 3, 1989".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Adminstration

[Docket No. 88N-0335]

Drugs Containing Sulfamethazine, Sulfaquinoxaline, Sulfamerazine, Sulfathiazole, Sulfapyridine, or Sulfanilamide for Oral, Injectable, Intrammary, or Intrauterine Use in Food-Producing Animals; Opportunity for Hearing

Correction

In notice document 88-26344 beginning on page 46050 in the issue of Tuesday, November 15, 1988, make the following corrections:

1. On page 46050, in the first column, under **DATES**, in the fouth line "February 13, 1989" should read "January 17, 1989".

2. On the same page, in the third column, in the ninth line, "64" should read "65".

3. On page 46053, in the table, under **C. Sulfaquinoxaline Alone or in Combination With Other Sulfa Products**, in the 4th column, the entry should read "1,2,3,5,6B (Ref. 57)"; and in the 3rd column, in the 15th line "sulfathiazole" was misspelled.

4. On the same page, in the table, under **E. Sulfapyridine Alone or in Combination With Other Sulfa Products**, under the second entry there should be a separate entry that should appear as follows: "099-976 Quality Plus Essar Corp.....Sulfapyridine Solution Injectable....1,2,3,5,6B (Ref. 64)".

5. On the same page, in the same section of the table, in the 4th column, the 3rd entry should read "1,2,3,5,6B (Ref. 65)"; and in the 3rd column, in the 22nd, 23rd, 26th and 27th lines remove the word "sodium".

6. On the same page, in the same section of the table, in the 3rd column, the 29th line should read "Sulfa-Plex, Triple Sulfa Solution, Oral 12.5%, Sulfamethazine sodium,".

7. On page 46054, in the table, in the third column, the first entry should read "Tri-Metha Bolus, Sulfanilamide,Sulfathiazole, Sulfamethazine".

8. On the same page, in the table, in the 3rd column, under **G. New Animal Drugs Containing Sulfonamides in Combination With Nutrients or Other Drugs**, in the 27th line, "Sulfanilamide" was misspelled; and the 28th line should read "Sulfathiazole Uterine, Boluses, Sulfathiazole, Urea".

9. On the same page, in the same section of the table, in the same column, the 34th line should read "Sulfapyridine-Iodine, Boluses, Sulfapyridine, Ethylenediamine dihydroio-"; and in the 45th line "Sulfathiazole" was misspelled.

10. On the same page, in the same section of the table, in the same column, in the 49th line, "Sulfamethazine" was misspelled; in the 51st line, "subcarbonate" was misspelled; and the 60th line should read "Metzol Calf Size, Boluses, Sulfamethazine, Electrolytes".

11. On page 46055, in the same section of the table, in the 4th column, in the 2nd entry, "(Ref. 10)" should read "(Ref. 120)"; and the 15th entry should read "1,2,3,4,5 (Ref. 133)".

12. On the same page, in the same section of the table, in the first column, the third entry should read "099-967".

13. On the same page, in the same section of the table, in the 2nd column, in the 19th line, "Bolettes" should read "Powder".

BILLING CODE 1505-01-D

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

29 CFR Part 530

Employment of Homeworkers in Certain Industries

Correction

In proposed rule document 89-2237 beginning on page 4836 in the issue of Tuesday, January 31, 1989, make the following correction:

On page 4836, in the third column, in the **SUMMARY**, in the second line, "declined" should read "decided".

BILLING CODE 1505-01-D

Employment Standards Administration

Wage and Hour Division

Office of the Secretary

29 CFR Parts 1 and 5

Procedures for Predetermination of Wage Rates; Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction and to Certain Nonconstruction Contracts

Correction

In rule document 89-1987 beginning on page 4234, in the issue of Friday, January 27, 1989, make the following corrections:

1. On page 4235, in the first column, in the first complete paragraph, in the seventh line, "classification" should read "journeyman".

2. On page 4236, in the 1st column, in the 13th line, "under the" should read "under this".

3. On the same page, in the 3rd column, in the 1st complete paragraph, in the 25th line, "not be" should read "be not".

3. On page 4242, in the 2nd column, in the 24th line, "With rate" should read "With rare".

BILLING CODE 1505-01-D

federal register

Thursday
February 2, 1989

Part II

Department of Health and Human Services

Health Care Financing Administration

42 CFR Part 405 et al.

Medicare and Medicaid; Requirements for Long Term Care Facilities; Final Rule with Request for Comments

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 405, 442, 447, 483, 488, 489, and 498

[BERC-396-FC]

Medicare and Medicaid; Requirements for Long Term Care Facilities

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule with comment period.

SUMMARY: These final regulations with comment period revise and consolidate the requirements that facilities furnishing long term care are required to meet to participate in both the Medicare and Medicaid programs. They contain revisions to our proposal of October 16, 1987 (52 FR 38582) based on comments submitted by the public.

Long term care facilities include both skilled nursing facilities (SNFs) and intermediate care facilities (ICFs) and, as of October 1, 1990, nursing facilities (NF) created by the Omnibus Budget Reconciliation Act of 1987 (OBRA '87). Under these regulations, one set of requirements replaces the existing separate ones for SNFs participating in the Medicare program, and for SNFs and ICFs participating in the Medicare program. (After October 1, 1990, SNFs, and ICFs participating in the Medicaid program will be known as nursing facilities (NFs).) Although some essential distinctions imposed by the statute remain, these new requirements reflect common needs in SNFs and ICFs. These regulations do not apply to ICFs for the mentally retarded or persons with related conditions.

DATES: *Effective Date:* These regulations are effective August 1, 1989, except when specified otherwise. State agencies have until 90 days after receipt of a revised State plan preprint to submit their plan amendments and required attachments. We will not hold a State to be out of compliance with the requirements of these final regulations if it submits the necessary plan material by that date.

Comment Date: To be considered, comments must be mailed or delivered to the appropriate address, as provided below, and must be received by 5:00 p.m. on May 3, 1989.

ADDRESSES: Mail comments to the following address:

Health Care Financing Administration,
Department of Health and Human Services,
Attention: BERC-396-FC,
P.O. Box 26676,
Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building,
200 Independence Avenue, SW.,
Washington, DC, or,
Room 132, East High Rise Building,
6325 Security Boulevard,
Baltimore, Maryland.

In commenting, please refer to file code BERC-396-FC. Comments received timely will be available for public inspection as they are received, beginning approximately three weeks after publication of this document, in Room 309-G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone: 202-245-7890).

Organizations and individuals desiring to submit comments on the reporting requirements discussed under the section on "Reporting Requirements" of this preamble should direct them to the Health Care Financing Administration at one of the addresses cited above, and to the Office of Information and Regulatory Affairs, Att.: Allison Herron, Office of Management and Budget, New Executive Office Building (Room 3208), Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Samuel W. Kidder, (301) 966-4620.

SUPPLEMENTARY INFORMATION:

I. Background

Prior Rulemaking Activity

On October 16, 1987 (52 FR 38582), we published a proposed rule (NPRM) that would establish consistent requirements for SNFs under Medicare and SNFs and ICFs under Medicaid. The purpose of the revisions is to focus on actual facility performance in meeting residents' needs in a safe and healthful environment, rather than on the capacity of facility to provide appropriate services. The result of this change in focus is to enforce requirements from the perspective of quality of care and life for long term care residents, not only under Medicare and Medicaid, but generally, since most of these requirements pertain to all the residents of an SNF, ICF or NF. We expect that these revisions will simplify Federal enforcement procedures by using a single set of requirements, which apply to those activities common to all facilities.

In the background discussion in the preamble to the NPRM, we traced the development of different statutes and regulations that established requirements for SNFs and ICFs under Medicare and Medicaid leading to the development of the existing regulations, which were proposed in 1974. Key elements of that discussion are:

- The emphasis of current rules is on process, not outcomes. Consequently the potential to furnish quality care, rather than actual rendition of care is emphasized, with undue reliance placed on staff qualifications.
- Medicaid SNFs must meet Medicare SNF requirements. Questions have been raised whether rules established primarily for post-hospital care are still relevant, considering changes in health care delivery.
- A single facility may include both SNF and ICF beds with differing levels of care and patients transferring from more intensive to less intensive care. Current rules are too inflexible to recognize such changes.
- Current rules are difficult to administer, requiring multiple surveys because State program needs differ from Federal program needs.
- Some requirements are detailed and some are not.

In 1983, we contracted with the Institute of Medicine (IoM), a group chartered by the National Academy of Sciences, to study Federal regulations that might enhance the ability of the regulatory system to assure that residents receive satisfactory care. The study concluded in 1986 with a report that stressed the need to develop new regulations that focus on actual delivery of care and the results of that care. Based on those findings, we developed proposed regulations revising the SNF and ICF requirements. Our proposals largely reflected acceptance of the 1986 Institute of Medicine study, findings and recommendations. We accepted virtually all the IoM recommendations that could be implemented under existing provisions of the Act.

Legislative Revisions

On December 22, 1987, the Omnibus Budget Reconciliation Act of 1987 (OBRA '87), Pub. L. 100-203, was enacted, which included extensive revisions to the Medicare and Medicaid statutory requirements for nursing facilities. These revisions were based on the IoM recommendations that we used in developing the NPRM. These revisions were made with knowledge of HCFA's rulemaking activities and followed extensive discussions with HCFA staff and other interested parties. The new statutory provisions are considerably more detailed than the previous provisions, reflecting the intent

of the Congress to specify in detail, effective October 1, 1990, requirements that the previous law left to the discretion of the Secretary. These new provisions are of two types. Some of them simply elaborate on existing law, while others institute entirely new requirements.

Response to NPRM

We received more than 5,500 comments in response to our October 16, 1987 NPRM. Virtually every association or organization representing nursing homes, and the various medical and other professional employees on their staffs submitted comments. Individual States and major third party payers submitted comments and a significant number of comments were received from or on behalf of individual patients, including numerous petitions and form letters.

Principles for Developing Final Regulations

In this final regulation we intend to implement the provisions in our NPRM (revised as appropriate) and, when possible, the new requirements contained in OBRA '87 that are effective October 1, 1990. When elements of OBRA '87 are significantly different from what appeared in our proposed rule, we are making them effective on October 1, 1990. It is our intention that the final regulations reflect, to the extent possible, the comments on the NPRM and the requirements of OBRA '87.

In implementing OBRA '87, we plan to publish other, related regulations in addition to this final rule. One of the regulations will implement sections 4202, 4203, 4212, and 4213 of OBRA '87, dealing with the survey and certification and enforcement processes. It will specify the tools to be used in enforcing the facility requirements. Another regulation will contain certain newly-created OBRA '87 requirements that are not self-implementing and must be published as a proposed rule.

As discussed in the preamble to the proposed rule (52 FR 38582), our NPRM reflected the recommendations of the IoM. OBRA '87 was written with both the recommendations of the IoM and our NPRM as a model. The new statute departs from previous Congressional practice by specifying many details which current law leaves to the authority of the Secretary. It also contains entirely new requirements which are also specified in detail.

In drafting the final regulation we have attempted to adapt the language of our proposals to reflect the language used in OBRA '87 in all cases in which we believe that the requirements in question are supportable under current law and reasonably flow from proposals published in the October 16, 1987 NPRM. We have done this because we have had comments on the NPRM that have recommended this course of action. We agree with the commenters and with a number of the sponsors of the legislation that it makes the most sense administratively to assure that the final requirements we put into effect now provide a bridge to the new requirements of OBRA '87 that are effective in 1990 and that our requirements be as consistent as possible with similar requirements in OBRA '87 to avoid needless disruption of nursing facilities in making the transition in 1990.

Whenever possible, therefore, this final regulation contains single provisions effective now or in 1990. Only when current law and our NPRM differ significantly from the requirements of OBRA '87 are there separate provisions, one effective August 1, 1989, and the other effective on October 1, 1990. Of course, some provisions appeared only in OBRA '87 and are not reflected in any of the provisions effective before October 1, 1990. These provisions are appearing in final form because they are only restatements of the exact language of the statute.

As a result of comments and the legislative changes, we are making numerous revisions to our NPRM. In addition to numerous technical revisions made by OBRA '87, in this final rule, we are incorporating the following major OBRA '87 requirements:

- Assuring residents' privacy rights with regard to accommodations, medical treatment, personal care, visits, telephone communications, and meetings with resident and family groups;
- Maintaining confidentiality of personal and clinical records;
- Guaranteeing facility access and visitation rights;
- Issuing a notice of rights at the time of admission;
- Implementing admissions policy requirements;
- Assuring proper use of physical restraints and psychoactive drugs;
- Protecting resident funds being managed by a facility;
- Ensuring transfer and discharge rights,and issuing notices required of a facility;
- Providing twenty four-hour licensed nursing services, and services of a registered nurse at least 8 hours a day, 7 days a week, subject to waivers;
- Furnishing comprehensive assessments and being subject to civil money penalties for falsification of an assessment;
- Requiring minimum training of nurse aides, competency evaluation programs, and regular in-service education;
- Prohibiting admission to SNFs and NFs of individuals with mental illness and mentally retardation, except when they need SNF and NF services and have been prescreened by a State authority of mental illness or retardation;
- Providing or obtaining routine and emergency dental services;
- Employing a full time social worker if a facility has more than 120 beds; and
- Meeting disclosure of ownership requirements.

Enforcement

The condition of participation (COP) format traditionally used by Medicare and Medicaid consists of condition level statements. It has been based on the principle that each condition level statement would be a statutory requirement while standard level statements would be lesser requirements. A facility could be found to have deficiencies at the standard level and be making efforts to correct them while it continued to participate in the Medicare program but was subject to termination if it failed to meet a condition level (i.e., statutory) requirement. Regardless of the significance of the requirement, that is, whether the requirement was a COP or a standard within a condition, the facility was responsible for fully complying with all requirements.

Notwithstanding this long standing agency policy, we wish to be certain that the public realize that all requirements for certification must be met by nursing facilities if they are to avoid some measure of adverse action. We believe that, to the extent that Federal requirements were set forth in what appeared to be a qualitative hiearchy, that there might be some misunderstanding that violations of the "lesser" requirements would not be subject to Federal enforcement.

Additionally, the OBRA '87 requirements have recast substantive requirements so as not to use the traditional "conditions" and "standards" terminology.

Accordingly, in this final rule, we have attempted where appropriate to retain the organization of the various proposed requirements, but have revised the terminology. Thus, those requirements that previously were identified as conditions of participation (appearing as individual sections within

a subpart) are now designated as level A requirements. Those requirements that previously were identified as standards (appearing as individual paragraphs within a section) are now designated as level B requirements. These designations are intended to communicate that all of the nursing facility requirements are binding and are not part of a qualitative hierarchy, while at the same time recognizing that violations of these requirements (depending on their type or severity) may be remedied through the different enforcement mechanisms available to the Department.

In light of the revised nomenclature of these regulations, it is our expectation that it will be the Department's enforcement regulations that will be the vehicle to describe the manner in which we will choose among the various enforcement devices available under the statute to remedy the different kinds of violations of Federal certification requirements that can occur in nursing facilities. We would be interested in hearing from the public on the manner in which the Department should approach this task as well as on any restructuring of these final regulations that might be needed to accommodate this program objective.

The comprehensive changes in the enforcement procedures in the Medicare and Medicaid programs necessitated by OBRA '87 will not be implemented until the full rulemaking process has been completed. Therefore, existing enforcement authorities under both programs must continue to be used from the effective date of this rule until the OBRA '87 final enforcement regulation is published and effective. We have made conforming technical changes to Parts 442, 488, 489, and 498 (dealing with certification, provider agreements, and appeals) to reflect the revised terminology for SNFs and ICFs used in this rule.

II. Provisions of the Proposed Rule and Public Comments

Commenters on the NPRM focused their attention primarily on the proposed conditions of participation, and the standards that would be applied to determine compliance with those conditions. There were no substantive comments on § 483.1, Basis and Scope and § 483.5, Definitions, hence, with the exception of adding updating changes required by OBRA '87, these sections are incorporated in this final rule as they were proposed.

Following, we present in order a brief summary of the provisions as proposed, the comments and our responses for those areas of major concern. Many commenters, while agreeing substantially with a standard, as proposed, suggested the standard be used to determine compliance with a different condition. We have accepted many of these comments, which has the effect of significantly reorganizing the NPRM. For general information, we have prepared a table, which appears at the end of this preamble, that relates the requirements in this final rule to the correlative NPRM section from which it evolved. Where OBRA '87 provisions resulted in significant change, we so identify OBRA '87 as the source. This table is intended merely to assist parties who may be interested in comparing specific provisions as proposed or in OBRA '87 to those of the final rule. It does not supplant the more detailed discussion in this preamble.

Comments and Responses

General Comments

Comment: Several commenters urged that we develop a separate set of requirements for specialized facilities such as swing-bed hospitals and hospital-based SNFs, arguing that the basically long-term, residential orientation of the proposed regulations is inappropriate for the particular circumstances of these types of facilities. They noted that these facilities generally are Medicare-only and serve a more acutely ill, shorter-stay patient population than do freestanding facilities. They cited several specific requirements in the proposed regulations as being problematic: allowing up to 14 days from admission to conduct a comprehensive assessment would place the assessment near the end of the typical hospital-based SNF patient's stay; resident participation in the resident group and in facility decisionmaking would lack continuity due to the relatively rapid turnover; the proposed physician visit schedule is too infrequent for this type of patient. Two other commenters expressed the concern that the proposed requirements do not adequately address the special care needs of mentally ill individuals, and the special circumstances of those facilities involved in the treatment of alcoholism.

Response: We acknowledge that certain aspects of individual requirements in the proposed regulations may be more characteristic of long-term, residential settings than of those serving a short-stay, relatively acute care population. However, we believe that developing an entire separate set of regulations for the latter type of facility would be inconsistent with the fundamental concept embodied in the IoM recommendation that, to the extent possible, there should be a single, uniform set of requirements applicable to all SNFs and ICFs. This basic objective of the IoM report is further supported by OBRA '87—which by statute, as of October 1, 1990, will combine the existing Medicaid requirements for SNFs and ICFs into a single set of nursing facility requirements. We also note that, to some extent, the concerns of the commenters are addressed by changes we are making to various individual provisions based on other comments on the proposed rule. For example, we are reducing the maximum timeframe for conducting a comprehensive assessment from 14 days to 4 days effective October 1, 1990. Also, we are reducing the maximum allowable interval between required physician visits in ICFs from that proposed (which permitted visits as infrequently as yearly) to no longer than 90 days.

With regard to the treatment of mental illness, we note that OBRA '87 includes requirements for preadmission screening and annual resident review, which focus, in part, on the special treatment needs of mentally ill individuals. These requirements are designed to direct mentally ill individuals to other settings when appropriate, and to ensure that when mentally ill individuals reside in nursing facilities, all of their treatment needs (including those relating to their mental illness) are fully met. For these reasons, we do not plan to adopt a separate set of requirements for specialized facilities.

Section 483.10 Resident Rights Requirement

We proposed in § 483.10 that the resident has a right to a dignified existence, self-determination, and communication with and access to persons and services inside and outside the facility. Also, we proposed that the facility must assert, protect, and facilitate the exercise of these rights. Under present rules, resident rights are categorized as an individual provision within a condition (i.e., a level B requirement).

Over one hundred commenters offered general comments on the introductory statement or on the requirement as a whole. Nearly half of these general comments stated that they strongly supported elevation of resident rights to the status of a condition of participation. Since we do not use the "condition of participation" or "standard" terminology any longer, and we are committed to enforcement of all requirements equally, we do not think

the title used to describe resident rights will bring about less or greater enforcement.

General Comments on the Resident Rights Requirement as a Whole.

Comment: Comments both supported and objected to the change of the term "patient" to "resident." Several commenters applauded the use of the term "resident" rather than "patient" because it recognizes the fact that for many individuals the nursing home is indeed their home. Opponents believed it fosters a false perception of a nursing home patient for those persons who, due to illness and infirmity generally, are unable to assert a variety of rights, engage in a variety of meaningful activities, and cannot be taken care of with minimal resources, i.e., at a relatively low cost.

Response: Our use of the term "resident" is based upon the IoM's recommendation to emphasize the concept of a nursing home as a place of residence for its clients. Additionally, OBRA '87 (Section 4201-Medicare Program and Section 4211-Medicaid Program) amended the Act by defining a skilled nursing facility as an "institution or a distinct part of an institution that is primarily engaged in providing to residents skilled nursing care and related services for residents who require medical or nursing care * * *" We agree that at any given time a number of the residents may be in need of considerable medical care; however, we believe that the term "resident" rather than "patient" as a general term of reference better describes the nursing home clients who reside there to obtain long-term care.

Comment: Another group of commenters suggested structural reorganization of the regulation. Several commenters found the division between resident rights and quality of life blurred and expressed concern that this confusion would lead to either dilution of significant findings or multiple citations by State agency surveyors for the same underlying problem. Some commenters remarked that concepts such as quality of life and quality of care are difficult, if not impossible, to define in isolation from other requirements.

A related criticism of the requirement, cited by commenters who did not realize that the statement of rights at § 483.10 had a parallel section concerning facility responsibilities under the administration requirement at § 483.75, was that the rights section had been weakened by couching the statements in terms of "the resident has a right to * * *". They felt it was quite another thing to say "the facility must do * * * to ensure these rights." They wanted facilities to be actively and meaningfully involved in the process of ensuring resident rights and requested specificity as to how the facility is supposed to assert, protect and facilitate the resident's exercise of these rights. Otherwise, the commenters believed that the requirement could not be used successfully to initiate non-compliance findings.

Response: We are responding to the concerns of these commenters by relocating certain provisions that place responsibilities upon facilities for ensuring rights from the Administration requirement to a new requirement at § 483.12, entitled, Admission, transfer and discharge rights. The individual provisions in this requirement include transfer and discharge, notice of bed hold policy and readmission, equal access to quality care, and admissions policy.

We are also consolidating other parts of the proposed Administration condition, augmented by OBRA '87 requirements, with certain provisions in § 483.10. These are notice of rights and services, access and visitation rights, notification of changes, and protection of resident funds.

To emphasize the importance of monitoring the manner in which nursing facilities manage resident behavior, we are creating a new requirement at § 483.13, entitled, Resident behavior and facility practices, that includes provisions related to resident abuse, the use of physical and psychoactive drugs, and staff treatment of residents.

To reflect the emphasis of the new quality of life requirement, § 483.15, on residents' effective interaction with their environment, we are relocating certain individual provisions from § 483.10 to § 483.15. These provisions are dignity, participation in resident and family groups, participation in other activities, self-determination and participation, and accommodation of needs.

Comment: Some commenters noted that residents do not understand their rights and hence, must rely on strong enforcement of this provision. Several commenters suggested that we develop detailed indicators to be used in the survey process to ensure compliance with this requirement. Still other commenters, stating that the majority of facilities use verbatim texts of rights statements in the materials they provide to residents, expressed appreciation that the language of this rights section had been simplified and made more understandable for residents. On the other hand, several commenters were concerned that the simplified language of the proposed rights section was too vague and open to interpretation. Other commenters felt that the approach taken to resident choice reflected unrealistic assumptions regarding resident capabilities.

Response: In order to reduce subjectivity and vagueness, we have added more specificity to a number of the individual provisions in this requirement, often by relying on the greater detail contained in the current SNF and ICF regulations. These changes are highlighted in the paragraph-by-paragraph discussions below.

We do not agree that these regulations are based on unrealistic assumptions concerning resident capabilities. Our regulations closely follow the recommendations of the IoM study which directly related resident health to the exercise of rights. Below, we address additional comments dealing with rights, since the requirement had numerous provisions involving specific rights.

Paragraph (a): Exercise of rights

We proposed at § 483.10(a) that: (1) The resident has the right to exercise his or her rights as a resident of the facility, and as a citizen or resident of the United States, including the right to file complaints; (2) the resident has the right to be free of coercion or reprisal from the facility in exercising his or her rights; and (3) An individual appointed under State law may exercise a resident's rights when a resident has been adjudicated to be incompetent.

Comment: Comments are summarized as follows. Commenters—

- Reported that language lacked specificity;
- Noted that the regulation failed to address the case of a resident who is clearly incompetent, but has not been determined incompetent by a judge;
- Charged that requiring a judicial determination of incompetency before a relative or representative can exercise the resident's rights would result in expensive and time consuming legal action, and would overburden the courts;
- Noted that the proposed requirement for a judicial determination of incompetency before a representative can exercise a resident's rights conflicts with State laws in some cases. Some States have authorized non-judicial designation of legal surrogates, such as durable powers of attorney, living wills or natural death laws (so-called advance directive mechanisms). If these mechanisms are ruled out, our regulations would restrict, rather than enhance a resident's right to self-determination;

• Requested that we retain provisions of existing regulations that allow physicians to make determinations concerning incompetence because such a determination may serve as a basis for State authorized non-judicial designations of surrogates.

Response: We have changed the wording of § 483.10 to accommodate commenters' views. In paragraph (f), we are using wording that specifies that a resident has the right to voice complaints and file grievances with respect to treatment or care, and the right to prompt efforts by the facility to resolve grievances. In the interpretive guidelines, we will explain that resident and family groups may serve as an effective vehicle for resolution of many resident grievances, particularly when they involve differences of opinion or a conflict of individual rights among residents. However, residents also have the right to take individual action to express their complaints.

Because of the variance in State laws concerning resident rights, we have also accepted commenters' recommendations that we defer entirely to State law on this matter in § 483.10(a)(3). In this final rule, to satisfy commenters, we are adopting wording concerning adjudicated cases that takes into account the fact that gradations of incapability exist to which the States have adopted or can adopt graduated remedies.

Paragraph (b): Right To Be Informed

We proposed at § 483.10(b)(1) that the resident has the right to be informed of his or her rights and the rules of the facility upon admission, in the language that he or she understands.

Comment: Summary of comments.

• A strong majority of commenters urged that we retain the concept of resident responsibilities as a counterbalance to resident rights;

• Commenters also asked that we retain the current requirements for written notification and acknowledgement of receipt of information of rights and responsibilities by residents;

• Some commenters also wanted us to specify, as in the current regulations, that this notification be made prior to or at the time of admission as well as during the stay; and

• Commenters requested clarification of the right to be informed of his or her rights "in the language that he or she understands."

Response: We agree with commenters and are including a requirement for written acknowledgement from the resident and periodic review of information pertaining to rights. We are retaining the requirement that the resident assume certain responsibilities relative to other residents and the facility.

We are also placing in § 483.10(b)(9) a provision that requires facilities to prominently display written information and provide oral information to residents and potential residents about how to apply for Medicare and Medicaid benefits.

"In language that the resident understands" means that communication of information concerning rights and responsibilities must be both clear and understandable to the resident and, if the resident's knowledge of English is inadequate for comprehension, in the foreign language familiar to the resident. For foreign languages commonly encountered in the facility locale, the facility must have written translations of its statement of rights and responsibilities, and should make the services of an interpreter available. In the case of less commonly encountered foreign languages, however, a representative of the resident may sign that he has interpreted the statement of rights to the resident prior to the resident's acknowledgement of receipt. For hearing impaired residents who communicate by signing, the facility would similarly be expected to provide an interpreter. Large print texts of the facility's statement of resident rights and responsibilities should also be available for the many residents who need them.

Comment: We proposed at § 483.10(b)(2) that the resident has a right to inspect his or her records on request.

• Many commenters supported our deletion of the "unless medically contraindicated" qualifier to a number of important rights that exist in the current SNF and ICF regulations, while others took a less favorable view of the deletion;

• Commenters suggested that most residents could not understand the medical terminology used in the records, and wanted us to require physician approval or the presence of a qualified staff person or a physician during the resident's inspection of records;

• Commenters requested that we provide that family members and other representatives also have the right to inspect residents' records on request.

• Commenters asked for clarification of the term, "on request," and recommended that requests for inspection of records be made in writing, and facilities be given 48 hours to respond.

• Commenters suggested that the right to inspect records include the right to photocopy records at prevailing community rates; and

• Commenters suggested that records be defined to include all of a resident's records.

Response: Because of the commenters' strong support for not limiting exercise of resident rights due to medical contraindications in general, we are not imposing this qualifier even though some commenters requested it here at § 483.10(b)(2) and also at (b)(3). We do not believe that residents should be shielded from medical facts. However, we also believe that it would be unreasonable to require the presence of a staff member to interpret records for the resident. In most cases, this would require a nurse, and we believe that scarce nurse resources should be used to provide nursing services, not medical education. The resident may permit inclusion of a staff member familiar with the record, however, if he or she so chooses. Likewise, the resident might wish to have family members or other representatives present. As for allowing other representatives or family members to exercise rights of inspection for the resident, rather than with the resident, we defer entirely to State law in this matter for residents, including those who are judicially determined to be incompetent, as dealt with in § 483.10(a)(3).

Partly to facilitate the inclusion of family or other representatives, as well as to allow the facility to coordinate requests for records with their medical records staff, we are revising the regulations to require written requests from residents and up to 48 hours for the facility to respond to the requests.

We believe the right to photocopy records is an integral aspect of the resident's right to employ the assistance of others in exercising his or her rights since some persons with whom the resident might wish to consult might not be able to be physically present at an inspection of the records. The interpretive guidelines will specify, however, that residents may be charged for this service at prevailing community rates. As explained under the requirement on privacy and confidentiality at § 483.10(e), we are defining records to include all records pertaining to the resident.

Comment: We proposed at § 483.10(b)(3) that the resident has the right to be informed of his or her medical condition, and to have an opportunity to participate in planning his or her medical treatment.

Commenters who responded to this provision wanted:

• Substitution of broader terms, such as health status and total plan of care, for the more restrictive terms of medical condition and medical treatment;

• More resident input into assessment and care planning;

• More informed consent by residents through fuller explanation and discussion of treatment options in language that the resident can understand;

• Inclusion of family members or representatives in the care planning process; and

• A requirement that every resident be informed of the name, specialty, and way of contacting the physician responsible for his or her care.

Response: As noted under § 483.10(b)(2), we believe that the resident should not be shielded from medical facts. We agree with the recommendations of commenters who suggested broader resident involvement in the care planning process and have revised § 483.10(b) to include commenters' suggestions. In the interpretive guidelines, we will explain that the resident should be involved in the assessment and care planning process, including the discussion of diagnoses, treatment options, risks and prognoses. These discussions should be presented in language that the resident can be expected to understand, and the resident must be allowed to make choices based upon the information provided.

Consistent with commenters' requests for a broader interpretation of a resident's right to be informed about his or her condition, we are expanding notification of changes, § 483.10(b)(10).

Comment: We proposed at § 483.10(b)(4) that the resident has a right to refuse treatment, and to refuse to participate in experimental research. The large number of comments we received on this issue are summarized as follows:

• Residents should not have the right to refuse food and liquids; some commenters saw such a refusal of treatment as a form of suicide, which they do not condone;

• Commenters requested that we clarify how a resident's right to refuse treatment can be reconciled with a facility's obligation to provide care and treatment;

• Commenters suggested that the act of refusal of treatment be well-defined, and that the facility inform the resident of the consequences of refusal; and

• Commenters requested that residents not be allowed to refuse to participate in research projects that involve only observation.

Response: As part of the quality of care requirements at § 483.25 (i) and (j), we are requiring that residents receive a nutritious diet and adequate liquids. When invasive procedures are necessary to accomplish this end, however, the courts have generally held that these procedures constitute treatments that residents or their representatives may refuse just as they may refuse any other medical treatment.

We are aware that this is a controversial issue, and for this reason, must defer to the courts and to the States which have responsibility for resolving the underlying legal issues. "The right to die," and particularly withholding of artificial feeding, has received considerable debate since 1976 with the Quinlan verdict and when California passed the nation's first natural death or living will law. Since that time, 38 States and the District of Columbia have adopted such laws. Six States explicitly include artificial feeding among treatments that the resident may refuse, thereby approving withdrawal of nutrition and hydration, while 7 States explicitly exclude such procedures from the definition of treatment, thereby prohibiting the withholding of artificial feeding. Among the remaining States, 14 are silent on the issue and 12 contain ambiguous references to comfort of the patient. Because the right to refuse treatment is protected by law, some believe the right to refuse artificial feeding exists even if a State's living will law has restrictive language excluding artificial feeding from the definition of treatment which may be refused. Such State-imposed restrictions are, therefore, subject to judicial challenge. So far, every trial court decision holding that artificial feeding is unlike other treatments and cannot be refused has been reversed upon appeal. Indeed, in 3 of the 7 States with restrictive language, court challenges to such restrictions have been successful. Because of the discrepancies among State laws and the need for a judicial resolution of this issue, we are leaving the wording of this statement concerning the resident's right to refuse treatment unqualified, as presented in the NPRM. The use of the advance directives, such as living wills, is dealt with under the statement on competency at § 483.10(a)(3).

We believe that a resident's refusal of treatment must be persistent and consistently documented in the resident's record. Refusals of treatment should also be countered by discussions with the resident of the health and safety consequences of the refusal and the availability of any therapeutic alternatives that might exist. With regard to the use of restraints, refusals may be dealt with in the care planning process in which the resident is to be involved, as provided for at § 483.10(d)(3) and through which treatment to reduce dependency upon the use of restraints is to be offered, as proposed under § 483.10(d). If a resident consistently refuses all treatment, discharge on the grounds that the resident's welfare cannot be met in the facility may be the ultimate solution. Transfer and discharge rights are dealt with under § 483.12.

Section 483.75(d) makes reference to general Departmental regulations concerned with the protection of human subjects of research. We also plan to clarify that experimental research must respect the privacy of the resident. Any direct observation or use of client-specific data requires the resident's consent. Non-resident-specific data, however, may be used for studies without obtaining permission of the individual clients.

Comment: We proposed at § 483.10(b)(5) that the resident has the right to information on Federal, State and local agencies concerned with enforcement of skilled and intermediate care rules, and agencies acting as client advocates, and must be afforded the opportunity to contact these agencies.

Comments are summarized as follows:

• Commenters asked that the rights information provided to residents in facilities include the name, address and phone number of all enforcement agencies, all local ombudsman programs, legal services programs, and citizen advocacy groups;

• Commenters suggested that facilities display the most recent Medicare or Medicaid survey reports and statements of deficiencies; and

• Commenters suggested that "agencies acting as client advocates" be deleted from the list of organizations about which the facility must provide information because most facilities do not have this information.

Response: We have concluded that the intent of this proposed provision is met by other requirements related to resident rights including the facility making available to residents and the public written policies on rights and responsibilities; providing space, privacy, and staff support for resident and family advisory groups; permitting access to Federal, State, and local enforcement agents and ombudsmen; and posting in a location accessible to residents information concerning Federal, State, and local enforcement and advocacy agencies, the State or local legal services agency, and

notification of the results of surveys and plans of correction. For this reason, we have chosen to eliminate proposed § 483.10(b)(5).

Comment: We proposed at § 483.10(b)(6) that the resident has a right to be informed of his or her responsibility for charges, services available, changes in rates, and changes in itemized forms.

Commenters—

- Found the wording of this element, as proposed, confusing, particularly the mention of itemized forms;
- Wanted the regulation to be more specific;
- Wanted the resident to be fully informed in advance of all charges for which he or she would be held responsible;
- Asked that facilities notify residents of charges in writing prior to or upon admission and that copies be provided to resident representatives or family members;
- Requested that facilities notify residents in advance of changes; and
- Thought that residents should have a right to receive information about services available under Medicaid and Medicare, eligibility rules, and the application process.

Response: Most concerns of the commenters regarding the wording of the proposal have been resolved by the revised § 483.10(b) (5) and (6). We believe that the revised § 483.10(b) (5) and (6) will provide residents with the knowledge of which items and services are paid for by Medicaid or Medicare, and for which other items and services the resident can expect to be billed. Also, private pay residents should be able to determine which items and services are included in the facility's per diem rate and which are ancillary items or services for which he or she will be billed separately.

Since neither current law and regulations nor the new OBRA '87 provisions give us the authority to require that residents be given advance notice of changes in services or charges, we cannot incorporate this recommendation into this rule. Whenever possible, however, we believe that advance notification should be given in order to be consistent with the intent of the law, which is to allow residents to be fully informed of what they owe the facility.

With regard to commenters who suggested that we require a facility to provide information on how to apply for Medicare and Medicaid benefits, we are using OBRA '87 wording at § 483.10(b)(9), effective on October 1, 1990. As for comments urging us to require that copies of bills be sent to all relevant parties, we also refer readers to § 483.10(b) and § 483.10(e), concerning the right to be informed and the right to privacy and confidentiality of records. These rights place limits on who may receive copies of a resident's financial records.

Paragraph (c): Resident Finances

We proposed at § 483.10(c) that the resident has the right to manage his or her financial affairs. A corresponding provision on resident finances under the administration requirement at § 483.75(j) proposed that the facility must establish and maintain a system that assures a full and complete accounting of the resident's personal funds entrusted to the facility on the resident's behalf. We have consolidated proposed §§ 483.10(c) and 483.75(j) into a single provision addressing resident finances.

Comment: Commenters—

- Requested a requirement that the facility issue quarterly statements to the resident or to his or her representative (this was the most frequently expressed request);
- Believed that residents should have the option to delegate the responsibility of managing funds to the facility, in which case, facilities should be required to accept responsibility;
- Wanted clarification that the resident is under no obligation to deposit funds with the facility; and
- Apparently alluding to State laws concerning incompetency and exercise of rights, which are discussed in § 483.10(a)(3), suggested that we qualify the statement that the resident has the right to manage his or her financial affairs by the phrase, "unless otherwise determined by State law."

Response: We have expanded upon the right of the resident to manage his own financial affairs or, if he or she so chooses, to designate another party to manage them for him or her. Unless determined incompetent under State law by a judge, the resident has the right to manage his or her own financial affairs, and is under no obligation to deposit personal funds with the facility. However, if the resident chooses, the facility must manage the resident's funds. In managing the funds, the facility must keep them in separate accounts, maintain a system that assures a full and complete and separate accounting, and affords the resident or legal representative reasonable access to the record. With regards to commenters' requests for quarterly reports, we proposed and made final, in § 483.10(c)(4)(ii), the requirement that the financial record be made available "on request" to the resident or his or her legal representative.

Paragraph (d): Restraints

We proposed at § 483.10(d) that the resident has the right to be free from unnecessary drugs and physical restraints, and is provided treatment to reduce dependency on drugs and physical restraint.

Comments: In summary, commenters—

- Wanted clarification or elaboration of the language;
- Indicated a preference for the existing regulations, especially with regard to the requirements for a physician's order specifying duration and circumstances for use of restraints;
- Suggested we add a statement that the purpose of restraints is to protect the resident from injury to self or others, and add provisions for emergency use on a one-time only basis;
- Proposed a ban on use of restraints for staff convenience or disciplinary purposes, while others suggested that we require review by an interdisciplinary team and documentation of attempts to use less restrictive methods;
- Commended the inclusion of the statement requiring treatment to reduce drug dependency;
- Found this requirement unsafe or inappropriate for some residents;
- Suggested that it be left up to the physician to reduce the use of restraints;
- Objected to the use of the term "unnecessary drugs" as vague, subjective or unenforceable. Some commenters proposed substituting "chemical restraints" for the term, "unnecessary drugs;" and
- Requested that we implement the OBRA '87 provisions concerning restraints and psychopharmacological drugs immediately.

Response: Because the area of behavioral management of nursing facility residents has both residents' rights and quality of care dimensions, we are placing proposed § 483.10(d), Restraints, and § 483.10(e) Abuse, in a new requirement, Resident behavior and facility practices, § 483.13.

In response to comments, we are providing in § 483.13(a) on the use of physical restraints and drugs for the purpose of discipline or convenience to staff that "The resident has the right to be free of and the facility must ensure freedom from physical restraints imposed or drugs administered for purposes of discipline or convenience, and not required to treat the resident's medical symptoms." We have chosen not to use the OBRA '87 term "chemical restraint." This term is often used in a pejorative sense to mean drugs used

without appropriate indications, in excessive doses, for excessive periods of time, or for a combination of all three of these reasons. Many drugs are, in fact, designed to restrain certain behaviors. They only become "chemical restraints" when used without proper indications for use, in excessive doses or for excessive periods of time.

In a forthcoming rule, we will propose specific requirements for the administration of drugs and the application of physical restraints in emergency and nonemergency situations. This will address many of the commenters' other concerns. Generally, we plan to follow the provisions of the conditions of participation for intermediate care facilities for the mentally retarded published as a final rule in the **Federal Register** on June 3, 1988 at 53 FR 20448.

We have chosen not to implement this OBRA '87 provision concerning the use of psychopharmacological drugs in this final rule, but will address this requirement in a forthcoming proposed rule.

In addition, the term "unnecessary drugs" is defined in this preamble under the "Quality of care requirement, Paragraph: (i) Drug Therapy" and has been relocated to § 483.25(l)

Paragraph (e): Abuse

We proposed at § 483.10(e) that the resident has the right to be free of physical, psychological, or sexual abuse or punishment.

Comment: Commenters—

- Applauded inclusion of this right;
- Recommended that resident management programs not be considered abuse when the programs are described in the plan of care in response to an identified problem, developed by the professional team and approved by the attending physician;
- Requested a definition of abuse or interpretation of such terms as psychological or sexual abuse within the regulation;
- Requested inclusion of verbal abuse and involuntary seclusion (isolation) as forms of punishment; and
- Suggested adding a right to information about how to report abuse, neglect, or mistreatment.

Response: We agree with the commenters' recommendations. We are creating a new requirement at § 483.13 which includes provisions on restraints and abuse, and we are adding verbal and sexual abuse in response to comments. We do not believe, however, that we can exclude all behavior management techniques that might be employed within a plan of care from possible consideration as abuse. We plan to define through example for our surveyors terms such as physical, psychological, sexual, and verbal abuse. We believe that the resident's right to information about agencies to which abuse or neglect should be reported is adequately addressed in § 483.10(k), as revised.

We are also placing in § 483.13(c), a requirement related to the staff treatment of residents reflecting a facility's responsibilities to prevent abuse through assuring that persons who have been convicted of abusing individuals are not employed and allegations of abuse are fully investigated.

Paragraph (f): Privacy and Confidentiality

We proposed at § 483.10(f) that the resident has the right to personal privacy and confidentiality of his or her records.

Comment: Commenters—

- Urged expansion of the right to personal privacy to include privacy regarding accommodations, treatment, personal care, visits, and meetings, whether of resident or family groups or with selected individuals such as ombudsmen, lawyers, and clergy;
- Requested addition of specific requirements that residents be treated with consideration and respect, and be accorded the right not to have one's condition or care discussed with family members without the resident's inclusion or expressed permission;
- Requested retention of all or parts of the more specific language on confidentiality used in the current SNF and ICF regulations. Most frequently, commenters wanted the regulation to specify that a resident has the right to approve or refuse the release of his or her records to any individual outside the facility, except those required to be released by law or third party payment contract; and
- Wanted the statement to specify that confidentiality extends to a resident's medical, social, and financial records so that the right cannot be interpreted to mean only medical records.

Response: To accommodate the many requests for a more specific definition of privacy rights, we have revised § 483.10(e) to discuss privacy explicitly in terms of accommodations, medical treatment, personal care, visits, and meetings of family and resident groups. The clause following new section 1919(c)(1)(A)(xi), added by OBRA '87, specifies that privacy with regard to accommodations does not require a private room. Under the physical environment requirement at § 483.70(d), we are defining privacy with regard to accommodations as full visual privacy around beds. We are interpreting the right to privacy to mean that the resident has the right to privacy with whomever the resident wishes to be private and that this privacy should include full visual, and to the extent possible, auditory privacy. Privacy space may be created flexibly and need not be dedicated solely for visitation purposes. For example, privacy for visitation or meetings might be arranged by using a dining area between meals; a vacant chapel, office or room; or an activities area when activities are not in progress. Arrangements for private space could be accomplished through cooperation between the facility's administration and resident or family groups so that private space is provided for those requesting it without infringement on the rights of other residents.

Under proposed paragraph § 483.10(f)(1), we have not accommodated the request of some commenters that we retain provisions of the current SNF and ICF regulations which require that the resident be treated with consideration, respect, and full recognition of his or her dignity and individuality because we believe this requirement will be addressed under the Quality of life requirement, § 483.15(a).

In proposed paragraph § 483.10(f)(2), as requested by commenters, we provide generally that the resident may approve or refuse the release of personal and clinical records outside the facility. This change found at § 483.10(e)(2) serves to continue the more specific requirements from the current SNF or ICF regulations as well as incorporates OBRA '87 wording, which requires confidentiality of personal and clinical records. We will interpret this in subsequent guidelines to include all types of records the facility might keep on a resident, whether they be medical, social, financial, automated, or other. We have also revised § 483.10(e) by adding a new paragraph (3) to include the explanation of conditions under which the resident does not have control over release of his records. These include transfer to another health care institution, and record release required by law or third-party payment contract.

Paragraph (g): Work

We proposed at § 483.10(g) that the resident has the right to not perform services for the facility, and to be compensated for services voluntarily performed, unless informed prior to performing the services that the services

are of a voluntary nature and will not be compensated.

Comment: Comments are summarized as follows:

- Many commenters found this requirement confusing, or even self-contradictory, and indicated a preference for the wording of the current SNF regulation which states that "The resident is not required to perform services for the facility that are not included for therapeutic purposes in his plan of care;"
- A large majority of commenters urged retention of the concept of work as therapy;
- A majority of commenters also requested that the rule state that the resident has the right to perform voluntary services for the facility just as much as he or she has the right not to perform any services; and
- Commenters objected to having the facility placed in a position of open-ended liability for payment anytime it neglects to inform a resident before performing a service that the service was voluntary.

Response: In the final rule, in § 483.10(h) we are acknowledging both the right not to work and the right to do work, as matters of resident choice. We have restored the concept of work as therapy by requiring that all resident work, whether of a voluntary or paid nature, be done through the plan of care. Documenting a resident's need or desire for work in the plan of care makes the work assignment reviewable and prevents the impression that every resident is expected to work. We believe a resident's desire for work is subject to discussion of medical appropriateness. As part of the plan of care, a therapeutic work assignment must be formally agreed to by the resident. The resident also has the right to refuse such treatment at any time that he or she wishes. At the time of development or review of the plan, the voluntary or paid nature of the work can be negotiated. The resident, thus, is able to negotiate while, at the same time, the facility is freed of the open-ended liability that many commenters criticized.

Paragraph (h): Mail

We proposed at § 483.10(h) that the resident has the right to send and receive mail that is not opened.

Comment: Commenters all strongly supported this right and usually requested more detailed protections of the right. A majority of commenters objected to delays, for one reason or another, in the delivery of mail. Because delaying mail may be used as a form of retaliation or retribution, some commenters proposed adding the phrase "without interference." Another group of commenters urged requiring distribution on a Monday through Saturday basis or on the same day as the mail is received by the facility. Several commenters also requested that we add, "the resident shall have access, at his or her own expense, to writing instruments, stationery, and postage." One commenter proposed that we adopt the broader provisions of OBRA '87, requiring, "privacy in written communications." Finally, as a way of protecting staff from misinterpretation of assistance as an invasion of privacy, two commenters proposed adding that "facility staff may assist the resident in sending or receiving personal mail if the resident requests it."

Response: We have expanded this requirement by incorporating some of the qualifiers suggested by commenters. In § 483.10(i), we are requiring that mail be sent from and delivered to residents "promptly," which will mean delivery to the resident writing within 24 hours of arrival in the facility and delivery to the postal service within 24 hours. More specific requirements concerning mail distribution might prove burdensome to facilities. While we require access to materials, we have not placed the responsibility for provision of these items directly on the facility. We take the view that within each facility a resident group or similar group could work with the facility's administration to make the most appropriate arrangements for their situation. In that residents have the right to request assistance in the exercise of all their rights, we do not believe that any particular staff protections are necessary.

Paragraph (i): Access to Facility

We proposed at § 483.10(i) that the resident has the right to receive visitors at any reasonable hour, and by arrangements at other times.

Comment: A sizeable majority of commenters, usually representing facilities, wanted "at any reasonable hour" defined in the regulation, qualified by "as determined by facility policy," or deleted in favor of "during visiting hours." Resident advocates proposed that "reasonable" be defined as at least eight hours per day, that "by arrangements at other times" be clarified to specify between whom the arrangements are to be made, and that facilities be required to take into consideration circumstances such as out-of-town visitors and working schedules of relatives and friends. Some commenters asked us to implement immediately all or parts of the OBRA '87 provisions pertaining to access to the facility, particularly the one allowing immediate access to the resident by members of the resident's family.

Response: We accept the comments requesting that facilities be responsible for granting access to visitors at any reasonable hour and are revising § 483.10(j) to provide that, until October 1, 1990, the resident has the right to receive visitors, and the facility must allow visitors to have access to the resident at any "reasonable hour." In the interpretive guidelines, we will define "at any reasonable hour" to mean at least eight hours per day, arranged in such a way that daytime, evening and weekend visitation times are available to meet most potential health practitioners and non-family visitors' schedules. Effective October 1, 1990, in § 483.10(k) (vii) and (viii), we are implementing the OBRA '87 requirement that residents have the right to "immediate" access from family, other relatives and friends. Section 411(l) of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–360, makes certain provisions of OBRA '87 effective July 1, 1988, including immediate access to representative of the Secretary, the State, the residents individual physician, State ombudsmen, and agencies responsible for the protection and advocacy system for developmentally disabled and mentally ill. We are including these provisions in § 483.10(k) (i), (ii), (iii), (iv), (v), and (vi).

Paragraph (j): Telephone

We proposed at § 483.10(j) that the resident have the right to have access to the private use of a telephone.

Comment: The vast majority of respondents commended the addition of this provision to the statement of resident rights. A few commenters objected to the phrase "private use of a telephone" on the grounds that facilities would incur costs by having to provide a phone room or private lines in all patient rooms. On the other hand, several commenters asked that we incorporate additional requirements such as wheel-chair accessibility, provision of adaptive equipment for the hearing-impaired, regular access to a phone as opposed to "by request to the staff" and provision of a private line for resident use.

Response: In regard to the provision requiring privacy in telephone conversations, as well as adaptive equipment for the hearing-impaired, we note that section 504 of the Rehabilitation Act of 1973 already establishes the basic right to communication for handicapped

individuals. Many residents of nursing homes are hearing-impaired, and cannot effectively exercise their right to communication by telephone without adaptive equipment. Under these circumstances, we believe that the Rehabilitation Act of 1973 already requires the provision of privacy during telephone conversations and adaptive equipment and, therefore, it is not necessary to revise the regulations specifically to require this. In our enforcement of the privacy right, we will seek to determine if residents are afforded privacy in telephone conversations, by whatever means, and hold the facility responsible for the ultimate outcome.

Paragraph (k): Self-Determination and Participation

We proposed at § 483.10(k) that the resident has the right to participate in normal social, religious, and community group activities and to make choices about significant aspects of his or her life in the facility.

Comment: Commenters responded to this provision and to the closely related one under the Administration requirement at § 483.75(u) which requires the facility to ensure resident participation in the facility's policy and operational decision-making. We are discussing both provisions in this section. Commenters on the administration requirement overwhelmingly opposed direct resident participation in comprehensive policy and operational decision-making. A strong majority of commenters, while not opposed to resident involvement, wanted resident input channeled through resident groups and limited to those areas which directly pertain to resident care. Most of these commenters urged inclusion, under this resident rights section, of a right to organize and participate in a resident or family group through which recommendations concerning policies and operations could be made. A minority of commenters, however, asked us to go a step further and require the existence of such group.

Other Comments are summarized below:

- Commenters criticized the vagueness and unenforceability of the words "normal" group activities and "significant" aspects of a resident's life in the facility;
- Resident advocates noted that the important decisions affecting a resident's life in the facility such as when to eat, whom to share a room with, what to wear, or when to go to bed are usually out of the resident's control;
- Commenters cited the need for transportation to outside activities and residents' desire to have some choice in the selection of, or changes in, roommates.

Response: Because of the strong support of commenters for the right to organize and participate in resident and family groups, we have included a new provision, titled Participation in resident and family groups. Furthermore, because this provision explicitly addresses residents' social interactions and involvement in group activities, we have decided to place it at § 483.15(c) as part of the quality of life requirement. This provision implements section 1919(c)(1)(A)(vii) of the Act.

We are not mandating that resident and family groups exist because we do not believe we have statutory authority, even udner OBRA '87, to do so. We are providing that when residents or their families wish to organize, facilities must allow such organizations to exist, and must provide them with space and privacy for meetings and staff support and liaison with the nursing facility's administration.

In response to commenters' requests, we are deleting the word "normal" in describing the resident's right to participate in (normal) social, religious, or community activities, as some commenters requested. We are placing a provision, titled Participation in other activities, at § 483.15(d) in the quality of life requirement, as it also reflects the ability of residents to engage in personally meaningful social behavior.

Finally, we are placing a provision, titled Accommodation of needs, in the quality of life requirement, § 483.15(e). This provision provides the resident with a guarantee of reasonable accommodation of individual needs and preferences. At the request of several commenters, we are incorporating a provision concerning the right to receive notice of changes in room or roommate in this paragraph.

Paragraph (l): Personal Property.

We proposed at § 483.10(l) that the resident has the right to retain and use personal possessions and appropriate clothing, within space allocated by the facility, unless to do so would infringe upon the rights or security of other residents.

Comment: Summarized below are the comments on this paragraph.

- Commenters supported the deletion of the "unless medically contraindicated" qualifier to many of the rights in current regulations;
- Several commenters were concerned that the way the proposed provision was expressed, it gave too much discretion to the facility to curtail a resident's retention of, access to, or use of his or her personal property. They proposed changing the phrase, "within space allocated by the facility," which was taken from the current SNF regulations to the more neutral, "as space permits;"
- Other commenters wanted facilities to have more authority to approve or disapprove of which personal possessions a resident may retain, usually on the grounds of safety;
- Commenters suggested that some record and response should be required of the facility in cases of lost or damaged personal property, such as maintaining a written inventory of possessions, investigating incidences of loss, and reporting suspected theft to police;
- Commenters proposed that facilities be required to provide each resident with locked storage space in his or her room and to assist residents in arrangement of stored possessions, particularly seasonal clothing;
- Another commenter proposed that resident councils be identified as the vehicle for establishing procedures for resolving disputes between residents in the exercise of their rights to use personal property; and
- Another respondent asked that furniture be explicitly included among the personal possessions a resident may retain because having their own furnishings may aid in orientation of many residents suffering from Alzheimer's disease or other dementias.

Response: In view of the IoM recommendations that residents' environment be as homelike as possible and that residents retain as much control over their lives as possible, we are following the prevailing view of commenters that the right to have and use personal possessions should not be subject to medical contraindications. We have also substituted "as space permits" for the phrase, "within space allocated by the facility", thus removing the facility from the role of sole arbiter of which possessions a resident may retain. In order to accommodate the legitimate safety concerns of facilities, we have also substituted "the health and safety" for the "security" of other residents.

Facility responsibility for lost or damaged personal property of residents, we believe, should be limited to reasonable preventive measures and investigation of incidents of loss or damage.

The right to participate in resident groups and the roles ascribed to such groups are dealt with in § 483.15(c).

Participation in resident and family groups and § 483.15(b), Self-determination and participation. We believe that resident and family groups are appropriate channels for resolving many types of grievances among residents, and between residents and the facility's administration over the exercise of property rights. We believe that a facility's role in protecting a resident's rights extends to investigation of incidents of loss or damage and taking appropriate legal action where it is warranted. Finally, since large numbers of residents suffer from mental confusion, we have included "some furnishings" among personal possessions which a resident may retain.

Paragraph (m): Married Couples

We proposed at § 483.10(m) that the resident has the right to privacy during visits by his or her spouse, and to share a room with his or her spouse, when married residents live in the same facility.

Comment: Nearly two-thirds of these comments addressed deletion of the "unless medically contraindicated" qualifier to many of the rights contained in the current regulations, with a strong majority of commenters applauding the deletion of the phrase. The minority that favored retention of the qualifer wanted to preserve some flexibility for facilities that encountered cases of verified verbal or physical spousal abuse, or that wanted to not accommodate a request when spouses required different levels of care. Several other commenters mentioned level of care problems without proposing retention of the phrase as a solution. In States which have adopted case-mix based prospective payment systems such as resource utilization groups, commenters were particularly concerned about the cost implications of implementing this right.

Several commenters raised the question of which spouse's right should prevail in cases where only one spouse wanted to share a room. Most of these commenters urged that consent of both spouses be required. Another sizable group of commenters wanted the right to share a room expanded to "consenting adults". Some of the commenters urged that facilities be required to state their room sharing policies "up front" in their written policies on resident rights. Finally, some commenters requested privacy with any visitor with whom the resident wished to be private.

Response: Because a number of commenters on this provision and the one on privacy and confidentiality at § 483.10(e) supported this expanded right to privacy during visitation, we have revised § 483.10(e) to provide for a general right to privacy. As originally proposed, § 483.10(m)(1) implied that only married couples were entitled to privacy. We are also revising § 483.10(n) to provide that a resident has the right to share a room with his or her spouse when married residents live in the same facility and both spouses consent to the arrangement.

In light of the strong support for our deletion of medical contraindications as a qualifier of the right of couples to share a room, we have maintained this deletion. The thrust of this entire rights section is to enable residents to make choices for themselves. If a couple wishes to share a room, they should be allowed to do so without a physician making the decision for them that to do so would be unwise or unsafe. We do believe, however, that the consent of both spouses should be required, and we are revising paragraph (n), accordingly. We believe that in cases of documented spousal abuse, the facility should use its staff to either resolve difficulties or encourage the abused spouse to withdraw consent to the room sharing.

In regard to level of care problems that may arise with room sharing, OBRA '87 mandates the end to the current SNF and ICF distinction by October 1, 1990. In States that currently certify beds simultaneously for both levels of care, no barrier exists to accommodating a couple's wish to share a room, even though they may require differing levels of care. Until October 1, 1990 when the OBRA provision takes effect, level of care problems will continue to arise in those States that certify individual beds or wings as either ICF or SNF, because under current law, a resident may not occupy a bed certified for a level of care for which he or she is not approved. The number of couples who have simultaneous stays in the same facility is, however, relatively small; and the number of such spouses who require different levels of care is smaller still. For the interim period until the statute's SNF and ICF distinction is abolished, level of care requirements must take precedence over this right in those relatively infrequent cases that may emerge in affected States. Elsewhere currently, and everywhere after October 1, 1990, a request by both spouses to share a room must be honored, even if case-mix or other classification groups vary widely. The incidence of such cases is low enough, we believe, that facilities will not incur inordinate financial loses by facilitating this right of married couples.

At this time, we do not believe that we should require that facilities grant the same right to "consenting adults" that we require they accord to married couples by virtue of their legal status. In interpretive guidelines, however, we will require facilities to explain their policies on room sharing requests to prospective residents prior to admission. We believe that most facilities attempt to accommodate residents' wishes and perferences in roommates whenever possible. Nevertheless, the guidelines will encourage such accommodation of residents' individual preferences.

Summary of Changes to § 483.10

The following is a summary of the major changes we are making to § 483.10 in response to comments. The organization has been changed from the proposed rule due to adding individual Level B requirements or moving them to other Level A requirements.

- In paragraph (a), we are adding provisions on exercise of a resident's rights by the resident's representative when a resident is adjudicated incompetent under State law.
- In paragraph (b), Notice of rights and services, we are requiring that a resident be fully informed of rights both orally and in writing in the language he or she understands.
- In paragraph (b)(5), we specify that a resident has the right to be fully informed in writing of all services available in the facility and of charges for those services.
- In paragraph (b)(2), we are requiring that a resident has the right to inspect and photocopy his or her records upon written request to the facility. The facility is allowed 48 hours to respond to a request.
- In paragraph (c), Protection of resident funds, we specify that a resident is not required to deposit personal funds with the facility, and the resident may designate another party to manage his or her finances. We are placing all requirements concerning protection of resident funds in paragraph (c).
- In paragraph (d), Free choice, we specify that a resident has the right to choose an attending physician, be informed in advance of care and treatment, and to participate in development of his or her plan of care.
- In paragraph (e), Privacy and confidentiality, we are adding a resident's right to privacy in accommodations, medical treatment, personal care, visits and meetings with family and resident groups. Paragraph (e) also provides that a resident has the right to refuse the release of personal and clinical records to any individual outside the facility, except when

required to release to another health care institution by law, or third party payment contract.

• We are creating two Level B requirements, abuse and restraints, and placing them in a new Level A requirement, § 483.13, Resident behavior and facility practices. In § 483.13(b), Abuse, we specify that a resident has the right to be free of verbal, mental, sexual or physical abuse and involuntary seclusion.

• In paragraph (f), Grievances, we are adding wording that supports commenters views that a resident has the right to voice complaints and file a grievance with respect to treatment or care, and the right to prompt efforts by the facility to resolve a grievance.

• In paragraph (h), Work, we are adding the resident's right to perform services for the facility when the need or desire for work is documented in the plan of care. Details of the services to be performed and compensation for services must be specified in the plan of care.

• In paragraph (i), Mail, we specify that a resident has the right to send and receive mail promptly that is unopened.

• In paragraph (j), Access to facility, we are revising the provisions on access to the facility to specify that a resident has a right to receive immediate family members or other relatives at any hour, and other visitors at a reasonable hour by arrangement with the facility.

• We are revising paragraph (l), Telephone, to provide that a resident has the right to the private use of a telephone.

• We have created several separate requirements from the proposed paragraph (p), Self-determination and participation, reflecting resident's rights concerning activities, interaction with members of the community, accommodation of individual needs and preference, notice before a change in room or roommate, and organization of, and participation in resident and family groups. We have placed these provisions in a revised quality of life requirement § 483.15(b), (c), (d) and (e).

• To paragraph (m), Personal property, we are adding a resident's right to retain and use personal possessions "as space permits."

• To paragraph (n), Married couples, we are adding a resident's right to share a room in a facility when both spouses consent to the arrangement.

Section 483.12 Admission Transfer and Discharge Rights Requirement

In this final rule, we are creating a new Level A requirement called Admission transfer and discharge rights, § 483.12, based on wording from OBRA '87 provisions. The provisions included in this new requirement appear in the following paragraphs:

(a) Transfer and discharge (proposed as § 483.75(r) (3), (4) and (5)).

(b) Notice of bed-hold policy and readmission (OBRA '87 effective 10/1/90).

(c) Equal access to quality care (OBRA '87 effective 10/1/90).

(d) Admissions policy (OBRA '87 effective 10/1/90).

We are responding to comments on transfer and discharge provisions at the location at which they appeared in the proposed rule. We are adding as paragraph (b), Notice of bed-hold policy and readmission, effective October 1, 1990, which largely incorporates OBRA '87 provisions in new section 1919(c)(2)(D) of the Act. This paragraph requires that facilities provide written information to the resident and a family member or legal representative that specifies the duration of the bed-hold policy, if any, under the State plan, and the facility's policies on bed hold periods before a resident is transferred to a hospital or for therapeutic leave, and at the time of transfer.

In paragraph (c), Equal access to quality care, we are implementing the OBRA '87 provision in new section 1919(c)(4) of the Act, which provides that, effective October 1, 1990, a facility must establish and maintain identical policies and practices regarding transfer, discharge, and the provision of services under the State plan for all individuals regardless of source of payment.

Paragraph (d), Admissions policy, incorporates OBRA '87 provisions in section 1919(c)(5) of the Act, effective October 1, 1990, which prohibit facilities from—

• Requiring a third party guarantee of payment as a condition of admission, expedited admission, or continued stay in the facility; and

• Charging, soliciting, accepting or receiving, in addition to any amount required to be paid under the State plan, any gift, money, donation or other consideration as a condition of admission, expedited admission or continued stay in the facility.

Note.—Even though this regulation does not take effect until the effective date of OBRA '87, the identical provisions are already in effect as a result of section 1128B of the Act.

Effective October 1, 1990, a facility must not—

• Require residents or potential residents to waive their rights to Medicare or Medicaid, and

• Require oral or written assurance that residents or potential residents are not eligible, or will not apply for, Medicare or Medicaid benefits. These provisions are intended to prevent discrimination against individuals entitled to Medicaid benefits.

Section 483.15 Quality of Life Requirement

In the Quality of Life requirement at § 483.15 we proposed that the facility must ensure that residents receive care in a manner and in an environment that maintains or enhances their quality of life without abridging the safety and rights of others by (a) treating each resident with dignity and respect and (b) maintaining each resident's privacy.

Comment: A commenter noted that the Quality of Life requirement is too vague and its individual provisions should be integrated into other existing requirements. For example, provisions dealing with Choice (483.15(c)) and Dignity (483.15(a)) should be within the Residents Rights requirement (483.10), and the provision on Environment should be placed within the Physical Environment requirement at § 483.70. The commenters reasoned that integrating the Quality of Life provisions within other specific existing requirements would decrease the risk that this requirement will be subjectively evaluated by surveyors.

Response: Quality of life is a complex concept reflecting the characteristics of an individual's relationship to his social and physical environment. Quality of life has both residents' rights and physical environment dimensions. It reflects the relationship between the resident and the physical and human environment in which he or she lives. After examining comments received on the proposed quality of life requirement and on the proposed resident rights requirements, we have chosen to reorganize the proposed quality of life requirement to include those provisions that best reflect an individual's ability to influence, and be influenced by, his or her physical and social environments and to participate fully in these environments to the full extent of his or her functional abilities.

The revised provisions of the quality of life requirement appear in the following paragraphs:

§ 483.15(a) Dignity
§ 483.15(b) Self-determination and participation
§ 483.15(c) Participation in resident and family groups
§ 483.15(d) Participation in other activities
§ 483.15(e) Accommodation of needs
§ 483.15(f) Activities
§ 483.15(g) Social services

§ 483.15(h) Environment

Paragraphs (b), (c), (d), and (e) of § 483.15 have already been discussed under revisions to the proposed rights requirement.

Comment: Several commenters objected to the use of the word "ensure" in the requirement that "the facility must ensure that residents receive care * * * that maintains or enhances their quality of life * * *", as well as in other parts of the proposed regulations, because it implies guarantees, and it creates an unrealistic burden on the facility.

Response: We agree that when used in certain contexts, the word "ensure" could inappropriately be construed as imposing on the facility an absolute responsibility to achieve a prescribed result, without allowing for factors that are clearly beyond its ability to control. In these final regulations, we are attempting to address this concern, either by limiting the use of the word "ensure" to factors for which the facility appropriately can be held responsible (such as the conduct of its own employees), or by allowing for exceptions when warranted by external circumstances that the facility cannot reasonably be expected to control (see the subsequent preamble discussion of this issue in connection with resident care outcomes under the Quality of Care requirement).

Comment: A commenter noted that § 483.15(a), Dignity, requires that the facility treat each resident with dignity and respect, and suggested adding, "in full recognition of his or her individuality." Other commenters requested that we specify that residents must be examined or be treated by physicians or other consultants in a private area, examination room or other room.

Response: We are modifying the wording of paragraph (a), Dignity, by adding, "in full recognition of his or her individuality." With regard to assuring resident privacy during treatment or examination, we believe we have addressed this issue adequately within the resident rights requirement at § 483.10(e)(1), which privides that "the resident has the right to personal privacy with regard to accommodations, medical treatment, personal care, visits, and meetings of family and resident groups."

Paragraph (b): Environment

Proposed § 483.15(b) requires the facility to provide a clean, comfortable, homelike environment, housekeeping and maintenance service, clean bed linens and secure and private closet space in each resident's room.

Comment: Many commenters questioned the meaning of the term "homelike," and either wanted it clarified, defined or deleted. One commenter noted that, while a facility may be cheerful, warm and colorful, for example, a truly homelike environment is incompatible with accepted safety and sanitation parameters. One commenter suggested adding to § 483.15(b)(1), "a safe, clean, comfortable homelike, and least restrictive environment." Another suggested that there should be a therapeutic environment which maximizes functional independence.

Response: We wish to retain the reference to homelike environment as one that deemphasizes the institutional character of the setting, to the extent possible, and allows the resident to use those personal belongings that support a homelike environment. This is in accordance with the proposed requirement at § 483.10(m) on personal property, and with section 1919(c)(1)(A)(v) of the Act, added by OBRA 87, which establishes the resident's right to "reside and receive services with reasonable accommodations of individual needs and preferences." In this final rule we have relocated this provision as § 483.15(h), Environment, under the Quality of life requirement.

In regard to the comment requesting requirements for architectural safeguards to accommodate a "least restrictive environment," or a "therapeutic environment, which maximizes functional independence," we do not believe these terms would be more descriptive or go any further in assisting the surveyor in identifying non-compliant facilities than the term "homelike."

Comment: A commenter recommended structural requirements, (e.g., room size and furnishings) since the immediate environment has a direct bearing on the quality of the resident's life. Another commenter recommended American National Standards Institute (ANSI) standards in making facilities accessible to the handicapped to produce an environment that encourages independence. Some commenters provided specific suggestions as to requirements for room size, room temperatures, ventilation, lighting and sound levels, furniture arrangement (non-institutional in arrangement), and adaptable call systems (i.e., a call system that can be used by the physically handicapped or the vision impaired).

Response: The commenters' concerns regarding structural requirements relative to room size and furnishings are addressed in the revised physical environment requirement. Section 483.70(d)(1)(ii) requires that the bedrooms measure at least 80 square feet per resident in multiple resident bedrooms and at least 100 square feet per resident in single resident rooms; and § 483.70(d)(2)(iv) requires the facility to provide each resident with functional furniture appropriate to the resident's needs. Specific requirements for ventilation and lighting levels also are addressed at § 483.70(g), which requires the facility to provide a comfortable environment for residents.

With regard to the comment that we include provisions requiring that facilities be accessible to the handicapped, we believe the administration requirement at § 483.75 is a more appropriate place for this concern. In revised § 483.75(d), relationship to other HHS regulations, we are referencing applicable provisions of other HHS regulations that facilities are obliged to meet, including but not limited to those pertaining to nondiscrimination on the basis of handicap. With regard to adapting call systems to the special needs of the physically handicapped or vision impaired, we believe the Rehabilitation Act of 1973 provides that residents with handicaps must be provided with a means to summon staff when necessary.

Comment: Proposed § 483.15(b)(3) requires the facility to provide clean bed linens. Many of the commenters wanted an expansion of this language to include bath linen that are in good condition. One commenter suggested the inclusion of a requirement for "linen handling techniques."

Response: We believe that this comment can best be accommodated by expanding the environment requirement at §483.15(h)(3) to read "clean bed and bath linen that are in good condition". We do not believe it necessary to include a requirement for linen handling technique because this is covered within the infection control requirement at § 483.65(c), which provides that personnel must handle, store, process and transport linens so as to prevent the spread of infection.

Comment: Proposed § 483.15(b)(4) requires the facility to provide secure and private closet space in each resident's room. Many commenters wanted clarification of the word "secure" as some believed a locked space without appropriate facility access could have potentially adverse results if a resident stores food or other items inconsistent with accepted health and safety practices. One commenter suggested adding, "the facility may

inspect and monitor and clean out as necessary." Another commenter recommended deletion of "secure" and "each," as often it is financially infeasible to provide "each" resident with a "secure" and private closet space, thus making this requirement difficult to meet.

Response: We agree with commenters that "secure" storage would be difficult to define short of actually specifying "locked" storage which would be prohibitively expensive. We have, however, retained the word "private" and will expect providers to respect the privacy of residents in this regard. The recommendation that we allow the facility routinely "to inspect and monitor and clean out as necessary" residents' closet space, would conflict with the IoM's recommendation for increased privacy for residents. However, in guidelines we will allow a facility to inspect a resident's storage space when the facility has documented sound reason to believe that stored items pose a threat to the health and safety of residents.

Comment: Proposed § 483.15(b)(5) requires the facility to "provide for a pest control program to ensure that the facility is free of rodents and pests." A few commenters suggested deleting from § 483.15(b)(5) the phrase "to ensure that the facility is free of rodents and pests". They believe that, although the facility should provide a pest control program, the facility cannot ensure that it is free from rodents and pests with daily deliveries of food and other supplies. One commenter suggested adding the word "effective" before pest control program.

Response: We recognize that it is difficult to maintain an absolutely pest free environment and have deleted the word "ensure." However, the facility must maintain an effective pest control program that keeps the physical plant as free of pests as is possible. These changes appear at § 483.70(h)(4).

Paragraph (c): Choice

Proposed § 483.15(c) requires the facility to permit residents to choose activities, schedules and health care, consistent with their interests, assessments and plans of care, and permit residents to interact with members of the community both inside and outside the facility.

Comment: Section 483.15(c) requires the facility to permit residents to choose activities, schedules and health care, consistent with their interests, assessments and plans of care, and permit residents to interact with members of the community both inside and outside the facility. A commenter noted that in large facilities it would be chaotic to have residents on different schedules and expect quality care to be given, particularly since nurse staffing differs on each shift. A number of the commenters objected to the use of the word "permit." One suggested instead the use of "encourage" or "motivate" as the word "permit" gives the facility total authority, and other commenters suggested that the word be deleted.

Response: We are deleting this requirement because it is covered in the Quality of life requirement at § 483.15(d), Participation in other activities, § 483.10(d) Free choice and § 483.15(b) Self-determination and participation.

Comment: A few commenters recommended that choices be limited to "reasonable" choices consistent with facility schedule as a facility must be operated within some organizational constraints. Within this context, a commenter suggested modifying this language to "permit residents to participate in making choices" rather than allowing full control, since this may be medically contraindicated.

Response: Since the emphasis of these regulations is on the resident's quality of life, and the sense of control over their lives is a major part of this emphasis, we chose not to limit the resident's choices consistent with the facility's schedule. With respect to residents' making choices which may be medically contraindicated, we believe the resident's plan of care would provide the proper constraints necessary. In § 483.15(b), Self-determination and participation, we provide that residents have the freedom to choose activities, schedules and health care consistent with their interests, assessments, and plans of care.

Comment: Some commenters suggested expansion of § 483.15(c) to ensure residents' opportunity to exercise choices in all areas significant to them, including not only activities, schedules and health care, but food and diet, room decor, association (choice of roommate, physician and direct caregivers), resident appearance, clothes and use of personal funds.

Response: The residents rights requirement, in general, addresses all issues listed by the commenter except that of association (specifically choice of roommate). We believe residents may more appropriately exercise choice in areas indicated by the commenters through resident groups found at § 483.15(c).

Paragraph (d): Food

This provision requires the facility to prepare food by methods that conserve nutritive value, flavor and appearance; serve attractive food at proper temperatures; and provide food that meets individual needs and offer substitutes of similar nutritive value to residents who refuse food served. Many comments in this area were commingled with those on our dietary services requirement (proposed § 483.35), so the following discussion deals with common issues.

Comment: A commenter recommended modifying the dietary services requirement, § 483.35 under the provision concerning frequency of meals at paragraph (d)(3), to read, "Provide food 'prepared in a form designed' to meet individual needs." The intent of this change would be to clarify that foods must not only be nutritionally adequate, but must also be served in a form that the resident is capable of ingesting.

Response: We are modifying the requirement on dietary services, § 483.35(d)(3) according to the commenter's recommendation to include the phrase, "prepared in a form designed" to meet individual needs.

Comment: Several commenters recommended that we define proper food temperatures, and distinguish between holding temperatures on a tray line and acceptable temperatures at the point of delivery. They recommended 140 degrees Fahrenheit or above as holding temperatures on a tray line for hot foods, but 110 degrees Fahrenheit as safe and acceptable when food reaches the point of delivery. Commenters suggested 45 degrees or below for cold foods.

Response: We do not believe that it is necessary to define temperature limits in regulations, but we intend to issue guidelines to ensure that the food is served at the proper temperature and under sanitary conditions.

Comment: Proposed § 483.15(d)(4) requires the facility to offer substitutes of similar nutritive value to residents who refuse food. A commenter suggested that we permit a resident who does not have an identified nutritional problem, and a resident with a diagnosed nutritional problem who has the approval of the attending physician, to select food substitutes that are not necessarily nutritionally similar to those in regular or therapeutic diets.

Response: With regard to allowing residents to select food substitutes that are not nutritionally similar, we emphasize that the facility is ultimately responsible for the health of the residents. Thus, the facility must ensure that the resident is provided with a nutritionally adequate diet. There may

be occasions when residents might request substitutes that are not nutritionally similar, but these occasions should not interfere with residents' long term nutritional status.

Comment: A commenter suggested that in § 483.15(d)(4), we replace, "Offer substitutes of similar nutritive value to residents who refuse food served" with, "must provide at least one alternative at every meal." Another commenter suggested that we provide that residents must be consulted in advance in the planning of all menus.

Response: We believe that it is necessary to retain paragraph (d)(4) of § 483.15, as proposed, so that the resident be provided some choice when a personally unacceptable food is served. However, we have moved this provision on food to § 483.35(d), under the Dietary services requirement. We would not want to prescribe how many alternatives the facility must provide because the resident already has the opportunity to request a substitute that serves the same purpose. We believe that it would not be practical for a facility to consult in advance with residents in the planning of all menus, but residents may certainly participate in meal planning through recommendations to their resident group, when one exists.

Comment: A commenter recommended that we add an additional requirement to proposed § 483.15(d) to read, "Where appropriate, have seasonings, condiments and beverages available for residents."

Response: We believe this recommendation is too prescriptive. We believe that, generally, facilities would be receptive to reasonable requests from residents as long as the items requested are not medically contraindicated, but that facilities should be allowed to determine what items are available.

Comment: A commenter suggested the addition of the following requirement on dining areas: "Dining areas should be clean, comfortable and attractive, and there should be sufficient staff to assist residents and promote independence in living. Assistive devices should be available and utilized to promote independence in living."

Response: We believe it is redundant to add a provision on dining areas under this requirement since this already is addressed in the physical environment requirement at § 483.70(g), Dining and resident activities. Section 483.70(g) provides that the facility must provide one or more rooms designated for resident dining, and paragraph (h) provides that a facility must provide a functional, sanitary and comfortable environment for residents. We are making a change in § 483.35 under the dietary services requirement. We are adding a new paragraph (b), Sufficient staff, that requires that the facility employ sufficient support personnel competent to carry out the functions of the dietary service. Assistive devices, addressed in the NPRM at § 483.35(e), Assistive devices, has been redesignated as § 483.35(g) in this final rule, and provides that the facility must provide special eating equipment and utensils for residents who need them.

Paragraph (e): Activities

Proposed § 483.15(e) provides that the facility must provide for an ongoing program of activities appropriate to residents' needs and interests designed to promote opportunities for engaging in normal pursuits, including religious activities of their choice. The current requirement at § 405.1131 (Patient Activities) requires the facility to provide an ongoing activity program appropriate to the needs and interests of each patient and approved as not in conflict with the plan of treatment. It designates a member of the facility's staff as responsible for the activities program, who, if not a qualified patient activities coordinator, functions with frequent regularly scheduled consultation from a person so qualified.

Comment: The majority of commenters opposed the proposal to delete the current requirement that a professionally qualified individual be responsible for the activities program, or requested retention of the current requirement at § 405.1131. Commenters recommended that we delineate qualifications for this individual to be included within the staffing qualifications at § 483.75(k)(2), and suggested including therapeutic recreation specialists, therapeutic recreation assistants, and occupational therapists, or occupational therapist assistants. Many of these commenters also wanted to add another category—a person who has attained or who is eligible to attain certification from the National Certification Council for Activity Professionals. They reasoned that a professionally qualified individual should be responsible for the direction of the activities program, which is vital to the life of the residents in a long term care facility. They expressed particular concern about the present activities provision being lowered from an A-level to a B-level requirement as they believed this significantly diminishes the importance of the activities program. Many of them noted that, although volunteers are important to these programs, they did not believe that volunteers should be used in lieu of a trained staff, nor could volunteers be effective without the leadership of a qualified activity director.

Response: In accordance with IoM's recommendation, and in recognition of the importance of resident's sense of life satisfaction, we created a new requirement on Quality of Life, which includes a provision on activities. Since activities has a strong relationship to the quality of life, we believe it is important that it remain as a part of this requirement. Also, based upon OBRA '87 provisions, we are requiring an on-going program of activities, directed by a qualified professional, designed to meet the interests and the physical, mental, and psychological well-being of each resident. In doing so, we are accommodating the overwhelming number of commenters who objected to the deletion of the patient activities coordinator and the qualifications for this individual found in current regulations at § 405.1101(o). We are providing that an activities program must be directed by a qualified professional who:

- Is a qualified therapeutic recreation specialist, licensed or registered, if applicable, by the State in which practicing, and eligible for certification as a therapeutic recreation specialist by a recognized accrediting body; or
- Has 2 years of experience in a social or recreational program within the last 5 years, 1 of which was full-time in a patient activities program in a health care setting; or
- Is a qualified occupational therapist or occupational therapy assistant.

Any organization which alleges competency as an accrediting body for this discipline may ask the Secretary for recognition in this regard.

Comment: Many of the commenters who requested that we retain the current requirement at § 405.1131, recommended adding another to it which would contain three types of therapeutic activities:

- Supportive-activities that provide stimulation or solace to residents who cannot generally benefit from either maintenance or empowerment activities, as defined below;
- Maintenance-activities that provide a schedule of events that promote physical, cognitive, social and emotional health; and
- Empowerment-activities that promote increased self-respect by providing opportunities for self-expression, personal responsibility and choice.

Response: We agree that these objectives are sound and should be a part of any activities program. However,

we do not believe they need to be a necessary part of a regulation. As a guide to our surveyors, we will present this material in the interpretive guidelines.

Summary of Changes to § 483.15

In summary, the changes we are making to § 483.15 are as follows: We are:

- Deleting proposed paragraph (c), Choice;
- Relocating paragraph (d), Food, to Dietary services § 483.35(d);
- Including in paragraph (f), Activities, qualifications for an activities professional to direct the activities program;
- Adding social services as new paragraph (g), having relocated the content from proposed § 483.50; and
- Revising requirements included in paragraph (h), Environmental quality of life.

Section 483.20 Resident Assessment Requirement

In § 483.20, we proposed that a facility must conduct initially and periodically thereafter a comprehensive, accurate assessment of each resident's medical, functional and psychosocial needs.

Comment: Summarized below are the major issues and concerns raised by commenters:

Time frames—Some commenters believe that the requirement that a facility complete a preliminary assessment within 48 hours of admission and a comprehensive assessment within 14 days was insufficient time; others thought the time allowed was too long.

Preliminary assessment—Commenters thought—

- The assessment should be completed by a nurse;
- It is unrealistic to require a physician to come to a facility to complete a medical evaluation at the time of admission;
- Preliminary assessments are duplicative of other assessments;
- Rehabilitation potential should be evaluated not only by a physician at the preliminary assessment but by an interdisciplinary team;
- When a resident is admitted to a facility, there should be admission orders by the attending physician, which address medications, treatment and diet.

Comprehensive assessment—Commenters stated—

- Dietitians should be part of the assessment team;
- Assessments for ICF residents should not be as extensive as for SNF residents;
- We should define "significant change requiring a reevaluation of the comprehensive assessment" in § 483.20(b)(2)(ii);
- We should institute a standard, uniform resident assessment instrument;
- In the comprehensive assessment, we should include dental condition, activities potential, rehabilitation potential, drug therapy, and cognitive status.

Accuracy of assessments—Commenters recommended that we delete the requirement that assessments be an accurate representation of a resident's status.

Comprehensive care plans—Commenters recommended that comprehensive care plans be developed by an interdisciplinary team.

Response: Timeframes: Although several commenters suggested that 14 days to complete the first comprehensive assessment is far too long, there was no clear mandate from commenters regarding the timeframe. We therefore are leaving the timeframe in the final rule at 14 days. Section 1919(b)(3)(C) of the Act, as added by OBRA '87, establishing a 4-day period for completion of the assessment, effective October 1, 1990, which we are implementing in § 483.20(b)(4)(ii). Until October 1, 1990, in § 483.20(b)(4)(i), we are requiring an assessment no later than 14 days after the date of admission, which allows providers a transition period in which to gradually move toward the shorter timeframe.

Since the comprehensive assessment must be completed within 4 days of admission, effective October 1, 1990, we are not making final the proposed requirement that within 40 hours of admission, a facility must complete a preliminary assessment of each resident.

Preliminary assessment: Based on our evaluation of comments, we are revising the final rule to include the following:

- We are adding the requirement that at the time each resident is admitted, the facility must have physician orders for the resident's immediate care. This appears as a new paragraph (a), Admission orders, under this requirement and was proposed at § 483.20(a)(1).
- We are eliminating the requirement for a preliminary assessment. In the NPRM, we did not designate specific facility personnel to perform the assessment.
- The need to assess rehabilitation potential has been placed under the comprehensive assessment, which is completed by an interdisciplinary team including a physician.

Comprehensive assessment: We respond to commenters concerns as follows:

- We agree with commenters that the comprehensive assessment should also include dental condition, activities potential, rehabilitation potential and cognitive status, and drug therapy and are modifying requirements accordingly.
- Consistent with comments, we are requiring that a comprehensive care plan be prepared by appropriate health professionals. Beginning October 1, 1990, each assessment must be conducted or coordinated by a registered nurse who signs and certifies the completion of the assessment.
- Consistent with the proposed rule at § 483.20(b)(2)(i) and section 1919(b)(3)(C)(ii) of the Act, we are retaining the requirement that facilities review the resident no less frequently than once every 3 months, and promptly after a significant change in the resident's physical or mental condition to assure the continuing accuracy of the assessment.
- We will develop an operational definition of "significant changes" requiring a review of the resident as part of constructing the resident assessment instrument and guidelines for its use prior to the effective implementation date of October 1, 1990.
- Effective October 1, 1990, section 1919(b)(3)(E) of the Act, as added by OBRA 1987, provides that assessments should be coordinated with State-required preadmission screening programs to the maximum extent practicable to avoid duplicative testing.
- In accordance with section 1919(f)(6) of the Act, added by OBRA 1987, the Secretary must specify a minimum data set of core elements and common definitions for facilities to use in conducting comprehensive assessments by January 1, 1989. Further OBRA 1987 requires the Secretary to designate one or more resident assessment instruments for conducting the assessments based on the minimum data set by April 1, 1990. By July 1, 1990, States must designate the resident assessment instrument facilities must use; either the assessment instrument developed by the Secretary or one that has been approved by the Secretary as including the minimum data set.
- In accordance with section 1919(b)(3)(F) of the Act, we are requiring that a facility not admit, on or after January 1, 1989, an individual with mental illness or mental retardation unless the individual requires the level of services provided by the nursing facility.

In place of the NPRM's requirement that assessments be an accurate representation of a resident's status, we are requiring that each individual who

completes a portion of the assessment must sign and certify the accuracy of that portion of the assessment.

Summary of Revisions to § 483.20

In addition to technical revisions, we are making the following changes to § 483.20.

- In § 483.20, we are adding a new paragraph (a), Admission orders, to require that the facility have physician orders for the resident's immediate care when a resident is admitted.
- We are eliminating the proposed requirement that a preliminary assessment be conducted within 48 hours of admission.
- In paragraph (b), Comprehensive assessments, we are requiring that each assessment must be conducted or coordinated with the appropriate participation of health professionals, and effective October 1, 1990, by a registered nurse who conducts or coordinates the completion of the assessment.
- In paragraph (b), we are including dental condition, activities and rehabilitation potential, drug therapy, and cognitive status among the required elements of a comprehensive assessment.
- In paragraph (c), Accuracy of assessments, we require that each individual who completes a portion of the assessment must sign and certify the accuracy of that portion of the assessment.
- In paragraph (d), Comprehensive care plans, we require that the comprehensive care plan be prepared by an interdisciplinary team which after October 1, 1990 includes the resident, the resident's family or legal representative, a physician, a registered nurse, and other staff in disciplines determined by the resident's needs.
- In new paragraph (f), Requirements relating to preadmission screening for mentally ill and mentally retarded individuals, we provide that, on or after January 1, 1989, a facility must not admit an individual with mental illness or mental retardation unless the State mental health authority or the State mental retardation or developmental disability authority has determined that the individual requires the level of care furnished by the facility.

Section 483.25 Quality of care requirement

In § 483.25, we proposed that each resident must receive the necessary nursing, medical and psychosocial services to attain and maintain the highest possible mental and physical functional status, as defined by the comprehensive assessment and plan of care.

Comment: Commenters—

- Objected to the regulation's purpose of removing structural requirements in favor of outcome requirements; and
- Recommended that the quality of care and quality of life provisions be incorporated into, for example, nursing, physician, dietary, requirements, which would eliminate unnecessary duplication of deficiencies and cross referencing.

Response: We have considered these comments and, in this final rule, we are restoring some structure and process requirements. Specifically, we are reinstating qualifications for dietitians, social workers, and activities coordinators. We recognize that overlap exists between the quality of care and medical and nursing requirements. We have intentionally shifted emphasis on certain resident outcomes that are included in the quality of care requirement, even though those resident outcomes could fit into a specific medical or nursing area. However, the resident outcome provisions are not duplicative and only appear in the quality of care requirement.

Comment: We proposed a number of requirements that hold the facility responsible for "ensuring" that residents receive the proper care and treatment and do not decline "unless reasonable justification is documented." Most of the comments on this section concerned the phrase "the facility must ensure." Commenters emphasized that a facility cannot control or be responsible for all variables surrounding the deterioration or diminished capacity of residents. Twenty commenters objected to the phrase, "reasonable justification is documented," because the proposed regulation does not make it clear who will provide the documentation, documentation is no substitute for care, and the heavy emphasis on documentation is already a problem area and goes against the intent of the regulation to look at patient outcomes.

Response: We recognize that a facility cannot ensure that the treatment and services will result in a positive outcome since outcomes can depend on many factors, including a resident's cooperation (i.e., the right to refuse treatment), and disease processes. However, we believe that it is reasonable to require the facility to ensure that "treatment and services" are provided, since the basic purpose for residents being in the facility is for "treatment and services" and that is why the Medicare or Medicaid program makes payment on the residents' behalf. We also think it is reasonable to require the facility to ensure that the resident does not deteriorate within the confines of a resident's right to refuse treatment and within the confines of recognized pathology and the normal aging process. We are restating the opening statement of this requirement to reflect this emphasis.

We agree with the commenters that the terminology, "unless reasonable justification is documented," could result in a focus on paperwork instead of the resident. Therefore, we have replaced that language in the several places where it was proposed (§ 483.25(a)(1), (c)(1), (f)(1), (g)(1), and (h)(2)) with, "unless the individual's clinical condition demonstrates that" the resident care outcome (e.g., pressure sore) was "unavoidable." This wording will permit the facility to direct surveyor attention to any evidence (the resident or the resident's clinical record) in order to show that a negative resident care outcome was unavoidable.

Paragraph (a): Activities of Daily Living

We proposed that a resident's ability to ambulate, dress, feed, groom, bathe, toilet, transfer (i.e., from bed to chair) does not diminish unless reasonable justification is documented.

Comment: Comments are summarized as follows:

- Commenters asked that each of the resident's activities be broken out as separate statements since activities of daily living require different interventions to maintain an appropriate level of functioning.
- One commenter asked that foot care be included in § 483.25, since foot care is a concern for the resident population and residents should be afforded the same access to care as for vision and hearing.

Response: Summary of responses:

- We have decided to break out the activities of daily living to accommodate commenters, and we are including the ability to use speech, language, or other functional communication systems; and
- We have added podiatric care to the list of special needs in § 483.25(k);

Paragraph (b): Vision and Hearing

We proposed that a facility must, if necessary, assist the resident in making appointments and arranging for transportation to and from a medical practitioner specializing in the treatment of vision and hearing impairments or vision or hearing assistive devices.

Comment: Several commenters wanted assurance that staff time and transportation is paid for under the Medicaid and Medicare programs. Commenters argued that making

appointments and arranging transportation will not assure residents proper assistive devices since many of the residents have no means to pay for such devices. This provision will only assure that the residents are assessed.

Response: The intent of this provision is to require a facility to assist residents in gaining access to vision and hearing services by making appointments and arranging for transportation. In accordance with section 1902(a)(13)(A) of the Act, States are required to provide reasonable and adequate reimbursement to meet the costs incurred in order to provide care and services in conformity with State and Federal laws and regulations. Thus making appointments and providing transportation to obtain vision and hearing services are among the services the rates must be designed to cover. These costs should be included in a facility's reimbursement rate. Vision, dental and hearing assistive devices are optional Medicaid benefits, which are covered by some, but not all jurisdictions. Based on a recent survey of Medicaid services, 75 percent of all jurisdictions provide dental services, 84 percent provide for eyeglasses, and 59 percent cover speech, hearing and language disorders.

Paragraph (c): Decubitus Ulcers (Pressure Sores)

We proposed at § 483.25(c) that a facility must ensure that a resident entering a facility without decubitus ulcers does not develop decubitus ulcers unless a physician certifies they were not reasonably avoidable, and a resident having decubitus ulcers receives necessary treatment and services to promote healing, prevent infection and prevent new uclers from developing.

Comment: A majority of commenters objected to the proposed requirement in § 483.25(c) that a physician certify that decubitus ulcers were not reasonably avoidable, since physicians are not fully aware of the condition and don't consider themselves responsible for documenting and certifying that decubitus ulcers were not reasonably avoidable. Several commenters asked that "medical and nutritional" treatment and services be specified in the regulation for residents having decubitus ulcers. Commenters objected to the term "decubitus ulcers" since it is no longer the accepted nomenclature.

Response: In response to comments regarding the term "decubitus ulcers," we have renamed them and this paragraph "pressure sores." We agree with the comments in regard to a physican certification of unavoidable pressure sores, and have revised § 483.25(c)(1) to specify, "A resident who enters the facility without pressure sores does not develop pressure sores unless the individual's clinical condition demonstrates that pressure sores were unavoidable." The requirement in § 483.25(c)(2) that a resident receive treatment and services include medical, nutritional, or nursing services depending on the circumstances of the resident. Consequently, we have not changed paragraph (c)(2) to include all the possible disciplines that might conceivably have input to these problems.

Paragraph (d): Antipsychotic Drugs

In § 483.25(d) we proposed to require that a physician certify that the use of antipsychotics was necessary to treat a specific condition, and to require that residents who use antipsychotics receive gradual dose reductions, drug holidays and behavioral programming in an effort to discontinue these drugs.

Comment: About 25 commenters expressed views on this proposal. Many wanted a definition of antipsychotic drugs. Others objected because they felt this was a duplication of the basic objective of the drug regimen review requirement of proposed § 483.60(e). A significant number of the commenters objected to the requirement for gradual dose reduction, drug holidays and behavioral programming because such interventions are the prerogative of the physician, or because these interventions are a disservice to residents who need these drugs to control psychotic symptoms.

Response: We have relocated this provision to § 483.25(1), Drug therapy. The term antipsychotic drug includes the drugs from the following chemical classes: phenothiazines, butyrophenones, and thioxanthenes. In addition, the individual drugs loxapine and molindone are included. This group of drugs does not include certain phenothiazines when used in the treatment of nausea, and vomiting or itching. These drugs are commonly used to treat psychotic disorders, and typically induce depressed initiative, decreased affect, disinterest in surroundings, suppression of complex behavior and spontaneous movements, decreased aggressiveness and impulsivity, and decreased psychotic symptoms. These drugs can also cause significant, sometimes irreversible side effects such as involuntary movements of the eyes, face, mouth, tongue, toes, as well as a shuffling gait, and tremors at rest.

With regard to the commenters that thought the drug regimen review requirement should adequately address the problem of inappropriate antipsychotic drug use, we point out that the drug regimen review cannot modify the fundamental diagnosis made by the physician upon which antipsychotic drug use is predicated. Certain authors estimate that a significant number of the elderly in nursing homes are improperly labeled as having organic brain syndrome or senile dementia of the Alzheimers type and many of these residents are treated with antipsychotics. Fundamentally, this is why we have modified the final rule by deleting the requirement that a "physician certify" that a resident needs these drugs for a specific condition. Instead, the regulations simply require that antipsychotic drugs are not given to residents "unless they are necessary to treat a specific condition." Enforcement of this requirement will rely primarily on the determination of the State mental health authority as to whether the resident is mentally ill and in need of active treatment. If the resident does not need active treatment for a mental illness, the long term use of antipsychotics will be viewed with considerable skepticism. Section 1919(b)(3)(F)(i), added by OBRA '87, requires that a determination be made on each resident as to whether he or she is mentally ill and in need of active treatment for that mental illness. The decision to use an antipsychotic drug will still be the prerogative of the individual physician but he or she will be aided by the judgment of experts in the field of mental illness in the diagnostic decision. With regard to those commenters who wanted to apply the provision to a broader category of psychopharmacologic drugs, we cannot agree. The term psychopharmacologic drugs includes antidepressants and antianxiety drugs that do not have the significant side effects of antipsychotic drugs.

Paragraph (e): Urinary Incontinence

We proposed at § 483.25(e) that a facility ensure that a resident who is incontinent of bladder receive the appropriate treatment and services to restore normal bladder functioning; a resident is not catheterized unless ordered by a physician; and a resident who uses a urinary catheter receives appropriate treatment to prevent infections.

Comment: Commenters questioned the need for a physician to certify the medical necessity of a urinary catheter since in most States a urinary catheter cannot be used unless ordered by a physician. Several other commenters

asked that this provision stipulate that restoration of normal bladder function be related to each resident's potential since not all residents will be able to completely restore bladder function. Finally, commenters suggested that the provision require that the resident grant informed consent before the facility uses a urinary catheter.

Response: We concur with comments concerning physician certification and have removed this requirement from § 483.25(e) (redesignated as paragraph (d)). However, we note that unlike other quality of care requirements, this provision does not emphasize discouraging the use of urinary catheters if the resident is not catheterized at the time of admission. Thus, in accordance with changes made in other quality of care requirements, we are revising new paragraph (d) to read, "a resident who enters the facility without a urinary catheter is not catheterized unless the resident's clinical condition demonstrates that catheterization was necessary." We have added the phrase, "to restore as much normal bladder function as possible," to § 483.25(d)(3) to address commenters' concerns regarding the difficulty in restoring total bladder function. We believe the issue of a resident's informed consent for a urinary catheter is addressed in the resident rights requirement at §483.10(b)(3), which establishes the resident's right to be informed of his or her medical condition and, in paragraph (b)(4), the right to refuse treatment.

Paragraph (f): Contractures (Range of Motion)

§ 483.25(f), we proposed that a facility must ensure that a resident who enters a facility without contractures does not experience an unpredictable reduction in range of motion without justifiable cause, and a resident with contractures receives appropriate treatment to increase range of motion and prevent further decrease in range of motion.

Comment: Six commenters suggested rewording paragraph (f)(2) as follows: "A resident who has contractures receives treatment and services consistent with professional nursing standards and designed to increase range of motion or to maintain existing range of motion." The commenters believe that this rewording is clearer, more positive and recognizes that a facility will not be able to maintain or increase range of motion on every resident who has contractures. Three commenters asked that a more specific definition of "contractures" be included in this provision and asked if arthritis could be considered a contracture if a reduction in range of motion occurs.

Response: Because we believe that appropriate treatment encompasses both professional nursing standards and physical therapy principles, we do not wish to narrow this concept to nursing standards only. We have renamed this provision, Range of motion, as it more accurately reflects the subject matter, and redesignated it as § 483.25(e). We are including in it any condition leading to a reduction in a resident's "range of motion," thereby eliminating the need to define "contracture."

Paragraph (g): Psychosocial Functioning

We proposed that a facility must ensure that a resident who displays psychosocial adjustment difficulty receives appropriate treatment and services to achieve remotivation and reorientation, and a resident whose assessment did not reveal a psychosocial adjustment difficulty does not display a pattern of decreased social interaction or increased withdrawn, angry or depressive behavior without justifiable cause.

Comment: Six commenters opposed the requirement to achieve "remotivation and reorientation". Some commenters suggested that we rephrase § 483.25(g)(1) to specify that a resident who displays psychosocial adjustment difficulty, receives appropriate treatment and services "if possible," to achieve remotivation and reorientation. Other commenters recommended adding the phrase, "as indicated by the plan of care." Still other commenters believed that reality orientation and remotivation are not appropriate for all residents and that the plan of care, not the regulation, should state what each resident should achieve.

Response: We agree with commenters and recognize that not all patients will achieve remotivation and reorientation.

Therefore, we have added "as possible" to paragraph (1) of this provision, now redesignated as § 483.25(f). As with all other provisions in this requirement, we have deleted from new § 483.25(f)(2) the phrase "unless reasonable justification is documented" and replaced it with "unless the resident's clinical condition demonstrates that such a pattern was unavoidable."

Paragraph (h): Naso-Gastric Tubes

We proposed that a facility must ensure that a resident who has been able to feed or partially feed himself or herself is not fed by naso-gastric tube unless reasonable justification is documented, and receives appropriate treatment and services to prevent complications and to restore normal feeding function.

Comment: Five commenters asserted that, in § 483.25(h), many of the conditions requiring the use of naso-gastric tubes are conditions that are not reversible. Three commenters suggested that the title of the provision be changed to "Special Feeding Techniques" since naso-gastric tubes are not the only enteral feeding tubes being used in facilities. Nine commenters objected to the narrow definition of complications and one commenter asked that pneumonia be specified as aspiration pneumonia. Seven commenters suggested that "medical, nursing and nutritional" be used to modify "treatment and services" for residents with naso-gastric tubes.

Response: We agree that not all residents may have restorative potential and we are revising paragraph (h), (now redesignated as § 435.25(g)) at paragraph (g)(2) to provide that a resident who is fed by nasogastric tube receives the "appropriate treatment and services * * * to restore normal feeding function if possible." We have studied the issue of including other feeding techniques, gastrostomy, and parenteral feeding. Although we agree with commenters that parenteral feeding could be include here, the intent of this provision is to include issues and circumstances that are indicative of abuse. We do not believe that parenteral feeding is a usual sign of neglect or abuse, and consequenlty, have not made any revisions in response to these comments. We agree that aspiration pneumonia is a more accurate term and have included this in § 483.25(g)(2). Finally, we believe that medical, nursing and nutritional practices are implicit when we refer to "treatment and services" for residents with naso-gastric tubes; therefore, no change is needed.

Paragraph (i): Drug Therapy (Unnecessary Drugs)

We proposed that the facility must ensure that each resident's drug regimen is free of unnecessary drugs, unnecessary dose levels, undue adverse consequences, and significant medication errors or significant medication error rates.

Comment: About 20 commenters objected to § 483.25(i). Some wanted us to define "significant" and "unnecessary." A majority objected because the facility could not ensure these outcomes because the physician has ultimate control over drug use. These commenters advocated deleting entirely the provisions relating to unnecessary drugs, unnecessary dose levels, and undue adverse consequences

and suggested moving the provision for medication errors to the pharmacy requirement.

Response: We do not agree that provisions regarding "unnecessary drugs" should be deleted and are redesignating this provision as paragraph (1). Increasing public attention is being focused by the media on the problem of treating behavioral problems with drug therapy, which extinguishes normal affect in the resident and causes undue adverse consequences to the extent that additional nursing staff is necessary to provide care. For example, excessive use of psychoactive drugs can cause a resident to become bedfast or chairfast and become more subject to pressure sores and contractures.

"Unnecessary drugs" are drugs that are given in excessive doses, for excessive periods of time, without adequate monitoring, or in the absence of a diagnosis or reason for the drug. An unnecessary drug is a drug for which monitoring data, or undue adverse consequences indicate that the drug should be reduced or discontinued entirely. An unnecessary drug is also one which is prescribed only in anticipation of an adverse consequence of another prescribed drug.

We are deleting the requirement that the resident's drug regimen remain free of unnecessary dose levels and undue adverse consequences, since we are defining unnecessary drugs in terms of these factors.

Paragraph (j): Accidents.

There were no comments on this proposed provision. It is being redesignated as § 483.25(h) due to removal of prior provisions.

Paragraph (k): Nutrition

We proposed that a facility must ensure that a resident does not lose weight after entering the facility without justifiable cause and receives a special therapeutic diet when there is a nutritional problem.

Comment: Twenty seven respondents commented on the weight loss requirement in § 483.25(k). Several commenters suggested changing the requirement to include measurable parameters of nutritional status with weight being one indicator. Other commenters recommended that the weight standard be based on a 10% loss of body weight within six months or less. The majority of commenters asked that, based on the comprehensive assessment of the resident, the facility ensure the resident's weight is appropriate for age, sex and medical status. Two commenters asked that a sentence be added reflecting a resident's right of refusal to eat or be fed.

Response: We agree with the commenters who suggest that the regulation include other parameters of malnourishment besides weight loss. However, we do not think it would be appropriate to list all these parameters in a regulation. Instead we have modified this provision, now redesignated as § 483.25(i), to require the facility to maintain acceptable parameters of nourishment unless the resident's clinical condition demonstrates that this is not possible. Acceptable parameters of nourishment include weight loss as well as other indices such as clinical signs and symptoms of malnourishment and laboratory tests indicating malnourishment (e.g., serum albumin levels). We do not anticipate that there will be many circumstances in which the facility could allege that the maintenance of nutritional parameters was not possible. The resident's right to refuse to eat or to be fed is included under right to refuse treatment in § 483.10(b)(4).

Comments: Two commenters asked that we add to the opening paragraph of § 483.25(k), a statement that facility action is "based on the comprehensive assessment of a resident."

Response: We agree that the nutrition provision must be based on a comprehensive assessment and have revised it as the commenters suggested.

Paragraph (l): Dehydration (Hydration)

We proposed that the facility must ensure that each resident is provided with sufficient fluid intake and electrolytes to maintain proper hydration and health.

Comments: The majority of commenters addressing this provision questioned the inclusion of electrolytes.

Responses: We did not intend to imply that replacing electrolytes is a medical intervention. We have deleted "electrolytes" from the provision redesignated as § 483.25(j) and refer only to sufficient fluid intake, to make our intent clearer. We are also changing the title of the provision to "hydration" as suggested by commenters. The rights of a resident to refuse treatment is addressed in § 483.10(b)(4).

Paragraph (m): Special Needs

We proposed that a facility must ensure that residents receive proper treatment and care for the following special needs: injections; parenteral fluids, colostomy or ileostomy care; tracheostomy care; tracheal suctioning, and respiratory therapy.

Commenters: Five commenters wanted the paragraph rewritten to reflect the fact that the facility must provide proper treatment and care when it accepts residents having those special care needs. The commenters believed that this is necessary since the intent of the proposal is not to require all nursing homes to provide all services.

Response: This provision does not require that facilities admit residents with these special needs. Therefore, we believe there is no need for this change. However, we must emphasize that a facility may not discriminate against handicapped individuals as defined by section 504 of the Rehabilitation Act of 1973.

Comment: Several commenters suggested that we add podiatric care to the list of special needs.

Response: We are adding podiatric care to the list of special needs in redesignated paragraph (k).

Paragraph (n): Staff Treatment of Residents

We proposed that a facility must develop and implement written policies and procedures that prohibit mistreatment, neglect or abuse of residents.

Comments: Commenters asked that § 483.24(n) include requirements for training of facility staff to make them aware of their responsibilities and orient them to the policies and procedures regarding mistreatment of residents. Commenters suggested deleting the introductory paragraph and paragraph (1), and moving the remainder to the administration requirement. Still other commenters stated this provision was unnecessary since it is covered under the resident's bill of rights and State abuse laws.

Response: We will implement nursing aide training in October 1990 as required by section 4211 of OBRA '87, and this will include abuse and neglect issues. We agree that the residents' bill of rights establishes the rights of residents. This provision directs the staff behavior to assure that those rights are enforced. As part of our effort to restructure these regulations logically, we are relocating this provision to § 483.13(c), Resident behavior and facility practices.

Note: Section 483.13(c)(2) requires the facility to investigate all alleged violations of abuse, mistreatment, neglect and injuries of unknown source and report the results of this investigation to the administrator or other officials.

We invite comment on the advisability of and additional provisions that would require the facility to report any convictions growing out of such investigations to the Office of Inspector General for possible exclusion

action in accordance with regulations at 42 CFR Part 1001.

Summary of Changes to § 483.25

In summary, the major changes we are making to § 483.25 as proposed are as follows:

- In the opening statement, we are replacing the phrase, "highest possible mental and physical functional status" with "highest practicable physical, mental and psychosocial well being";
- In renamed paragraph (c), Pressure sores, we are replacing the term "decubitus ulcers" with "pressure sores," and removing the requirement that the physician certify that pressure sores were reasonably avoidable;
- We are retaining the substance of paragraph (d), Antipsychotic drugs, but relocating it to paragraph (1), Drug therapy;
- We are redesignating proposed paragraph (e), Urinary incontinence, as (d), linking the use of catheters to a resident's comprehensive assessment, and removing the physician certification requirement;
- We are redesignating proposed paragraph (f), Contractures, as paragraph (e), revising the title to "Range of motion," and eliminating the documentation requirement;
- Paragraph (g) Psychosocial functioning, and paragraph (j), Accidents, are redesignated as paragraphs (f) and (h), respectively, with only minor editorial clarifications;
- We are eliminating the documentation requirement in paragraph (h), Nasogastric tubes, redesignating it as paragraph (g), and replacing it with the requirement that clinical conditions demonstrate that use of a nasogastric tube was unavoidable;
- We are redesignating proposed paragraph (i), Drug therapy, as paragraph (l) to include three regulatory requirements—use of unnecessary drugs, use of antipsychotic drugs, and drug administration;
- We are redesignating proposed paragraph (k), Nutrition, as paragraph (i) and replacing reliance on weight loss with reliance on maintaining acceptable parameters of nutritional status;
- We are redesignating paragraph (m), Special needs, as paragraph (k) and adding podiatric care and prosthetics to the special needs for which residents must receive proper treatment; and
- We are relocating proposed paragraph (n), Staff treatment of residents, to § 483.13(c), Resident behavior and facility practices.

Section 483.30 Nursing services requirement

We proposed three alternatives with regard to nursing services. In the first alternative, we proposed to require all facilities to meet 24 hour nurse staffing requirements comparable to those currently required for SNFs, including a registered nurse (RN) on duty on the day shift at least 8 hours a day, 7 days a week. This would be an increase in requirements for ICFs.

In the second alternative, we proposed to retain the current SNF requirements for SNFs, and retain essentially the current, ICF requirements for ICFs. ICFs would be required to have an RN or a licensed practical nurse (LPN) or licensed vocational nurse on duty full time on the day shift, 7 days a week.

In the third alternative, we proposed to adapt the current SNF staffing requirements to both SNFs and ICFs, but provide for a waiver of the requirements when an ICF can provide appropriate nursing care with a lower level of staffing.

We also proposed in all three alternatives that, unless prohibited in writing by the attending physician, the facility may permit each resident to retain his or her drugs at bedside, and self-administer those drugs.

Paragraphs (a) Director of nursing services, (b) Charge nurse, and (c) Sufficient staff.

Comment: Concerning proposed § 483.30(c), dealing with sufficiency of nursing staff, of the commenters that expressed a preference for a specific alternative, the majority favored alternative I, as best meeting the increasingly intensive and complex care needs of the nursing home population. Alternative I would retain essentially the current staffing requirements in SNFs and extend them to ICFs. A significant number of commenters supported Alternative II, which leaves in place the existing requirements in SNFs and ICFs, respectively, as being the most realistic option in view of existing nurse shortages and cost constraints. A small minority of commenters expressed support for Alternative III, but suggested that the waiver period be the period for which the facility is certified, rather than 6 months. A common concern expressed by many of the commenters was that HCFA has not ensured the funding to pay for costly changes such as nurse staffing upgrades that were required in the proposed rule.

Response: Since each of the three nurse staffing alternatives that we proposed would essentially leave unchanged the existing nurse staffing requirements for SNFs, most of the comments on this provision focused on the various proposals' potential effect on facilities that are currently ICFs. We believe that valid points were raised in connection with each of he proposed alternatives. We agree with the commenters who favored alternative I (imposing the current, higher SNF staffing requirements on ICFs), that nurse staffing requirements must take into account the increasingly sophisticated medical needs of ICF residents. However, the advocates of alternative II (retaining the existing ICF staffing requirements) also are correct in pointing out that meeting more stringent nurse staffing requirements may sometimes be difficult for ICFs in view of existing shortages of qualified nursing personnel.

In passing OBRA '87, Congress also considered these factors. It recognized the need for upgraded nurse staffing, by requiring nursing facilities (including those currently licensed as ICFs), effective October 1, 1990, to "* * * provide 24-hour licensed nursing services which are sufficient to meet the nursing needs of its residents * * *" and to "* * * use the services of a registered professional nurse for at least 8 consecutive hours a day, 7 days a week" (section 1919(b)(4)(C)(i) of the Act). At the same time, Congress indicated its intent that certain nursing facilities would be treated differently in terms of nurse staffing requirements, by creating differing waiver provisions relating to nurse staffing for Medicare SNFs and for Medicaid nursing facilities.

Of the three proposed alternatives, we believe that alternative III (which, like alternative I, would impose the current SNF staffing requirements on ICFs, but would also allow for waiver of those requirements under certain circumstances) comes the closest to achieving an acceptable balance between the commenters' two major concerns: upgrading staffing requirements to address residents' increasingly complex medical needs, while making necessary allowances for existing nurse shortages in a manner that does not compromise resident health and safety. However, while some commenters indicated support for the general concept of staffing waivers, they expressed concern about individual aspects of the specific waiver mechanism that was proposed under alternative III. For example, they indicated that the proposed 6 month duration of the waiver should be changed, and suggested that the availability of prompt physician or nurse

response in an emergency should be considered in granting a waiver.

We believe that these commenters' concerns can be addressed by adopting a waiver provision for nursing facilities consistent with the one contained in OBRA '87. This provision contains an annually-reviewed State waiver mechanism under which either the 24-hour licensed nursing requirement or the daily RN requirement (but not both) can be waived for a given nursing facility. In deciding whether to grant (or renew) a waiver, the State must consider such factors as a facility's efforts to recruit appropriate personnel, the health and safety of the facility's residents, and the immediate availability of physician or RN response to a telephone request by the facility. Therefore, we are responding to commenters on the nurse staffing provision by essentially adopting alternative III, with a modification of that alternative's waiver mechanism. This means that we will:

- Retain the existing nurse staffing requirements for SNFs, and apply them to ICFs as well. These requirements include provisions for an RN on the day shift 7 days a week, and an RN or LPN as charge nurse on each tour of duty.
- Retain the existing waiver mechanism for SNFs under Medicare (i.e., under the conditions described in regulations at 42 CFR 405.1911, the daily RN requirement can be waived to the extent that it would require an RN in the SNF for more than 40 hours per week). Until October 1, 1990, this waiver mechanism will also apply to Medicaid SNFs.
- Adopt a waiver mechanism for ICFs, under which either the 24-hour licensed nursing requirement or the daily RN requirement (but not both) can be waived for a given facility. In deciding whether to grant (or renew) a waiver, the State would consider such factors as a facility's efforts to recruit appropriate personnel, the health and safety of its residents, and the immediate availability of physician or RN response to the facility's telephone requests. When the OBRA '87 provisions take effect on October 1, 1990, this waiver mechanism will apply to all Medicaid nursing facilities, including those facilities that previously participated in the program as ICFs or as Medicaid SNFs.

In addition, we are incorporating in the opening statement the OBRA '87 requirement that a facility have sufficient nursing staff to provide nursing services "to attain or maintain the highest practicable physical, mental and psychosocial well-being of each resident."

We have also considered comments which indicated that States would have difficulty obtaining additional funding under Medicaid necessary to pay the cost of additional nurse staffing in intermediate care facilities, and comments that nursing facilities would have difficulty in recruiting nurses on short notice. Accordingly, we have elected to make the new requirements effective on October 1, 1990. Until that date, current SNF and ICF nurse staffing requirements will remain in effect. (We are relocating the SNF requirements in § 405.1124 to new § 483.28, and the ICF requirements in §§ 442.302 and 442.339 to new § 483.29.) On October 1, 1990, the full range of OBRA '87 requirements will take effect. After that date, 24-hour nursing will be required in all facilities. OBRA '87 will simultaneously create a change in the status of facilities with respect to nurse staffing waivers, with Medicare SNFs subject to one set of requirements and Medicaid NFs (regardless of whether they have been ICFs or SNFs) subject to another set of requirements.

Regarding the concern for availability of adequate funding to finance implementation of the upgraded staffing requirements, we note that section 1902(a)(13) of the Act currently requires State Medicaid agencies to use payment rates that are "* * * reasonable and adequate to meet the costs which must be incurred by efficiently and economically operated facilities in order to provide care and services in conformity with applicable State and Federal laws, regulations, and quality and safety standards * * *" We believe that this provision requires that States reasonably reflect the cost of the mandated staffing upgrades in their ICF payment rates when they become effective. Congress has reinforced this requirement in section 4211(b) of OBRA '87 by adding a provision specifically directed at payment for nursing facility services, effective for fiscal years beginning on or after October 1, 1990. Under this provision, a State must submit for the Secretary's approval a State plan amendment for each fiscal year, specifically establishing the appropriateness of its payment rates for nursing facility services.

Comment: Most commenters expressed support for requiring 24-hour nursing coverage by RNs; others recommended 24-hour coverage by licensed personnel. Commenters indicated that since the implementation of diagnosis related group (DRG) payments in hospitals, nursing home residents tend to be discharged from hospitals sooner, and require a higher level of care. Under these circumstances, they argue, merely requiring 24-hour coverage by LPNs and unspecified "other" personnel, as proposed in our three nurse staffing alternatives, is inadequate. Other commenters suggested that the requirement be clarified by requiring 24-hour coverage by nurses and other nursing personnel.

Response: While we recognize that the intensity of nursing home residents' care needs have generally increased in recent years, we believe that requiring 24-hour RN coverage may not be feasible in view of the existing nurse shortage. However, we note that Congress in section 4211 of OBRA '87, has attempted to address this concern by requiring 24-hour coverage by licensed personnel in long-term care facilities. We believe that the OBRA provision represents an acceptable balance between the commenters' requests for upgraded nursing staff requirements and the current availability of nursing personnel and, therefore, we are incorprating it in these final regulations in § 483.30(a).

Comment: Three commenters noted that actual, hands-on care is furnished primarily by nurse aides rather than by RNs or LPNs. One suggested that the regulations specify aide-patient ratios rather than nurse-patient ratios.

Response: As noted above, we are amending the regulations to clarify that the requirement in § 483.30(a) for sufficient staff refers to licensed nurses and other nursing personnel, which includes nurse aides. We prefer not to rely on nurse-resident ratios because the number and skills of nursing staff depend on the severity of the residents' condition. The severity or case-mix of the resident population is a much better determinant of sufficiency of nursing staff.

Comment: Eighteen commenters indicated that we should require in paragraph (a), Director of nursing services, that an RN serve as the director of nursing (DON) in ICFs as well as SNFs. Another commenter suggested that the regulations require a DON in the ICF seven days a week. One commenter expressed support for allowing an LPN to serve as the DON in an ICF.

Response: In response to the comments, we are restructuring § 483.30, and in new paragraph (b), we require that facilities designate an RN to serve as the DON in NFs and have a full time DON. We expect that the DON would act as a manager of the nursing staff; and envision that in all instances the DON can also serve as the RN on the

day shift at least 5 of the 7 days per week.

Comment: In proposed § 483.30(b), which allows a DON to serve as charge nurse in small facilities, one commenter supported this provision as proposed. Others suggested that it be modified to incorporate a waiver mechanism, or to reflect such factors as the level of care that residents require or the facility's past compliance with the quality of care and quality of life requirements. Still others opposed allowing the DON to function as a charge nurse at all.

Response: We are retaining this requirement as proposed, redesignated as § 483.30(b)(3) in this final rule, because we believe that the necessity for facilities to comply with quality of care and sufficency of nursing staff requirements that are in these regulations should be enough to ensure that this provision is not used in inappropriate situations.

Comment: Some commenters stressed that nurse staffing waivers should not be granted unless a facility is in compliance with the requirements for quality of life and quality of care, as determined by the previous survey. Another commenter argued that emphasis should be placed on eliminating the nurse shortage, rather than accommodating it by scaling back facility standards through waivers.

Response: We believe that these concerns are adequately addressed by the waiver mechanism contained in section 4211 of OBRA '87 which, in part, precludes a State from granting a nurse staffing waiver unless it determines that the nursing facility has made diligent efforts to recruit appropriate personnel, and that the waiver will not endanger the health or safety of individuals staying in the facility. Therefore, we are including the OBRA '87 provision on nurse staffing waivers.

Paragraph (d): Self-Administration of Drugs

The proposed rule, at § 483.30(d), would allow residents to self-administer drugs without a physician's authorization as long as they could securely store these drugs and maintain a record of administration.

Comment: The majority of those who commented on this provision opposed it, maintaining that the vast majority of residents in nursing homes were not mentally or physically capable of drug self-administration. They also maintained that this practice would be dangerous because residents would be too free to take each others' drugs and the staff would have more opportunity to pilfer drugs from residents. Other commenters were concerned because the proposed regulation would require a physician to document why each resident could not self-administer drugs. Assuming that most residents are incapable of this task, the documentation by physicians would result in a large paperwork burden. Of the commenters that supported the concept, many said that safeguards must be in place, such as physician authorizations, nurse supervision and facility oversight of storage and recordkeeping.

Response: The commenters point out some very special problems with allowing residents to self-medicate, but we remain committed to the principle of allowing residents as much independence and self-control as possible.

As a consequence, we have revised proposed § 483.30(e) to preserve the right of residents to self-administer drugs. This right may only be withdrawn by the facility's interdisciplinary team, and may only be withdrawn on a case by case basis when self-administration is considered unsafe for the particular resident or other residents.

If a drug self-administering resident makes an error in drug administration, the facility should reassess that resident's capability. We will instruct our State agency surveyors who detect such errors that this should not count against the facility as a medication error, but calls into question the judgment made by the facility in allowing self-administration for that resident.

As noted above, we have placed § 483.30(e) under the revised Resident rights requirement, § 483.10(o), Self administration of drugs.

Summary of Changes to § 483.30

The major changes to § 483.30 are as follows:

- We are adding and reorganizing material to improve clarity;
- In paragraph (a), Sufficient staff (redesignated from proposed (c)), we adopt the proposed requirement that a facility provide services by a sufficient number of licensed nurses and other personnel on a 24-hour basis. We also require in paragraph (b) that, except when waived under paragraph (c), a facility must designate a licensed nurse to serve as charge nurse;
- In new paragraph (b), Registered nurse, we provide that, unless waived under paragraph (c) or (d), a facility must use the services of a registered nurse at least 8 hours a day, 7 days a week. Except when waived under paragraph (c) or (d), a facility must designate a registered nurse to serve as director of nursing on a full time basis; and the director of nursing may serve as charge nurse only when the facility has an average occupancy of 60 or fewer residents;
- In new paragraph (c), Nursing facilities: Waiver of requirement to provide licensed nurses on a 24-hour basis, we provide for waiver of the requirement that a facility provide a registered nurse for at least 8 hours a day, 7 days a week, or licensed nurses on a 24-hour basis;
- In new paragraph (d), SNFs: Waiver of the requirement to provide services of a registered nurse for more than 40 hours a week, we provide for waiver of the requirement to provide services of a registered nurse for more than 40 hours a week;
- The proposed paragraph (d), Drug administration, has been placed at § 483.10(o), Self-administration of drugs. We are providing that a facility must permit residents to Self-administer a drug when the facility determines, in accordance with the comprehensive assessment, that a resident is a good candidate, when the resident demonstrates that he or she can securely store, safely administer and accurately record the administration of drugs, and the facility reassesses the resident's ability to self-administer drugs at least every 3 months.
- Also at § 483.60(a)(2), we provide that the facility may permit unlicensed personnel to administer drugs if State law permits, but only under the general supervision of a licensed nurse.

§ 483.35 Dietary Services Requirement

In § 483.35, we proposed that a facility must provide each resident with a nourishing, palatable, well-balanced diet including modified and specially prescribed diets.

Paragraph (a): Staff Qualifications

Comment: Comments on staff qualifications are summarized below. Commenters—

- Objected to the absence of qualifications for the individual responsible for food management or nutrition, and suggested that we specify qualifications for dietitians and dietary supervisors.
- Urged us to maintain existing regulatory requirements at § 405.1125(a) applicable to a skilled nursing facility. These requirements are that the facility maintain a full-time qualified dietetic service supervisor, who, if not a registered dietitian, functions with frequent, regularly scheduled consultation from a person so qualified;
- Requested that we define dietitian and dietary service supervisor under the

proposed staffing qualifications provision at § 483.75(k);

• Stated the belief that only a qualified dietitian can ensure an adequate diet for residents in these facilities;

• Asserted that, with shorter average hospital stays under the prospective payment system, residents entering nursing homes require greater care and have more complicated dietary needs;

• Suggested adding a requirement that the facility employ sufficient support personnel competent to carry out the functions of the dietetic service and require that food service personnel be on duty daily over a period of 12 or more hours, as specified in existing § 405.1125(a).

Response: The Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–360, which clarifies the intent of sections 4201 and 4211 of OBRA '87, stated that the Secretary must ensure that the requirements for dietary services be at least as stringent as those in effect prior to OBRA '87. (Conference Report on the Medicare Catastrophic Coverage Act of 1988. H.R. Rep. 100–661, 100th Congress, 2nd Sess., page 269.) As a result of this, and the significant adverse response to the dietary staffing proposal, we are providing in paragraph (a) that the facility must employ a qualified dietitian on a full-time, part-time, or consultant basis. We are eliminating professional qualifications and credential requirements from the administration requirement, § 483.75(k), and instead, at § 483.35(a), we are providing that a qualified dietitian is one who is eligible for registration by the Commission on Dietetic Registration of the American Dietitic Association, or who is qualified on the basis of education, training, or experience in identification of dietary needs, planning and implementation of dietary programs.

We agree with the commenters that the sufficient staff requirement should be restored, and we are adding this as a new paragraph (b), Sufficient staff. We did not, however, restore the requirement for personnel to be on duty 12 hours per day. We believe this is basically a process requirement that can inhibit the facility's ability to innovate and manage.

The 14 hour time span between meals requirement in proposed § 483.35(d), Frequency of meals (redesignated as paragraph (f) in this final rule), should be sufficient to guarantee that residents do not go hungry for long periods of time.

Paragraphs (b): Menus and nutritional adequacy; and (c): Therapeutic diets

Comment: In summary, commenters—

• Objected to the requirement that menus must meet the nutritional needs of residents, be prepared in advance and be followed;

• Suggested retention of the language at existing § 405.1125(b), which specifies that menus are planned and followed in accordance with the recommended dietary allowances (i.e., the Four Basic Food Groups) of the Food and Nutrition Board of the National Research Council, National Academy of Sciences. They maintained that there must be a nationally recognized standard to follow in order to maintain cost effectiveness and ensure nutritional adequacy;

• Suggested maintaining menus (with correction of any change) on file for 30–60 days for the purpose of resolving food complaints both for individuals, families and resident groups, as they provide a source of useful documentation when comparing what residents say was served with what the menu stated. A few suggested that the menus be posted in a conspicuous place so the residents as well as visitors could see what is served; and

• Commenters suggested that, in addition to being prescribed by a physician, therapeutic diets should be planned with supervision or consultation from the dietitian; also, the facility should have readily available a current therapeutic diet manual approved by the dietitian.

Response: In response to comments, we are expanding proposed § 483.35(b)(1) to provide that menus must meet the nutritional needs of residents "in accordance with the recommended dietary allowances of the Food and Nutrition Board of the National Research Council, National Academy of Sciences." Since we are relying on the facility to furnish an adequate diet for each resident, we believe that this is an important national standard upon which the facility must rely. This requirement has been redesignated as § 483.35(c)(1).

We consider requirements to maintain a record of menus for a period of 30–60 days or to post meals in advance as overly burdensome on facilities. If the facility wishes to do either, we believe that it should be voluntary and not as the result of a regulation. Perhaps a resident group, if one exists, could work with the facility to bring about this objective if it were mutually agreeable.

Our objective is to focus on the outcome of a physician-prescribed therapeutic diet, and in doing so, avoid specificity in how the facility achieves the outcome. We do not want to prescribe what resources must be used in order to accomplish the physician's diet order, but rather look to the facility to use whatever appropriate resources it deems necessary to implement the therapeutic diet prescribed by the physician. Therefore, we are not making the suggested changes.

Paragraphs (d): Frequency of meals; and (e): Assistive devices

Comment: In summary, commenters—

• Were concerned that the proposed 14 to 16 hour time span between the evening meal and breakfast the following day is too long a period. The alternatives suggested by commenters ranged from a minimum of 12 hours up to a maximum of 15 hours;

• Suggested that we define "snack" to ensure that it is nutritionally adequate to allow an additional 2 hours between the evening meal and breakfast;

• Objected to our requirement that snacks require the physician's permission;

• Suggested that the nursing department, rather than the dietary department, should have primary responsibility for providing special eating equipment and utensils, and assisting residents;

• Suggested that we include requirements that the staff be trained to assist residents in using special eating equipment.

Response: In the frequency of meals provision, redesignated as § 483.35(f) in this final rule, we are retaining the proposed time span of 14 hours between the evening meal and the subsequent morning meal since the commenters' suggestions for changing this provision did not provide a consensus. In response to commenters' concerns, whenever a nourishing snack is served at bed time, we are allowing up to 16 hours between a substantial evening meal and breakfast the following day if agreed to by the resident group.

The comments convince us that, unless it is medically contraindicated, residents should be able to have snacks without a physician's order whenever they choose, and we are deleting the reference to the physician's permission. In revised § 483.35(f)(3), we are requiring that the facility "offer" snacks instead of "serve" snacks because this is more in keeping with our intent to provide a homelike atmosphere, which respects residents' discretion to accept or decline such foods.

The assistive devices requirement, redesignated as § 483.35(g) in this final rule, does not specify the facility staff required to assist residents. We do not believe it is necessary to include such detail in regulation as long as the devices are provided. As noted under § 483.25(a), Activities of Daily Living,

based on the comprehensive assessment of the resident, the facility must ensure that a resident is given the appropriate treatment and "services" to maintain or improve his or her ability to eat.

Paragraph (f): Sanitary conditions

Comment: Commenters recommended reinstating the requirements of existing § 405.1125(f), that dietary service personnel are free from communicable diseases and practice hygienic food handling techniques. When food service employees are assigned duties outside the dietary service, these duties must not interfere with the sanitation, safety or time required for dietary work assignments.

Response: In an effort to eliminate prescriptive requirements, we chose to eliminate the language suggested by commenters concerning food service employees when they are assigned duties outside the dietary service. However, we are retaining the language in proposed § 483.35(f), redesignated as paragraph (h), regarding sanitary conditions as they relate to food. We are also including a provision at revised § 483.65(b)(2), Infection control (redesignated from proposed § 483.75(e)(4), Administration), which prohibits employees with a communicable disease or infected skin lesions from direct contact with residents' food, if direct contact will transmit the disease.

Summary of Changes to § 483.35

In summary, we are making the following changes from the proposed rule:

- We are revising staffing in paragraph (a) to provide that a facility must employ a qualified dietitian either full-time, part-time, or on a consultant basis. A qualified dietitian is defined as one who is eligible for registration by the Commission on Dietetic Registration of the American Dietetic Association, or who is qualified on the basis of education, training, or experience in identification of dietary needs, planning and implementation of dietary programs.
- We are establishing a new paragraph (b), Sufficient staff, that requires a facility to employ sufficient support personnel competent to carry out the functions of the dietary service.
- In proposed paragraph (b), Menus and nutritional adequacy, redesignated as (c), we retain the existing requirement that menus be in accordance with the recommended dietary allowances of the Food and Nutrition Board of the National Research Council, National Academy of Sciences.
- We are establishing a new requirement on food preparation and service as paragraph (d). The content of this provision was originally proposed to be under the quality of life requirement as § 483.15(d).
- In proposed paragraph (d), Frequency of meals, redesignated as (f), we have modified the 16-hour period between evening meal and breakfast the following day when a nourishing snack is provided, and replaced it with the option for a resident group to make judgments concerning the meal span and what constitutes a nourishing snack.
- We are eliminating proposed § 483.35(f)(4) since we want to reduce paperwork burden and adherence to State and local laws is adequately addressed at § 483.75(b), Compliance with Federal, State, or local laws.

Section 483.40 Physician Services Requirement

We proposed that a physician must personally approve a recommendation that an individual be admitted to a facility, and that each resident must remain under the care of a physician, and if possible, designate a personal physician.

Comment: In summary, commenters—

- Suggested that we clearly state in the opening statement that it is always a resident's right to designate a personal physician;
- Suggested that the opening statement include a requirement that the physician be granted access to any facility within the State in which the physician is licensed;
- Indicated that it is unfair to hold the facility responsible for compliance with requirements involving activities that must be performed by the physician, over whom the facility has little control;
- Suggested that the facility be required to notify the Federal or State agency with jurisdiction over the physician's licensing when a physician repeatedly fails to meet the provisions of this requirement:
- Suggested that the regulations require the facility to express to the physician any concerns it has about orders that it considers questionable, since the facility can be held accountable for the consequences of following the physician's orders.

Response: We agree that the resident always has the right to designate a personal physician. This right is implicit in the resident rights requirement at § 483.10(d), which provides that the resident has the right to choose a personal physician. In § 483.40, the phrase, "and if possible, designate a personal physician" in the opening statement is not intended to be a requirement (i.e., the resident is not required to designate a personal physician) but simply to permit designation of one if he or she chooses to do so. Therefore, we are deleting the words "and, if possible, designate a personal physician" from the opening statement, since it is more appropriately placed in interpretive guidelines than in regulations.

As amended by OBRA '87, section 1819(c)(3)(A) of the Act (for Medicare SNFs) and section 1919(c)(3)(A) of the Act (for Medicaid nursing facilities) require that all participating facilities grant the resident's individual physician immediate access to the resident. We believe that this provision addresses the commenter's concern, and we are incorporating it in the final regulations in the new resident rights requirement, § 483.10(k).

Regarding the issue of facility responsibility for requirements that involve performance by a physician, the nature of the survey and certification process is such that our enforcement mechanism is primarily through the facility itself rather than through the individual practitioners that serve the facility's residents. When a physician gives orders that the facility considers questionable, the facility's responsibility is to ensure that these concerns are, in fact, raised with the physician. We believe that the individual staff members' business and professional codes already require them to question any orders which they believe to be inappropriate. OBRA '87 reinforces this responsibility, by adding new sections 1819(d)(4)(A) (for Medicare) and 1919(d)(4)(A) (for Medicaid) to the Act. These sections require the facility to comply not only with applicable Federal, State and local requirements, but also with "accepted professional standards and principles which apply to professionals providing services in such a facility." We are modifying the applicable portions of the Administration requirement, § 483.75 (b) and (c), to reflect this. We will look to the written statements and codifications of recognized professional organizations when it is necessary to establish that a particular professional standard or principle is, in fact, "accepted."

Paragraphs (a): Physician supervision and (b): Physician visits

Comment: Commenters—

- Argued that a facility resident should not be required to be under the care of a physician if he or she chooses to be under the care of a nonphysician health care professional in lieu of physician care;

• Expressed support for physician review of the resident's total program of care, but noted that it is impractical to require the physician to review the total program of care at each visit, since a resident's condition may sometimes require visits in addition to those normally required. They suggested that we require review of the total plan of care only during those visits required under the physician visit schedule in paragraph (c);

• Suggested that we require the physician to date, as well as sign progress notes and orders at each visit;

• Stated that unless we explicitly require the physician to have face-to-face contact with the resident when he or she reviews the program of care, the physician might merely stop by the facility to review the resident's records without actually seeing the resident.

Response: Under the provisions of section 1861(j)(4)(A) of the Act, every resident must be provided care under the supervision of a physician. We believe this indicates a Congressional intent that there be physician involvement in the care of all residents in the facility.

Based on the comments, we are revising paragraph (b) to require that the physician review the total plan of care at each visit required in § 483.40(c), and to require that the physician sign and date progress notes at each visit. Since proposed paragraph (c) specifies that the resident "must be seen" by a physician at prescribed time intervals, we do not believe other changes are needed.

Paragraphs (c): Frequency of Physician Visits, and (d): Availability of Physicians for Emergency Care

Comment: In summary, commenters—

• Suggested eliminating the requirement to record the prescribed frequency of physician visits in the resident's comprehensive care plan, since it is already specified in the regulations;

• Argued for flexibility in time periods between visits by using terms such as "monthly" and "every two months" or, alternatively, allowing a variance of several days;

• Opposed the ICF physician visit schedule proposed in § 483.40(c)(2). One commenter supported it, while forty-four felt that 6 to 12 months between visits is too infrequent, particularly for unstable residents;

• Noted that the proposed visit schedule does not coincide with the physician recertification schedule;

• Argued that physician visits should be based on an actual patient need, request, or significant change in condition rather than on compliance with a prescribed set of time intervals or the licensure of the facility (SNF versus ICF) in which the resident is located;

• Suggested that we require a medical evaluation and physical examination within 48 hours of admission, as well as a physician visit at the time of admission; and

• Expressed support for the provision on availability of physicians for emergency care, but suggested that we define what is meant by "availability," and require the facility to contact an absent physician's designated referral physician before assuming the responsibility of assigning a physician.

Response: After evaluating comments and taking into account changes made by OBRA '87, we are revising paragraph (c). As commenters suggest, we are eliminating the proposed requirement at § 483.40(c) to record physician visit requirements in the plan of care. We are also revising paragraph (c)(3) to provide that "a physician visit is considered timely if it occurs not later than 10 days after the date the visit was otherwise required" to provide an element of flexibility.

With respect to the comment concerning consistency of the visit schedules with the physician recertification requirements of section 1903(g)(6) of the Act, we note that this requirement has been repealed by OBRA '87. Section 1919(b)(3)(C)(ii) of the Act, as added by OBRA '87, will require a review of the resident's assessment no less frequently than every three months for nursing facility residents. In order to accommodate the commenters' concerns, and to make this requirement consistent with OBRA '87 resident assessment provisions, we are requiring, in § 483.40(c)(2), physician visits for ICF residents at least once every 30 days for the first 90 days and at least once every 90 days thereafter, with a ten-day variance, as specified in § 483.40(c)(3). However, we do not agree that the scheduling of the maximum time between physician visits should be done in accordance with criteria such as resident need, resident request, or significant resident change, because these concepts are subjective and not definable for regulatory purposes. Finally, we note that, under the provisions of OBRA '87, the Medicaid SNF–ICF distinction will cease as of October 1, 1990. In the interim, we will continue to base the applicable physician visit schedule on the certification of the facility (SNF or ICF) in which the resident is located.

We believe that the comment regarding "availability" of physicians for emergency care is valid, but would be more appropriately incorporated in guidelines. Therefore, we will include it in guidelines when they are issued.

Paragraph (e): Physician Delegation of Tasks

Comment: In proposed § 483.40(e), we would permit physician delegation to physician extenders, i.e., physician assistants and nurse practitioners, of tasks that the regulations do not otherwise require to be performed by the physician personally. An overwhelming majority of commenters expressed general support for permitting the delegation of tasks to physician extenders; however, other commenters expressed specific concerns about this provision. In summary, commenters—

• Were concerned about the interaction of this provision with proposed paragraph (b), which requires the physician personally to sign all orders, and with proposed paragraph (c), which requires the physician personally to perform physician visits at the prescribed time intervals. The regulations as proposed would effectively preclude these tasks from being delegated to physician extenders. Supporters of delegation recommended—

—The physician extender be allowed to sign orders, leaving to individual State law the issue of personal countersignature by the physician;

—The delegation be limited in scope, and adequately supervised by the physician;

—Permitting physician visits to be delegated to physician extenders, arguing that studies have demonstrated that allowing physician extenders to perform routine visits may actually increase physician involvement, since the physician typically will give considerable weight to the physician extender's determination that a personal physician visit is warranted in a particular instance;

—Including clinical nurse specialists (who are now permitted by section 4218 of OBRA '87 to perform the required certifications and recertifications for Medicaid nursing home residents) in the physician delegation provision.

• Opposed allowing any delegation of tasks to physician extenders whatsoever, claiming that it would represent a degradation in the quality and amount of care given;

• Asked that we revise proposed § 483.40(e)(1)(iii) to clarify that physician supervision of a physician extender need not be direct, on-site supervision;

• Interpreted the language in § 483.40(e)(2), regarding required tasks that a physician must "personally" perform, as nevertheless permitting such tasks to be delegated to others, and merely requiring that the physician document the record on those occasions when he or she actually does perform the task personally; and

• Noted that the requirement in proposed § 483.75(k)(2)(ii) for a physician extender to have a current license or certification to practice in the State is too restrictive, and would preclude the use of many qualified individuals.

Response: We believe that, to the extent feasible, the regulations should be written in a manner that allows for the effective utilization of physician extenders in the nursing home setting. For this reason, we are withdrawing our proposed requirement in § 483.40(b) that all orders be signed by the physician personally. This means that under § 483.40(e)(2), requirements concerning physician signature or countersignature of orders are determined by individual State law and facility policy. We are also deleting the words "responsibility for" from § 483.40(e)(2). This is to clarify that this provision involves delegating the actual performance of tasks; however, the ultimate responsibility for delegated tasks remains with the physician, as indicated in § 483.40(e)(1)(iii).

We also believe that the regulations should be revised to permit at least some measure of delegation to physician extenders of the physician visit function. We remain concerned, however, that at least a minimal degree of direct personal contact between physician and patient should be maintained, both at the point of admission to the facility and periodically during the course of the resident's stay. Therefore, in § 483.40(c)(4) we require that the physician perform the initial visit personally, and in § 483.40(c)(5), allow the physician the option of alternating with the physician extender in making subsequent required visits.

Under § 483.40(e)(1)(iii), as proposed, we require that the physician extender be under supervision, not under the "direct" supervision, of the physician. Hence, this provision permits supervision by a physician who need not be on-site. However, contrary to one commenter's interpretation of the provision in § 483.40(e)(2), this provision requires that when personal performance of a particular task by a physician is specified in the regulations, performance of that task cannot be delegated to anyone else.

We agree that the qualifications specified in the proposed Administration requirement § 483.75 at paragraph (k), Staff qualifications, go beyond those required in the existing regulatory definitions of physician assistants and nurse practitioners at 42 CFR 491.2 (to which paragraph (e) cross-refers). We are not including proposed § 483.75(k)(2)(ii) in these final regulations, and leave in place paragraph (e)'s cross-reference to the existing definitions.

Regarding the clinical nurse specialist authority conferred by section 4218 of OBRA '87, we note that the authority that Congress extended to clinical nurse specialists under this provision is specifically limited to the Medicaid program, and includes only the required certification and periodic recertifications, and the establishment and review of the plan of care. Congress chose not to authorize clinical nurse specialists to perform other physician functions under Medicaid, such as making required physician visits or writing orders, or to perform any physician functions whatsoever under Medicare. Further, the authority for clinical nurse specialists to perform Medicaid certifications and recertifications is itself time-limited, and applies only during the period from July 1, 1988, to October 1, 1990. We do not believe that the current limited scope of the clinical nurse specialist provision in OBRA '87 provides sufficient basis for including clinical nurse specialists in the physician delegation provision.

Summary of Revisions to § 483.40

We are making the following changes to § 483.40:

• In paragraph (b), Physician visits, the physician must write, sign and date progress notes at each visit;

• We are not including in paragraph (c), Frequency of physician visits, the proposed requirement that a facility record in the resident's comprehensive care plan how often a physician must visit a resident;

• We are revising the physician visit schedule for ICFs in paragraph (c) so that a resident must be seen by a physician at least once every 30 days for the first 90 days after admission, and at least every 90 days thereafter. A physician visit is considered timely if it occurs not later than 10 days after the date the visit was required;

• Also in paragraph (c), with certain stated exceptions, all required physician visits must be made by the physician personally. At the physician's option, required visits after the initial visit may alternate between personal visits by the physician and visits by a physician assistant or nurse practitioner in accordance with the delegation provision in paragraph (e).

Section 483.45 Specialized rehabilitative services requirement

We proposed at § 483.45 that facilities that provide rehabilitative services must either furnish them directly or arrange to obtain them from a provider of rehabilitative services. We included requirements dealing with provision of services and qualifications.

Comments: A large number of commenters asked that we specify that a facility must not retain a resident at the facility if a need for rehabilitative services develops and the facility will not provide or obtain the services. The NPRM had only prohibited the admission of residents in this situation. A few commenters further suggested that we require that all long-term care facilities provide rehabilitative services.

Several commenters suggested that we retain the current requirements for written administrative and patient care policies and progress reports.

Many commenters recommended that we delete the section in the proposed regulation that refers to the requirements for outpatient physical therapy providers since this subject is not pertinent to this regulation. Others commented that the title of this section is inappropriate. One commenter pointed out that the term "speech pathology" has been replaced by the term "speech-language pathology."

Response: In revised § 483.45, we are clarifying that a facility must provide or obtain rehabilitative services to every resident it admits. This is required by current law (section 1861(j)(1)), as well as by OBRA '87 (sections 1819(b)(4)(A)(i) and 1919(b)(4)(A)(i) of the Act). We are also describing the services included in this category (physical therapy, speech-language pathology and occupational therapy) and we are specifying that they must be provided under the written order of a physician, by qualified individuals. Finally, we are deleting the references to the requirements for outpatient physical therapy providers.

We are not reinstating requirements in existing regulations for written policies and progress reports because we do not believe that these are appropriate regulatory requirements under an outcome-oriented approach. We are requiring that all residents whose comprehensive assessment indicates rehabilitation potential receive, and the facility provide or obtain, appropriate rehabilitative services.

Summary of Revisions to § 483.45

We are making the following changes from the proposed rule:

- We are revising the opening statement to provide that a facility that admits or retains residents who require rehabilitative services, such as physical therapy, speech-language pathology, and occupational therapy, must provide or obtain these services;
- In the opening statement, for clarity, we are explaining that "rehabilitative services" include "physical therapy, speech-language pathology, and occupational therapy;" and
- We are revising paragraph (b) to provide that specialized rehabilitative services must be provided under the written order of a physician by qualified personnel.

Section 483.50 Social Services Requirement

We proposed at § 483.50 to require facilities to provide or arrange for services to meet the psychosocial needs of residents as identified in each resident's comprehensive assessment. We also proposed that the facility must establish liaison with community resources, which can assist in meeting those needs.

Comments: Many commenters said that it is much more effective to have psychosocial services provided by facility employees than by consultants or community agencies because consultants lack authority to assure that needed services are provided by the facility and may not devote ongoing attention to resolve problems as they arise. Many commenters pointed out that the proposed requirement is in conflict with the recommendation made by the IoM that facilities with 100 beds or more employ at least one full-time social worker and the similar requirement in section 1819(b)(7) of the Act, added by OBRA '87 for facilities with more than 120 beds. Commenters acknowledged the necessity of using consultants or agencies for social services in small and rural facilities and noted that this is reflected in the IoM study and in OBRA '87.

Many commenters recommended that the regulations specify the credentials required of those providing social services and that we designate the individual responsible for provision and coordination of social services. Most commenters who discussed credentials said that it was not necessary for a social worker to have a master of social work (MSW) but indicated that a professional with a bachelor's degree in social work or in another applied human services field would be sufficient. Commenters expressed concern that if credentials are not specified, social services duties would be relegated to an ancillary part of another job. Several commenters stated that nurses are already overburdened and could not assume this responsibility. In addition, commenters noted that social services provided by unqualified personnel could have negative outcomes.

Many commenters suggested that we specify the duties of social workers, such as assessment, treatment and planning as well as training support staff and other facility staff to facilitate provision of social services.

Few comments were received in response to our invitation in the preamble to the proposed rule for public comment as to whether a separate requirement for social services should be included in the final regulation or whether these functions should be entirely integrated with other requirements. One commenter suggested that we integrate social services functions with other requirements. Another commenter said that we could put social services under the resident's rights requirement. The other commenters that responded to this issue were strongly in favor of retaining social services as a separate requirement to assure that the quality of life and quality of care requirements are met. These commenters also indicated that we should require that a social worker provide these services.

In the preamble we also asked what types of specific outcome measures might be used to evaluate this type of care. A number of commenters submitted lists of possible outcome criteria.

Response: After considering comments, we are relocating social services as paragraph (a) under § 483.15, Quality of Life, along with resident activities. Commenters convinced us that these services have similar objectives of supportive, maintenance and empowerment services and we reasoned that these were important quality of life issues. (See preamble discussion of § 483.15(e), Activities)

While existing section 1861(j)(15) of the Act states that the Secretary cannot require that medical social services be furnished in a SNF, a provision in OBRA '87 requires that SNFs with more than 120 beds employ at least one full-time social worker effective October 1, 1990. Consequently, we have included separate provisions in this final regulation that will be effective before and after October 1, 1990, the effective date of the OBRA '87 provision. We are providing that, before October 1, 1990, SNFs are not required to furnish social services directly, but must meet the social service needs of its residents either by obtaining the services from an outside source or by employing a social worker. We will not require social work services in ICFs before October 1, 1990.

In this rule, we are specifying that a social worker must have a bachelors degree, or two years supervised experience in a health care setting, or similar professional qualifications. This requirement is consistent with IoM recommendations and with OBRA '87 requirements that will become effective on October 1, 1990. In the meantime, we invite public comment on how we should define the meaning of the statutory requirement "or similar professional qualifications" as it pertains to a bachelors degree in social services. We plan to publish a final rule on this subject before October 1, 1990.

Summary of changes to proposed § 483.50

We are withdrawing the social services requirement as proposed, making the following changes, and relocating social services as paragraph (g) under § 483.15, Quality of life.

- In § 483.15(g), we are requiring that social services be provided by a qualified individual defined as an individual with a bachelors degree in social work or two years experience in a health care setting working directly with patients or clients, or similar professional qualifications.
- We are providing that before October 1, 1990, a SNF is not required to furnish social services directly, but must meet the social services needs of its residents by either obtaining social services from an outside source, or providing the services directly.
- Effective October 1, 1990, all facilities with more than 120 beds must employ a qualified social worker on a full-time basis.

Section 483.55 Dental services requirement

In § 483.55, we proposed that facilities assist residents in obtaining routine and emergency dental care, and ensure that a dentist is available in an advisory role to the nursing staff. The facility must have an agreement with a dentist to provide dental services, maintain a list of available dentists, and, if necessary, assist the resident in making appointments and in arranging for transportation to and from the dentist's office.

Comment: In summary, commenters had the following concerns. Commenters suggested that—

- We reinstate the current requirement that an advisory dentist participate in staff development training for nursing personnel;
- Advisory dentists should conduct mouth assessments;
- Dental referral lists should include only dentists willing to treat nursing facility residents, and those willing to accept Medicaid payment;
- We require prompt replacement of lost or damaged dentures; and
- Emergency dental care should be available on a 24 hour basis.

Response: For the interim period up to October 1, 1990, when the applicable OBRA '87 provisions become effective, we are making final the dental services regulations as proposed, and adding a provision requiring facilities to refer residents with lost or damaged dentures promptly to a dentist.

Under section 4201 of OBRA '87, which was enacted after the NPRM was published, section 1819(b)(4)(A)(vi) of the Act was added to require that effective October 1, 1990, Medicare SNFs provide or obtain "* * * routine and emergency dental services to meet the needs of each resident" and specified that the SNF will not be required to furnish such services without additional charge. Section 4211 of OBRA '87 added section 1919(b)(4)(A)(vi) to the Act, which, effective October 1, 1990, requires Medicaid nursing facilities to provide or obtain "* * * routine dental services (to the extent covered under the State plan) and emergency dental services to meet the needs of each resident."

We are implementing these provisions in revised regulations that will become effective on October 1, 1990. The effect of these changes is that currently effective regulations require merely that a facility assist its residents in obtaining dental services on their own. However, effective October 1, 1990, facilities will become directly responsible for the dental care needs of their residents, as specified in OBRA '87.

Summary of Revisions to § 483.55

In addition to technical revisions, we are revising § 483.55 to—

- Include, for the interim period beginning with the effective date of these regulations up to October 1, 1990, the dental services requirements as proposed in the NPRM, with an additional provision regarding referral of residents with lost or damaged dentures; and
- Implement, effective October 1, 1990, the OBRA '87 provisions under which facilities are responsible for meeting the dental care needs of their residents, as specified in the law.

§ 483.60 Pharmacy services requirement

This provision requires a facility to provide routine and emergency drugs and biologicals to its residents.

Comment: The opening statement of the proposed rule states that the requirement that a facility have methods and procedures for dispensing and administering drugs and biologicals is based on a requirement of section 1861(j)(7) of the Act for skilled nursing facilities (SNFs). Several commenters wrote in to say that they were confused which requirements applied to SNFs and which to ICFs.

Response: We are retaining reference to section 1861(j)(7) of the Act dealing with methods and procedures for dispensing and administering drugs and biologicals. This provision will be effective for skilled nursing facilities until October 1, 1990. There is and will be no similar provision for ICFs until October 1, 1990. After that date, we will use the wording of OBRA '87 which deals with assuring the "accuracy" of pharmaceutical service, and this provision will apply to both skilled nursing and nursing facilities.

Comment: Existing SNF pharmacy and nursing services regulations at § 405.1124(i), contain requirements for labeling and storage of drugs, which were deleted in the proposed rule because we thought that these issues were adequately addressed by State law. Six commenters did not agree with that, and maintained that the laws in their States did not adequately address these issues.

Response: In response to these comments, we are establishing new § 483.60(f), Labeling of drugs and biologicals, which reinstates existing requirements that drug labeling be in accordance with currently accepted professional principles, and that labeling include appropriate accessory and cautionary instructions and expiration date. Note that existing regulations only require an expiration date "when applicable." Since the Food and Drug Administration now requires expiration dates on virtually all legend drugs, we have deleted the modifier "when applicable."

We are also reinstating current provisions that require the facility to lock all drugs and to separately lock schedule II Controlled Drugs listed in the Comprehensive Drug Abuse Prevention and Control Act of 1970. We note that residents who self-administer drugs in accordance with these requirements will also have to store their drugs in locked compartments, but would not have to separately lock Schedule II controlled drugs.

Comment: Existing regulations for skilled nursing facilities at § 405.1127(d) require a pharmaceutical services committee. The function of this committee is to develop written policies and procedures for safe and effective drug therapy distribution, control and use. Regulations governing ICFs do not have a provision for this committee. In the proposed rule, we deleted requirements for this committee and approximately 30 commenters expressed opposition. These commenters maintained that this committee is essential to the coordination of the inter-disciplinary task of prescribing, dispensing, distributing and administering drugs and biologicals in long-term care facilities.

Response: Existing section 1861(j)(7) of the Act requires the facility to develop "methods and procedures for dispensing and administering drugs and biologicals." Section 1919(b)(4)(A)(iii), added by OBRA '87, requires "procedures that assure the accurate acquiring, receiving, dispensing and administering of all drugs and biologicals" effective October 1, 1990.

Since commenters expressed a desire to have a formally established committee to develop these procedures, we are reinstating the existing provisions providing for this committee in § 483.60 as a new paragraph (c), Pharmaceutical services committee. We note, however, that OBRA '87 also requires the facility to have a "Quality Assessment and Assurance Committee." When the regulations implementing this OBRA '87 provision become effective in October, 1990 (see revised § 483.75(r)), we expect the functions of the pharmaceutical services committee to be assumed by the quality assessment and assurance committee, which would act as a "committee of the whole."

Paragraph (a): Methods and Procedures.

Committee: Under § 483.60(a)(2) of the proposed rule, unlicensed personnel may administer drugs if State law permits this practice, thus continuing a similar requirement currently in SNF regulations at § 405.1124(g). Comments ranged from opposition to the idea of unlicensed personnel administering drugs, on the belief that only a registered nurse should perform this task, to recommendations for adequate training to administer drugs and supervision by licensed personnel.

Response: We continue to believe that the task of administering solid form oral doses is largely routine and mechanized, and valuable licensed nurse resources

can be better utilized in making direct resident care assessment and judgments and providing care. We agree, however, that general supervision by a licensed nurse when unlicensed personnel are administering drugs is desirable and are making this revision. We are retaining the provision allowing unlicensed personnel to administer drugs if State law permits. We are relocating this provision to § 483.10(o), Self administration of drugs.

Paragraph (c); Drug regimen review

Proposed 483.60(c) requires a pharmacist to conduct a monthly drug regimen review and report any irregularities to the attending physician.

Comment: Commenters were concerned about who should receive the pharmacists' reports of irregularities. They wanted reports to be sent to either the director of nursing, who could correct irregularities relating to drug administration; the physician because only he could resolve issues dealing with drug prescriptions; the administrator and the medical director because they ultimately are responsible, or share responsibility for potential drug therapy problems.

Response: We agree that the pharmacist's reports should go to the attending physician and the director of nursing, since they have direct resident care responsibilities.

We also believe that the director of nursing or the attending physician, or both, must act on the recommendations of the pharmacist, especially with regard to psychopharmacologic drug use, since the ultimate goal of the drug regimen review process is to optimize drug use in facilities and that can only happen if action is taken, either to accept or reject recommendations made by the pharmacist. This provision is in accordance with the spirit of section 1919(c)(1)(D) of the Act, added by OBRA '87, which strongly emphasizes efforts to control the abuse of psychopharmacologic drugs as chemical restraints. We are modifying the provision, designated as paragraph (e) in this final rule, accordingly.

We believe it would be too prescriptive to require explicitly that drug review reports go to the administrator and medical director. The facility may develop its own policy regarding whether these reports should be reviewed by these individuals.

Note: We plan to issue a proposed rule to implement the OBRA '87 provision prohibiting the use of psychopharmacologic drugs except under certain circumstances (physician's order, plan to reduce or eliminate symptoms and annual review by an outside consultant).

Summary of revisions to § 483.60

In addition to minor editorial revisions, we are revising proposed § 483.60 as follows:

- We are relocating the requirement that a facility may permit unlicensed personnel to administer drugs if State law permits from paragraph (a), Methods and procedures, to the requirement concerning nursing services, § 483.10 under paragraph (o), Drug administration;
- In new paragraph (c), Pharmaceutical services committee, we are requiring facilities to have a pharmaceutical services committee which develops written policies and procedures for safe and effective drug therapy, distribution and control;
- We are renaming the supervision of services requirement. Its new name is Service Consultation. This term more accurately describes the role pharmacists play in these facilities. This provision is now located at § 483.60(d).
- In paragraph (e), Drug regimen review, redesignated from (c), we require that the drug regimen of each resident be reviewed at least once a month by a licensed pharmacist, and any irregularities be reported by the pharmacist to the attending physician or the director of nursing, or both;
- In new paragraph (f), we provide that the facility must label drugs and biologicals in accordance with currently accepted professional principles.
- We are placing proposed § 483.30(d)(2) regarding storage of self-administered drugs and biologicals in a new provision at § 483.10(o).

483.65 Infection control requirement

The provision requires that the facility provide a sanitary environment.

Paragraph (a): General requirements

Comment: Existing infection control regulations at § 405.1135 contain provisions for an infection control committee composed of representative professional staff with responsibility for overall infection control in the facility. Section 405.1135 requires the committee to establish policies and procedures for investigating, controlling, and preventing infections in the facility, and monitors staff performance to ensure that the policies and procedures are executed. We deleted these provisions in the proposed rule because the emphasis we wanted to place was on the actual performance of a facility in providing care rather than on its capacity to perform. Twenty-six commenters thought that the infection control committee should be retained.

Response: After review of the comments, we are creating a requirement for an infection control program, under which the facility is responsible for establishing policies and procedures for investigating infections in the facility. We note that sections 1819(b)(1)(B) (for Medicare) and 1919(b)(1)(B) (for Medicaid), as added by OBRA '87, require that each nursing facility have a quality assurance committee, effective October 1, 1990 (see revised § 483.75(r)). To avoid requirements for an excessive number of limited purpose committees, we are removing the requirement for a separate infection control committee. The quality assurance committee will become a committee of the whole and carry out the functions of the infection control program.

We are also introducing a requirement at § 483.65(b)(3) for handwashing by staff with direct resident contact when indicated by accepted professional practice. Our purpose in doing so is to state in more specific terms the basic intent of a requirement that we originally proposed at § 483.65(a)(5). This provision, as proposed, would have required all personnel to follow aseptic and isolation techniques in accordance with acceptable professional practice. We are revising this requirement to focus on handwashing by staff with direct resident contact when indicated by accepted professional practice, in view of recent studies that have identified such handwashing as one of the basic, essential measures for preventing the spread of infection in nursing homes. We will use the Guideline for Handwashing and Hospital Environmental Control, 1985, published by the Centers for Disease Control of the Public Health Service, as the standard for accepted professional practice in this area.

Comment: Proposed § 483.65(a)(4) requires that residents with infectious diseases be isolated in single rooms that are vented to the outside, with a private toilet and handwashing facilities, and identified by precautionary signs. Eleven commenters believed that not all infectious diseases require isolation and that the regulations should be revised so that facilities are not required to isolate patients unless their disease requires this precautionary measure.

Response: We agree with these comments. As noted in the previous response, we are reinstating the existing requirement for an infection control program, under which the facility has responsibility for overall infection control. One of these responsibilities is to determine what form isolation should take given the resident's infection. Not all infections require isolation in single

rooms vented to the outside, with a private toilet and handwashing facilities, thus we have deleted these requirements at § 483.65(b).

Comment: Proposed § 483.65 requires that the facility maintain a record of incidents and corrective actions related to infections. Eight commenters thought that this language was not clear enough and that we should define the words "incidents" and "corrective actions".

Response: The requirement has been made a function of the infection control program. We do not wish to institute prescriptive regulatory requirements, but intend to elaborate further in interpretive guidelines. A facility should, for example, maintain a separate record on infections that identifies each resident with an infection, gives the date of infection, the causative agent, the organ or site of infection, and describes what precautionary measures were taken to prevent the spread of the infection within the facility. This log or record of infection will assist the facility in determining patterns of infection and potential correction measures.

Summary of Changes to § 483.65

We are making the following changes from the proposed rule:

• We are replacing proposed paragraph (a), general requirements, with a new paragraph (a): Infection control program. We require a facility to establish an infection control program under which it investigates, controls and prevents infections, decides on isolation procedures, and maintains a record of incidents and corrective actions related to infections.

• In paragraph (b)(1), we are not specifying what isolation procedures should be followed.

• Paragraph (b)(2) (redesignated from proposed § 483.75(e)(4)) requires that a facility prohibit employees with symptoms or signs of a communicable disease or infected skin lesions from direct contact with residents or their food, if such direct contact will transmit the disease.

• Paragraph (b)(3) provides that a facility must require staff to wash their hands in accordance with accepted professional practice.

• Proposed paragraph (b), Linens, is redesignated as paragraph (c).

Section 483.70 Physical Environment Requirement

Proposed § 483.70 requires that the facility must be constructed, equipped and maintained to protect the health and ensure the safety of residents, personnel and the public.

Comment: The comments on physical environment are summarized below. Commenters——

• Were opposed to permitting waivers of certain life safety code provisions;

• Had a number of specific suggestions with regard to such environmental factors as temperature levels, pest control, smoke-free rooms, smoke detectors, fire drills, emergency power, and resident call systems;

• Recommended a variety of additional structural changes, including room size and furnishings, and accessibility to the handicapped;

• Suggested that resident rooms accommodate no more than two beds per room;

• Suggested that physical plant changes not be required in existing facilities;

• Requested clarification of the term, "secure," in regard to closet space;

• Asked that we retain the existing SNF requirement that generally prohibits the placement of blind, nonambulatory residents above the street level floor if the facility is 2 or more stories and has a waiver of construction type or height, or is not of fire resistant construction;

• Objected to the requirement for full visual privacy, stating that many facilities have privacy curtains that extend only to the end of the bed, and this is sufficient for privacy; others thought an outcome oriented approach to privacy would give facilities more flexibility in meeting this requirement;

• Objected to the term "homelike," and asked that it be clarified or deleted since "homelike" may be incompatible with acceptable safety and sanitation measures.

Response: In responding to the comments we made changes to the regulations that are consistent with the Act and discussions of the issues that appeared in OBRA '87. Our responses to comments are summarized below.

• Waivers of certain life safety code provisions are permitted by section 1861(j)(13) of the current Act, and by sections 1919(d)(1)(B)(i) and 1819(d)(1)(B)(i) of the Act, as amended by OBRA '87. We do not have the authority, therefore, to preclude the potential for waivers when appropriate.

• The requirements for quarterly fire drills and smoke detectors in facility corridors are included in the life safety code of the National Fire Protection Association. § 483.70(a) requires that facilities meet the provisions of this code, in accordance with the Social Security Act. On April 7, 1988, we published final regulations at 53 FR 11504, which incorporate by reference the 1985 edition of the National Fire Protection Association's Life Safety Code.

• We are revising the Emergency power requirement to include the requirement that the emergency electrical power system must supply power adequate at least for lighting all entrances and exits, equipment to maintain fire detection, alarm and extinguishing systems, and life support systems when the normal electrical supply is interrupted.

• In the Dining and resident activities requirement, we are revising the regulation to require that nonsmoking areas be identified.

• In the Resident call system provision, we are eliminating the requirement for a call system from common resident areas because commenters objected to the expense of installing a system, and misunderstood the intent of the proposal.

• We are not requiring that rooms accommodate only two beds because this would be too costly. Moreover, we believe that the general provision for privacy and the specific provision for privacy curtains on newly certified facilities ameliorates the need to limit the number of beds per room.

• We are also requiring that, in facilities initially certified after the effective date of these regulations—

—The temperature range must be 71–81° Fahrenheit. As discussed below, this has been relocated to § 483.15(h)(6); and

—Each bed must have ceiling suspended curtains that extend around the bed sufficiently to provide total visual privacy. We believe this is supported under current law and section 1919(c)(1)(A)(iii) of the Act as added by OBRA '87.

We plan to allow temperatures that exceed the upper range of 81 degrees Fahrenheit for facilities in geographic areas of the country (primarily at the northernmost latitudes) where that temperature is exceeded only during rare, brief episodes of unseasonably hot weather. This interpretation would apply in cases where it does not adversely affect resident health and safety, and would enable facilities in areas of the country with relatively cold climates to avoid the expense of installing air conditioning equipment that would only be needed very infrequently.

• We agree that facilities must provide handicapped accessibility and have added it under the Administration requirement at § 483.75(d).

• With regard to the commenter who requested that physical plant changes not be required in existing buildings, we

emphasize that fire safety regulations for all Medicare and Medicaid facilities have grandfather clause provisions that address that issue.

• We do not agree with commenters who suggested amending the regulations to specify that a facility may routinely inspect, monitor or clean out the resident's closet space, because this would be in conflict with IoM recommendations on privacy. However, we will permit facilities to inspect the area when the facility has reason to believe that the items stored in the closet are a threat to the health and safety of other residents.

• With regard to a provision prohibiting facilities from placing handicapped residents above street level, we believe that specific regulatory provisions are unnecessary because a waiver of the LSC may be granted only if it does not affect the health and safety of all residents.

• We are retaining the reference to a "homelike" environment because it deemphasizes the institutional setting by allowing residents to use personal belongings, and is consistent with a resident's right to receive services with reasonable accommodations of individual needs and preferences, as specified in the Resident rights requirement, § 483.15(h).

• We are relocating proposed requirement, Pest control program, from § 483.15(b)(5) to § 483.70(h), Other Environmental conditions.

• We are relocating proposed requirements in § 483.70(h)(1)(2) and (3) to the Environmental quality of life provision, § 483.15(h).

• We are reorganizing proposed § 483.70(h) to include the following regulatory requirements:

(1) Establish procedures to ensure that water is available to essential areas when there is a loss of normal water supply.

(2) Have adequate outside ventilation by means of windows, or mechanical ventilation or a combination of the two;

(3) Equip corridors with firmly secured handrails on each side; and

(4) Establish an effective pest control program in order to maintain the facility free of pests and rodents.

• We are not deleting the proposed requirement for a facility to ensure that the premises are free of pests and rodents because we believe that the facility is accountable for maintaining sanitary conditions, and to eliminate this requirement would jeopardize residents' health and safety.

Summary of Changes to § 483.70

In addition to technical changes discussed above, we are making the following revisions to proposed § 483.70:

• We are specifying in paragraph (b), Emergency power, that the emergency electrical power system must supply adequate power at least for lighting entrances and exits, fire detection equipment, alarms and extinguishing systems, and life support systems when the normal electrical supply is interrupted;

• We are revising § 483.70 to provide that in facilities initially certified after the effective date of these regulations.

—Each bed must have ceiling suspended curtains, which provide total visual privacy (paragraph (d)(v)); and

—Now located at § 483.15(h)(6) temperature range of 71–81° Fahrenheit must be maintained. We will specify in guidelines exceptional circumstances under which a facility may exceed the upper limit briefly;

• In paragraph (g), Dining and resident activities, we require that nonsmoking areas be identified;

• We are adding new paragraph (h), Environment, which was originally proposed as § 483.15(b).

Section 483.75 Administration requirement

In § 483.75, we proposed a Level A requirement consisting of 22 Level B requirements, 7 of which are required by the Act. The major comments are as follows:

Paragraph (a): Licensure

In § 483.75(a), we proposed that an SNF must be licensed in accordance with State or local law, or approved by the State or local agency responsible for licensing such institutions. An ICF must be licensed under State law to provide, on a regular basis, health-related care and services to individuals who do not require the degree of care that a hospital or SNF provides. This paragraph is closely related to paragraphs (b) and (c), Compliance with Federal, State and local laws. (See the discussion of the Physician services requirement (§ 483.40) and the discussion of proposed paragraph (j) of this section (use of outside resources) regarding revisions made in paragraph (c) to reflect OBRA language on compliance with professional standards.)

Comment: One commenter suggested that we include a description of the new nursing facility (NF) level of care introduced in OBRA 1987. Other commenters disagreed with the description of ICF care as limited to that type of care that can be furnished only through institutional facilities.

Response: OBRA 1987, in defining NF care, simply incorporates the existing statutory language defining SNF care and ICF care into a single definition, without altering the basic wording. Thus, in effect, the existing regulatory definitions of SNF care and ICF care, when taken together, already constitute a description of NF care. Since the "nursing facility" category created by OBRA 1987 does not become operative as such until October 1, 1990, we are retaining the current paragraph (a) distinction between SNF and ICF care for use in the interim period. The description of ICF care of § 483.75(a)(2) is verbatim to what section 1905(c)(1) of the Act provides and essentially is included in the OBRA 1987 definition of nursing facility care.

Paragraph (c): Governing Body

We proposed that a facility must have a governing body or designated person functioning as a governing body that is legally responsible for establishing, implementing and making available to residents and the public written policies regarding management and operation of the facility. The governing body appoints the administrator who is licensed by the State, and is responsible for management of the facility. The proposed provision contained detailed requirements concerning access to ombudsmen or others who assist residents, including resident advisory councils.

Comment: Commenters suggested that we define the qualifications of the administrator, and specify the number of hours the administrator is employed in a facility.

Response: Since we are emphasizing resident care outcomes and deleting unnecessarily prescriptive requirements, we chose not to specify in detail the responsibilities of the administrator nor the exact amount of hours he or she should be employed but rather allow the facility to determine how the facility should be managed. We note, however, that if a facility is substantially out-of-compliance with program requirements, it is ultimately the responsibility of the administrator of the facility.

Based upon sections 1819(f)(4) and 1919(f)(4) of the Act, added by OBRA 1987, we are developing a separate rule containing proposed standards for the qualifications of administrators of skilled nurisng facilities and nursing facilities.

Comment: Commenters were opposed to the requirement that would allow a facility to restrict access within State

law to a designated ombudsman, and to authorized employees and agents of public agencies to normal visiting hours.

Response: We agree with commenters, and note that Congress has dealt with this issue in OBRA 1987, which creates a new section 1819(c)(3) of the Act (for Medicare) and a new section 1919(c)(3) (for Medicaid), dealing with access and visitation rights. These provisions distinguish between certain categories of individuals, who must be granted immediate access to residents, and other categories that are to be allowed reasonable access. Because we believe that these issues are within the scope of current law, as well as OBRA 1987, we are incorporating the OBRA 1987 provisions in these final regulations, and we are relocating these provisions on access to § 483.10, the requirement for protection of resident rights at paragraph (k), access to the facility.

Comment: Commenters did not object to the requirement that the governing body make available to residents information on Federal, State and local agencies responsible for enforcement of nursing home rules and advocacy for residents, the results of Federal and State surveys, and the name, address and phone number of State survey office, ombudsman office and legal service office. However, commenters noted that posting these notices detracts from a "homelike" environment, and they suggested that the facility should simply be required to post a notice that these documents are available for review.

Response: We agree with commenters, and in the final rule, we are providing that a resident has the right to examine the results of Federal and State surveys, and plans of correction, upon reasonable request. Since the issue concerns resident rights, we are relocating this provision to § 483.10 at paragraph (g), Examination of survey results.

Comment: Concerning our proposed requirement that a facility provide space, privacy, and a designated staff person to provide assistance, for resident advisory and family groups, commenters—

- Suggested permitting the staff advisory person to attend council meetings;
- Asked us to require facilities to facilitate establishment of resident councils, to submit proposed policies affecting resident life to the council for review, and to respond to formal council recommendations within 2 weeks.

Response: We do not require that facilities organize these groups, merely that when residents or family members desire such groups, the facility provide assistance. Because residents' need for assistance may vary from one facility to another, we have altered the wording of this requirement to indicate that staff or visitors may attend only at the group's pleasure. This change should preserve the privacy right of group participants without necessitating issuance of a formal invitation anytime assistance is needed. On the other hand, in situations where residents do not need or desire the presence of a staff person for assistance, they have the right to organize and conduct meetings on their own and invite of include whomever they wish. The interpretive guidelines will explain that normally the designated staff person responsible for such assistance and liasion between the group and the facility's administration would be the only staff person present during resident or family group meetings—and only if the group requests such assistance.

At § 483.15(c), under the Participation in resident and family groups provision of the quality of life requirement, in reponse to comments, we are implementing in essence the OBRA '87 provision that grants residents the right to organize and participate in resident groups in the facility and the right of the resident's family to meet in the facility. In order to facilitate this right, we believe the facility must allow these groups to exist and provide space, privacy and staff support.

Paragraph (d): Institutional Planning

Comment: The proposed regulations at § 483.75(d) require each facility to have an institutional plan and budget, and give detailed requirements for their content. Several commenters felt that these requirements were burdensome to facilities and could be deleted.

Response: The content of proposed paragraph (d) (redesignated as (f)) is required by section 1861(z) of the Act. Since the provision is based on a statutory requirement, we cannot simply delete it. However, as of October 1, 1990 this requirement will be repealed in accordance with OBRA '87 provisions.

Paragraph (e): Personnel Policies and Procedures

In § 483.75(e), we proposed that the facility must maintain current records for each employee to support placement in an assigned position, ensure a safe and sanitary environment for residents and employees, provide or refer employees for periodic health examinations, and prohibit employees with symptoms of communicable disease from direct contact with residents and food.

Comment: Commenters suggested—

- Retaining the existing requirements for written personnel policies;
- Retaining the requirement for quarterly staffing reports;
- Including personnel training records or screening procedures in employee records; and
- Clarification of terms or deletion of requirements for periodic health examination of employees.

Response: After reviewing the requirements contained in this provision, we have determined that certain requirements are already addressed elsewhere in the regulations and, therefore, can be deleted, with other requirements are more appropriately placed in other sections of the regulations. We are deleting, therefore, the entire provision and replacing some of the requirements in other sections of Part 483 as follows:

- The requirements of paragraph (e)(1), maintenance of sufficient information to support an employee's assigned placement, are already contained in § 483.75(h), which requires a demonstration of job competency by nurse's aides, and § 483.25, which prescribes a series of quality care outcomes that require general staff competency.
- The requirements of paragraph (e)(2), a safe and sanitary environment, are contained in § 483.70(h), which requires a "functional, sanitary and comfortable environment". We are adding the word "safe" to § 483.70(h). Accident prevention requirements are already contained in § 483.25(h).
- We are deleting the requirements of paragraph (e)(3), periodic health exams for employees, since we believe that § 483.65(b) already addresses reasonable measures that facilities should take to prevent the transmission of communicable diseases by employees.
- The requirements of paragraph (e)(4), which prohibits employees with symptoms of communicable disease from resident or food contact, are now incorporated into the infection control requirement, § 483.65(b).

We note that the IoM report specifically recommended that the requirement for quarterly staffing report be eliminated. Therefore, we are not reinstating this requirement.

With regard to employee training records or applicant screening procedures, we believe that the nurse aide training requirements introduced in OBRA '87 will, along with the survey process, assure the continued competence of nurse aides; the competence of professional and

technical personnel is addressed in licensure requirements.

Paragraph (f): Nurse Aide Training

Comment: Proposed section 483.75(f) requires that the facility provide 80 hours of training for untrained aides before they are allowed to care for patients without direct supervision. The majority of respondents approved of the requirement for nurse aide training, while a minority thought that the regulation should be more specific with regard to the content of the training and emphasized that the training should combine theory and clinical experience. Commenters—

- Suggested allowing aides to work before they have completed 80 hours of training;
- Argued that training should be provided only in State approved courses or State accredited institutions;
- Suggested that training take place in facilities that have an acceptable compliance history; and
- Suggested that training be directed by a registered nurse.

Response: OBRA '87 contains extensive provisions on nurse aide training, including the provision that a nurse aide cannot work in a facility on or after January 1, 1990 for more than 4 months unless the individual has completed a training and competency evaluation program, or a competency evaluation program approved by the State.

We have decided to delete our proposed requirement and to include the OBRA '87 provisions in this final rule, with the effective date specified in OBRA '87, January 1, 1990. To do otherwise would force facilities to come into compliance with one set of rules now and another set of rules in January of 1990. We expect that facilities will begin immediately to prepare to meet the OBRA '87 requirements and that this activity will have a positive effect on the quality of aide services during the interim.

We are also including in this final rule the following OBRA '87 provisions, generally effective January 1, 1990 which are essentially self-executing due to their explicit requirements:

- Effective July 1, 1989, a facility must provide a competency evaluation program for currently employed nurse aides approved by the State;
- A facility may not use any individual as a nurse aide for more than 4 months unless the individual:

(1) Has completed a training and competency evaluation program, or a competency program approved by the State, and

(2) Is competent to provide nursing and nursing related services;

- Nurse aides who have not performed paid services for a continuous period of 24 months since the most recent completion of a training and competency evaluation program must undergo required retraining; and
- Nurse aides must participate in required regular in-service education by a facility.

In this final rule, proposed paragraph (f) is being redesignated as paragraph (g).

Paragraph (h): Notification of Changes

We proposed at § 483.75(h) that, except in an emergency, a facility must notify promptly a resident's physician or other responsible person when there is an accident or a significant change in a resident's physical, mental or emotional status.

Comment: Commenters—

- Recommended that only accidents that result in injury should be reported;
- Suggested that abuse and neglect be included among the conditions that must be reported;
- Noted that often no third party exists to be notified;
- Requested clarification of terms or modifications of language; and
- Suggested that accidents must be reported within 24 hours; changes in billings within 72 hours and 10–30 days' notice of transfer or discharge in non-emergency cases.

Response: As a result of these and other comments, as discussed above, we have moved paragraph (h), Notification of changes.

- At § 483.10(b)(10), we located the requirement that the facility notify the resident's physician and any known legal representative or family member within 24 hours of an accident or a significant change in the resident's physical or psychological status;
- At § 483.12(a)(4), we located the requirement that the facility notify the resident and his or her family or representative at least 30 days before the resident is transferred or discharged in non-emergency cases, except when—

—The health or safety of individuals in the facility would be endangered;

—The resident's health improves sufficiently to permit a more immediate transfer;

—Immediate transfer or discharge is required by a resident's urgent medical needs; or

—A resident has not resided in the facility for 30 days.

Paragraph (i): Resident Care Policies

In § 483.75(i), we proposed that a facility must have written resident care policies that govern the continuing nursing care, and medical or other services furnished by the facility.

Comments: Commenters—

- Suggested that the regulations be more specific;
- Requested that a social work staff member be included on the policies development team;
- Suggested that the provision not require physician involvement in purely nursing policies; and
- Suggested that resident care policy development and review apply to ICFs as well SNFs.

Response: The SNF requirement that resident care policies be developed by a group of professionals is repealed by OBRA '87 effective October 1, 1990. We have retained this current statutory requirement (found at section 1861(j)(2) of the Act) but will terminate it on the effective date of the OBRA '87 provision, October 1, 1990.

(j) Paragraph: Resident Finances

We proposed at § 483.75(j) that a facility establish and maintain a system that assures a full and complete accounting of the resident's personal funds entrusted to the facility on the resident's behalf. Further, the system must preclude any commingling of resident funds with the funds of any person other than another resident. The individual financial record must also be available on request to the resident or the legal representative.

Comment: Commenters—

- Requested retention of the requirement in the current SNF regulations that facilities issue quarterly statements in addition to allowing the resident or his or her representative to inspect the record upon request;
- Requested a full and complete accounting of all transactions according to generally accepted accounting principles;
- Suggested retention of the prohibition, contained in the current regulations, against commingling of a resident's funds with any other funds of the facility, as well as with those of any person other than another resident;
- Wanted no commingling of a resident's funds whatsoever, thus, requiring individual accounts for every resident rather than separate accounting of each resident's funds within a pooled account;
- Contended that facilities are not required to accept management of residents' personal funds but agreed that, if they do accept management responsibilities, Federal standards are appropriate;

• Wanted the family to have access to the resident's financial records, as permitted under the current ICF regulations;

• Asked us to implement the OBRA '87 requirements concerning management of personal funds and requirements for facilities to post surety bonds and adhere to conveyance-upon-death requirements; and

• Asked that we prohibit facilities from charging, other than through their basic rate, for management of personal funds.

Response: In these final regulations, we are revising the financial management requirements placed on facilities and relocating them to § 483.10(c), Protection of resident funds. We are including OBRA '87 provisions requiring that the facility maintain a full and complete and separate accounting of each resident's personal funds entrusted to the facility, and make this accounting available to the resident or legal representative. This provision is effective on the effective date of these regulations because we have authority to implement it under existing law. We are also implementing those provisions of OBRA '87 that deal with residents' right to control their funds if they so choose. Full implementation of OBRA '87 resident funds provisions will begin on October 1, 1990. We are not implementing a requirement for quarterly accounting of financial transactions because we did not propose this as a rule, it is not an OBRA '87 requirement, and, although this requirement did appear in the regulations at one time, as commenters noted, its effective date was stayed indefinitely.

Paragraph (k): Staff Qualifications

We proposed at § 483.75(k) to require staff qualifications for a number of staff categories.

Comment: We received 128 comments on this issue, many of which suggested qualifications for activities and dietary professionals. These specialties are discussed elsewhere in this preamble. The comments ranged from objections to Federal requirements on the basis that they may conflict with State laws, to suggestions for further licensing requirements.

Response: We are convinced by the comments that we should defer to State law concerning professional qualifications. The IoM also concluded that it is inappropriate to prescribe detailed staffing standards. Therefore, we are eliminating from § 483.75(i) (redesignated from (k)) the detailed credential requirements for nursing facility staff.

Instead, we are requiring that all professional staff be licensed, certified or registered in accordance with applicable State laws.

Paragraph (1): Use of Outside Resources

In proposed § 483.75(l), a facility that does not employ a qualified person to furnish a service must arrange with an outside person or agency to provide that service. We proposed that the facility must assume responsibility for the quality and timeliness of the services furnished by an outside resource.

Comment: In summary, commenters—

• Objected to the requirement that a facility assume responsibility for the quality of services furnished to its residents by an outside resource.

• Suggested that we use existing language from § 405.1121(i) requiring the facility to assume professional and administrative responsibility for services furnished by an outside resource.

• Suggested that we require that the outside resource meet the same standards that would be required of a facility employee.

Response: We believe that the facility must be responsible for the quality of services furnished to its residents by an outside resource. If a facility does not believe it can assure the quality of services obtained from a particular outside resource, it may obtain services from a different source whose quality it can assure, or it may furnish the services itself. Regarding the qualifications of outside resources, we note that OBRA '87 requires that services provided by the facility, as well as services that the facility obtains from an outside source, must meet professional standards of quality. We are modifying paragraph (2) of this provision to incorporate this requirement. In this final rule, paragraph (l) has been redesignated as paragraph (j).

Paragraph (m): Medical Director

In § 483.75(m), we proposed that a facility must designate a physician, registered nurse or other medical staff member to serve as medical director. The medical director is responsible for implementation of resident care policies, development and coordination of the resident treatment plan, and care delivered to each resident.

Comment: Summarized below are the major issues raised by commenters concerning the medical director. Commenters—

• Objected to a nonphysician serving as medical director on the basis that only a physician can educate facility staff on the care of specific problems, and serve as a link between the facility and the larger health care community;

• Recommended that the position be abolished or required only in SNFs;

• Recommended that the position be required only in those ICFs with over 120 beds; and

• Expressed concern over possible conflict in terms of duties between the medical director and the resident's primary physician (as well as other trained professionals responsible for managing specific disciplines within the facility), and suggested that the medical director coordinate care provided by attending physicians, but not develop treatment plans or provide care.

Response: In response to comments, we are making the following revisions to §483.75(k) (redesignated from (m)). We are—

• Requiring that only a physician serve as medical director;

• Retaining the requirement for both SNFs and ICFs to have a medical director since, under the final rule the Medical distinction between SNF and ICF services will be eliminated effective October 1, 1990. It is clearly our intent, and in keeping with the IoM report, to eliminate as many distinctions between SNF and ICF requirements as possible.

• Not retaining the proposed requirement that the medical director be responsible for development and coordination of the resident treatment plan, and care delivered to each resident. Instead, we are requiring that the medical director be responsible for implementation of resident care policies, and the coordination of medical care in the facility.

Paragraph (n): Laboratory Services

We proposed that SNFs must provide or obtain clinical laboratory services to meet the needs of their residents.

Comment: Proposed paragraph (n) also required that when a SNF provides its own laboratory services, the services must meet the applicable conditions for coverage of the services furnished by independent laboratories specified in 42 CFR Part 405, Subpart M. Some commenters thought that it would be more reasonable for facilities to meet the conditions of participation for hospital laboratories specified in § 482.27.

Response: We are unable to make the change suggested by commenters because we interpret section 1861(s)(11) of the Act as requiring a SNF that furnishes its own laboratory services to meet the requirements for certification as an independent laboratory. We are, however, developing proposed

regulations for laboratory services that would be uniform for all providers.

Comment: In proposed paragraph (n) (redesignated as (1) in this final rule), we also provided that a facility that does not provide laboratory services must have an agreement to obtain those services from a physician's office, a participating hospital, SNF, or independent laboratory, which is approved to provide these services under the Medicare program. Seven commenters objected to allowing physicians' offices to do laboratory testing because they are not required to be certified for participation in the Medicare program.

Response: We share the commenters' concerns, and are revising the redesignated paragraph (1) to read as follows: "If the facility does not provide laboratory services on site, it must have an agreement to obtain these services only from a laboratory that is approved for participation in the Medicare program either as a hospital or as an independent laboratory."

Paragraph (p): Medical records (clinical records)

Proposed § 483.75(p) requires a facility to maintain medical records on each resident in accordance with accepted professional standards and practices. Generally, the facility must keep confidential all information in a resident's records, and must permit each resident to inspect his or her records on request and provide copies on request.

Comment: Summarized below are the major comments we received on medical records.

Commenters—

- Suggested that the resident's physician be allowed to limit a resident's access to his or her medical record on the basis of medical contraindications;
- Suggested we add reasonable timeframes for a facility to comply with a resident's request to inspect or provide photocopies of records;
- Recommended retention of current medical record staff credential requirements in § 405.1132(a);
- Recommended retention of existing requirements in § 405.1132 (c) and (g), which describe the contents and the indexing of medical records, respectively;
- Recommended that an exception to confidentiality be made in the case of authorized State and Federal representatives who require resident information for State surveys;
- Suggested that we include information in the medical record to determine progress on meeting care plan goals.

Response: In response to comments, in redesignated paragraph (n) we are—

- Not limiting a resident's access to his or her records because that would be inconsistent with the resident's right to be fully informed of his or her health status, as provided in the resident's rights requirement, § 483.10(b)(3);
- Requiring that a facility provide a resident with a photocopy of records within 48 hours after a written request;
- Not specifying qualifications for medical records personnel, to be consistent with our approach to defer to State law;
- Not adding further requirements for the contents of medical records or indexing so that facilities are left with some discretion in this area;
- Not providing in this section for release of information of Federal and State representatives, since this is already addressed in 42 CFR Part 405, Subpart S;
- Substituting the term "clinical records" for "medical records". This is a technical change that also happens to be consistent with OBRA '87.
- Adding to paragraph (n)(6) the requirement that the clinical record contain progress notes, as well as the results of any preadmission screening conducted by the State.

Paragraph (q): Disaster Preparedness

Proposed § 483.75(q) requires that the facility have written plans and procedures to meet all potential emergencies and disasters, and that the facility train employees in emergency procedures.

Comment: Commenters suggested that we clarify training procedures for emergencies, while others argued that training should focus on frequently encountered types of emergencies. One commenter suggested that we require monthly fire drills, and add labor strikes to the list of emergencies.

Response: We believe that training procedures are more appropriately placed in guidelines rather than regulations. This list of emergencies is not intended to be an all-inclusive list, but rather examples: therefore, we have not included labor strikes. Fire drills are already addressed in the National Fire Protection Association standards, which require quarterly drills on each shift. These provisions are incorporated by reference in the Physical environment requirement, § 483.70(a).

Paragraph (r): Transfer Agreement

Proposed § 483.75(r) requires that a facility have in effect a written transfer agreement with one or more hospitals approved for participation under Medicare and Medicaid. The facility must ensure that residents are not involuntarily discharged or transferred to another facility except under specified circumstances, and must notify a resident's representative and physician of the tranfer.

We also proposed that a facility must ensure that the resident is not involuntarily discharged or transferred to another facility unless—

—A physician certifies that it is medically necessary;

—The facility determines that it is necessary for the resident's welfare or the welfare of other residents;

—The facility is going out of business; or

—Except as prohibited by the Medicare and Medicaid programs, the resident's bill has been unpaid.

The facility must notify the resident and any representatives in writing—

—At least 3 days before the end of a bed hold period; and

—Except in emergencies, 4 days before discharge or transfer from the facility.

Comment: Regarding the portion of this provision on transfer agreements, the majority of commenters requested that we delete the requirement that a facility and the transfer hospital exchange information for determining whether the resident can be adequately cared for in a less expensive setting than either the facility or the hospital. They argued that transferring personnel can only assure that the receiving facility is licensed to furnish the appropriate level of care, and lack the expertise to analyze the cost structure of the transfer setting.

Response: While we agree that this particular provision should not be the primary mechanism for ensuring appropriateness of placement, we note that this requirement cannot simply be deleted, as it is taken directly from section 1861(l)(2) of the Act, which currently applies only to SNFs. However, section 1919(a)(2) of the Act, as added by OBRA '87, extends that section's applicability to nursing facilities which, in addition to Medicaid SNFs, will also encompass those facilities currently categorized as ICFs. While the proposed regulation appears to require that this type of information be exchanged every time a transfer occurs, the wording of the statutory provision allows more flexibility. Therefore, we are revising this provision to clarify that information relating to whether care can be adequately furnished in a less expensive setting need be exchanged only when the transferring facility deems it

appropriate. Paragraph (r) is being redesignated as (p).

Comment: In summary, commenters on the transfer and discharge portion of this provision—

- Urged that transfer and discharge requirements be relocated to the resident rights requirement;
- Complained that the time allowed for notification of transfer and discharge was too short and proposed instead 30 days for nonemergency cases;
- Suggested that verbal or phone notification followed by written notification, would be more practical;
- Noted that Medicare policy may not permit a 4-day notice, as, for example, transfer or discharge must be completed within 3 days when there is a determination that skilled level of care is no longer necessary;
- Suggested that the facility provide notification of the State's bed hold policy at the beginning of a bed hold period rather than at the end;
- Requested clarification of terms and editorial changes;
- Requested that we require notice of inter-facility transfers also;
- Suggested documentation of the need for transfer or discharge in the clinical record;
- Suggested that concern for the welfare of others in the facility should be a legitimate cause for transfer or discharge;
- Asked that we incorporate Medicare and Medicaid due process of law protections; and
- Requested that we clarify to whom a resident may appeal.

Response: In response to comments, we are—

- Establishing transfer and discharge requirements as paragraph (a) under § 483.12, Admission, transfer and discharge rights;
- Retaining the language of the proposed rule, which requires that a resident be notified 4 days prior to transfer and discharge. The 30 day notice requested by commenters would be too costly for providers at this time. We will implement the OBRA '87 requirement for 30 days advance notice on October 1, 1990;
- Requiring documentation of the reason for transfer or discharge in the clinical record, in accordance with public comment;
- Requiring that the attending physician determine that transfer or discharge is necessary when the resident's medical needs or general welfare is involved;
- Requiring that a facility physician may determine that transfer or discharge is necessary when the health of individuals in the facility is endangered;
- Requiring written notice to a resident before a facility transfers or discharges a resident;
- Requiring that a facility notify a resident and his or her representatives of the State's bed hold policy, if any, before transfers to a hospital or for therapeutic leave;
- Addressing notification of a change in room assignment under the quality of life requirement in § 483.15(e), Accommodation of needs; and
- Planning to implement a State appeals process for transfers and discharges in a separate regulation.

Paragraph (r): Quality Assessment and Assurance Committee

Sections 1819(b)(1)(B) and 1919(b)(1)(B) of the Act, as amended by OBRA '87, require a quality assessment and assurance committee. Paragraph (r) implements this section of the law on October 1, 1990. In addition to the committee's statutory responsibility to oversee the quality of services in the facility, we expect it to act as a committee of the whole and assume the responsibilities of the pharmaceutical services committee at § 483.60(c), the utilization review committee at § 483.75(q), whose existence will be terminated September 30, 1990, and the infection control program at § 483.65.

Paragraph (s): Utilization Review

Proposed § 483.75(s) requires that a SNF have in effect a utilization review (UR) plan that provides for the review of the medical necessity of services.

Comment: Many commenters recommended elimination of UR as a needless paperwork burden. Others requested clarification of various areas, such as the review of extended duration stays.

Response: We note that in OBRA '87, Congress has eliminated the UR requirement from the Act, as it pertains to SNFs. However, until repeal of the SNF UR requirement becomes effective on October 1, 1990, the existing statutory UR requirement at sections 1861(j)(8) and 1861(k) of the Act remains in effect for Medicare and Medicaid SNFs. While we are sympathetic to the concerns of those commenters who suggest that this provision should be eliminated immediately from the regulations, we believe that until the OBRA '87 repeal of the SNF UR requirement becomes effective, the regulations must continue to reflect at least those requirements that are contained in existing law. Paragraph (s) is redesignated as (q).

Regarding the suggestion to increase the maximum time interval permitted in the regulations for review of extended duration stays, we note that section 1861(k) of the Act does not prescribe a specific duration of stay that must be subject to review; therefore, we are revising the regulations to allow each facility to make its own determination of what is appropriate in this regard.

Paragraph (t): Disclosure of Ownership

Proposed § 483.75(t) requires facilities to comply with the disclosure requirements of 42 CFR 420.206, Disclosure of persons having ownership, financial, or control interest.

Comment: One commenter suggested that we revise paragraph (t) to reflect the disclosure of ownership requirements contained in OBRA '87, while another suggested that the provision be deleted.

Response: Sections 4201 and 4211 of OBRA '87 amend the Act by adding new section 1819(d)(1)(B) (for Medicare) and section 1919(d)(1)(B) (for Medicaid) dealing with disclosure of ownership requirements. We have revised paragraph (s) (redesignated from (t)) to reflect these requirements, effective October 1, 1990. In summary, revised paragraph (s) will require facilities to notify at the time of change the State agency when there are changes in—

- Individuals with ownership or control interest;
- Officers, directors, agents or managing employees;
- The corporation, association or other company responsible for management of the facility; or
- The facility's administrator or director of nursing.

Paragraph (u): Resident Participation

We proposed that the facility must ensure resident participation in the facility's policy and operational decision making.

Comment: Commenters—

- Almost unanimously opposed this provision because, in their opinions, many residents are too sick or mentally confused to sit through long board or staff meetings, and most are usually uninformed of the issues;
- Noted that discussions concerning other residents would violate confidentiality requirements; and
- Supported the use of resident and family councils as the vehicle for involving residents in decisions affecting their care and life in the facility.

Response: We acknowledge that many of the points made by commenters call into question the ability to implement this broadly stated requirement. Nonetheless, we feel it important that participation rights be

available. We are revising this provision and including it under the quality of life requirement at § 483.15(c), to clearly give residents the right to organize and participate in resident and family groups. We require of the facility that it allow such groups to exist, and, where they exist, to provide them with meeting space, privacy, and staff support. We believe this requirement is consistent with OBRA '87, which includes the right of the resident and family to organize and participate in resident and family groups. The facility must also consult with, listen to, and act upon the recommendations of these groups.

Paragraph (v): Independent Medical Evaluation and Audit

Proposed § 483.75(v) requires that a SNF cooperate in an effective program providing for independent medical evaluation and audit of the residents in the facility, including medical evaluation of each resident's need for SNF care.

Comment: Two commenters suggested that we restore the provisions on medical care evaluation studies in existing regulations at 42 CFR 405.1137(c). Another suggested that this provision incorporate the inspection of care process.

Response: OBRA '87 removes the statutory basis for this provision, section 1861(j)(12) of the Act, effective October 1, 1990. Therefore, we do not believe it is appropriate to augment this provision by adding specific requirements beyond those contained in the proposed regulations. Paragraph (v) is redesignated as (t).

Summary of revisions to § 483.75

The following is a summary of the major changes to our proposal that we are making to § 483.75 in response to comments.

- We are making extensive revisions to proposed paragraph (c), Governing body, paragraphs (4) and (5), to incorporate OBRA '87 provisions concerning facility access, and relocating these provisions in the Protection of resident rights requirement, § 483.10, paragraph (k), Access to the facility.
- In proposed paragraph (c)(6), we are providing that a resident has the right to examine the results of Federal and State surveys and plans of correction upon reasonable request, and relocating this provision to the resident rights requirement, § 483.10, paragraph (g), Examination of survey results.
- We are not making final proposed paragraph (e), Personnel Policies and Procedures, and relocating requirements concerning communicable diseases of employees to the Infection control requirement, § 483.65, paragraph (b), Infection control program.
- In proposed paragraph (h), Notification of changes, we are making certain revisions suggested by commenters, and relocating the contents to the resident rights requirement, § 483.10, paragraph (b)(10), Notification of changes.
- In proposed paragraph (i), Resident care policies, we are removing the specific SNF requirements in accordance with OBRA '87 provisions, and relocating the contents in the requirement for Protection of resident rights, § 483.12, paragraph (e), Resident care policies.
- In proposed paragraph (j), Resident finances, we are adding the requirement that accounting be done "according to generally accepted accounting principles," and relocating this provision to the resident rights requirement, § 483.10, paragraph (c), Protection of resident funds.
- We are removing the specific staff qualifications and credential requirements from proposed § 483.75(k), (redesignated as paragraph (i)), and requiring instead that professional staff be licensed, certified or registered in accordance with State law.
- We are requiring, in proposed paragraph (m), Medical director (redesignated as paragraph (k)), that only a physician serve as medical director of a facility; and requiring that the medical director be responsible for implementation of resident care policies and the coordination of medical care in the facility.
- In proposed paragraph (n), Laboratory services (redesignated as paragraph (1)), we are requiring that if a facility does not provide laboratory services on site, it must have an agreement to obtain these services only from a laboratory that is approved for participation in the Medicare program either as a hospital or as an independent laboratory.
- In proposed paragraph (p), Medical records (Clinical records redesignated as paragraph (n)), we are requiring that a facility furnish a resident with a photocopy of requested records within 48 hours after a resident's written request, and replacing the term, "medical records" with "clinical records." We are also adding the requirement that the clinical record contain progress notes.
- We are revising proposed paragraph (r), Transfer and discharge, clauses (3), (4), and (5) to incorporate OBRA '87 provisions including 30 day notice before transfer or discharge, effective October 1, 1990, and a 4 day notice as of the effective date of these regulations, and relocating the contents to the Admission, transfer and discharge rights requirement, § 483.12 paragraph (a), Transfer and discharge.
- We are redesignating the paragraphs within proposed paragraph (s), Utilization review (redesignated as paragraph (q)), and revising redesignated paragraph (q)(2) to clarify when the facility must complete the extended duration review.
- In proposed paragraph (t), Disclosure of ownership (redesignated as paragraph (s)), we are adding OBRA '87 requirements, effective October 1, 1990, concerning a facility's obligation to notify the State agency when certain changes in ownership and management occur.
- In proposed paragraph (u), Resident participation, we are incorporating OBRA '87 provisions on the right of residents and family groups to organize and participate, and relocating this provision to the quality of life requirement, § 483.15, paragraph (c), Participation in resident and family groups.

Payment Provisions

Section 4211(b)(1) of OBRA '87 amends section 1902(a)(13) of the Act to require a State to submit an assurance to the Secretary that its payment rates to nursing facilities:

> take into account the costs of complying with subsections (b) (other than paragraph (3)(f) thereof), (c), and (d) of section 1919 and provide (in the case of a waiver under section 1919(b)(4)(C)(ii)) for an appropriate reduction to take into account the lower costs (if any) of the facility for nursing care.

Section 1919(b)(3)(f) in the above quote refers to preadmission screening for mentally ill and mentally retarded individuals.

Section 4211(b)(2) of OBRA '87 further provides certain timing requirements for State plan amendments to take into account the new provisions of section 1919 of the Act, which are effective October 1, 1990. The Act provides that each State must submit an amendment not later than April 1, 1990, to provide for an appropriate adjustment in payment amounts for nursing facility services to be furnished during the year beginning October 1, 1990. The Act requires that the Secretary review each of the amendments and, by September 30, 1990, approve or disapprove each of them. If an amendment is disapproved, the State is required to submit a revised amendment meeting the requirements. The absence of approval does not relieve the State or a nursing facility of any obligation or requirement under the Medicaid program.

Section 4211(b)(1) of OBRA '87 also requires that the State provide for procedures to make available to the public the data and methodology used in establishing payment rates for nursing facilities. Consequently, we are revising § 447.253(b)(1) to require that the methods and standards used by the Medicaid agency to establish payment rates for nursing facility services take into account the costs of complying with the requirements of Part 483 Subpart B (except for preadmission screening of individuals with mental illness and mental retardation under § 483.20(f). Section 1903(a)(2)(C) of the Act provides that 75 percent Federal financial participation is available for these costs under section 1919(e)(7) of the Act, and these are considered Medicaid administrative costs and reimbursed as such). The methods and standards must also provide for an appropriate reduction to take into account the lower costs (if any) of the facility for nursing care under a waiver of the requirement to provide licensed nurses on a 24-hour basis, under § 483.30(c). The agency must also establish procedures under which the data and methodology used in establishing payment rates are made available to the public.

We believe most States will need to submit amendments to their plans to meet the requirements in § 447.253(b)(1)(iii)(A). For example, a State that calculates prospective rates for long-term care facilities by trending forward a prior year cost base could not, we believe, provide a satisfactory assurance concerning its current plan, since the State could not demonstrate how the additional costs of section 1919's requirements (e.g., increased staffing or new resident assessment programs) would be accounted for under the present methodology. Moreover, a number of States' plans currently contain provisions that permit additional reimbursement or rate recalculation in order to recognize cost increases associated with compliance with revised Fedeal or State standards. We expect that for such a State to provide a satisfactory assurance, it must specify in its plan precisely how the additional costs will be taken into account in setting rates.

III. Crosswalk to Proposed Rule

Due to the extensive rearrangement of the regulations from that originally proposed, and the addition of numerous OBRA '87 provisions, we are including the following chart as a general guide to readers in identifying the source of the requirements in the final rule. The derivation table in Part VI of this preamble relates provisions of this final rule to existing regulations.

Final regulations	Source
§ 483.10 Residents rights:	
(a) Exercise of rights	§ 483.10(a)
(b) Right to be informed, includes notices of rights and services, and Admissions policy, Apply/Use Medicare/Medicaid benefits, and notification of changes.	§ 483.10(b) OBRA '87 OBRA '87 OBRA '87
(c) Protection of resident funds.	§ 483.10(c) OBRA '87
(d) Free choice	§ 483.15(c)
(e) Privacy and confidentiality	§ 483.10(f)
(f) Grievances	OBRA '87
(g) Examination of survey results.	OBRA '87
(h) Work	§ 483.10(g)
(i) Mail	§ 483.10(h)
(j) Visitation Rights includes access to facility and visitation rights.	§ 483.10(i) OBRA '87
(k) Telephone	§ 483.10(j)
(l) Personal property	§ 483.10(l)
(m) Married couples	§ 483.10(m)
(n) Self Administration of Drugs.	§ 483.30(e)
§ 483.12 Admission, Transfer and Discharge Rights:	
(a) Transfer and discharge	OBRA '87 and § 483.75(r)
(b) Notice of bed-hold policy and readmission.	OBRA '87
(c) Equal access to quality of care.	OBRA '87
(d) Admissions policy, other than informing about Medicare and Medicaid application and use.	OBRA '87
(e) Resident care policies	§ 483.12(k)
§ 483.13 Resident behavior and facility practices:	
(a) Restraint	§ 483.10(d) and OBRA '87
(b) Abuse	§ 483.10(e)
(c) Staff treatment of residents.	§ 483.25(n)
§ 483.15 Quality of life:	
(a) Dignity	§ 483.15(a)
(b) Self-determination and participation.	§ 483.10(k)
(c) Participation in resident and family groups.	§ 483.10(k) and § 483.75(u)
(d) Participation in other activities.	§ 483.10(k)
(e) Accommodation of needs	OBRA '87
(f) Activities	OBRA '87 and § 483.15(e)
(g) Social Services	OBRA '87 and § 483.50
(h) Environmental quality of life.	§ 483.15(b) and § 483.70(h)
§ 483.20 Resident assessment:	
(a) Admission orders	OBRA '87 and § 483.20(a)
(b) Comprehensive assessment.	OBRA '87 and § 483.20(b)
(c) Accuracy of assessments	OBRA '87 and § 483.20(c)
(d) Comprehensive care plans.	OBRA '87 and § 483.20(d)
(e) Discharge summary	§ 483.20(e)
(f) Preadmission screening for mentally ill and mentally retarded individuals.	OBRA '87
§ 483.25 Quality of care:	
(a) Activities of daily living	§ 483.25(a)
(b) Vision and hearing	§ 483.25(b)
(c) Pressure sores	§ 483.25(c)
(d) Urinary incontinence	§ 483.25(e)
(e) Range of motion	§ 483.25(f)
(f) Psychosocial functioning	§ 483.25(g)
(g) Naso-gastric trubes	§ 483.25(h)
(h) Accidents	§ 483.25(j)
(i) Nutrition	§ 483.25(k)
(j) Hydration	§ 483.25(l)
(k) Special needs	§ 483.25(m)
(l) Drug therapy, includes:	
Unnecessary drugs	§ 483.25(i)
Antipsychotic Drugs	OBRA '87
Drug administration	§ 483.30(d)
§ 483.28 Nursing services—SNFs.	§ 405.1124
§ 483.28 Nursing services—ICFs	§ 442.302 and § 442.339
§ 4833.28 Nursing services:	
(a) Sufficient staff	OBRA '87
(b) Registered nurse	OBRA '87
(c) Waiver of requirement to provide licensed nurses on 24-hr basis.	
(d) NFs: Waiver of requirement to provide services of an RN for more than 40 hours/week.	OBRA '87
(e) SNFs: Waiver of requirement to provide services of an RN for more than 40 hours/week.	OBRA '87
§ 483.35 Dietary services:	
(a) Staffing	OBRA '87 and § 483.35(a)
(b) Sufficient staff	Comments
(c) Menus and Nutritional adequacy.	§ 483.35(b)
(d) Food	§ 483.15(d)
(e) Therapeutic diets	§ 483.35(c)
(f) Frequency of meals	§ 483.35(d)
(g) Assistive devices	§ 483.35(e)
(h) Sanitary conditions	§ 483.35(f)
§ 483.40 Physician services:	
(a) Physician supervision	§ 483.40(a)
(b) Physician visits	§ 483.40(b)
(c) Frequency of physicians visits.	OBRA '87
(d) Availability of physicians for emergency care.	§ 483.40(d)
(e) Physician delegation of tasks.	§ 483.40(e)
§ 483.45 Specialized rehabilitative services:	
(a) Provision of services	§ 483.45(a)
(b) Qualifications	§ 483.45(b)
§ 483.55 Dental services:	
(a) Advisory dentist	§ 483.50(a)
(b) Outside services	§ 483.50(b)
(c) Skilled nursing facilities	OBRA '87
(d) Nursing facilities	OBRA '87
§ 483.60 Pharmacy services:	
(a) Methods and procedures	
(b) Procedures	§ 483.60(a)
(c) Pharmaceutical services committee.	OBRA '87
(d) Service consultation	§ 483.60(b)
(e) Drug regimen review	§ 483.60(c)
(f) Labeling of drugs and biologicals.	§ 483.60(e)
(g) Storage of drugs and biologicals.	§ 483.30(d)(2)
§ 483.65 Infection control:	
(a) Infection control program	§ 483.65(a)
(b) Prevention spread of infection.	§ 483.65(a)
(c) Linens	§ 483.65(b)
§ 483.70 Physical environment:	
(a) Life safety from fire	§ 483.70(a)
(b) Emergency power	§ 483.70(b)
(c) Space and equipment	§ 483.70(c)
(d) Resident rooms	§ 483.70(d)
(e) Toilet facilities	§ 483.70(e)
(f) Resident call system	§ 483.70(f)
(g) Dining and resident activities.	§ 483.70(g)

Final regulations	Source
(h) Other environmental conditions.	§483.70(h) and §483.15(b)
§483.75 Administration:	
(a) Licensure	§483.75(a)
(b) Compliance with Federal State and locals laws before 10/1/90.	§483.75(b)
(c) Compliance with Federal State and local laws effective 10/01/90.	OBRA '87
(d) Relationship to other HHS regulations.	Comments
(e) Governing body	§483.75(c)
(f) Institutional plan and budget.	§483.75(d)
(g) Required training of nurse aides.	OBRA '87
(h) Proficiency of nurse aides	OBRA '87 and §483.75(g)
(i) Staff qualifications	§483.75(k)
(j) Use of outside resources	§483.75(l)
(k) Medical director	§483.75(m)
(l) Laboratory services	§483.75(n)
(m) Radiology and other diagnostic services.	§483.75(o)
(n) Clinical records	§483.75(p)
(o) Disaster preparedness	§483.75(q)
(p) Transfer agreement	OBRA '87
(q) Utilization review	OBRA '87 and §483.75(s)
(r) Quality assessment and assurance.	OBRA '87
(s) Disclosure of ownership	OBRA '87
(t) Independent Medical evaluation and audit.	§483.75(v)

Waiver of Proposed Rulemaking

We ordinarily publish notices of proposed rulemaking in the Federal Register, and offer the public an opportunity to comment on proposed rules. Such notices include a statement of the nature of the rulemaking proceeding, reference to the legal authority under which the rule is proposed, and the terms or substance of the proposed rule or a description of the subjects and issues involved. However, this requirement can be waived when we find good cause that such a notice and comment procedure is impracticable, unnecessary, or contrary to the public interest, and incorporates a statement of the finding and its reasons in the rule issued.

With regard to the provisions of OBRA '87 that are self-executing, identified earlier in the preamble, we believe that issuance of these legislative changes for notice and comment would be unnecessary and contrary to the public interest since they are being incorporated into these regulations as they appear in the statute and are given an effective date as specified in OBRA '87, unless the provisions are otherwise authorized under current law. Therefore, we find good cause to waive the proposed rulemaking procedure with respect to these provisions.

Regulatory Impact Statement

A. Introduction

Executive Order (E.O.) 12291 requires us to prepare and publish a final regulatory impact analysis for any final rule that meets one of the E.O. criteria for a "major rule"; that is, that would 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. In addition, we generally prepare a final 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 regulation would not have significant economic impact on a substantial number of small entities. For purposes of the RFA, we treat all Medicare and Medicaid long term care providers as small entities. States and individuals are not small entities.

The provisions contained in this rule are not expected to result in an annual economic impact of $100 million or more. However, the provisions will affect a number of small and new providers. Those providers that would find it difficult to compete under the final rule may view our final rule as having a significant adverse effect on competition. Therefore, we have prepared the following analysis, which is intended to conform to the objectives of E.O. 12291 and the RFA.

In preparing this analysis, we found it difficult to anticipate all the potential impacts of these regulations. In the proposed rule published October 16, 1987 (52 FR 38582), we explained that, in general, the following observations of the IoM study on the cost implications of their recommendations applied also to the proposed rule. We believe that these observations apply to this final rule as well.

> The effects of the recommendations on the costs of regulation and on the costs of providing care to residents are not easily calculated for two reasons: (1) The quantitative and qualitative changes in behavior of the various actors in the system, and the effects on efficiency of the regulatory agencies and nursing homes, cannot be predicted on the basis of current data; (2) current data about staffing and costs in nursing homes and in state regulatory agencies are not available in sufficient detail; and (3) some immediate costs are likely to produce long-term savings that cannot be estimated. Given these uncertainties, any estimates made—even with the assistance of a very elaborate cost model—would have to present a wide range of costs to account for interactions of varying assumptions.—(Page 214)

Subsequent to the publishing of the proposed rule, OBRA '87 was passed by Congress and signed into law on December 22, 1987. This legislation covered many of the provisions that appeared in the proposed rule. Therefore, many of the provisions that we are adopting in this final rule are now legislative provisions.

For example, nurse aide training requirements which are expected to substantially increase costs, are a direct result of this legislation rather than the regulations. However, we believe that the increased training of personnel will result in healthier residents, which will reduce costs in the long run.

The final changes for nursing services conform the regulations to many of the legislative provisions that will be in effect. For the most part, costs would be incurred regardless of the promulgation of these regulations.

These final regulations, however, do generate one area of cost in the requirement under the resident rooms provision that each bed must have ceiling suspended curtains, which extend around the bed sufficiently to provide total visual privacy. The cost involved in this requirement has been substantially minimized by the fact that the requirement refers only to those facilities initially certified after the effective date of these regulations.

B. Affected Entities

As of September 1987, there were nearly 15,000 long term care facilities participating in either the Medicare or Medicaid program. Of this total, 7,148 were participating in both Medicare and Medicaid. In addition to the 7,148 long term care facilities, 1,977 SNFs were participating in Medicaid only. A total of 5,600 ICFs were participating in Medicaid.

C. Effects on SNFs

SNFs are currently required to meet the majority of the requirements included in this final rule and therefore should have very little increased costs.

D. Effects on ICFs

There are several categories of ICFs: the hospital-based ICF; the ICF with some SNF-certified beds; and the freestanding ICF that is usually a separate entity financially and

physically. These rules will result in a greater cost increase for freestanding ICFs than for SNFs because many of the final requirements are not currently in effect for ICFs. ICFs that also maintain SNF residents should not be as adversely affected because many of these final requirements must already be met for those SNF residents.

The heaviest costs experienced by long term care facilities are staff costs, especially for nurses. The final requirements will significantly affect ICFs that currently are relatively lightly staffed.

In the proposed rule, we estimated costs for ICFs under Alternative 1, which required ICFs to meet nurse staffing requirements comparable to SNFs, to be approximately $100 million for increased nursing services. We were unable to determine costs for Alternatives 2 and 3. However, we would expect those costs to be somewhat lower, since Alternative 1's increased ICF staffing requirements would either not be imposed (under Alternative 2) or could be waived under certain circumstances (under Alternative 3).

In response to comments, we have adopted the essential elements of Alternative 3; that is, upgraded staffing requirements for ICFs that can be waived when circumstances warrant. The resulting provision is similar to that of OBRA 87 which becomes effective for fiscal years beginning on or after October 1, 1990. This regulatory requirement reads in part that the facility must have sufficient nursing staff to provide services to meet the needs of all residents in the facility as determined by resident assessments and individual plans of care. Specifically, some of the more costly requirements are that facilities must provide services by a sufficient number of licensed nurses and other nursing personnel on a 24 hour basis; and must use the services of a registered professional nurse at least 8 consecutive hours a day, 7 days a week. Further, a facility must designate a licensed nurse as charge nurse; and must designate a registered nurse to serve as the director of nursing seven days a week. The director of nursing may serve as a charge nurse only when the facility has an average occupancy of 60 or fewer residents.

Although these requirements will be costly for some facilities, we believe that the inclusion of a waiver in these final provisions will offset many of these costs.

E. Effect on States

To the extent that these final rules result in higher costs in providing long term care services, they will tend to increase State Medicaid expenditures for those services. However, we believe there will be little or no increased cost for State certification activities. Rather, these rules should benefit State certification agencies in that their reviews of SNFs and ICFs will be simplified. Combining two reviews into one should result in a more cost-effective review system. The recently implemented Long-Term Care Survey Process has already intensified the focus on outcomes. The incremental changes flowing from this final rule will have minimal effects on States.

F. Comments and Responses

Comments: Undoubtedly the major area of concern related to increased cost was our estimate of $100 million for Alternative 1 under § 483.30, concerning nursing services. The general comment was that we had grossly underestimated this amount and that we needed to guarantee increased allocations to cover these costs.

Response: We have, in accordance with comments, adopted Alternative 3 which requires a facility to provide 24-hour licensed nursing services that are sufficient to meet the nursing needs of its residents and to use the services of a registered nurse for at least 8 consecutive hours a day, 7 days a week. As discussed in this preamble under the Response to Comments concerning § 483.30, we believe that section 4211(b) of OBRA regarding payment for nursing facility services will assure the appropriateness of payment rates. Furthermore, we believe that the waiver provision in this final rule will reduce substantially our original cost estimates.

Comment: Three commenters determined the costs to provide cubicle curtains under the physical environment requirement to be about $50 million. This cost was estimated at $50–100 per bed for 500,000 beds; the number of beds without full curtains being estimated to be about 50 percent of the total number of beds to fall under these requirements.

Response: This final rule requires only facilities that are newly certified on or after the effective date of these regulations to meet this requirement. This change from the proposed rule substantially reduces the estimated cost which was based on current beds without full visual enclosure.

G. Conclusion

Many persons commenting on costs recommended that we eliminate Alternative 1 of the proposed rules in favor of some other, less costly approach. We believe that these final provisions accomplish the goal of limiting costs, through the provision of a waiver for nursing services under certain limited conditions. We also believe that the total impact on residents will result in improved quality of life and care. Further, we believe that the initial increased costs for facilities will be balanced by the increased quality of care resulting from the implementation of this final rule.

Reporting Requirements

Sections 483.10(b), 483.12 (a), (b), (c) and (e), 483.20 (a), (b), (d) and (e), 483.40(b), 483.45(b), 483.55(b), 483.60 (c) and (d), 483.65(a), 483.75 (f), (j), (l), (m), (n), (o), (p), (q), and (s) of this final rule contain information collections that are subject to Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1980. Long term care facilities must provide documentation to assure compliance with the requirements in order to receive Federal funds for Medicare and Medicaid. Public reporting burden for this collection of information is estimated to be 1,167,500 hours annually for approximately 15,000 facilities. (Comparable reporting burden for information collection requirements in existing regulations is 2,585,300 hours annually.) A notice will be published in the **Federal Register** when approval for the reduced burden is obtained. Other organizations and individuals desiring to submit comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should send comments to the agency officials specified in the "**ADDRESS**" section of this preamble.

IV. Derivation Table

The following table identifies requirements in rules that these final rules supercede that are most closely related to the new requirements of Part 483.

Subject	Part 483	Current Part 405	Current Part 442
Basis, Scope Definition	483.1 (a) and (b)		442.300
	483.5	405.1101	

Subject	Part 483	Current Part 405	Current Part 442
Resident Rights	483.10(a)(1)	405.1121(k)(5)	442.311(d)
	483.10(a)(3)	405.1121(k) following (14)	442.312
	483.10(b)(1)	405.1121(k)(1)	442.311(a)(1)–(3)
	483.10(b)(2)	405.1121(k)(8)	442.310
	483.10(b)(3)	405.1121(k)(3)	442.311(b)
	483.10(b)(5)	405.1121(k)(2)	442.311(a)(4)
	483.10(b)(6)	do	Do.
	483.10(b)(7)	405.1121(m)	442.311(e)
	483.10(b)(10)	405.1121(j)	442.313
	483.10(c)	405.1121(k)(6)	442.311(e)
	483.10(d)	405.1121(k)(3)	442.311(b)
	483.10(e)	405.1121(k)(8)	442.311(g)
	483.10(f)	405.1121(k)(5)	442.311(d)
	483.10(h)	405.1121(k)(10)	442.311(h)
	483.10(i)	405.1121(k)(11)–(12)	442.311(i)(2)
	483.10(j)	do	442.311(i)(1)
	483.10(m)	405.1121(k)(13)	442.311(k)
	483.10(n)	405.1121(k)(14)	442.311(g)(5)
Admission, Transfer and Discharge Rights	483.12(a)	405.1121(k)(4)	442.311(c)
	483.12(b)		
	483.12(c)		
	483.12(d)		
	483.12(e)	405.1121(l)	442.305
Resident Behavior and Facility Practices	483.13(a)+(b)	405.1121(k)(7)	442.311(f), 442.308
	483.13(c)	do	442.311(f)
Quality of Life	483.15(a)	405.1121(k)(9)	442.311(g)
	483.15(b)+(d)	405.1121(k)(12)	442.311(j)
	483.15(f)	405.1131	442.345(a), (b) and (d)
	483.15(g)	405.1130	442.344
	483.15(h)	405.1134(j)	
Assessment	483.20(a)–(b)	405.1123(a), 405.1123(b), 405.1124(d), 405.1126(b), 405.1130.	442.319, 442.341, 442.343, 442.344, 442.345
	483.20(e)	405.1337(h)	
	483.20(d)(3)		
Quality of Care	483.25	405.1124(c)	442.342
Nursing Services	483.30	405.1124 (general)	442.338
	483.30(a)	405.1124(c)	442.340
	483.30(a)(2)	405.1124(b)	442.339(e)
	483.30(b)	405.1124(c)	442.339(c)
	483.30(b)(2)	405.1124(a)	442.339(a)
Dietary Services	483.35	405.1125 (general)	442.331
	483.35(a)–(b)	405.1125(a)	442.332(a)
	483.35(c)	405.1125(b)	442.332(a)(1)
	483.35(e)	405.1125(c)	442.332(b)
	483.35(f)	405.1125(d)	442.331(a)
	483.35(g)		442.331(c)
	483.35(h)	405.1125 (f) and (g)	442.331(b)
Physician Services	483.40	405.1123 (general)	442.346(a)
	483.40(a)–(c)	405.1123(b)	442.346(b)
	483.40(d)	405.1123(c)	
Specialized Rehabilitation Services	483.45(a)	405.1126 (general)	442.343(a)–(c)
	483.45(b)	405.1126(d)	442.343(e)(i)
Dental Services	483.55	405.1129	
Pharmacy Services	483.60 (a) and (b)	405.1127 (general)	442.335
	483.60(c)	405.1127(d)	
	483.60(d)	405.1127 (a), (b)	442.333
	483.60(e)	405.1127(a)	442.336
	483.60(f)	405.1127(c)	
	483.60(g)	405.1125(i)	442.333(b)
Infection Control	483.65(a)–(b)	405.1135(a), (b), (f)	442.328(b)
	483.65(c)	405.1135(d)	442.327
Physical Environment	483.70	405.1134	442.321–442.323
	483.70(a)	do	442.321
	483.70(b)	405.1134(b)	
	483.70(c)	405.1134(g), (h), (i) and (j)	442.328, 442.329
	483.70(d)	405.1134(e)	442.324, 442.325
	483.70(e)	do	442.326
	483.70(f)	405.1134(d)	
	483.70(g)	405.1134(g)	442.329
	483.70(h)	405.1134(j)	
Administration	483.75(a)	405.1120	442.315
	483.75(b)	do	442.251, 442.252
	483.75(c)		
	483.75(d)	405.1134(c)	442.330(a)(2)
	483.75(e)	405.1121(e)	
	483.75(f)	405.1121(f)	
	483.75(g)	405.1121(h)	442.314
	483.75(i)	405.1101	442.332, 442.333, 442.339, 442.343
	483.75(j)	405.1121(i)	442.317

Subject	Part 483	Current Part 405	Current Part 442
	483.75(k) and (l)	405.1128	
	483.75(m)	do	
	483.75(n)	405.1132	442.318
	483.75(o)	405.1136	442.313
	483.75(p)	405.1133	442.316
	483.75(q)	405.1137	

List of Subjects

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Nursing Homes, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 442

Grant programs-health, Health facilities, Health professions, Health records, Medicaid, Nursing homes, Nutrition, Reporting and recordkeeping requirements, Safety.

42 CFR Part 447

Accounting, Administrative practice and procedure, Grant programs-health, Health facilities, Health professions, Medicaid, Reporting and recordkeeping requirements, Rural areas.

42 CFR Part 483

Grant programs-health, Health facilities, Health professions, Health records, Medicaid, Nursing homes, Nutrition, Reporting and recordkeeping requirements, Safety.

42 CFR Part 488

Health facilities, Medicare, Reporting and recordkeeping requirements

42 CFR Part 489

Health facilities, Medicare

42 CFR Part 498

Administrative practice and procedure, Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements

CHAPTER IV—HEALTH CARE FINANCING ADMINISTRATION, DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Chapter IV is amended as follows:

A. The heading of Subchapter B is revised to read as follows:

SUBCHAPTER B—MEDICARE PROGRAM

B. Part 405 is amended as follows:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

1. The table of contents is amended by removing and reserving Subpart K.

Subpart K—[Removed and Reserved]

2. Subpart K (§§ 405.1101 through 405.1137) is removed and reserved.

SUBCHAPTER C—MEDICAL ASSISTANCE PROGRAMS

PART 442—STANDARDS FOR PAYMENT FOR SKILLED NURSING AND INTERMEDIATE CARE FACILITY SERVICES

C. Part 442 is amended as follows:

1. The authority citation for Part 442 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302), unless otherwise noted.

2. The table of contents is amended by removing and reserving Subparts D, E, and F.

§ 442.2 [Amended]

2a. In Subpart A, § 442.2, in the definition of "immediate jeopardy," the phrase "(for ICFs/MR) or level A requirements (for SNFs and ICFs)" is substituted for the phrase "(for SNFs) or standards (for ICFs and ICFs/MR)."

§ 442.13 [Amended]

2b. In § 442.13(b)(1), the phrase "or level A requirements (for SNFs and ICFs)" is added after the term "standard."

3. In Subpart B, § 442.30 is amended by revising paragraph (a)(1) to read as follows:

Subpart B—Provider Agreements

§ 442.30 Agreement as evidence of certification.

(a) * * *

(1) The survey agency failed to apply the applicable certification requirements under Subparts B and D of Part 483, which sets forth the conditions of participation for ICFs/MR;

* * * * *

4. Section 442.101 is amended by revising paragraph (d)(1) to read as follows:

§ 442.101 Obtaining certification.

* * * * *

(d) The notice must indicate that one of the following provisions pertains to the facility:

(1) The facility meets the applicable requirements:

(i) A SNF meets the requirements in each of the conditions of participation in Part 483, Subpart B of this chapter.

(ii) A ICF meets the requirements in Suparts E and F of this part.

(iii) A ICF/MR meets the requirements of Subpart E of this part and each of the conditions of participation in Part 483, Subpart D of this chapter.

* * * * *

5. Section 442.105 is amended by revising the section heading and introductory text to read as follows:

§ 442.105 Certification with deficiencies: General provisions.

If a survey agency finds a facility deficient in meeting the standards and level B requirements (for SNFs and ICFs) specified under Subparts B and D of Part 483, the agency may certify the facility for Medicaid purposes under the following conditions:

* * * * *

§ 442.105 [Amended]

5a. In § 442.105 (c)(1) and (d)(1), the phrase "(for ICFs/MR) and level B requirements (for SNFs and ICFs)" is added after the term "standards."

§ 442.117 [Amended]

5b. In § 442.117(a), the phrase "(for ICFs/MR) or level A requirements (for SNFs and ICFs)" is substituted for the phrase "(for SNFs) or standards (for ICFs and ICFs/MR)."

§ 442.118 [Amended]

5c. In § 442.118(a), the phrase "(for ICFs/MR) or level A requirements (for SNFs and ICFs)" is substituted for the phrase "(for SNFs) or standards (for ICFs and ICFs/MR)."

5d. In § 442.118(b)(1), the phrase "(for ICFs/MR) or the level A requirements (for SNFs and ICFs)" is substituted for the phrase "(for SNFs) or the standards (for ICFs)."

5e. In § 442.118(b)(3)(i), the phrase "(for ICFs/MR) or level A requirements (for SNFs and ICFs)" is substituted for

the phrase "(for SNFs and ICFs/MR) or standards (for ICFs)."

§ 442.119 [Amended]

5f. In § 442.119, paragraphs (a)(1) and (b)(1) are amended by removing the phrase "conditions of participation (for SNFs and ICFs/MR)" and adding in its place the phrase "level A requirements (for SNFs and ICFs) and conditions of participation (for ICFs/MR)"; and by removing the phrase "or standards for ICFs."

Subpart D—[Removed and reserved]

6. Subpart D (§§ 442.200 through 442.202) is removed and reserved.

Subpart E—[Removed and reserved]

7. Subpart E (§§ 442.250 through 442.254) is removed and reserved.

Subpart F—[Removed and reserved]

8. Subpart F (§§ 442.300 through 442.346) is removed and reserved.

PART 447—PAYMENTS FOR SERVICES

D. Part 447 is amended as follows:

1. The authority citation for Part 447 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

Subpart C—Payment for Inpatient Hospital and Long-Term Care Facility Services

Payment Rates

2. In Subpart C, § 447.251 is amended by revising the definition of "long term care facility services" as follows:

§ 447.251 Definitions.

* * * * *

"Long-term care facility services" means skilled nursing facility (SNF) services and intermediate care facility (ICF) services, including intermediate care facility services for the mentally retarded (ICF/MR), and nursing facility (NF) services.

* * * * *

3. Section 447.253 is amended by adding a new paragraph (b)(1)(iii) and republishing the introductory text to paragraph (b) to read as follows:

§ 447.253 Other requirements.

* * * * *

(b) *Findings.* Whenever the Medicaid agency makes a change in its methods and standards, but not less often than annually, the agency must make the following findings:

(1) * * *

(iii) With respect to nursing facility services—

(A) Except for preadmission screening for individuals with mental illness and mental retardation under § 483.20(f) of this Chapter, the methods and standards used to determine payment rates take into account the costs of complying with the requirements of Part 483 Subpart B of this Chapter;

(B) The methods and standards used to determine payment rates provide for an appropriate reduction to take into account the lower costs (if any) of the facility for nursing care under a waiver of the requirement in § 483.30(c) of this Chapter to provide licensed nurses on a 24-hour basis;

(C) The State establishes procedures under which the data and methodology used in establishing payment rates are made available to the public.

4. Section 447.255 is amended by revising paragraph (a) and republishing the introductory text to read as follows:

§ 447.255 Related information.

The Medicaid agency must submit, with the assurances described in § 447.253(a), the following information:

(a) The amount of the estimated average proposed payment rate for each type of provider (hospital, SNF, ICF, ICF/MR, or nursing facility), and the amount by which that estimated average rate increased or decreased relative to the average payment rate in effect for each type of provider for the immediately preceding rate period;

* * * * *

5. Section 447.272 is amended by revising paragraphs (a) and (b) to read as follows:

§ 447.272 Application of upper payment limits.

(a) *General rule.* Except as provided in paragraph (c) of this section, aggregate payments by an agency to each group of health care facilities (that is, hospitals, SNFs, ICFs, ICFs for the mentally retarded (ICFs/MR, and nursing facilities) may not exceed the amount that can reasonably be estimated would have been paid for those services under Medicare payment principles.

(b) *State operated facilities.* In addition to meeting the requirement of paragraph (a) of this section, aggregate payments to each group of State-operated facilities (that is, hospitals, SNFs, ICFs, ICFs/MR, and nursing facilities) may not exceed the amount that can reasonably be estimated would have been paid under Medicare payment principles.

* * * * *

SUBCHAPTER E—STANDARDS AND CERTIFICATION

E. Part 483 is amended as follows:

1. The authority citation for Part 483 is revised to read as follows:

Authority: Sec. 1102, 1819 (a)–(d), 1861 (j) and (1), 1863, 1871, 1902(a)(28), 1905 (a) and (c), and 1919 (a)–(d) of the Social Security Act (42 U.S.C. 1302, 1395(i)(3) (a)–(d), 1395x (j) and (1), 1395hh, 1396a(a)(28), and 1396d(c) and 1396r (a)–(d)), unless otherwise noted.

2. The heading of Part 483 is revised to read as follows:

PART 483—CONDITIONS OF PARTICIPATION AND REQUIREMENTS FOR LONG TERM CARE FACILITIES

3. Subpart B is added to read as follows:

Subpart B—Requirements for Long Term Care Facilities

Sec.

483.1 Basis and scope.
483.5 Definitions.
483.10 Level A requirement: Resident rights.
483.12 Level A requirement: Admission, transfer and discharge rights.
483.13 Level A requirement: Resident behavior and facility practices.
483.15 Level A requirement: Quality of life.
483.20 Level A requirement: Resident assessment.
483.25 Level A requirement: Quality of care.
483.28 Level A requirement: Nursing services—Skilled nursing facilities.
483.29 Level A requirement: Nursing services—Intermediate care facilities.
483.30 Level A requirement: Nursing services.
483.35 Level A requirement: Dietary services.
483.40 Level A requirement: Physician services.
483.45 Level A requirement: Specialized rehabilitative services.
483.55 Level A requirement: Dental services.
483.60 Level A requirement: Pharmacy services.
483.65 Level A requirement: Infection control.
483.70 Level A requirement: Physical environment.
483.75 Level A requirement: Administration.

Subpart B—Requirements for Long Term Care Facilities

§ 483.1 Basis and scope.

(a) *Basis in legislation.* (1) Section 1861(j) of the Act provides that—

(i) Skilled nursing facilities participating in Medicare must meet certain specified requirements; and

(ii) The Secretary may impose additional requirements if they are

necessary for the health and safety of individuals to whom services are furnished in the facilities.

(2) Section 1902(a)(28) of the Act provides that skilled nursing facilities participating in Medicaid must meet the requirements contained in section 1861(j) of the Act, except for the exclusion of institutions which are primarily for the care and treatment of mental diseases.

(3) Section 1905(c) of the Act provides that—

(i) Intermediate care facilities participating in Medicaid must meet certain specified requirements; and

(ii) The Secretary may impose additional standards necessary for the proper provision of care.

(4) Section 1919 (a)–(d) of the Act creates a new term, "nursing facility" in the Medicaid program, which replaces the terms skilled nursing facility and intermediate care facility effective October 1, 1990.

(b) *Scope.* The provisions of this part contain the requirements that an institution must meet in order to qualify to participate as a SNF in the Medicare program, and, before October 1, 1990, as a SNF or ICF in the Medicaid program, and, effective October 1, 1990, as a nursing facility in the Medicaid program. They serve as the basis for survey activities for the purpose of determining whether a facility meets the requirements for participation in Medicare and Medicaid.

§ 483.5 Definitions.

For purposes of this subpart—

"Facility" means, unless otherwise indicated, a skilled nursing facility (SNF), an intermediate care facility (ICF) or a nursing facility (NF). "Facility" may include a distinct part of a facility as specified in § 440.40 or § 440.150 of this chapter, but does not include an institution for the mentally retarded or persons with related conditions described in § 440.150(c) of this chapter. For Medicare, a SNF may not include any institution that is for the care and treatment of mental diseases (see Sec. 1861(j)(15) of the Act.) For Medicaid, a facility may not include any institution that is for the care and treatment of mental diseases except for services furnished to individuals age 65 and over. This restriction does not apply to Medicaid SNFs and ICFs before October 1, 1990 (see § 1902(a)(28) of the Act).

§ 483.10 Level A requirement: Resident rights.

The resident has a right to a dignified existence, self-determination, and communication with and access to persons and services inside and outside the facility. A facility must protect and promote the rights of each resident, including each of the following rights:

(a) *Level B requirement: Exercise of rights.* (1) The resident has the right to exercise his or her rights as a resident of the facility and as a citizen or resident of the United States.

(2) The resident has the right to be free of interference, coercion, discrimination, or reprisal from the facility in exercising his or her rights.

(3) In the case of a resident adjudged incompetent under the laws of a State by a court of competent jurisdiction, the rights of the resident are exercised by the person appointed under State law to act on the resident's behalf.

(b) *Level B requirement: Notice of rights and services.* (1) The facility must inform the resident both orally and in writing in a language that the resident understands of his or her rights and all rules and regulations governing resident conduct and responsibilities during the stay in the facility. Such notification must be made prior to or upon admission and during the resident's stay. Receipt of such information, and any amendments to it, must be acknowledged in writing;

(2) The resident has the right to inspect and purchase photocopies of all records pertaining to the resident, upon written request and 48 hours notice to the facility;

(3) The resident has the right to be fully informed in language that he or she can understand of his or her total health status, including but not limited to, his or her medical condition;

(4) The resident has the right to refuse treatment, and to refuse to participate in experimental research; and

(5) The facility must—

(i) Inform each resident who is entitled to Medicaid benefits, in writing, at the time of admission to the nursing facility or, when the resident becomes eligible for Medicaid of—

(A) The items and services that are included in nursing facility services under the State plan and for which the resident may not be charged;

(B) Those other items and services that the facility offers and for which the resident may be charged, and the amount of charges for those services; and

(ii) Inform each resident when changes are made to the items and services specified in paragraphs (5)(i)(A) and (B) of this section.

(6) The facility must inform each resident before, or at the time of admission, and periodically during the resident's stay, of services available in the facility and of charges for those services, including any charges for services not covered under Medicare or by the facility's per diem rate.

(7) The facility must furnish a written description of legal rights which includes—

(i) A description of the manner of protecting personal funds, under paragraph (c) of this section; and

(ii) A statement that the resident may file a complaint with the State survey and certification agency concerning resident abuse, neglect, and misappropriation of resident property in the facility.

(8) The facility must inform each resident of the name, specialty and way of contacting the physician responsible for his or her care.

(9) Effective October 1, 1990, the facility must prominently display in the facility written information, and provide to residents and potential residents oral and written information about how to apply for and use Medicare and Medicaid benefits, and how to receive refunds for previous payments covered by such benefits.

(10) *Notification of changes.* (i) Except in a medical emergency or when a resident is incompetent, a facility must consult with the resident immediately and notify the resident's physician, and if known, the resident's legal representative or interested family member within 24 hours when there is—

(A) An accident involving the resident which results in injury;

(B) A significant change in the resident's physical, mental, or psychosocial status;

(C) A need to alter treatment significantly; or

(D) A decision to transfer or discharge the resident from the facility as specified in § 483.12(a).

(ii) The facility must also promptly notify the resident and, if known, the resident's legal representative or interested family member when there is—

(A) A change in room or roommate assignment as specified in § 483.15(e)(2); or

(B) A change in resident rights under Federal or State law or regulations as specified in § 483.10(b)(1).

(iii) The facility must record and periodically update the address and phone number of the resident's legal representative or interested family member.

(c) *Level B requirement: Protection of Resident Funds.* (1) The resident has the right to manage his or her financial affairs and the facility may not require residents to deposit their personal funds with the facility.

(2) *Management of personal funds.* Effective October 1, 1990, upon written authorization of a resident, the facility must hold, safeguard, manage and account for the personal funds of the resident deposited with the facility, as specified in paragraphs (c)(3)–(8) of this section.

(3) *Deposit of funds.* Effective October 1, 1990—

(i) *Funds in excess of $50.* The facility must deposit any resident's personal funds in excess of $50 in an interest bearing account (or accounts) that is separate from any of the facility's operating accounts, and that credits all interest earned on the resident's account to his or her account.

(ii) *Funds less than $50.* The facility must maintain a resident's personal funds that do not exceed $50 in a non-interest bearing account or petty cash fund.

(4) *Accounting and records.* Effective on [effective date of regulation], the facility must establish and maintain a system that assures a full and complete and separate accounting, according to generally accepted accounting principles, of each resident's personal funds entrusted to the facility on the resident's behalf.

(i) The system must preclude any commingling of resident funds with facility funds or with the funds of any person other than another resident.

(ii) The individual financial record must be available on request to the resident or his or her legal representative.

(5) *Notice of certain balances.* Effective October 1, 1990, the facility must notify each resident that receives Medicaid benefits—

(i) When the amount in the resident's account reaches $200 less than the SSI resource limit for one person, specified in section 1611(a)(3)(B) of the Act, and

(ii) That, if the amount in the account, in addition to the value of the resident's other nonexempt resources, reaches the SSI resource limit for one person, the resident may lose eligibility for Medicaid or SSI.

(6) *Conveyance upon death.* Effective October 1, 1990, upon the death of a resident with a personal fund deposited with the facility, the facility must convey promptly the resident's funds, and a final accounting of those funds, to the individual administering the resident's estate.

(7) *Assurance of financial security.* Effective October 1, 1990, the facility must purchase a surety bond, or provide self-insurance to assure the security of all personal funds of residents deposited with the facility.

(8) *Limitation on charges to personal funds.* Effective October 1, 1990, the facility may not impose a charge against the personal funds of a resident for any item or service for which payment is made under Medicaid or Medicare.

(d) *Level B requirement: Free choice.* The resident has the right to—

(1) Choose a personal attending physician;

(2) Be fully informed in advance about care and treatment and of any changes in that care or treatment that may affect the resident's well-being; and

(3) Unless adjudged incompetent or otherwise found to be incapacitated under the laws of the State, participate in planning care and treatment or changes in care and treatment.

(e) *Level B requirement: Privacy and confidentiality.* The resident has the right to personal privacy and confidentiality of his or her personal and clinical records.

(1) Personal privacy includes accommodations, medical treatment, written and telephone communications, personal care, visits, and meetings of family and resident groups, but this does not require the facility to provide a private room;

(2) Except as provided in paragraph (e)(3) of this section, the resident may approve or refuse the release of personal and clinical records to any individual outside the facility;

(3) The resident's right to refuse release of personal and clinical records does not apply when—

(i) The resident is transferred to another health care institution; or

(ii) Record release is required by law or third-party payment contract.

(f) *Level B requirement: Grievances.* A resident has the right to—

(1) Voice grievances with respect to treatment or care that is, or fails to be furnished, without discrimination or reprisal for voicing the grievances; and

(2) Prompt efforts by the facility to resolve grievances the resident may have, including those with respect to the behavior of other residents.

(g) *Level B requirement: Examination of survey results.* A resident has the right to—

(1) Examine the results of the most recent survey of the facility conducted by Federal or State surveyors and any plan of correction in effect with respect to the facility. The results must be posted by the facility in a place readily accessible to residents; and

(2) Receive information from agencies acting as client advocates, and be afforded the opportunity to contact these agencies.

(h) *Level B requirement: Work.* The resident has the right to—

(1) Refuse to perform services for the facility;

(2) Perform services for the facility, if he or she chooses, when—

(i) The facility has documented the need or desire for work in the plan of care;

(ii) The plan specifies the nature of the services performed and whether the services are voluntary or paid;

(iii) Compensation for paid services is at or above prevailing rates; and

(iv) The resident agrees to the work arrangement described in the plan of care.

(i) *Level B requirement: Mail.* The resident has the right to privacy in written communications, including the right to—

(1) Send and receive mail promptly that is unopened; and

(2) Have access to stationery, postage and writing implements at the resident's own expense.

(j) *Level B requirement: Access to Facility.* (1) Until October 1, 1990, the resident has the right to receive visitors and the facility must allow access to the resident for such visitors at any reasonable hour.

(2) Provisions in paragraphs (k)(vii) and (viii) of this section apply effective October 1, 1990.

(k) *Level B requirement: Access and Visitation Rights.* (1) The resident has the right and the facility must provide immediate access to any resident by the following:

(i) Any representative of the Secretary;

(ii) Any representative of the State;

(iii) The resident's individual physician;

(iv) The State long term care ombudsman (established under section 307(a)(12) of the Older Americans Act of 1965);

(v) The agency responsible for the protection and advocacy system for developmentally disabled individuals (established under part C of the Developmental Disabilities Assistance and Bill of Rights Act);

(vi) The agency responsible for the protection and advocacy system for mentally ill individuals (established under the Protection and Advocacy for Mentally Ill Individuals Act);

(vii) Effective October 1, 1990, subject to the resident's right to deny or withdraw consent at any time, immediate family or other relatives of the resident; and

(viii) Effective October 1, 1990, subject to reasonable restrictions and the resident's right to deny or withdraw consent at any time, others who are visiting with the consent of the resident.

(2) The facility must provide reasonable access to any resident by any entity or individual that provides health, social, legal, or other services to the resident, subject to the resident's right to deny or withdraw consent at any time.

(3) The facility must allow representatives of the State Ombudsman, described in paragraph (k)(1)(iv) of this section, to examine a resident's clinical records with the permission of the resident or the resident's legal representative, and consistent with State law.

(l) *Level B requirement: Telephone.* The resident has the right to have regular access to the private use of a telephone.

(m) *Level B requirement: Personal property.* The resident has the right to retain and use personal possessions, including some furnishings, and appropriate clothing, as space permits, unless to do so would infringe upon the rights or health and safety of other residents.

(n) *Level B requirement: Married couples.* The resident has the right to share a room with his or her spouse when married residents live in the same facility and both spouses consent to the arrangement.

(o) *Level B requirement: Self-Administration of Drugs.* Each resident has the right to self-administer drugs unless the interdisciplinary team, as defined by § 483.20(d)(2)(ii), has determined for each resident that this practice is unsafe.

§ 483.12 Level A requirement: Admission, transfer and discharge rights.

(a) *Level B requirement: Transfer and discharge*—(1) *Transfer and discharge requirements.* The facility must permit each resident to remain in the facility, and not transfer or discharge the resident from the facility unless—

(i) The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility;

(ii) The transfer or discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility;

(iii) The safety of individuals in the facility is endangered;

(iv) The health of individuals in the facility would otherwise be endangered;

(v) The resident has failed, after reasonable and appropriate notice, to pay for (or to have paid under Medicare or Medicaid) a stay at the facility. For a resident who becomes eligible for Medicaid after admission to a facility, the facility may charge a resident only allowable charges under Medicaid; or

(vi) The facility ceases to operate.

(2) *Documentation.* When the facility transfers or discharges a resident under any of the circumstances specified in paragraphs (a)(1) (i) through (v) of this section, the resident's clinical record must be documented. The documentation must be made by—

(i) The resident's physician when transfer or discharge is necessary under paragraph (a)(1)(i) or paragraph (a)(1)(ii) of this section; and

(ii) A physician when transfer or discharge is necessary under paragraph (a)(1)(iv) of this section.

(3) *Notice before transfer.* Before a facility transfers or discharges a resident, the facility must—

(i) Notify the resident and, if known, a family member or legal representative of the resident of the transfer or discharge and the reasons;

(ii) Record the reasons in the resident's clinical record; and

(iii) Include in the notice the items described in paragraph (a)(5) of this section.

(4) *Timing of the notice.* (i) Except when specified in paragraph (a)(4)(ii) of this section, the notice of transfer or discharge required under paragraph (a)(3) of this section must be made by the facility at least—

(A) Effective on August 1, 1989, 4 days before the resident is transferred or discharged; and

(B) Effective October 1, 1990, 30 days before the resident is transferred or discharged.

(ii) Notice may be made as soon as practicable before transfer or discharge when—

(A) The safety of individuals in the facility would be endangered, under paragraph (a)(1)(iii) of this section;

(B) The health of individuals in the facility would be endangered, under paragraph (a)(1)(iv) of this section;

(C) The resident's health improves sufficiently to allow a more immediate transfer or discharge, under paragraph (a)(1)(ii) of this section;

(D) An immediate transfer or discharge is required by the resident's urgent medical needs, under paragraph (a)(1)(i) of this section; or

(E) A resident has not resided in the facility for 30 days.

(5) *Contents of the notice.* For nursing facilities, the written notice specified in paragraph (a)(3) of this section must include the following:

(i) For transfers or discharges occurring on or after August 1, 1989—

(A) The reason for transfer or discharge;

(B) The effective date of transfer or discharge; and

(C) The location to which the resident is transferred or discharged.

(ii) For transfers or discharges occurring on or after October 1, 1989, a statement that the resident has the right to appeal the action to the State agency designated by the State for such appeals.

(iii) For transfers or discharges occurring on or after October 1, 1990—

(A) The name, address and telephone number of the State long term care ombudsman;

(B) For nursing facility residents with developmental disabilities, the mailing address and telephone number of the agency responsible for the protection and advocacy of developmentally disabled individuals established under part C of the Developmental Disabilities Assistance and Bill of Rights Act; and

(C) For nursing facility residents who are mentally ill, the mailing address and telephone number of the agency responsible for the protection and advocacy of mentally ill individuals established under the Protection and Advocacy for Mentally Ill Individuals Act.

(6) *Orientation for transfer or discharge.* A facility must provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility.

(b) *Level B requirement: Notice of bed-hold policy and readmission. (Effective October 1, 1990)*—(1) *Notice before transfer.* Before a facility transfers a resident to a hospital or allows a resident to go on therapeutic leave, the facility must provide written information to the resident and a family member or legal representative that specifies—

(i) The duration of the bed-hold policy under the State plan, if any, during which the resident is permitted to return and resume residence in the facility; and

(ii) The facility's policies regarding bed hold periods, which must be consistent with paragraph (b)(3) of this section, permitting a resident to return.

(2) *Notice upon transfer.* At the time of transfer of a resident to a hospital or for therapeutic leave, a nursing facility must provide written notice to the resident and a family member or legal representative, which specifies the duration of the bed hold policy described in paragraph (b)(1) of this section.

(3) *Permitting resident to return to facility.* A nursing facility must establish and follow a written policy under which a resident whose hospitalization or therapeutic leave exceeds the bed-hold

period under the State plan, is readmitted to the facility immediately upon the first availability of a bed in a semi-private room if the resident—

(i) Requires the services provided by the facility; and

(ii) Is eligible for Medicaid nursing facility services.

(c) *Level B requirement: Equal access to quality care (Effective October 1, 1990).* (1) A facility must establish and maintain identical policies and practices regarding transfer, discharge, and the provision of services under the State plan for all individuals regardless of source of payment;

(2) The facility may charge any amount for services furnished to non-Medicaid residents consistent with the notice requirement in § 483.10(a)(5)(i) describing the charges; and

(3) The State is not required to offer additional services on behalf of a resident other than services provided in the State plan.

(d) *Level B requirement: Admissions policy (Effective October 1, 1990).* (1) The facility must—

(i) Not require a third party guarantee of payment to the facility as a condition of admission, or expedited admission, or continued stay in the facility;

(ii) Not charge, solicit, accept, or receive, in addition to any amount otherwise required to be paid under the State plan, any gift, money, donation or other consideration as a precondition of admission, expedited admission or continued stay in the facility.

(2) A facility must—

(i) Not require residents or potential residents to waive their rights to Medicare or Medicaid;

(ii) Not require oral or written assurance that residents or potential residents are not eligible for, or will not apply for, Medicare or Medicaid benefits.

(3) States or political subdivisions may apply stricter admissions standards under State or local laws than specified in paragraphs (d)(1) and (2) of this section, to prohibit discrimination against individuals entitled to Medicaid benefits.

(4) A facility may require an individual who has legal access to a resident's income or resources available to pay for facility care, to sign a contract, without incurring personal financial liability, to provide facility payment from the resident's income or resources.

(5) A nursing facility may charge a resident who is eligible for Medicaid for items and services the resident has requested and received, and that are not specified in the State plan as included in the term "nursing facility services."

(6) A nursing facility may solicit, accept or receive a charitable, religious or philanthropic contribution from an organization or from a person unrelated to the resident, or potential resident, but only to the extent that the contribution is not a condition of admission, expedited admission, or continued stay in the facility.

(e) *Level B requirement: Resident care policies.* Until October 1, 1990, the facility must have written resident care policies that govern the continuing nursing care, and medical or other services furnished by the facility.

§ 483.13 Level A requirement: Resident behavior and facility practices.

(a) *Level B requirement: Restraints.* The resident has the right to be free from any physical restraints imposed or psychoactive drug administered for purposes of discipline or convenience, and not required to treat the resident's medical symptoms.

(b) *Level B requirement: Abuse.* The resident has the right to be free from verbal, sexual, physical or mental abuse, corporal punishment, and involuntary seclusion.

(c) *Level B requirement: Staff treatment of residents.* The facility must develop and implement written policies and procedures that prohibit mistreatment, neglect or abuse of residents.

(1) The facility must—

(i) Not use verbal, mental, sexual, or physical abuse, including corporal punishment, or involuntary seclusion; and

(ii) Not employ individuals who have been convicted, of abusing, neglecting or mistreating individuals.

(2) The facility must ensure that all alleged violations involving mistreatment, neglect or abuse, including injuries of unknown source, are reported immediately to the administrator of the facility or to other officials in accordance with State law through established procedures.

(3) The facility must have evidence that all alleged violations are thoroughly investigated, and must prevent further potential abuse while the investigation is in progress.

(4) The results of all investigations must be reported to the administrator or his designated representative or to other officials in accordance with State law within 5 working days of the incident, and if the alleged violation is verified, appropriate corrective action is taken.

§ 483.15 Level A requirement: Quality of life.

A facility must care for its residents in a manner and in an environment that promotes maintenance or enhancement of each resident's quality of life.

(a) *Level B requirement: Dignity.* The facility must promote care for residents in a manner and in an environment that maintains or enhances each resident's dignity and respect in full recognition of his or her individuality.

(b) *Level B requirement: Self-determination and participation.* The resident has the right to—

(1) Choose activities, schedules, and health care consistent with his or her interests, assessments and plans of care;

(2) Interact with members of the community both inside and outside the facility; and

(3) Make choices about aspects of his or her life in the facility that are significant to the resident.

(c) *Level B requirement: Participation in resident and family groups.* (1) A resident has the right to organize and participate in resident groups in the facility;

(2) A resident's family has the right to meet in the facility with the families of other residents in the facility;

(3) The facility must provide a resident or family group, if one exists, with private space;

(4) Staff or visitors may attend meetings at the group's invitation;

(5) The facility must provide a designated staff person responsible for providing assistance and responding to written requests that result from group meetings;

(6) When a resident or family group exists, the facility must listen to the views and act upon the grievances and recommendations of residents and families concerning proposed policy and operational decisions affecting resident care and life in the facility.

(d) *Level B requirement: Participation in other activities.* A resident has the right to participate in social, religious, and community activities that do not interfere with the rights of other residents in the facility.

(e) *Level B requirement: Accommodation of needs.* A resident has the right to—

(1) Reside and receive services in the facility with reasonable accommodation of individual needs and preferences, except when the health or safety of the individual or other residents would be endangered; and

(2) Receive notice before the resident's room or roommate in the facility is changed.

(f) *Level B requirement: Activities.* (1) The facility must provide for an ongoing program of activities designed to meet, in accordance with the comprehensive assessment, the interests and the

physical, mental, and psychosocial well-being of each resident.

(2) The activities program must be directed by a qualified professional who—

(i) Is a qualified therapeutic recreation specialist who is—

(A) Licensed or registered, if applicable, by the State in which practicing; and

(B) Eligible for certification as a therapeutic recreation specialist by a recognized accrediting body on August 1, 1989; or

(ii) Has 2 years of experience in a social or recreational program within the last 5 years, 1 of which was full-time in a patient activities program in a health care setting; or

(iii) Is a qualified occupational therapist or occupational therapy assistant; or

(iv) Has completed a training course approved by the State.

(g) *Level B requirement: Social Services.* (1)— The facility must provide medically-related social services to attain or maintain the highest practicable physical, mental or psychosocial well-being of each resident.

(2) *Skilled nursing facilities.* (i) Until October 1, 1990, the facility must meet the social service needs of its residents by either obtaining social services from an outside source or by furnishing the service directly; and

(ii) Effective October 1, 1990, a facility with more than 120 beds must employ a full-time qualified social worker.

(3) *Nursing facilities.* Effective October 1, 1990, a facility with more than 120 beds must employ a qualified social worker on a full-time basis.

(4) *Qualifications of social worker.* A qualified social worker is an individual with—

(i) A bachelor's degree in social work; or

(ii) Two years of social work supervised experience in a health care setting working directly with individuals; or

(iii) Similar professional qualifications.

(h) *Level B requirement: Environment.* The facility must provide—

(1) A safe, clean, comfortable and homelike environment, allowing the resident to use his or her personal belongings to the extent possible;

(2) Housekeeping and maintenance services necessary to maintain a sanitary, orderly and comfortable interior;

(3) Clean bed and bath linens that are in good condition;

(4) Private closet space in each resident room, as specified in § 483.70(d)(2)(iv) of this section;

(5) Adequate and comfortable lighting levels in all areas;

(6) Comfortable and safe temperature levels. Facilities initially certified after [the effective date of these regulations] must maintain a temperature range of 71–81 °F; and

(7) For the maintenance of comfortable sound levels.

§ 483.20 Level A requirement: Resident assessment.

The facility must conduct initially and periodically a comprehensive, accurate, standardized, reproducible assessment of each resident's functional capacity.

(a) *Level B requirement: Admission orders.* At the time each resident is admitted, the facility must have physician orders for the resident's immediate care.

(b) *Standard: Comprehensive assessments.*

(1) The facility must make a comprehensive assessment of a resident's needs, which—

(i) Effective October 1, 1990, is based on a uniform data set specified by the Secretary and uses an instrument that is specified by the State; and

(ii) Describes the resident's capability to perform daily life functions and significant impairments in functional capacity.

(2) The comprehensive assessment must include at least the following information:

(i) Medically defined conditions and prior medical history;

(ii) Medical status measurement;

(iii) Functional status;

(iv) Sensory and physical impairments;

(v) Nutritional status and requirements;

(vi) Special treatments or procedures;

(vii) Psychosocial status;

(viii) Discharge potential;

(ix) Dental condition;

(x) Activities potential;

(xi) Rehabilitation potential;

(xii) Cognitive status; and

(xiii) Drug therapy.

(3) [Reserved]

(4) *Frequency.* Assessments must be conducted—

(i) For individuals admitted on or after [effective date of regulation], no later than 14 days after the date of admission;

(ii) For individuals admitted on or after October 1, 1990, no later than 4 days after the date of admission;

(iii) For current residents of a facility, not later than October 1, 1991;

(iv) Promptly after a significant change in the resident's physical or mental condition; and

(v) In no case less often than once every 12 months.

(5) *Review of assessments.* The nursing facility must examine each resident no less than once every 3 months, and as appropriate, revise the resident's assessment to assure the continued accuracy of the assessment.

(6) *Use.* The results of the assessment are used to develop, review, and revise the resident's comprehensive plan of care, under paragraph (d) of this section.

(7) *Coordination.* Effective October 1, 1990, the facility must coordinate assessments with any State-required preadmission screening program to the maximum extent practicable to avoid duplicative testing and effort.

(c) *Level B requirement: Accuracy of assessments.* (1) *Coordination.* (i) Each assessment must be conducted or coordinated, with the appropriate participation of health professionals.

(ii) Effective October 1, 1990, each assessment must be conducted or coordinated by a registered nurse who signs and certifies the completion of the assessment.

(2) *Certification.* Each individual who completes a portion of the assessment must sign and certify the accuracy of that portion of the assessment.

(3) *Penalty for Falsification.* Effective October 1, 1990, an individual who willfully and knowingly certifies (or causes another individual to certify) a material and false statement in a resident assessment is subject to civil money penalties. The implementing regulations for this statutory authority are located in Part 1003 of this chapter.

(4) *Use of independent assessors.* Effective October 1, 1990 if a State determines, under a survey or otherwise, that there has been a knowing and willful certification of false statements under paragraph (c)(3) of this section, the State may require (for a period specified by the State) that resident assessments under this paragraph be conducted and certified by individuals who are independent of the facility and who are approved by the State.

(d) *Level B requirement: Comprehensive care plans.* (1) The facility must develop a comprehensive care plan for each resident that includes measurable objectives and timetables to meet a resident's medical, nursing and psychosocial needs that are identified in the comprehensive assessment.

(2) A comprehensive care plan must be—

(i) Developed within 7 days after completion of the comprehensive assessment;

(ii) Prepared by an interdisciplinary team, that effective October 1, 1990, includes the attending physician, a registered nurse with responsibility for the resident, and other appropriate staff in disciplines as determined by the resident's needs, and with the participation of the resident, the resident's family or legal representative, to the extent practicable; and

(iii) Periodically reviewed and revised by a team of qualified persons after each assessment.

(3) The services provided or arranged by the facility must—

(i) Meet professional standards of quality; and

(ii) Be provided by qualified persons in accordance with each resident's written plan of care.

(e) *Level B requirement: Discharge summary.* When the facility anticipates discharge, a resident must have a discharge summary that includes—

(1) A recapitulation of the resident's stay;

(2) A final summary of the resident's status to include items in paragraph (b)(2) of this section, at the time of the discharge that is available for release to authorized persons and agencies, with the consent of the resident or legal representative; and

(3) A post-discharge plan of care that developed with the participation of the resident and his or her family, which will assist the resident to adjust to his or her new living environment.

(f) *Level B requirement: Preadmission screening for mentally ill individuals and individuals with mental retardation.* (1) A nursing facility must not admit, on or after January 1, 1989, any new resident with—

(i) Mental illness as defined in paragraph (f)(2)(i) of this section, unless the State mental health authority has determined, based on an independent physical and mental evaluation performed by a person or entity other than the State mental health authority, prior to admission, whether—

(A) Because of the physical and mental condition of the individual, the individual requires the level of services provided by a nursing facility; and

(B) If the individual requires such level of services, the individual requires active treatment for mental illness; or

(ii) Mental retardation, as defined in paragraph (f)(2)(ii) of this section, unless the State mental retardation or developmental disability authority has determined prior to admission whether—

(A) Because of the physical and mental condition of the individual, the individual requires the level of services provided by a nursing facility; and

(B) If the individual requires such level of services, the individual requires active treatment for mental retardation.

(2) *Definition.* For purposes of this section—

(i) An individual is considered to have "mental illness" if the individual has a primary or secondary diagnosis of mental disorder (as defined in the Diagnostic and Statistical Manual of Mental Disorders, 3rd edition) and does not have a primary diagnosis of dementia (including Alzheimer's disease or a related disorder).

(ii) An individual is considered to be "mentally retarded" if the individual is mentally retarded or a person with a related condition as described in 42 CFR 435.1009.

§ 483.25 Level A requirement: Quality of care.

Each resident must receive the necessary nursing, medical and psychosocial services to attain and maintain the highest possible mental and physical functional status, as defined by the comprehensive assessment and plan of care. Each resident must receive and the facility must provide the necessary care and services to attain or maintain the highest practicable physical, mental, and psychosocial well-being, in accordance with the comprehensive assessment and plan of care.

(a) *Level B requirement: Activities of daily living.* Based on the comprehensive assessment of a resident, the facility must ensure that—

(1) A resident's abilities in activities of daily living do not diminish unless circumstances of the individual's clinical condition demonstrate that diminution was unavoidable. This includes the resident's ability to—

(i) Bathe, dress and groom;

(ii) Transfer and ambulate;

(iii) Toilet;

(iv) Eat; and

(v) To use speech, language or other functional communication systems.

(2) A resident is given the appropriate treatment and services to maintain or improve his or her abilities specified in paragraph (a)(1) of this section; and

(3) A resident who is unable to carry out activities of daily living receives the necessary services to maintain good nutrition, grooming, and personal and oral hygiene.

(b) *Level B requirement: Vision and hearing.* To ensure that residents receive proper treatment and assistive devices to maintain vision and hearing abilities, the facility must, if necessary, assist the resident—

(1) In making appointments; and

(2) By arranging for transportation to and from the office of a medical practitioner specializing in the treatment of vision or hearing impairment or the office of a professional specializing in the provision of vision or hearing assistive devices.

(c) *Level B requirement: Pressure sores.* Based on the comprehensive assessment of a resident, the facility must ensure that—

(1) A resident who enters the facility without pressure sores does not develop pressure sores unless the individual's clinical condition demonstrates that they were unavoidable; and

(2) A resident having pressure sores receives necessary treatment and services to promote healing, prevent infection and prevent new sores from developing.

(d) *Level B requirement: Urinary Incontinence.* Based on the resident's comprehensive assessment, the facility must ensure that—

(1) A resident who is incontinent of bladder receives the appropriate treatment and services to restore as much normal bladder functioning as possible;

(2) A resident who enters the facility without an indwelling catheter is not catheterized unless the resident's clinical condition demonstrates that catheterization was necessary; and

(3) A resident who is incontinent of bladder receives appropriate treatment and services to prevent urinary tract infections and to restore as much normal bladder function as possible.

(e) *Level B requirement: Range of motion.* Based on the comprehensive assessment of a resident, the facility must ensure that—

(1) A resident who enters the facility without a limited range of motion does not experience reduction in range of motion unless the resident's clinical condition demonstrates that a reduction in range of motion is unavoidable; and

(2) A resident with a limited range of motion and/or receives appropriate treatment and services to increase range of motion to prevent further decrease in range of motion.

(f) *Level B requirement: Psychosocial functioning.* Based on the comprehensive assessment of a resident, the facility must ensure that—

(1) A resident who displays psychosocial adjustment difficulty, receives appropriate treatment and services to achieve as much remotivation and reorientation as possible; and

(2) A resident whose assessment did not reveal a psychosocial adjustment difficulty does not display a pattern of decreased social interaction and/or increased withdrawn, angry, or depressive behaviors, unless the resident's clinical condition demonstrates that such a pattern was unavoidable.

(g) *Level B requirement: Naso-gastric tubes.* Based on the comprehensive assessment of a resident, the facility must ensure that—

(1) A resident who has been able to eat enough alone or with assistance is not fed by naso-gastric tube unless the resident's clinical condition demonstrates that use of a naso-gastric tube was unavoidable; and

(2) A resident who is fed by a naso-gastric or gastrostomy tube receives the appropriate treatment and services to prevent aspiration pneumonia, diarrhea, vomiting, dehydration, metabolic abnormalities, and nasal-pharyngeal ulcers and to restore, if possible, normal feeding function.

(h) *Level B requirement: Accidents.* The facility must ensure that—

(1) The resident environment remains as free of accident hazards as is possible; and

(2) Each resident receives adequate supervision and assistive devices to prevent accidents.

(i) *Level B requirement: Nutrition.* Based on a resident's comprehensive assessment, the facility must ensure that a resident—

(1) Maintains acceptable parameters of nutritional status, such as body weight and protein levels, unless the resident's clinical condition demonstrates that this is not possible; and

(2) Receives a therapeutic diet when there is a nutritional problem.

(j) *Level B requirement: Hydration.* The facility must provide each resident with sufficient fluid intake to maintain proper hydration and health.

(k) *Level B requirement: Special needs.* The facility must ensure that residents receive proper treatment and care for the following special services:

(1) Injections;

(2) Parenteral and enteral fluids;

(3) Colostomy, ureterostomy or ileostomy care;

(4) Tracheostomy care;

(5) Tracheal suctioning;

(6) Respiratory care;

(7) Podiatric care; and

(8) Prostheses.

(l) *Level B requirement: Drug Therapy.*—(1) *Unnecessary drugs.* Each resident's drug regimen must be free from unnecessary drugs.

(2) *Antipsychotic Drugs.* Based on a comprehensive assessment of a resident, the facility must ensure that—

(i) Residents who have not used antipsychotic drugs and are not given these drugs unless antipsychotic drug therapy is necessary to treat a specific condition; and

(ii) Residents who use antipsychotic drugs receive gradual dose reductions, drug holidays or behavioral programming, unless clinically contraindicated in an effort to discontinue these drugs.

(m) *Level B requirement: Medication Errors.* The facility must ensure that—

(1) It is free of significant medication error rates; and

(2) Residents are free of any significant medication errors.

§ 483.28 Level A requirement: Nursing services-skilled nursing facilities.

The requirements of this section are effective through September 30, 1990. The skilled nursing facility provides 24-hour service by licensed nurses, including the services of a registered nurse at least during the day tour of duty 7 days a week. There is an organized nursing service with a sufficient number of qualified nursing personnel to meet the total nursing needs of all patients in the facility. (See § 405.1911(a) regarding waiver of the 7-day registered nurse requirement.)

(a) *Level B requirement: Director of nursing services.* The director of nursing services is a qualified registered nurse employed full-time who has, in writing, administrative authority, responsibility, and accountability for the functions, activities, and training of the nursing services staff, and serves only one facility in this capacity. If the director of nursing services has other institutional responsibilities, a qualified registered nurse serves as her assistant so that there is the equivalent of a full-time director of nursing services on duty. The director of nursing services is responsible for the development and maintenance of nursing service objectives, standards of nursing practice, nursing policy and procedure manuals, written job descriptions for each level of nursing personnel, scheduling of daily rounds to see all patients, methods for coordination of nursing services with other patient services, for recommending the number and levels of nursing personnel to be employed, and nursing staff development (see § 405.1121(h)).

(b) *Level B requirement: Charge nurse.* A registered nurse, or a qualified licensed practical (vocational) nurse, is designated as charge nurse by the director of nursing services for each tour of duty, and is responsible for supervision of the total nursing activities in the facility during each tour of duty. The director of nursing services does not serve as charge nurse in an facility with a average daily total occupancy of 60 or more patients. The charge nurse delegates responsibility to nursing personnel for the direct nursing care of specific patients during each tour of duty, on the basis of staff qualifications, size and physical layout of the facility, characteristics of the patient load, and the emotional, social, and nursing care needs of patients.

(c) *Level B requirement: Twenty-four-hour nursing service.* The facility provides 24-hour nursing services which are sufficient to meet total nursing needs and which are in accordance with the patient care policies developed as provided in § 405.1121(1). The policies are designed to ensure that each patient receives treatments, medications, and diet as prescribed, and rehabilitative nursing care as needed; receives proper care to prevent decubitus ulcers and deformities, and is kept comfortable, clean, well-groomed, and protected from accident, injury, and infection, and encouraged, assisted, and trained in self-care and group activities. Nursing personnel, including at least one registered nurse on the day tour of duty 7 days a week, licensed practical (vocational) nurses, nurse aides, orderlies, and ward clerks, are assigned duties consistent with their education and experience and based on the characteristics of the patient load. Weekly time schedules are maintained and indicate the number and classifications of nursing personnel, including relief personnel, who worked on each unit for each tour of duty.

§ 483.29 Level A requirement: Nursing services—intermediate care facilities.

The requirements of this section are effective through September 30, 1990.

(a) The ICF must have staff on duty 24 hours a day sufficient in number and qualifications to carry out the policies, responsibilities, and programs of the ICF.

(b) The ICF must have a registered nurse or a licensed practical or vocational nurse to supervise the ICF's health services full time, 7 days a week, on the day shift.

(c) The nurse must have a current license to practice in the State.

(d) If the ICF employs a licensed practical or vocational nurse to supervise health services, the ICF must have a formal contract with a registered nurse to consult with the licensed practical or vocational nurse at regular

intervals, but not less than 4 hours each week.

(e) To be qualified to serve as a health services supervisor, a licensed practical or vocational nurse must—

(1) Be a graduate of a State-approved school of practical nursing;

(2) Have education or other training that the State authority responsible for licensing practical nurses considers equal to graduation from a State-approved school of practical nursing; or

(3) Have passed the Public Health Service examination for waivered licensed practical or vocational nurses.

(f) The ICF may employ as charge nurse an individual who is licensed by the State in a category other than registered nurse or licensed practical or vocational nurse if—

(1) The individual has completed a training program to get the license that included at least the same number of classroom and practice hours in all nursing subjects as in the program of a State-approved school of practical or vocational nursing; and

(2) The State agency responsible for licensing the individual submits a report to the Medicaid agency comparing State licensed practical nurse or vocational nurse course requirements with those for the program completed by the individual.

§ 483.30 Level A requirement: Nursing services.

Effective October 1, 1990, the facility must have sufficient nursing staff to provide nursing and related services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident, as determined by resident assessments and individual plans of care.

(a) *Level B requirement: Sufficient staff.* (1) The facility must provide services by sufficient numbers of each of the following types of personnel on a 24-hour basis to provide nursing care to all residents in accordance with resident care plans:

(i) Except when waived under paragraph (c) of this section, licensed nurses; and

(ii) Other nursing personnel.

(2) Except when waived under paragraph (c) of this section, the facility must designate a licensed nurse to serve as a charge nurse on each tour of duty.

(b) *Level B requirement: Registered nurse.* (1) Except when waived under paragraph (c) or (d) of this section, the facility must use the services of a registered nurse for at least 8 consecutive hours a day, 7 days a week.

(2) Except when waived under paragraph (c) or (d) of this section, the facility must designate a registered nurse to serve as the director of nursing on a full time basis.

(3) The director of nursing may serve as a charge nurse only when the facility has an average daily occupancy of 60 or fewer residents.

(c) *Level B requirement: Nursing facilities: Waiver of requirement to provide licensed nurses on a 24-hour basis.* A facility may request a waiver from either the requirement that a nursing facility provide a registered nurse for at least 8 consecutive hours a day, 7 days a week, as specified in paragraph (b) of this section, or the requirement that a nursing facility provide licensed nurses on a 24-hour basis, including a charge nurse as specified in paragraph (a) of this section, if the following conditions are met:

(1) The facility demonstrates to the satisfaction of the State that the facility has been unable, despite diligent efforts (including offering wages at the community prevailing rate for nursing facilities), to recruit appropriate personnel;

(2) The State determines that a waiver of the requirement will not endanger the health or safety of individuals staying in the facility;

(3) The State finds that, for any periods in which licensed nursing services are not available, a registered nurse or a physician is obligated to respond immediately to telephone calls from the facility;

(4) A waiver granted under the conditions listed in paragraph (c) of this section is subject to annual State review; and

(5) Effective October 1, 1990, in granting or renewing a waiver, a facility may be required by the State to use other qualified, licensed personnel.

(d) *Level B requirement: SNFs: Waiver of the requirement to provide services of a registered nurse for more than 40 hours a week.* (1) The Secretary may waive the requirement that a SNF provide the services of a registered nurse for more than 40 hours a week, including a director of nursing specified in paragraph (b) of this section, if the Secretary finds that the facility—

(i) Is located in a rural area and the supply of skilled nursing facility services in the area is not sufficient to meet the needs of individuals residing in the area;

(ii) Has one full-time registered nurse who is regularly on duty at the facility 40 hours a week; and

(iii) Either—

(A) Has only patients whose physicians have indicated (through physicians' orders or admission notes) that they do not require the services of a registered nurse or a physician for a 48-hour period; or

(B) Has made arrangements for a registered nurse or a physician to spend time at the facility, as determined necessary by the physician, to provide necessary skilled nursing services on days when the regular full-time registered nurse is not on duty.

(2) A waiver of the registered nurse requirement under paragraph (d)(1) of this section is subject to annual renewal by the Secretary.

§ 483.35 Level A requirements: Dietary Services.

The facility must provide each resident with a nourishing, palatable, well-balanced diet that meets the daily nutritional and special dietary needs of each resident.

(a) *Level B requirement: Staffing.* The facility must employ a qualified dietitian either full-time, part-time, or on a consultant basis.

(1) If a qualified dietitian is not employed full-time, the facility must designate a person to serve as the director of food service.

(2) A qualified dietitian is one who is qualified based upon either registration by the Commission on Dietetic Registration of the American Dietetic Association, or on the basis of education, training, or experience in identification of dietary needs, planning and implementation of dietary programs.

(b) *Level B requirement: Sufficient staff.* The facility must employ sufficient support personnel competent to carry out the functions of the dietary service.

(c) *Level B requirement: Menus and nutritional adequacy.* Menus must—

(1) Meet the nutritional needs of residents in accordance with the recommended dietary allowances of the Food and Nutrition Board of the National Research Council, National Academy of Sciences;

(2) Be prepared in advance; and

(3) Be followed.

(d) *Level B requirement: Food.* Each resident receives and the facility provides—

(1) Food prepared by methods that conserve nutritive value, flavor and appearances;

(2) Food that is palatable, attractive, and at the proper temperature;

(3) Food prepared in a form designed to meet individual needs; and

(4) Substitutes offered of similar nutritive value to residents who refuse food served.

(e) *Level B requirement: Therapeutic diets.* Therapeutic diets must be prescribed by the attending physician.

(f) *Level B requirement: Frequency of meals.*(1) Each resident receives and the facility provides at least three meals daily, at regular times comparable to normal mealtimes in the community.

(2) There must be no more than 14 hours between a substantial evening meal and breakfast the following day, except as provided in (4) below.

(3) The facility must offer snacks at bedtime daily.

(4) When a nourishing snack is provided at bedtime, up to 16 hours may elapse between a substantial evening meal and breakfast the following day if a resident group agrees to this meal span and a nourishing snack is served.

(g) *Level B requirement: Assistive devices.* The facility must provide special eating equipment and utensils for residents who need them.

(h) *Level B requirement: Sanitary conditions.* The facility must—

(1) Procure food from sources approved or considered satisfactory by Federal, State, or local authorities;

(2) Store, prepare, distribute, and serve food under sanitary conditions; and

(3) Dispose of garbage and refuse properly.

§ 483.40 Level A requirement: Physician services.

A physician must personally approve a recommendation that an individual be admitted to a facility. Each resident must remain under the care of a physician.

(a) *Level B requirement: Physician supervision.* The facility must ensure that—

(1) The medical care of each resident is supervised by a physician; and

(2) Another physician supervises the medical care of residents when their attending physician is unavailable.

(b) *Level B requirement: Physician visits.* The physician must—

(1) Review the resident's total program of care, including medications and treatments, at each visit required by paragraph (c) of this section;

(2) Write, sign and date progress notes at each visit; and

(3) Sign all orders.

(c) *Level B requirement: Frequency of physician visits.* Physician visits must conform to the following schedule:

(1) For skilled nursing facilities, the resident must be seen by a physician at least once every 30 days for the first 90 days after admission, and at least once every 60 days thereafter.

(2) For nursing facilities (and for intermediate care facilities until October 1, 1990), the resident must be seen by a physician at least once every 30 days for the first 90 days after admission, and at least once every 90 days thereafter.

(3) A physician visit is considered timely if it occurs not later than 10 days after the date the visit was required.

(4) Except as provided in paragraph (c)(5) of this section, all required physician visits must be made by the physician personally.

(5) At the option of the physician, required visits after the initial visit may alternate between personal visits by the physician and visits by a physician assistant or nurse practitioner in accordance with paragraph (e) of this section.

(d) *Level B requirement: Availability of physicians for emergency care.* The facility must provide or arrange for the provision of physician services 24 hours a day, in case of an emergency.

(e) *Level B requirement: Physician delegation of tasks.* (1) Except as specified in paragraph (e)(2) of this section, a physician may delegate tasks to a physician assistant or nurse practitioner who—

(i) Meets the applicable definition in § 491.2 of this chapter;

(ii) Is acting within the scope of practice as defined by State law; and

(iii) Is under the supervision of the physician.

(2) A physician may not delegate a task when the regulations specify that the physician must perform it personally, or when the delegation is prohibited under State law or by the facility's own policies.

§ 483.45 Level A requirement: Specialized rehabilitative services.

A facility must provide or obtain rehabilitative services, such as physical therapy, speech-language pathology, and occupational therapy, to every resident it admits.

(a) *Level B requirement: Provision of services.* If specialized rehabilitative services are required in the resident's comprehensive plan of care, the facility must—

(1) Provide the required services; or

(2) Obtain the required services from an outside resource in accordance with § 483.75(j) of this part, from a provider of specialized rehabilitative services.

(b) *Level B requirement: Qualifications.* Specialized rehabilitative services must be provided under the written order of a physician by qualified personnel.

§ 483.55 Level A requirement: Dental services.

The facility must assist residents in obtaining routine and 24-hour emergency dental care.

(a) *Level B requirement: Advisory dentist.* Until October 1, 1990, the facility must ensure that a dentist is available in an advisory role to the nursing staff.

(b) *Level B requirement: Outside services.* Until October 1, 1990, the facility must—

(1) Have an agreement, which meets the requirements of § 483.75(j) of this part, with a dentist to provide dental services;

(2) Maintain a list of available dentists for residents who do not have a private dentist;

(3) If nesessary, assist the resident—

(i) In making appointments; and

(ii) By arranging for transportation to and from the dentist's office; and

(4) Promptly refer residents with lost or damaged dentures to a dentist.

(c) *Level B requirement: Skilled nursing facilities.* (1) Effective October 1, 1990, the facility must provide or obtain from an outside resource, in accordance with § 483.75(j) of this part, routine and emergency dental services.

(2) An SNF may charge a resident an additional amount for emergency dental services.

(d) *Level B requirement: Nursing facilities.* Effective October 1, 1990, the facility must provide or obtain from an outside resource, in accordance with § 483.75(j) of this part, the following dental services to meet the needs of each resident:

(1) Routine dental services (to the extent covered under the State plan); and

(2) Emergency dental services.

§ 483.60 Level A requirement: Pharmacy services.

The facility must provide routine and emergency drugs and biologicals to its residents, or obtain them under an agreement described in § 483.75(j) of this part.

(a) *Level B requirement: Methods and procedures.* (1) Until October 1, 1990, skilled nursing facilities must establish methods and procedures for dispensing and administering drugs and biologicals.

(2) The facility may permit unlicensed personnel to administer drugs if State law permits; but only under the general supervision of a licensed nurse.

(b) *Level B requirement: Procedures.* Effective October 1, 1990, a facility must provide pharmaceutical services (including procedures that assure the accurate acquiring, receiving, dispensing, and administering of all drugs and biologicals) to meet the needs of each resident.

(c) *Level B requirement: Pharmaceutical services committee.* (1) Until October 1, 1990, the facility must have a pharmaceutical services

committee (or its equivalent), which develops written policies and procedures for safe and effective drug therapy, distribution, control, and use.

(2) The committee is comprised of at least the pharmacist, the director of nursing services, the administrator, and one physician.

(3) The committee oversees pharmaceutical service in the facility, makes recommendations for improvement, and monitors the service to ensure its accuracy and adequacy.

(4) The committee meets at least quarterly and documents its activities, findings, and recommendations.

(d) *Level B requirement: Service consultation.* The facility must employ or obtain the services of a licensed pharmacist who

(1) Provides consultation on all aspects of the provision of pharmacy services in the facility;

(2) Establishes a system of records of receipt and disposition of all controlled drugs in sufficient detail to enable an accurate reconciliation; and

(3) Determines that drug records are in order and that an account of all controlled drugs is maintained and periodically reconciled.

(e) *Level B requirement: Drug regimen review.* (1) The drug regimen of each resident must be reviewed at least once a month by a licensed pharmacist.

(2) The pharmacist must report any irregularities to the attending physician or the director of nursing, or both, and these reports must be acted upon.

(f) *Level B requirement: Labeling of drugs and biologicals.* The facility must label drugs and biologicals in accordance with currently accepted professional principles, and include the appropriate accessory and cautionary instructions, and the expiration date.

(g) *Level B requirement: Storage of drugs and biologicals.* (1) In accordance with State and Federal laws, the facility must store all drugs and biologicals in locked compartments under proper temperature controls, and permit only authorized personnel to have access to the keys.

(2) The facility must provide separately locked, permanently affixed compartments for storage of controlled drugs listed in Schedule II of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and other drugs subject to abuse, except when the facility uses single unit package drug distribution systems in which the quantity stored is minimal and a missing dose can be readily detected.

§ 483.65 Level A requirement: Infection control.

The facility must establish and maintain an infection control program designed to provide a safe, sanitary, and comfortable environment in which residents reside and to help prevent the development and transmission of disease and infection.

(a) *Level B requirement: Infection control program.* The facility must establish an infection control program under which it—

(1) Investigates, controls and prevents infections in the facility;

(2) Decides what procedures, such as isolation, should be applied to an individual resident; and

(3) Maintains a record of incidents and corrective actions related to infections.

(b) *Level B requirement: Preventing spread of infection.* (1) When the infection control program determines that a resident needs isolation to prevent the spread of infection, the facility must isolate the resident.

(2) The facility must prohibit employees with a communicable disease or infected skin lesions from direct contact with residents or their food, if direct contact will transmit the disease.

(3) The facility must require staff to wash their hands after each direct resident contact for which handwashing is indicated by accepted professional practice.

(c) *Level B requirement: Linens.* Personnel must handle, store, process, and transport linens so as to prevent the spread of infection.

§ 483.70 Level A requirement: Physical environment.

The facility must be designed, constructed, equipped and maintained to protect the health and safety of residents, personnel and the public.

(a) *Level B requirement: Life safety from fire.* Except as provided in paragraph (a)(1) or (a)(3) of this section, the facility must meet the applicable provisions of the 1985 edition of the Life Safety Code of the National Fire Protection Association (which is incorporated by reference). Incorporation of the 1985 edition of the National Fire Protection Association's Life Safety Code (published February 7, 1985; ANSI/NFPA) was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51 that govern the use of incorporations by reference.[1]

(1) A facility is considered to be in compliance with this requirement as long as the facility—

(i) On November 26, 1982, complied, with or without waivers, with the requirements of the 1967 or 1973 editions of the Life Safety Code and continues to remain in compliance with those editions of the Code; or

(ii) On May 9, 1988, complied, with or without waivers, with the 1981 edition of the Life Safety Code and continues to remain in compliance with that edition of the Code.

(2) After consideration of State survey agency findings, HCFA, or in the case of intermediate care facilities, the State survey agency may waive specific provisions of the Life Safety Code which, if rigidly applied, would result in unreasonable hardship upon the facility, but only if the waiver does not adversely affect the health and safety of residents or personnel.

(3) The provisions of the Life Safety Code do not apply in a State where HCFA finds, in accordance with applicable provisions of section 1861(j)(13) of the Act, that a fire and safety code imposed by State law adequately protects patients, residents and personnel in long term care facilities.

(b) *Level B requirement: Emergency power.* (1) An emergency electrical power system must supply power adequate at least for lighting all entrances and exits, equipment to maintain the fire detection, alarm and extinguishing systems, and life support systems in the event the normal electrical supply is interrupted.

(2) When life support systems are used, the facility must provide emergency electrical power with an emergency generator (as defined in NFPA 99, Health Care Facilities) that is located on the premises.

(c) *Level B requirement: Space and equipment.* The facility must—

(1) Provide sufficient space and equipment in dining, health services, recreation, and program areas to enable staff to provide residents with needed services as required by these standards and as identified in each resident's plan of care; and

(2) Maintain all essential mechanical, electrical, and patient care equipment in safe operating condition.

(d) *Level B requirement: Resident rooms.* Resident rooms must be designed

[1] The Code is available for inspection at the Office of the Federal Register Information Center, Room 8301, 1110 L Street NW., Washington, DC. Copies may be obtained from the National Fire Protection Association, Batterymarch Park, Quincey, Mass. 02209. If any changes in this code are also to be incorporated by reference, a notice to that effect will be published in the **Federal Register**.

and equipped for adequate nursing care, comfort and privacy of residents.

(1) Bedrooms must—

(i) Accommodate no more than four residents;

(ii) Measure at least 80 square feet per resident in multiple resident bedrooms, and at least 100 square feet in single resident rooms;

(iii) Have direct access to a corridor;

(iv) Be designed or equipped to assure full visual privacy for each resident;

(v) In facilities initially certified after August 1, 1989, each bed must have ceiling suspended curtains, which extend around the bed to provide total visual privacy, in combination with adjacent walls and curtains;

(vi) Have at least one window to the outside; and

(vii) Have a floor at or above grade level.

(2) The facility must provide each resident with—

(i) A separate bed of proper size and height for the convenience of the resident;

(ii) A clean, comfortable mattress;

(iii) Bedding appropriate to the weather and climate; and

(iv) Functional furniture appropriate to the resident's needs, and individual closet space in the resident's bedroom with clothes racks and shelves accessible to the resident.

(3) HCFA, or in the case of a facility participating as a skilled nursing facility under Medicaid only or as an intermediate care facility, or a nursing facility after October 1, 1990, the survey agency may permit variations in requirements specified in paragraphs (d)(1) (i) and (ii) of this section relating to rooms in individual cases when the facility demonstrates in writing that the variations—

(i) Are required by the special needs of the residents; and

(ii) Will not adversely affect residents' health and safety.

(e) *Level B requirement: Toilet facilities.* Each resident room must be equipped with or located near toilet and bathing facilities.

(f) *Level B requirement: Resident call system.* The nurse's station must be equipped to receive resident calls through a communication system from—

(1) Resident rooms; and

(2) Toilet and bathing facilities.

(g) *Level B requirement: Dining and resident activities.* The facility must provide one or more rooms designated for resident dining and activities. These rooms must—

(1) Be well lighted;

(2) Be well ventilated, with nonsmoking areas identified;

(3) Be adequately furnished; and

(4) Have sufficient space to accommodate all activities.

(h) *Level B requirement: Other environmental conditions.* The facility must provide a safe, functional, sanitary and comfortable environment for residents, staff and the public. The facility must—

(1) Establish procedures to ensure that water is available to essential areas when there is a loss of normal water supply;

(2) Have adequate outside ventilation by means of windows, or mechanical ventilation or a combination of the two; and

(3) Equip corridors with firmly secured handrails on each side.

(4) Maintain an effective pest control program so that the facility is free of pests and rodents.

§ 483.75 Level A requirement: Administration.

A facility must be administered in a manner that enables it to use its resources effectively and efficiently to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident.

(a) *Level B requirement: Licensure.* (1) A skilled nursing facility must be—

(i) Licensed in accordance with State or local law if that law requires it; or

(ii) Approved by the State or local agency responsible for licensing such institutions, as meeting the applicable licensing standards.

(2) Until October 1, 1990, an intermediate care facility must be licensed under State law to provide, on a regular basis, health-related care and services to individuals who do not require the degree of care and treatment which a hospital or skilled nursing facility is designed to provide, but who because of their mental or physical condition require care and services (above the level of room and board) which can be made available to them only through institutional facilities.

(b) *Level B requirement: Compliance with Federal, State and local laws.* Until October 1, 1990, the facility must be in compliance with all applicable provisions of Federal, State and local laws, regulations and codes pertaining to health, safety, sanitation, and research.

(c) *Level B requirement: Compliance with Federal, State and local laws and professional standards, effective October 1, 1990.* The facility must operate and provide services in compliance with all applicable Federal, State, and local laws, regulations and codes, and with accepted professional standards and principles that apply to professionals providing services in such a facility.

(d) *Level B requirement: Relationship to other HHS regulations.* In addition to compliance with the regulations set forth in this subpart, facilities are obliged to meet the applicable provisions of other HHS regulations, including but not limited to those pertaining to nondiscrimination on the basis of race, color, or national origin (45 CFR Part 80), nondiscrimination on the basis of handicap (45 CFR Part 84), nondiscrimination on the basis of age (45 CFR Part 91), protection of human subjects of research (45 CFR Part 46), and fraud and abuse (42 CFR Part 455). Although these regulations are not in themselves considered requirements under this part, their violation may result in the termination or suspension of, or the refusal to grant or continue payment with Federal funds.

(e) *Level B requirement: Governing body:* (1) The facility must have a governing body, or designated persons functioning as a governing body, that is legally responsible for establishing and implementing policies regarding the management and operation of the facility; and

(2) The governing body appoints the administrator who is—

(i) Licensed by the State; and

(ii) Responsible for management of the facility.

(f) *Level B requirement: Institutional plan and budget:* Until October 1, 1990, skilled nursing facilities must develop an overall plan and budget that meets the following requirements:

(1) Provides for an annual operating budget which includes all anticipated income and expenses, but need not include an item-by-item identification of the components of each type of anticipated expenditure or income;

(2) Provides for a capital expenditures plan for at least a 3-year period, including the year to which the operating budget described in paragraph (1) of this section is applicable. This plan must identify in detail the anticipated sources of financing for, and the objectives of, each anticipated expenditure in excess of $600,000, or such lesser amount as may be established by the State in which the SNF is located, related to the acquisition of land, the improvement of land, buildings, and equipment, and the replacement, modernization, and expansion of the buildings and equipment which would, under generally accepted accounting principles, be considered capital items;

(3) Provides that the plan is submitted to the State agency designated under

section 1122(b) of the Act, or if no such agency is designated, to the appropriate health planning agency in the State, except when a facility is exempt from section 1122 review under section 1122(j) of the Act (see 42 CFR Part 100);

(4) Is reviewed and updated by the facility at least annually; and

(5) Is prepared, under the direction of the governing body of the institution by a committee consisting of representatives of the governing body, the administrative staff, and the medical staff of the institution.

(g) *Level B requirement: Required training of nurse aides*—(1) *General rule.* Effective January 1, 1990, a facility must not use any individual working in the facility as a nurse aide for more than 4 months, on a full-time, temporary, per diem, or other basis, unless:

(i) That individual has completed a training and competency evaluation program, or a competency evaluation program approved by the State, and

(ii) That individual is competent to provide nursing and nursing related services.

(2) *Competency evaluation programs for current employees.* Effective July 1, 1989, a facility must provide, for individuals used as nurse aides, a competency evaluation program approved by the State, and preparation necessary for the individual to complete the program by January 1, 1990.

(3) *Competency.* Effective January 1, 1990, a facility must permit an individual to serve as a nurse aide or provide services of a type for which the individual has not demonstrated competence only when—

(i) The individual is in a training and competency evaluation program or a competency evaluation program approved by the State; and

(ii) The facility has asked and not yet evaluated a reply from the State registry for information concerning the individual.

(4) *Required retraining.* Effective January 1, 1990, when an individual has not performed paid nursing or nursing-related services for a continuous period of 24 consecutive months since the most recent completion of a training and competency evaluation program, the facility must require the individual to complete a new training and competency evaluation program.

(5) *Regular in-service education.* Effective January 1, 1990, the facility must provide regular performance review and regular in-service education to ensure that individuals used as nurse aides are competent to perform services as nurse aides. In-service education must include training for individuals providing nursing and nursing-related services to residents with cognitive impairments.

(6) *Definition of nurse aide.* For purposes of this section, the term, "nurse aide," means any individual providing nursing or nursing-related services to residents in a facility. This definition does not include an individual who volunteers to provide such services without pay.

(h) *Level B requirement: Proficiency of Nurse aides.* The facility must ensure that nurse aides are able to demonstrate competency in skills and techniques necessary to care for residents' needs, as identified through resident assessments, and described in the plan of care.

(i) *Level B requirement: Staff qualifications.* (1) The facility must employ on a full time, part time, or consultant basis those professionals necessary to carry out the provisions of these conditions of participation.

(2) Professional staff must be licensed, certified or registered in accordance with applicable State laws.

(j) *Level B requirement: Use of outside resources.* (1) If the facility does not employ a qualified professional person to furnish a specific service to be provided by the facility, the facility must have that service furnished to residents by a person or agency outside the facility under an arrangement described in section 1861(w) of the Act or an agreement described in paragraph (j)(2) of this section.

(2) Arrangements or agreements pertaining to services furnished by outside resources must specify in writing that the facility assumes responsibility for—

(i) Obtaining services that meet professional standards and principles that apply to professionals providing services in such a facility; and

(ii) The timeliness of the services.

(k) *Level B requirement: Medical director.* (1) The facility must designate a physician to serve as medical director.

(2) The medical director is responsible for—

(i) Implementation of resident care policies; and

(ii) The coordination of medical care in the facility.

(l) *Level B requirement: Laboratory services.* (1) The facility must provide or obtain clinical laboratory services to meet the needs of its residents. The facility is responsible for the quality and timeliness of the services.

(i) If the facility provides its own laboratory services, the services must meet the applicable conditions for coverage of the services furnished by independent laboratories specified in Subpart M of Part 405 of this chapter;

(ii) If the facility provides blood bank and transfusion services, it must meet the applicable conditions for—

(A) Independent laboratories specified in Subpart M of Part 405 of this chapter; and

(B) Hospitals specified in § 482.27(d) of this subchapter;

(iii) If the laboratory chooses to refer specimens for testing to another laboratory, the referral laboratory must be approved for participation in the Medicare program either as a hospital or an independent laboratory;

(iv) If the facility does not provide laboratory services on site, it must have an agreement to obtain these services only from a laboratory that is approved for participation in the Medicare program either as a hospital or as an independent laboratory.

(2) The facility must—

(i) Provide or obtain laboratory services only when ordered by the attending physician;

(ii) Promptly notify the attending physician of the findings;

(iii) Assist the resident in making transportation arrangements to and from the source of service, if the resident needs assistance.

(iv) File in the resident's clinical record signed and dated reports of clinical laboratory services.

(m) *Level B requirement: Radiology and other diagnostic services.* (1) The skilled nursing facility must provide or obtain radiology and other diagnostic services to meet the needs of its residents. The facility is responsible for the quality and timeliness of the services.

(i) If the facility provides its own diagnostic services, the services must meet the applicable conditions of participation for hospitals contained in § 482.26 of this subchapter.

(ii) If the facility does not provide diagnostic services, it must have an agreement to obtain these services from a provider or supplier that is approved to provide these services under Medicare.

(2) The facility must—

(i) Provide or obtain radiology and other diagnostic services only when ordered by the attending physician;

(ii) Promptly notify the attending physician of the findings;

(iii) Assist the resident in making transportation arrangements to and from the source of service, if the resident needs assistance; and

(iv) File in the resident's clinical record signed and dated reports of x-ray and other diagnostic services.

(n) *Level B requirement: Clinical records.* (1) The facility must maintain

clinical records on each resident in accordance with accepted professional standards and practices that are—

(i) Complete;

(ii) Accurately documented;

(iii) Readily accessible; and

(iv) Systematically organized.

(2) Clinical records must be retained for—

(i) The period of time required by State law; or

(ii) Five years from the date of discharge when there is no requirement in State law; or,

(iii) For a minor, three years after a resident reaches legal age under State law.

(3) The facility must safeguard clinical record information against loss, destruction, or unauthorized use;

(4) The facility must keep confidential all information contained in the resident's records, regardless of the form or storage method of the records, except when release is required by—

(i) Transfer to another health care institution;

(ii) Law;

(iii) Third party payment contract; or

(iv) The resident.

(5) The facility must—

(i) Permit each resident to inspect his or her records on request; and

(ii) Provide copies of the records to each resident no later than 48 hours after a written request from a resident, at a photocopying cost not to exceed the amount customarily charged in the community.

(6) The clinical record must contain—

(i) Sufficient information to identify the resident;

(ii) A record of the resident's assessments;

(iii) The plan of care and services provided; and

(iv) Effective October 1, 1989, the results of any preadmission screening conducted by the State; and

(v) Progress notes.

(o) *Level B requirement: Disaster and emergency preparedness.* (1) The facility must have detailed written plans and procedures to meet all potential emergencies and disasters, such as fire, severe weather, and missing residents.

(2) The facility must train all employees in emergency procedures when they begin to work in the facility, periodically review the procedures with existing staff, and carry out staff drills using those procedures.

(p) *Level B requirement: Transfer agreement.* (1) In accordance with section 1861(l) of the Act, the facility must have in effect a written transfer agreement with one or more hospitals approved for participation under the Medicare and Medicaid programs that reasonably assures that—

(i) Residents will be transferred from the facility to the hospital, and ensured of timely admission to the hospital when transfer is medically appropriate as determined by the attending physician; and

(ii) Medical and other information needed for care and treatment of residents, and, when the transferring facility deems it appropriate, for determining whether such residents can be adequately cared for in a less expensive setting than either the facility or the hospital, will be exchanged between the institutions.

(2) The facility is considered to have a transfer agreement in effect if the facility has attempted in good faith to enter into an agreement with a hospital sufficiently close to the facility to make transfer feasible.

(q) *Level B requirement: Utilization review.* Before October 1, 1990, a skilled nursing facility must have in effect a utilization review plan that applies to services furnished by the facility to individuals entitled to Medicare benefits.

(1) The plan must provide for the review, on a sample or other basis, of the medical necessity of the services, to promote the most efficient use of available health facilities and services. The facility must include reviews of—

(i) Admissions to the institutions;

(ii) Duration of stays for a continuous period of extended duration, to be specified by the facility; and

(iii) Professional services, including drugs and biologicals furnished.

(2) The extended duration review must be made as promptly as possible after each day specified under paragraph (q)(1)(ii) of this section, and in no event later than one week following such day.

(3) The review committee must be composed of—

(i) A staff committee of the institution composed of two or more physicans, of which at least two must be physicians as defined in § 410.20(b) of this chapter, with or without participation of other professional personnel; or

(ii) A group outside the facility, which is similarly composed and which is—

(A) Established by the local medical society and some or all of the SNFs in the locality; or

(B) If no such group exists, a group that is approved by HCFA.

(4) If it is impracticable for a facility to have a properly functioning utilization review committee because of the small size of the institution or because of lack of an organized medical staff, then the review committee must be composed as described in paragraph (3)(ii) of this section rather than paragraph (3)(i).

(5) HCFA will require that the facility use Medicaid utilization review procedures instead of the procedures specified in this section if HCFA determines that the Medicaid utilization review procedures are superior in effectiveness to the Medicare procedures.

(6) Before a finding that any further stay in the facility is not medically necessary, the review committee must consult with the individual's attending physician.

(7) When the review committee finds that any further stay in the facility is not medically necessary, the committee must notify promptly—

(i) The institution;

(ii) The individual; and

(iii) the individual's attending physician.

(r) *Level B requirement: Quality assessment and assurance.* (1) Effective October 1, 1990, a facility must maintain a quality assessment and assurance committee consisting of—

(i) The director of nursing services;

(ii) A physician designated by the facility; and

(iii) At least 3 other members of the facility's staff.

(2) The quality assessment and assurance committee—

(i) Meets at least quarterly to identify issues with respect to which quality assessment and assurance activities are necessary; and

(ii) Develops and implements appropriate plans of action to correct identified quality deficiencies.

(s) *Level B requirement: Disclosure of ownership.*

(1) The facility must comply with the disclosure requirements of §§ 420.206 and 455.104 of this chapter.

(2) Effective October 1, 1990, the facility must provide written notice to the State agency responsible for licensing the facility at the time of change, if a change occurs in—

(i) Persons with an ownership or control interest, as defined in §§ 420.201 and 455.101 of this chapter;

(ii) The officers, directors, agents, or managing employees;

(iii) The corporation, association, or other company responsible for the management of the facility; or

(iv) The facility's administrator or director of nursing.

(3) The notice specified in paragraph (s)(2) of this section must include the identity of each new individual or company.

(t) *Level B requirement: Independent medical evaluation and audit.* Before

October 1, 1990, a SNF must cooperate in an effective program which provides for a regular program of independent medical evaluation and audit of the residents in the facility to the extent required by the programs in which the facility participates (including medical evaluation of each resident's need for SNF care).

PART 488—SURVEY AND CERTIFICATION PROCEDURES

F. Part 488 is amended as follows:

1. The authority citation for Part 488 continues to read as follows:

Authority: Secs. 1102, 1814, 1861, 1865, 1866, 1871, 1880, 1881 and 1883 of the Social Security Act (42 U.S.C. 1302, 1395f, 1395x, 1395bb, 1395cc, 1395hh, 1395qq, 1395rr and 1395tt).

§ 488.1 [Amended]

1a. In § 488.1, in the definition of "certification," the phrase ", requirements (for SNFs and ICFs)," is added after the phrase "conditions of participation."

§ 488.3 [Amended]

1b. In § 488.3, the phrase "and requirements for SNFs and ICFs" is added to the heading of the section after the phrase, "Conditions for coverage".

1c. In § 488.3(a)(2), the phrase "or level A requirements (for SNFs)" is added after the phrase "applicable conditions."

§ 488.18 [Amended]

2. In § 488.18, paragraph (a), the phrase "or requirements (for SNFs and ICFs)" is added after the phrase "conditions of participation,".

3. In § 488.18, paragraph (a), the phrase "or level A requirements (for SNFs and ICFs)" is added after the phrase "conditions of participation".

3a. In § 488.18, paragraphs (a) and (b), the phrase "or level A requirements (for SNFs and ICFs)" is added after the phrase "compliance with the conditions" wherever it appears.

§ 488.20 [Amended]

4. In § 488.20, paragraphs (a) and (c), the phrase "or requirements (for SNFs and ICFs)" is added after the phrase "conditions of participation."

§ 488.24 [Amended]

5. In § 488.24, paragraphs (a) and (b), the phrase "or level A requirements (for SNFs and ICFs)" is added after the phrase "conditions of participation."

§ 488.26 [Amended]

6. In § 488.26 paragraph (a), the phrase "or level A requirements (for SNFs and ICFs)" is added after the phrase "conditions of participation."

6a. In § 488.26, paragraph (a), the phrase "and requirements (for SNFs and ICFs)" is added after the phrase "various standards within each condition."

§ 488.28 [Amended]

7. In § 488.28, paragraph (a), the phrase "or Level B requirements (for SNFs and ICFs)" is added after the phrase "standards in the conditions of participation".

8. In § 488.28, paragraph (b), the phrase "or Level B requirements (for SNFs and ICFs)" is added after the term "standards."

§ 488.50 [Amended]

9. In § 488.50, paragraph (a), introductory text, the phrase "Level B requirements" is substituted for the term "standards."

10. In § 488.50, paragraph (b), the phrase "Level B requirements(s)" is substituted for the term "standard(s)."

11. In § 488.50, paragraphs (d) introductory text and (e), the phrase "Level B requirements" is substituted for the term "standards" and the phrase "Level B requirement" is substituted for the term "standard."

PART 489—PROVIDER AGREEMENTS UNDER MEDICARE

G. Part 489 is amended as follows:

1. The authority citation for Part 489 continues to read as follows:

Authority: Secs. 1102, 1861, 1862(h), 1864, 1866, and 1871 of the Social Security Act (42 U.S.C. 1302, 1395x, 1395y(h), 1395aa, 1395cc, and 1395hh) and sec. 602(k) of Pub. L. 98-21 (42 U.S.C. 1395ww note).

§ 489.3 [Amended]

2. In Subpart A, § 489.3, in the definition of "immediate jeopardy," the phrase "level A requirements" is substituted for the term "conditions of participation."

§ 489.10 [Amended]

3. In § 489.10, paragraphs (a)(1) and (b), the phrase "or requirements (for SNFs)" is added after the phrase "conditions of participation."

§ 489.13 [Amended]

3a. In § 489.13, paragraph (a), the phrase "conditions of participation or level A requirements (for SNFs)" is substituted for the term "standards."

§ 489.15 [Amended]

4. In § 489.15, paragraphs (b) and (d)(2)(ii), the phrase "level A requirements" is substituted for the term "conditions of participation."

§ 489.53 [Amended]

5. In Subpart E, § 489.53, paragraph (a)(3), the phrase "or requirements (for SNFs and ICFs)" is added after the phrase "conditions of participation."

6. In § 489.53, paragraph (b)(1), the phrase "level A requirement" is substituted for the phrase "condition of participation."

§ 489.60 [Amended]

7. In Subpart F, § 489.60, paragraph (a) introductory text, the phrase "level A requirement" is substituted for the term "condition of participation."

§ 489.62 [Amended]

8. In § 489.62, paragraph (a), the term "requirements" is substituted for the phrase "conditions of participation."

9. In § 489.62, paragraph (c), the phrase "level A and level B requirements" is substituted for the phrase "the conditions of participation or standards."

§ 489.64 [Amended]

9a. In § 489.64, paragraphs (a)(1) and (b)(1), the phrase "level A requirements" is substituted for the phrase "the conditions of participation."

PART 498—APPEALS PROCEDURES FOR DETERMINATIONS THAT AFFECT PARTICIPATION IN THE MEDICARE PROGRAM

H. Part 498 is amended as follows:

1. The authority citation for Part 498 continues to read as follows:

Authority: Secs. 205(a), 1102, 1869(c) 1871, and 1872 of the Social Security Act (42 U.S.C. 405(a), 1302, 1395ff(c), 1395hh and 1395ii, unless otherwise noted).

§ 498.3 [Amended]

2. In Subpart A, § 498.3, paragraphs (d)(1) and (2), the phrase "or level A requirements (for SNFs and ICFs)" is added after the phrase "conditions of participation."

2a. In § 498.3, paragraph (d)(10), the phrase "or a level A requirement (for SNFs and ICFs)" is added after the phrase "a condition of participation."

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare Hospital Insurance, No. 13.774, Medical Assistance Program.)

Dated: December 7, 1988.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: January 18, 1989.

Otis R. Bowen,

Secretary.

[FR Doc. 89-1697 Filed 1-27-89; 12:10 pm]

BILLING CODE 4120-01-M

federal register

Thursday
February 2, 1989

Part III

Department of Energy

10 CFR Part 710

Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Significant Quantities of Special Nuclear Material; Proposed Rule

DEPARTMENT OF ENERGY

10 CFR Part 710

Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Significant Quantities of Special Nuclear Material

AGENCY: Office of Safeguards and Security, Department of Energy.

ACTION: Proposed rule.

SUMMARY: The Department of Energy (DOE) is issuing a proposed rule for the Personnel Security Assurance Program (PSAP), which is a special access authorization program for positions that afford direct access to Category I quantities of special nuclear material (SNM) or have direct responsibility for transportation or protection of Category I quantities of SNM; that are identified as nuclear material production reactor operators; or with the potential for causing unacceptable damage to national security. The proposed rule sets forth the criteria for determining eligibility for this access authorization program, which includes supervisory review, medical assessment, management evaluation, and security review and clearance determination. This access authorization, called a PSAP clearance, is a security review and determination and is conducted by DOE personnel security specialists.

DATE: Comments must be submitted on or before March 6, 1989.

ADDRESSES: Send comments to Director, Office of Safeguards and Security, DP-34, Department of Energy, Germantown, Room E-369, Washington, DC 20545, (301) 353-5106.

FOR FURTHER INFORMATION CONTACT: Martin Hershkowitz (Program Manager, Personnel Security Assurance Program), (301) 353-5671, or Stephen P. Smith (Principal Attorney), (202) 586-8618.

SUPPLEMENTARY INFORMATION:

I. Introduction and Background

The protection of certain of the Department's security interests, with the potential, if misused, of causing unacceptable damage to the national security, requires the implementation of a program designed to assure that individuals occupying positions affording access to certain material, facilities, and programs meet the highest standards of reliability. This objective is accomplished under the PSAP through a system of continuous evaluation which identifies those individuals whose judgment may be impaired by physical and/or emotional disorders, the use of controlled substances, or the use of alcohol habitually to excess. The PSAP involves four components: supervisory review, medical assessment, management evaluation, and security determination. In order for an individual to be placed or continued in a PSAP position, he or she must successfully complete all reviews required and be granted (or have continued) a PSAP access authorization. A determination to grant initially and to continue annually the PSAP access authorization is based upon a DOE security assessment of any information of security concern developed in the course of the supervisory review, medical assessment, management evaluation, and security review. In the event of a question regarding eligibility for a PSAP access authorization, the procedures contained in the current 10 CFR Part 710 shall be used (the current 10 CFR Part 710 will become 10 CFR Part 710, Subpart A after this proposed regulation is final). PSAP positions include those positions: (a) That afford direct access to Category I quantities of SNM or have direct responsibility for transportation or protection of Category I quantities of SNM; (b) that are identified as nuclear material production reactor operators; and (c) with the potential for causing unacceptable damage to national security.

II. Amendment to 10 CFR Part 710

The present content of this part is entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Significant Quantities of Special Nuclear Material." This amendment proposes to take the entire content of 10 CFR Part 710 and restate it as 10 CFR Part 710, Subpart A, and then add a Subpart B entitled "Criteria and Procedures for Establishment of Personnel Security Assurance Program (PSAP) and Determination of Individual's Eligibility for Access to a PSAP Position," as set forth below.

III. Opportunity for Public Comment

Interested persons are invited to participate in this rulemaking by submitting data, views, or arguments, with respect to the proposal set forth in this notice. Comments should be submitted to the address indicated in the Addresses section of this notice and should be identified on the envelope with the designation, "Rulemaking Comment". Six copies should be submitted. All written comments received on or before the date specified in the beginning of this notice and all other relevant information will be considered by DOE before taking final action on this rule. All written comments received on the proposed rule will be available for public inspection in the DOE Freedom of Information Reading Room, Room 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday. Any person submitting information which that person believes to be confidential and which may be exempt by law from public disclosure should submit 1 complete copy, as well as 6 copies from which the information claimed to be confidential has been deleted. DOE reserves the right to determine the confidential status of the information or data and treat it according to its determination. This procedure is set forth in 10 CFR 1004.11.

IV. Procedural Requirements

A. Executive Order 12291

Under Executive Order 12291 agencies are required to determine whether proposed rules are major rules as defined in the Order. DOE has reviewed this proposed rule and has determined that it is not a major rule because: Implementing the additional security requirements proposed in this rule will not have an annual effect on the economy of $100 million or more; will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises.

B. Regulatory Flexibility Act

In accordance with section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., DOE finds that sections 603 and 604 of said Act do not apply to this rule because, if promulgated, the rule will affect only DOE contractors operating Government-owned facilities, their subcontractors, and selected DOE Federal operations, and will not affect small entities.

C. National Environmental Policy Act

There is no impact on the human environment under this proposed rule. It is a personnel security clearance effort and deals only with a determination to grant, deny, or suspend a PSAP access authorization. Accordingly, preparation of neither an environmental assessment nor an environmental impact statement is required.

D. Paperwork Reduction Act

The proposed regulation has been reviewed in accordance with the Paperwork Reduction Act and has been determined to contain no collection of information requirements.

E. Federalism Effects

DOE has reviewed this proposed rule under the provisions of Executive Order 12612. The principal impacts of this regulation will be on DOE employees and contractors. DOE finds that this regulation raises no Federalism implications and therefore no Federalism assessment is required.

List of Subjects in 10 CFR Part 710

Access authorization, suspension, revocation, Administrative practice and procedure, Classified information, Government contracts, Government employees, nuclear materials, access, Security measures, Personnel Security Assurance Program, PSAP position, Category I Quantities of Special Nuclear Material, PSAP access authorization.

Issued in Washington, DC, on January 19, 1989.

Troy E. Wade II,

Acting Assistant Secretary for Defense Programs.

In consideration of the foregoing, it is proposed to amend Part 710 of Title 10 of the Code of Federal Regulations, as set forth below.

PART 710—CRITERIA AND PROCEDURES FOR DETERMINING ELIGIBILITY FOR ACCESS TO CLASSIFIED MATTER OR SIGNIFICANT QUANTITIES OF SPECIAL NUCLEAR MATERIAL

1. The authority citation for Part 710 continues to read as follows:

Authority: Sec. 145, 68 Stat. 942, as amended (42 U.S.C. 2165); sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201). E.O. 10450. 3 CFR 1949–1953 Comp., p. 936, as amended; E.O. 10865. 3 CFR 1959–1963 Comp., p. 398, as amended. 3 CFR. Chap. IV; sec. 104(c). 38 Stat. 1237 (42 U.S.C. 5814); sec. 105(a). 88 Stat. 1238 (42 U.S.C. 5815).

Subpart A—General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Significant Quantities of Special Nuclear Material.

§§ 710.1 through 710.399 and Appendix A [Designated as Subpart A]

2. Part 710 is amended by designating §§ 710.1 through 710.39 and Appendix A in their entirety as Subpart A, and by adding a subpart heading to read as set forth above.

3. Part 710 is amended by adding Subpart B to read as set forth below:

General Provisions

Sec.
710.50 Purpose.
710.51 Scope.
710.52 References.
710.53 Policy.
710.54 Definitions.
710.55 Designations of PSAP positions.
710.56 Program process.
710.57 Supervisory review.
710.58 Medical assessment.
710.59 Management evaluation.
710.60 DOE security review and clearance determinations.

Subpart B—Criteria and Procedures for Establishment of Personnel Security Assurance Program (PSAP) and Determinations of Individual's Eligibility for Access to a PSAP Position

General Provisions

§ 710.50 Purpose.

(a) This part establishes the policies and procedures for implementing a Department of Energy (DOE) personnel security assurance program (PSAP) for individuals in positions which afford direct access to or have direct responsibility for transportation or protection of Category I quantities of special nuclear materials (SNM), which are identified as nuclear material production reactor operators, or with the potential for causing unacceptable damage to national security.

(b) The DOE personnel security assurance program is designed to establish the procedures for DOE and DOE contractors to utilize in the selection and continuing evaluation of individuals for assignment to the identified PSAP positions. Individuals selected for assignment to PSAP positions must be granted a PSAP access authorization in accordance with the procedures and requirements set forth in Subparts A and B of this part.

§ 710.51 Scope.

The criteria and procedures establishing a personal security assurance program shall apply to:

(a) Those employees of, and applicants for employment with, DOE who either occupy or make application for PSAP positions.

(b) Those employees of, and applicants for employment with, contractors and agents of the DOE who either occupy or make application for PSAP positions.

§ 710.52 References.

(a) Atomic Energy Act of 1954, as amended, Section 11, "Definitions"; Section 141, "Policy"; Section 143, "Department of Defense Participation"; Section 145, "Restriction"; Section 161.b, "General Provisions"; which provide statutory authority for establishing and implementing a DOE security program for controlling access to Restricted Data and special nuclear material. Copies of selected provisions appear as Appendix A to Subpart A of this part.

(b) Executive Orders 10450, April 29, 1953, "Security Requirements for Government Employment," 10865, February 20, 1965, "Safeguarding Classified Information Within Industry," and 12564, September 15, 1986, "Drug-Free Federal Workplace," all as amended.

(c) 53 FR 11970, "Department of Health and Human Services; Mandatory Guidelines for Federal Workplace Drug Testing Programs" of 4–11–88, which contains requirements for conducting drug testing.

(d) Implementing directives (DOE Orders) which provide Departmental guidance on the PSAP and related areas are available from the U.S. Department of Energy, Washington, DC 20585.

§ 710.53 Policy.

The protection of certain of the Department's security interests, with the potential, if misused, of causing unacceptable damage to the national security, requires the implementation of a program designed to assure that individuals occupying positions affording access to certain material, facilities, and programs meet the highest standards of reliability. This objective is accomplished under the PSAP through a system of continuous evaluation which identifies those individuals whose judgment may be impaired by physical and/or emotional disorders, the use of controlled substances, or the use of alcohol habitually to excess. This process will reduce the risk resulting from the potential threat represented by such employees to an acceptable level. The determination to grant initially and to continue annually the access authorization to a PSAP position is based upon a DOE security assessment of any information of security concern developed in the course of an initial and annual security review process.

§ 710.54 Definitions.

As used in this part:

"Direct Access" means access to Category I quantities of SNM which would permit an individual to remove or misuse that material in spite of any controls that have been established to prevent such unauthorized actions.

"Illegal Drugs," means a controlled substance included in Schedule I or II, as defined by Section 802(6) of Title 21 of the United States Code, the possession of which is unlawful under Chapter 13 of that Title. The term

"illegal drugs" does not apply to the use of a controlled substance pursuant to a valid prescription or other uses authorized by law.

"Nuclear Material Production Reactor Operator" means an individual certified by DOE contractor management to operate (manipulate the controls of) a DOE-owned nuclear material production reactor.

"PSAP Approving Official" means a senior DOE official with direct personnel security responsibilities appointed by an operations office manager to review all relevant information, including DOE F 5631.35, "PSAP Management, Medical, and Security Report" as part of the DOE security review process, and who is responsible for granting or continuing the PSAP access authorization, or determining that an individual be processed under the provisions of Subpart A of this part.

"PSAP Position" means a position that affords direct access to or has direct responsibility for transportation or protection of Category I quantities of SNM, nuclear material production reactor operators, or with the potential to cause unacceptable damage to national security.

"Security Concern" means the presence of information regarding an individual applying for or holding a PSAP position that may be considered derogatory under the criteria in Subpart A of this part.

"Unacceptable Damage" means an incident that could result in a nuclear explosive detonation, a major environmental release from a nuclear material production reactor, or an interruption of nuclear weapons production with a significant impact on national security.

Procedures

§ 710.55 Designation of PSAP positions.

PSAP positions shall be designated by the cognizant Operations Office Manager in accordance with the following criteria:

(a) Positions that afford direct access to Category I quantities of SNM or have direct responsibility for transportation or protection of Category I quantities of SNM.

(b) Positions that are identified as nuclear material production reactor operators.

(c) Positions with the potential for causing unacceptable damage to national security which are not included in paragraph (a) or (b) of this section, and are approved by the Director, Office of Safeguards and Security, DOE.

§ 710.56 Program process.

(a) Individuals selected for assignment to PSAP positions must be granted a PSAP access authorization in accordance with the procedures and requirements set forth in this part.

(b) The PSAP involves four (4) components: supervisory review, medical assessment, management evaluation, and security determination. A DOE determination to grant initially and to continue annually an individual's PSAP access authorization is based upon a DOE security assessment of any information of security concern developed in the course of the supervisory review, medical assessment, management evaluation, and security review.

(c) DOE shall make its decision as to a PSAP access authorization in accordance with the criteria in § 710.11 of this part. The intent of the PSAP is to establish a more comprehensive security evaluation of individuals applying for or occupying PSAP positions, on a more frequent basis, to determine whether they meet, or continue to meet, the criteria under Subpart A, § 710.11 of this part.

§ 710.57 Supervisory review.

(a) The supervisory review shall be performed on all applicants for PSAP positions, transferees to PSAP positions, individuals occupying PSAP positions but not yet holding a PSAP access authorization, and PSAP-cleared employees.

(b) The initial SF–86, OMB Control No. 3206.007, "Questionnaire for Sensitive Positions" of an applicant for a PSAP position and an annual update of the "Questionnaire for Sensitive Positions," including a completed Part II, of each incumbent in a PSAP position shall be completed and forwarded to the appropriate PSAP Approving Official.

(c) Before being considered for a PSAP position, all applicants must undergo a thorough preemployment check covering the past 10 years, which includes validation of the applicant's educational history; verification of the applicant's employment record; a credit check; a local agency criminal records check for the locations of interest, as permitted by state or local law; and contact with all references.

(d) Each applicant being considered for a PSAP position and each individual occupying a PSAP position but not yet holding a PSAP access authorization shall execute the appropriate PSAP releases, acknowledgments, and waivers. The request for a PSAP access authorization shall not be further processed until these documents are completed. Failure of an individual occupying a PSAP position but not yet holding a PSAP access authorization to complete these documents shall result in their reassignment from PSAP duties and an effort be made to reassign the individual to a position that does not require a PSAP access authorization.

(e) Each applicant for a PSAP position and each individual occupying a PSAP position but not yet holding a PSAP access authorization shall undergo testing for the use of illegal drugs in accordance with the provisions of the DOE drug testing program. A determination of the use of illegal drugs based on a drug test shall result in the termination of consideration for the PSAP access authorization. An employee who has been determined to be a user of illegal drugs based on drug test shall be immediately reassigned from the PSAP duties and processed under the provisions of Subpart A of this part.

(f) The supervisor (or selecting official) shall report any security concerns resulting from his or her review to the appropriate management official.

(g) *Annual Review.* Each PSAP-cleared employee shall have an annual PSAP review conducted by the supervisor during which the supervisor shall evaluate relevant information of security interest. The supervisor shall report any security concerns resulting from his or her review to the appropriate management official following the annual review of each PSAP-cleared employee.

(h) *Recognition of Security Concerns and Unusual Conduct.* In order to facilitate early recognition of an individual who represents a possible security concern, individuals who in the judgment of the responsible supervisor exhibit unusual conduct shall be referred to the site Occupational Medical Director who may arrange for the PSAP-cleared employee to be examined by the appropriate medical staff. Information indicating a possible security concern shall be reported immediately to the appropriate management official and PSAP Approving Official.

(i) *Temporary Reassignment to non-PSAP Duties.* Where an individual has demonstrated a possible security concern or a condition which may temporarily affect his or her reliability, the individual with the recommendation and approval of the site Occupational Medical Director or the PSAP Approving Official may be temporarily reassigned to non-PSAP duties. In the event that a PSAP-cleared employee is temporarily reassigned to non-PSAP duties, the

supervisor, jointly with the site Occupational Medical Director and/or the PSAP Approving Official, as appropriate, may determine the temporary restrictions to be placed on the employee. The PSAP Approving Official shall be notified immediately upon the decision to temporarily reassign the employee to non-PSAP duties and the reason for such action, and upon the decision to reinstate such employee. If the reason for the temporary reassignment was based upon a security concern, the PSAP Approving Official must approve the request for reinstatement.

§ 710.58 Medical assessment.

(a) *The medical examination.* The purpose of the PSAP medical examination is to ensure that an application for, or incumbent in, a PSAP position does not represent a security concern or have a condition which may prevent the individual from performing PSAP duties in a reliable and safe manner. The examination shall include an evaluation to determine the presence of any physical or mental condition that causes or may cause a significant defect in the judgment or reliability of the individual, including that which may result from the use of illegal drugs or the use of alcohol habitually to excess.

(b) *When performed.* The medical assessment is performed initially upon applicants for PSAP positions and employees occupying PSAP positions who have not yet received a PSAP access authorization. The medical assessment shall be performed annually, or more often as may be required by the site Occupational Medical Director, for PSAP-cleared employees.

(c) *Contents of medical assessment.* The medical assessment shall include: a comprehensive medical examination; an examination for use of alcohol habitually to excess; a psychological assessment and/or psychiatric evaluation as provided for in any applicable DOE medical standards for personnel reliability programs, and as permitted by Federal regulations; and an examination for the cause of any reported unusual conduct.

(d) *Examination for use of alcohol habitually to excess.* The use of alcohol habitually to excess represents a potential threat to national security and is inconsistent with access to a PSAP position. Accordingly, the medical assessment shall include:

(1) *Diagnosis.* Individuals in, or applying for, a PSAP position shall be examined for the use of alcohol habitually to excess. Such individuals diagnosed currently to use alcohol habitually to excess shall be temporarily reassigned to non-PSAP duties and the PSAP Approving Official shall be notified immediately.

(2) *Rehabilitation.* Individuals reinstated to PSAP duties following treatment leading to rehabilitation from the use of alcohol habitually to excess shall be required to undergo evaluation as prescribed by the site Occupational Medical Director in order to ensure continued rehabilitation. Such evaluation shall be consistent with appropriate Departmental substance abuse programs.

(e) *Examination for the cause of reported unusual conduct.* Upon referral of an PSAP-cleared employee by a supervisor for unusual conduct, the site Occupational Medical Director may arrange for the employee to be examined by appropriate specialists.

(f) *Report of Occupational Medical Director.* Upon completion of the medical assessment, the site Occupational Medical Director shall report any security concerns resulting from the medical assessment to the appropriate management official.

(g) *Temporary restriction on a PSAP position.* In the event that a condition or circumstance develops that may affect the judgment or reliability of a PSAP-cleared employee, the site Occupational Medical Director may recommend restrictions. The site Occupational Medical Director shall report immediately these restrictions in writing to the appropriate management official who shall notify immediately the appropriate PSAP Approving Official. Removal of the restrictions requires notification in writing to both the management official and the PSAP Approving Official by the site Occupational Medical Director.

(h) *Sick leave from a PSAP position.* PSAP-cleared employees who have been on sick leave for five (5) or more consecutive work days are required to report in person to the site Occupational Medical Driector before being allowed to return to normal duties. The site Occupational Medical Director shall provide a recommendation to the appropriate management official regarding the employee's return to work. A PSAP-cleared employee may in certain circumstances also be required to report to the site Occupational Medical Director for written approval to return to normal duties after any period of sick leave.

§ 710.59 Management evaluation.

(a) *Evaluation components.* A management evaluation based upon a careful review of the results of the supervisory review, medical assessment, and drug testing of an individual in, or applying for, a PSAP position is required before that individual can be considered for an initial or the continuance of a PSAP access authorization. The appropriate manager of an organization having PSAP positions (management official) shall evaluate the information in these reports and forward his or her recommendation, including any security concern, to the PSAP Approving Official.

(b) *Drug testing component.*—(1) *Program requirements.* DOE's drug testing program for the use of illegal drugs shall be established in accordance with the Department of Health and Human Services' "Mandatory Guidelines for Federal Workplace Drug Testing Programs," that will test all individuals in, or applying for, a PSAP position. The program shall include unannounced drug testing and testing for cause or reasonable suspicion. A PSAP-cleared individual who has been determined to be a user of illegal drugs based on a drug test shall be reassigned immediately to non-PSAP duties, and the PSAP Approving Official shall be notified immediately.

(2) *Rehabilitation.* Individuals reinstated to PSAP duties following treatment leading to rehabilitation from use of illegal drugs shall be required to undergo evaluation and testing as prescribed by the site Occupational Medical Director or other designated official, as appropriate, in order to ensure continued rehabilitation.

(3) *Corporate Policy.* Nothing in this part is intended to interfere with or prohibit a contractor of the Department from conducting medical and other evaluations, including testing for illegal drugs, as a matter of corporate policy.

§ 710.60 DOE security review and clearance determination.

(a) *When performed.* The final components of the PSAP process is a security review and clearance determination performed by the PSAP Approving Official upon receipt of the management evaluation and recommendation.

(b) *Review for initial PSAP access authorization.* An initial PSAP access authorization requires a special 15-year background investigation completed within the last five (5) years. The adjudication and determination for a PSAP access authorization shall be based upon a review of security information, including the results of the background investigation and the information provided by management and medical sources.

(c) *The criteria.* The PSAP access authorization and adjudications shall be

conducted in accordance with the criteria and procedures contained in Subparts A and B of this part.

(d) *Annual PSAP access authorization continuance.* Once an employee has received the PSAP access authorization, he or she shall thereafter undergo an annual security evaluation by the PSAP Approving Official. The evaluation shall include a credit check and national and local criminal records check, where available, review of the individual's DOE personnel security file, and an updated SF–86, OMB Control No. 3206.007, "Questionnaire for Sensitive Positions," including completed Part II. The PSAP-cleared employees shall undergo a limited background investigation at least every five (5) years. The determination to continue the PSAP access authorization shall be based upon a review and adjudication of the information resulting from the annual security evaluation, and the information provided by management and medical sources, in accordance with the criteria and procedures contained in Subparts A and B of this part.

(e) *Processing Under 10 CFR Part 710, Subpart A.* Any matters of security concern raised to the attention of the PSAP Approving Official, such as confirmed use of illegal drugs or use of alcohol habitually to excess, shall be evaluated in accordance with the criteria under Subpart A, § 710.11 of this part.

[FR Doc. 89–2347 Filed 2–1–89; 8:45 am]
BILLING CODE 6450–01–M

federal register

Thursday
February 2, 1989

Part IV

Department of Transportation

Maritime Administration

46 CFR Part 221

Documented Vessels and Other Maritime Interests; Regulated Transactions; Interim Final Rule

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 221

[Docket No. R-125]

RIN 2133-AA79

Regulated Transactions Involving Documented Vessels and Other Maritime Interests

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Interim final rule.

SUMMARY: The Maritime Administration ("MARAD") is issuing this interim final rule to conform its regulations to reflect significant changes in the law that became effective on January 1, 1989. These changes impose statutory requirements or standards that are either at variance with MARAD's existing regulations or require regulatory clarification to implement legislative intent. The legislative history of the new law clearly anticipates the need for contemporaneous regulatory guidelines implementing the statute to allow uniform application of underlying policy and to provide guidance to the public on that policy as of the effective date.

DATES: This interim final rule is effective February 2, 1989. The period for public comment will expire April 3, 1989.

ADDRESS: Send an original and two copies of comments to the Secretary, Maritime Administration, Room 7300, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590. To expedite review of the comments, the agency requests, but does not require, submission of an additional ten (10) copies. All comments will be made available for inspection during normal business hours at the above address. Commentors wishing MARAD to acknowledge receipt of comments should enclose a stamped, self-addressed envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Robert J. Patton, Jr., Deputy Chief Counsel, Maritime Administration, Washington, DC 20590, tel. (202) 366-5711.

SUPPLEMENTARY INFORMATION:

Background

The amendment and codification of the former Ship Mortgage Act, 1920, in new 46 U.S.C. Ch. 313, Subch. II, which is contained in section 102 of Pub. L. 100-710 (enacted November 23, 1988), introduces significant changes that are at variance with the present law and existing regulations of the Maritime Administration ("MARAD"). For example, the codification expands the categories of persons that can be mortgagees of preferred mortgages on documented vessels to include federally insured depository institutions, whether or not the entity is a "citizen of the United States" as defined in section 2 of the Shipping Act, 1916 (46 App. U.S.C. 802). The Secretary of Transportation ("the Secretary") is also given broad authority to prescribe criteria for approval of a trustee, without regard to citizenship, for a mortgage held by a noncitizen that cannot qualify as a preferred mortgagee. The codification also removes restrictions on who may hold a preferred mortgage on documented vessels operated only as a fishing vessel, a fish processing vessel, a fish tender vessel or a vessel operated only for pleasure.

Pub. L. 100-710 also contains an amendment to section 9 of the Shipping Act, 1916 (46 App. U.S.C. 808), to reflect established administrative and judicial interpretation of the present law that requires, among other things and with new exceptions, the Secretary's approval of transfer to noncitizens of "control" of citizen-owned documented vessels. The legislative history of this amendment further directs that "the Secretary prescribe guidelines so there will be a uniform application of policy (as to what constitutes 'control') and to advise the public as to the types of transfer for which the Secretary has concern."

The provisions of Pub. L. 100-710 that require changes in MARAD's regulations became effective on January 1, 1989. While there is no statutory mandate that these regulations be in place when the law becomes effective, MARAD has concluded that it is imperative in the interest of all concerned to publish revised regulations as an interim final rule, effective on publication, to permit implementation of the new law without hiatus. This interim final rule is intended to minimize transitional uncertainty, while allowing subsequent fine-tuning of these regulations based on the opportunity for considered evaluation of comments from interested parties before adopting a final rule.

Apart from the substantive provisions implementing Pub. L. 100-710, MARAD has taken this opportunity to revise 46 CFR Part 221 in the interest of a more coherent and orderly statement of its regulatory responsibilities with respect to transactions involving citizen-owned documented vessels, including an explanation of certain policy guidelines in response to specific directions of the Congress contained in the legislative history of Pub. L. 100-710.

Whenever reference is made in these regulations to forms prescribed by MARAD for applications or other filing requirements, the format of such forms in effect prior to the effective date of these regulations may be used pending revision and issuance of new forms approved by The Office of Management and Budget. To the extent necessary to reflect statutory requirements, any form submitted may be modified or supplemented to facilitate processing, but until publication of new forms has been approved these regulations do not require more extensive paperwork or reporting requirements than exist under the present MARAD regulations. Indeed, with the exemptions provided herein those requirements should be less burdensome in the aggregate. Any additional burden imposed at this time in particular circumstances is a function of statutory, not regulatory, requirements.

Discussion of Rulemaking Text

Subpart A Introduction

Section 221.1 Purpose

Section 221.1, Purpose, is self-explanatory.

Section 221.3 Definitions

Section 221.3, Definitions, is intended to provide convenient reference to the meaning of significant terminology used in Part 221, based principally on statutory derivation.

Paragraph (a), "*Charter,*" identifies arrangements other than conventional charter parties that have been found through past applications to involve sufficient interest in or control of a documented vessel under 46 App. U.S.C. 808 to warrant inclusion in this regulation. These include contracts of affreightment, space charters and leases. Although § 221.17(c) of this part provides for general approval of most charters for periods of six months or less, views are solicited on whether certain contracts of affreightment, space charters or leases in excess of six months should be accorded similar treatment. For example, some space charters may allow the use of less than a majority of a vessel's total capacity. Should such space charters nevertheless require approval under 46 App. U.S.C. 808?

Some contracts of affreightment provide for transportation of cargo on an as-needed basis, without a named vessel dedicated to the contract. Should such contracts of affreightment nevertheless require approval under 46 App. U.S.C. 808 for the owner's fleet, or only those contracts where identified

vessels have been dedicated under the contract?

Paragraph (b), "*Citizen of the United States,*" is derived from 46 App. U.S.C. 802, 803, and includes a "controlling interest" test not found in the definition of "citizen of the United States" for purposes of U.S. Coast Guard documentation (46 U.S.C. 2101(3a), 1201).

Paragraph (c), "*Documented vessel,*" includes a vessel for which a registry has been issued pursuant to 46 U.S.C. 12105, reflecting long-standing interpretation of the documentation laws by the Coast Guard. Also consistent with long-standing interpretation of those laws by the Coast Guard, a documented vessel retains that status, with attendant rights and obligations, until officially removed from the documentation rolls. Both interpretations are incorporated into this definition for purposes of these regulations.

Paragraph (d), "*Federally insured depository institution,*" implements 46 U.S.C. 31322(a)(1)(d)(iii), introducing a new class of authorized mortgagees that may or may not be citizens of the United States. Many foreign banking institutions have noncitizen branches or agencies in the United States. So long as they are corporations or associations organized and doing business under the laws of the United States or of a State, are authorized by such law to accept deposits from the public, and are insured by the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation or the National Credit Union Administration, those entities are now eligible to be a mortgagee of preferred mortgages on documented vessel unless disapproved by MARAD.

Paragraph (e), "*Fishing vessel,*" is derived from 46 U.S.C. 2101(11a).

Paragraph (f), "*Fish processing vessel,*" is derived from 46 U.S.C. 2101(11b).

Paragraph (g), "*Fish tender vessel,*" is derived from 46 U.S.C. 2101(11c).

Paragraph (h), "*Mortgagee,*" is derived from 46 U.S.C. 31322(a)(1)(d).

Paragraph (i), "*Noncitizen,*" is the excluded residuum of persons not satisfying the definition of "citizen of the United States" contained in paragraph (b).

Paragraph (j), "*Person,*" is derived from section 1 of the Shipping Act, 1916 (46 App. U.S.C. 801), modified expressly to include individuals and joint ventures and to reflect the fact that "United States," as defined in paragraph (o), already includes the separate geopolitical entities referred to in that statutory definition.

Paragraph (k), "*Person who qualifies as a citizen of the United States under 46 App. U.S.C. 802,*" reflects long-standing MARAD interpretations of who is a citizen within the meaning of 46 App. U.S.C. 802. In order to be a citizen, a person must not be subject to control by any means whatsoever by a noncitizen. This definition incorporates the legal principles articulated in *Mecham Corp.* v. *United States,* 207 F.2d 535, 543 (4th Cir., 1953), that the determination requires examination beyond the exterior structure of an entity to discover who has the actual beneficial interest or control.

Paragraph (l), "*Pleasure vessel,*" is derived from 46 U.S.C. 2101(25), modified to reflect the exclusive use requirement for exemption of such vessels from the authorized mortgagee requirements of 46 U.S.C. 31322(a)(1)(D) and from the foreign transfer restrictions of section 9(c)(1) of the Shipping Act, 1916, as contemplated by Pub. L. 100–710. Although Pub. L. 100–710 requires exemption solely for "a vessel operated only for pleasure," it is believed that the broader definition in this regulation is warranted in view of the fact that the statutory exemption is predicated upon the use to which the vessel is put rather than upon ownership by the person using the vessel. The definition, however, makes clear that a bareboat-chartered pleasure vessel must be under the command of an individual who is a citizen of the United States for the entire charter period, consistent with 46 U.S.C. 12110(d).

Paragraph (m), "*State,*" is derived from 46 U.S.C. 30101(6).

Paragraph (n), "*Trustee,*" is derived from 46 U.S.C. 31328(a).

Paragraph (o), "*United States,*" is derived from 46 U.S.C. 30101(8), and has been included to ensure parallelism between use of that term in the codified provisions of the former Ship Mortgage Act, 1920, and its use for purposes of section 9 of the Shipping Act, 1916, both as amended by Pub. L. 100–710.

Paragraph (p), "*United States Government,*" is self-explanatory.

Section 221.5 Citizenship Declarations

Section 221.5, Citizenship Declarations, implements 46 U.S.C. 31306 (a) and (b), *vice* section 40 of the Shipping Act, 1916 (46 App. U.S.C. 838), repealed. The filing of Form MA–899 with the Coast Guard incident to presentation for filing or recording of any instrument transferring an interest in a documented vessel is for the purpose of demonstrating that the transaction is not in violation of section 9 of the Shipping Act, 1916 (46 App. U.S.C. 808). This requirement is carried forward from present law and regulations.

Section 221.7 Applications and Fees

Section 221.7, Applications and Fees, is self-explanatory. The fee amounts are the same as those specified in present 46 CFR 221.14 and 221.16. These fees are intended to recover the cost to the government of processing applications for the specified transactions and have not changed for many years. MARAD is reviewing the amount of the fees, and they may be adjusted upon publication of this rule in final form. Comment on this issue is specifically invited.

Subpart B, Transfers to Noncitizens or to Registry or Authority of a Foreign Country Under 46 App. U.S.C. 808

Section 221.11 Required Approvals

Paragraph (a) recites the statutory restrictions on transactions that generally require prior approval of the Maritime Administrator. The statutory exclusion for certain fishing vessels, fish processing vessels, fish tender vessels and pleasure vessels is dealt with in § 221.15(b)(1), and blanket approvals for other transactions are contained in § 221.17.

Paragraph (b) of this section contains a statement of the circumstances under which the Maritime Administrator will find that a transaction will result in a documented vessel being operated "under the authority of a foreign country." This constraint is mandated by the express statutory language of Pub. L. 100–710, but the legislative history provides no guidance as to its intended scope. The intent of the regulatory definition is to encompass any circumstances under which a documented vessel may be subjected voluntarily to requisition, forfeiture, taking or impairment of freedom of navigation in derogation of the rights and obligations of the owner, operator or master under the laws of the United States.

Section 221.13 Transfer of Control

This provision has been included in response to the House Merchant Marine and Fisheries Committee's statement of intent that—

> The Secretary prescribe guidelines so there will be a uniform application of policy [concerning what constitutes "control"] and to advise the public as to the types of transfer for which the Secretary has concern. For example, a privately held corporation in which all of the stock is owned by U.S. citizens may be able to transfer 49 percent of that stock to foreign citizens without losing control over the vessel. However, a publicly traded corporation, in which the stock is

diluted among many stockholders, may have control transferred with only a 15 percent stock sale to foreign citizens. The guidelines prescribed by the Secretary should allow many normal business transactions to occur, while placing restrictions on those cases of real concern. The touchstone of any analysis in this area is who, in fact, exercises control and not the form of how a transaction is structured * * *.

H.R. Rept. No. 100–918, 100th Cong., 2d Sess. 25 (1988).

It is MARAD's intention that this section of the final regulations will comply fully with that directive, which clearly contemplates concepts of "control" that may go well beyond the majority equity interest/voting power/fiduciary obligations that have been the usual indicia. Paragraph (a), *Criteria*, addresses presumptions, both conclusive and rebuttable, in administration of this regulation. Paragraph (a)(1) reiterates indicia that have been the principal determinates of "control" for purposes of 46 App. U.S.C. 808 analysis prior to enactment of Pub. L. 100–710. Paragraph (a)(2) suggests new presumptive criteria. For example, under paragraph (a)(2)(i), covenants in loan agreements frequently provide restrictions on the borrower's financial transactions, sale of corporate assets, new business undertakings or abandonment of existing activities, either by prior approval or veto. To the extent such covenants are applicable to or may affect documented vessels owned by the borrower, they could be indicia of control of the vessels. Other contractual undertakings may give noncitizens an immediate or contingent right to exercise direct authority over operations of a documented vessel, such as powers contained in a mortgage to an approved noncitizen mortgagee authorizing, in the event of default, operation of the vessel by or on behalf of the noncitizen mortgagee, seizure of physical possession and/or sale of the vessel by the mortgagee under a power of attorney. Implicit in the House Committee's mandate is also the need to consider criteria of "control" that are applied by other Federal agencies, to the extent they may be relevant to a more realistic assessment of "control" by MARAD for purposes of 46 App. U.S.C. 808, and this is provided for in paragraph (a)(1)(ii). The legislative intent of Pub. L. 100–710 indicates that such direct control provisions, if they fall within the noncitizen "control" restrictions of 46 App. U.S.C. 808, would require explicit MARAD approval even though the noncitizen might hold a preferred mortgage on that vessel.

Paragraph (a)(3), attributing transfer to or acquisition of control to a noncitizen if a parent or person that directly or indirectly controls the transferee or acquiring person is a noncitizen, is consistent with present MARAD policy.

Paragraph (b), *Voting Interest*, addresses, *inter alia*, the subject of convertible non-voting instruments, which has also been included in response to the House Committee's mandate that MARAD explicate policy guidelines concerning its approach to "control" determinations for purposes of 46 App. U.S.C. 808, as amended by Pub. L. 100–710.

Notwithstanding the foregoing, and mindful of the House Committee's injunction that the guidelines should not unnecessarily intrude on "normal business transactions" that are not "of real concern," the Maritime Administration does not intend to depart significantly at this time from the jurisdictional precedents under 46 App. U.S.C. 808 that are well-known to the maritime and financial communities, absent extenuating circumstances, until such time as the there has been full opportunity for interested persons to express their views on precisely what would accommodate the Committee's invitation for a more expansive view of "control" in "cases of real concern" without, perforce, more intrusive interference with legitimate business transactions.

Section 221.15 Unrestricted Transfers

Paragraph (a) reflects the statutory exclusion from MARAD approval of transactions under 46 App. U.S.C. 808 if the owner of a documented vessel is not a citizen of the United States within the meaning of 46 App. U.S.C. 802.

Paragraph (b) implements the conditional statutory exemption from prior approval by MARAD for transfer to noncitizens of vessels that have been operated only as a fishing vessel, fish processing vessel, fish tender vessel or vessels that have been operated only for pleasure. Statutory use of the restrictive language, "have been operated only," bespeaks an intent that there have been a continuum of exclusive use of vessel for one or more of the designated purpose for the exemption to be applicable. Accordingly, this paragraph reflects this stringent test, but makes provision for the fact that vessels can be converted or adapted from prior non-qualifying use to a qualifying use and allows exclusion of such vessels so long as they have been exclusively operated with *bona fides* for any of the qualifying uses for a period of not less than twelve (12) consecutive months prior to the date of transfer. Nevertheless, in either event, exclusive use is a requisite for the exemption. Many documented vessels that operate in the geographic ambit of the coastwise trade hold dual or multiple licenses or endorsements. For example, fish tender vessels holding a fisheries license or endorsed registry may also hold a coastwise license or endorsed registry for transport of commercial or proprietary cargo between points in the United States as an adjunct to primary usage of the vessels. Since the clear statutory exclusion applies solely to vessels that *have been operated only* as a fish tender vessel, the exclusion would not apply to such a vessel if it has also been operated for other purposes under the coastwise license or endorsed registry.

Accordingly, paragraph (c) conditions availability of the exemptions of this section on filing of Form MA–899 with the Coast Guard accompanying surrender for the certificate of documentation or registry, as required by law.

Section 221.17 General Approval

In paragraph (a), *All Transactions*, MARAD grants administrative approval for all transactions with respect to certain categories of vessels that, under the 46 App. U.S.C. 808 transfer-of-control authority, would not otherwise be exempt by statute from the approval requirements. MARAD is granting general approval relating to such transfers because, at the present time, there is deemed to be insufficient national interest to require prior MARAD approval for transactions, other than those excluded in the preamble, involving documented vessels that are: (1) Self-propelled vessels under 1,000 gross tons; (2) vessels located on inland lakes or waters from which there is no navigable exit; and (3) non-self-propelled vessels under 1,000 gross tons, other than LASH and SEABEE barges. Any noncitizen acquiring a vessel, or an interest in or control of, a vessel pursuant to this general exemption would, perforce, be precluded from using that vessel in the coastwise trade. However, a "Bowaters" corporation has, by special legislation (46 App. U.S.C. 883–1), a limited waiver, for proprietary carriage, of the Jones Act requirement that coastwise privileges are available only to a vessel owned by a person who qualifies as a citizen of the United States under 46 App. U.S.C. 802. Because "Bowaters" corporations have that dispensation for access to the Jones Act trade, MARAD is of the view that any acquisition of vessels or interests in or control of vessels by such corporations (other than by purchase, as permitted by this special legislation) should be

subject to regulatory scrutiny to ensure conformity with the limited operational purpose and intent of the statute. Accordingly, the preamble to this paragraph excepts "Bowaters" corporations from the general exemption from 46 App. U.S.C. 808 approval for transactions involving the stated categories of vessels.

In paragraph (b), *Mortgages*, blanket approval is given for mortgages to noncitizens under certain circumstances. Paragraph (b)(1) grants approval for mortgages of documented vessels to noncitizen federally insured depository institutions that have complied with the requirements of § 221.45(a) of this part, in accordance with 46 U.S.C. 31322(a)(1)(D)(iii).

Paragraph (b)(2) grants approval for mortgages to any noncitizen of vessels specified in § 221.17(a) of this part.

In paragraph (c), *Charters*, MARAD's present policy concerning charters generally is reiterated.

Paragraph (d), *Charters for Trade with the USSR*, reiterates present policy concerning charters by a citizen of the United States to a noncitizen for trade with the USSR and is carried forward with no intended change.

Section 221.19 Prohibited Transactions

Section 221.19, Prohibited Transaction, replicates the restrictions under present MARAD regulations concerning transactions with nationals of interdicted foreign political entities.

Section 221.21 Requests for Waiver of Required Documentation or Approval of Use

Paragraph (a) implements 46 U.S.C. 31329(a), which permits foreclosure sale of a documented vessel by order of a district court to a person eligible to own a documented vessel or to a mortgagee of the vessel. The statute also provides that a purchaser of the vessel, pursuant to order of a district court or from an intervening noncitizen mortgagee-purchaser, must document the vessel under the laws of the United States, unless that requirement is waived by MARAD. Although decisions concerning documentation of vessels is a Coast Guard function, MARAD has responsibility under 46 App. U.S.C. 808 for regulating the transfer of documented vessels to noncitizens or to foreign registry or authority. Since 46 U.S.C. 31329 contemplates that a vessel sold by order of a district court will continue to be operated and documented only under the laws of the United States, a requirement for express administrative permission for departure from that legislative intent is within the ambit of MARAD's statutory responsibilities.

Paragraph (b) provides that in order to be considered for a waiver, a written request must be submitted to MARAD. Such request must contain the present and former name(s) and official number of the vessel; present and former owner(s) of the vessel; vessel type; vessel gross tonnage; and the intended country of registry.

Paragraph (c) implements 46 U.S.C. 31329(b)(1) and (c). If the purchaser-mortgagee at the court-ordered sale is not eligible to document the vessel, the vessel must be held for resale only and may be operated by the mortgagee only with MARAD approval.

Subpart C, Preferred Mortgages on Doncumented Vessels: Mortgagees and Trustees

Section 221.41 Purpose

Section 221.41, Purpose, is self-explanatory.

Section 221.43 General Approval of Mortgagees

Section 221.43, General Approval of Mortgagees, reflects exercise by the Maritime Administrator of the discretion contained in new 46 U.S.C. 31322(a)(1)(D)(vi) to approve persons other than those specifically identified in the statute to be mortgagees of preferred mortgages on documented vessels.

In paragraph (a)(1), blanket approval is granted to certain federally insured depository institutions to hold preferred mortgages on documented vessels, pursuant to authority of 46 U.S.C. 31322(a)(1)(D)(iii), notwithstanding that they are not citizens of the United States. The statute authorizes such institutions to be mortgagees, unless disapproved. For purposes of these interim final regulations MARAD has determined that the appropriate criteria for regulatory approval of a noncitizen federally insured depository institution as a mortgagee should be the same as those for statutory qualification of an institutional trustee, except for (1) the requirement that the institution have trust powers and (2) the option between supervision or examination by a State, rather than a Federal, official, as established in an application evidencing compliance with the requisite criteria. Relief from the general disapproval of such institutions in paragraph (a)(2) will be granted only upon receipt of an application pursuant to paragraph (a)(1). This is new ground, and should be tilled cautiously at the outset.

Paragraph (b)(1) provides general approval for noncitizens to be mortgagees of vessels that are exempt from foreign transfer restrictions under these regulations: However, Paragraph (b)(2) limits this approval to mortgages that contain no provisions allowing noncitizens to operate the vessel without MARAD's approval, or to exercise control over the owner, charterer or management of the vessel. The term "control" is defined to mean the ability, present or prospective, through any means or device whatsoever, to influence in any manner business decisions affecting the vessel.

Notwithstanding the general approvals granted in paragraphs (a) and (b), paragraph (c) states that they are inapplicable where the mortgagee has direct or indirect ties to certain interdicted countries.

Section 221.45 Permitted Mortgages and Trusts

Paragraph (a) provides that where the United States Government or a State is the mortgagee of a documented vessel or trustee for the benefit of a person not qualifying as a citizen of the United States, issuance of the note or other evidence of indebtedness secured by the mortgage does not require MARAD approval.

Paragraph (b) makes clear that, unless a person is a mortgagee or trustee approved by MARAD, a note or other evidence of indebtedness secured by a mortgage on a documented vessel may not be issued, assigned, transferred to, or held in trust for the benefit of a noncitizen, by that person to a person who does not qualify as a citizen of the United States under 46 App. U.S.C. 802 without specific approval of MARAD.

Paragraph (c) provides that if the approval of a mortgagee or trustee lapses while the mortgage or trust is in effect, the former mortgagee or trustee is liable for curing the lapse by timely substitution of a successor with MARAD approval.

Section 221.47 Approval of Corporate Citizen Trustee

Section 221.47, Approval of Corporate Citizen Trustee, reflects the statutory criteria of 46 U.S.C. 31328(b)(1)–(4) for approval of a corporate trustee that is a citizen of the United States.

Section 221.49 Approval of Noncorporate Citizen Trustee

Section 221.49, Approval of Noncorporate Citizen Trustee, adapts the criteria of 46 App. U.S.C. 31328(b)(1)–(4) to noncorporate business entities that are citizens of the United States.

Section 221.51 Approval of Noncitizen Trustee

Paragraphs (a) and (b) implement 46 U.S.C. 31328 (a)(4) and (b)(5) to permit a federally insured depository institution that is not a citizen of the United States to serve as an approved trustee if it otherwise meets the criteria of 46 U.S.C. 31328(b)(1)–(4) either as a corporation or an association and files an application to that effect with MARAD.

Paragraph (c), consistent with the exclusion of fishing vessels, fish processing vessels, fish tender vessels and pleasure vessels from the restrictions on who may hold a preferred mortgage under 46 U.S.C. 31322(a)(2), grants approval for any noncitizen, other than an individual, to serve as a trustee of such mortgages.

Paragraph (d) provides that all other noncitizens, including a noncitizen federally insured depository institution that has not submitted the requisite application, are excluded from the general approval granted under this section, but may be considered for approval upon application to the Maritime Administrator.

Section 221.53 Application for Approval as Mortgagee or Trustee

Section 221.53, Application for Approval as Mortgagee or Trustee, establishes the procedure for such applications. General approvals of mortgagees or trustees are confirmed for one year, subject to annual renewal pursuant to § 221.55, and a list of such generally approved mortgagees and trustees will be published in the **Federal Register** from time to time. Specific approval of a mortgagee or trustee for a particular transaction is, of course, valid for the period stated in the approval.

Section 221.55 Renewal of General Approval as Mortgagee or Trustee

Section 221.55, Renewal of General Approval as Mortgagee or Trustee, is self-explanatory.

Subpart D, Transactions Involving Maritime Interests in Time of War or National Emergency Under 46 App. U.S.C. 835

This Subpart reserves for later implementation regulations concerning foreign transfer of interests in or control of vessels or maritime facilities under the captioned circumstances.

Subpart E, Penalties

This subpart will be published as part of the final rule. The penalties will be those provided by statute, which are applicable in any event, but such publication will make the regulation more informative and self-contained.

Subpart F, Other Transfers Involving Documented Vessels

This subpart preserves the unaltered text of present 46 CFR 221.13 as 221.90, pending determination whether this provision should be retained, repositioned elsewhere in 46 CFR Ch. II, revised or revoked.

Appendix to Part 221

This appendix carries forward the present statement of procedures and conditions for approval of transfers of documented vessels to foreign ownership or registry, which will also be applicable to operation of documented vessels under the authority of a foreign country as mandated by Pub. L. 100–710.

Summary

This revision of 46 CFR Part 221 is being published as an interim final rule in order to implement recently-enacted legislation concerning vessel financing and foreign transfer of documented vessels, effective January 1, 1989. The issues involved in transition from the present regime to the new statutory mandate are complex, and absence of immediate guidance would almost certainly occasion serious disruption in the business planning of the maritime and financial communities that are affected by this legislation. Public comment is solicited, and will provide the input necessary for MARAD to formulate and publish a final rule that is consistent with the expressed congressional intent concerning national interest.

Because of the need to avoid uncertainty that could jeopardize complex maritime financial transactions presently in progress or contemplation, MARAD finds that good cause exists for making this rule effective on publication.

Analysis of Regulatory Impact

This rulemaking has been reviewed under Executive Order 12291, and it has been determined that this is not a major rule. It will not result in an annual effect on the economy of $100 million or more. There will be no increase in production costs or prices for consumers, individual industries, Federal, State or local governments, agencies, or geographic regions. Furthermore, it will not adversely affect competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

While this rulemaking does not involve any change in important Departmental policies, it is considered significant because it implements statutory changes that will substantially effect the regulation of transactions involving U.S.-documented vessels, and may be expected to generate significant public interest. However, because the economic impact should be minimal, further regulatory evaluation is not necessary. Moreover, the Maritime Administrator certifies that this amendment will not have a significant economic impact on a substantial number of small entities.

This rulemaking does not significantly affect the environment. An environmental impact statement is not required under the National Environmental Policy Act of 1969. It has also been reviewed under Executive Order 12612, Federalism, and it has been determined that it does not have sufficient implications for federalism to warrant preparation of a Federalism Assessment.

Finally, this rulemaking contains reporting requirements that either have previously been approved by the Office of Management and Budget (Approval No. 2133–0006), or are being submitted for its approval, pursuant to provision of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Use of present Maritime Administration forms will be continued pending approval of proposed revisions.

List of Subjects in 46 CFR Part 221

Maritime administration, Maritime carriers.

Accordingly, 46 CFR Part 221 is revised to read as follows:

PART 221—REGULATED TRANSACTIONS INVOLVING DOCUMENTED VESSELS AND OTHER MARITIME INTERESTS

Subpart A—Introduction

Sec.

221.1 Purpose.
221.3 Definitions.
221.5 Citizenship declarations.
221.7 Applications and fees.

Subpart B—Transfers to Noncitizens or to Registry or Authority of a Foreign Country Under 46 App. U.S.C. 808

221.11 Required approvals.
221.13 Transfer of control.
221.15 Unrestricted transfers.
221.17 General approval.
221.19 Prohibited transactions.
221.21 Requests for waiver of required documentation or approval of use.

Subpart C—Preferred Mortgages on Documented Vessels: Mortgagees and Trustees

221.41 Purpose.
221.43 General approval of mortgages.
221.45 Permitted mortgages and trusts.

221.47 Approval of corporate citizen trustee.
221.49 Approval of noncorporate citizen trustee.
221.51 Approval of noncitizen trustee.
221.53 Application for approval as mortgagee or trustee.
221.55 Renewal of general approval as mortgagee or trustee.

Subpart D—Transactions Involving Maritime Interests in Time of War or National Emergency Under 46 App. U.S.C. 835 [Reserved]

Subpart E—Penalties [Reserved]

Subpart F—Other Transfers Involving Documented Vessels

221.90 Uniform Bareboat Charter of a Government-owned dry-cargo vessel under section 705 of the Merchant Marine Act, 1936, as amended, "Form No. 705."

Appendix—to Part 221

Authority: Secs. 2, 9, 37, 41 and 43, Shipping Act, 1916, as amended, and Secs. 204(b) and 705, Merchant Marine Act, 1936, as amended (46 App. U.S.C. 705, 802, 803, 808, 835, 839, 841a, 11149(b), 1195); 49 CFR 1.66.

Subpart A—Introduction

§ 221.1 Purpose.

This part implements statutory responsibilities of the Secretary of Transportation (the "Secretary") with respect to:

(a) Approval of mortgagees and trustees of preferred mortgages on vessels documented under the laws of the United States pursuant to 46 U.S.C. ch. 313, subch. II, contained in section 102 of Pub. L. 100–710, amending and codifying provisions of the former Ship Mortgage Act, 1920;

(b) The regulation of transactions involving transfers of vessels documented under the laws of the United States to noncitizens or to the registry or authority of foreign countries under 46 App. U.S.C. 808, as amended by section 104 of Pub. L. 100–710; and

(c) Transactions involving maritime interests in time of war or national emergency under 46 App. U.S.C. 835.

Those responsibilities have been delegated by the Secretary to the Maritime Administrator (49 CFR 1.66). Accordingly, statutory references to "the Secretary" have been modified herein to refer to the "Maritime Administrator," to reflect that delegation for regulatory purposes.

§ 221.3 Definitions.

For the purpose of this part:

(a) "Charter" means any agreement, contract, lease or commitment whereby possession, use, or services of a vessel are obtained. The term includes all bareboat, time and voyage charters as well as contracts of affreightment, space charters, drilling contracts and leases.

(b) "Citizen of the United States" means any person who qualifies as a citizen of the United States under 46 App. U.S.C. 802 (hereinafter defined), including receivers and trustees and successors or assignees of such persons pursuant to 46 App. U.S.C. 803.

(c) "Documented vessel" means a vessel documented under chapter 121, title 46, United States Code, including a vessel for which a registry has been issued pursuant to section 12105 of that title. A vessel shall be deemed to be documented until such time as surrender of the Certificate of Documentation or Certificate of Registry has been officially accepted by the United States Coast Guard.

(d) "Federally insured depository institution" means a corporation or association organized and doing business under the laws of the United States or of a State, authorized by such law to accept deposits from the public and whose deposit accounts are insured by any of the following agencies:

(1) Federal Deposit Insurance Corporation (FDIC);

(2) Federal Savings and Loan Insurance Corporation (FSLIC); and

(3) National Credit Union Administration (NCUA).

(e) "Fishing vessel" means a vessel that commercially engages in the catching, taking, or harvesting of fish or an activity that can reasonably be expected to result in the catching, taking, or harvesting of fish.

(f) "Fish processing vessel" means a vessel that commercially prepares fish or fish products other than by gutting, decapitating, gilling, skinning, shucking, icing, freezing, or brine chilling.

(g) "Fish tender vessel" means a vessel that commercially supplies, stores, refrigerates, or transports fish, fish products, or materials directly related to fishing or the preparation of fish to or from a fishing vessel, fish processing vessel, or fish tender vessel or a shoreside fish processing facility.

(h) "Mortgagee" means

(1) A State;

(2) The United States Government;

(3) A federally insured depository institution that has not been disapproved by the Maritime Administrator;

(4) An individual who is a citizen of the United States;

(5) Any other person who qualifies as a citizen of the United States; or

(6) Any other person approved by the Maritime Administrator to whom a documented vessel is mortgaged.

(i) "Noncitizen" means a person who is not a citizen of the United States within the meaning of paragraph (b) of this section.

(j) "Person" includes, in addition to individuals, corporations, partnerships, joint ventures and associations, existing under or authorized by the laws of the United States or of a State or, unless the context indicates otherwise, of any foreign country.

(k) "Person who qualifies as a citizen of the United States under 46 App. U.S.C. 802" means a person that, in both form and substance, satisfies the following requirements—

(1) An individual who is a citizen by birth, naturalization or as otherwise authorized by law;

(2) A corporation organized under the laws of the United States or of a State, the controlling interest of which is owned by citizens of the United States and whose president or chief executive officer and chairman of the board of directors are each a citizen of the United States, the majority of a quorum of the board of directors is composed of citizens of the United States and the controlling interest of which is owned by citizens of the United States, but the interest owned by citizens of the United States shall be not less than 75 percent in the event of direct or indirect ownership of a vessel engaging in the coastwise trade;

(3) A partnership organized under the laws of the United States or of a State, if all the general partners are citizens of the United States, a majority of the partnership interests are owned by citizens of the United States and if entitlement to a majority of the proceeds or benefits of the partnership accrue to citizens of the United States, but not less than 75 percent of the partnership interests must be owned by citizens of the United States in the event of direct or indirect ownership of a vessel engaging in the coastwise trade;

(4) An association organized under the laws of the United States or of a State, whose president or other chief executive officer and chairman of the board of directors (or equivalent committee or body) are citizens of the United States, the majority of a quorum of the board of directors, or equivalent, are citizens of the United States, and a majority of the members entitled to vote are citizens of the United States, but not less than 75 percent of the members entitled to vote shall be citizens if in the event of direct or indirect ownership of a vessel engaging in the coastwise trade; or

(5) A joint venture organized under the laws of the United States or of a State, if each coventurer is a citizen of the United States, but not less than a 75

percent interest in each coventurer must be owned by citizens of the United States in the event of direct or indirect ownership of a vessel engaging in the coastwise trade.

(l) "Pleasure vessel" means a vessel that has been issued a recreational vessel license pursuant to 46 U.S.C. 12109 and—

(1) Is operated by the owner only for pleasure; or

(2) Is bareboat chartered by or on behalf of the owner to another person and operated only for that person's pleasure, subject to compliance throughout the period of the charter with the requirement of 46 U.S.C. 12110(d) that a documented vessel may be placed under the command only of a citizen of the United States.

(m) "State" means a State of the United States, Guam, Puerto Rico, the Virgin Islands, American Samoa, the District of Columbia, the Northern Mariana Islands, and any other territory or possession of the United States.

(n) "Trustee" means:

(1) A State;

(2) The United States Government;

(3) A citizen of the United States approved by the Maritime Administrator; or

(4) Any other person approved by the Maritime Administrator.

(o) "United States," when used in the geographic sense, means the States of the United States, Guam, Puerto Rico, the Virgin Islands, American Samoa, the District of Columbia, the Northern Mariana Islands, and any other territory or possession of the United States; when used in other than the geographic sense, it means the United States Government.

(p) The term "United States Government" means the Federal government acting by and through any of its departments or agencies.

§ 221.5 Citizenship declarations.

(a) When an instrument transferring an interest in a documented vessel is presented to the United States Government for filing or recording, the person filing shall submit therewith a written declaration on Maritime Administration Form No. MA–899 (available from the Coast Guard Documentation Officer at the home port of the vessel or from the Vessel Transfer and Disposal Officer (MAR–745.1), Maritime Administration, United States Department of Transportation, Washington, DC 20590), that the transferee is a citizen of the United States, is an authorized mortgagee or trustee under 46 U.S.C. 31322 or 31328 or is exempt from the approval requirement of section 9 of the Shipping Act, 1916, as amended (46 App. U.S.C. 808) in accordance with § 221.15(b)(1) or § 221.17(a) of this part.

(b) A declaration filed by any person other than an individual shall be signed by its president, secretary, treasurer, or other official authorized by the entity to execute the declaration.

§ 221.7 Applications and fees.

(a) *Applications.* Whenever approval of the Maritime Administrator is required under § 221.11 of this part, or pursuant to a Maritime Administration contract or Transfer Order, an application on Maritime Administration Form MA–29 or MA–29B giving full particulars of the proposed transaction shall be filed with the Vessel Transfer and Disposal Officer (MAR–745.1), Maritime Administration, United States Department of Transportation, Washington, DC 20590.

(b) *Fees.* Applications for approval of any of the following transactions shall be accompanied by the specified fee.

(1) Transactions requiring approval under § 221.11:

(i) Sale and delivery to a noncitizen, or transfer to foreign registry of, or foreign governmental authority over, a documented vessel, per vessel—

(A) Of 3,000 gross tons and 325
(B) Of less than 3,000 gross tons 170

(ii) Mortgage, or transfer of any interest in, or control of, a documented vessel to a noncitizen, per vessel 250

(iii) Charter of a documented vessel to a noncitizen, per vessel 250

(iv) Sale or transfer of stock in a corporation that is a citizen of the United States and owns any documented vessel, if by such sale or transfer the controlling interest or a majority of the voting power of the corporation is vested in, or for the benefit of, any noncitizen 325

(v) An application for approval to act as mortgagee or trustee for an indebtedness secured by a preferred mortgage on a documented vessel, and all required annual renewal applications 215

(2) Transactions requiring approval pursuant to a Maritime Administration contract:

(i) Transfer of ownership or registry, or, both, of a contract vessel, per vessel 260

(ii) Sale or transfer to a noncitizen of stock in the foreign corporate owner of the contract vessel 235

(iii) Charter of a contract vessel to a noncitizen, per vessel 240

(iv) Transfer of title to a vessel subject to a mortgage in favor of the United States and to have the mortgage assumed by a new mortgagor, per vessel 400

(c) *Modification of applications or prior approvals.* An application for modification of any approval sought, or of an outstanding Maritime Administration contract or Transfer Order, shall be accompanied by the fee established for the original application.

(d) *Reduction or Waiver of fees.* The Maritime Administrator, in appropriate circumstances, and upon a written finding, may reduce any fee imposed by paragraph (b) or (c) of this section to conform the fee charged more closely with administrative costs, or may waive the fee entirely in extenuating circumstances where the best interest of the United States Government would be served.

Subpart B—Transfers to Noncitizens or to Registry or Authority of a Foreign Country Under 46 App. U.S.C. 808

§ 221.11 Required approvals.

(a) Except as provided in §§ 221.15(b)(1) and 221.17(a) of this part, a person may not, without the written approval of the Maritime Administrator:

(1) Sell, mortgage, lease, charter, deliver, or in any manner transfer, or agree to sell, mortgage, lease, charter, deliver, or in any manner transfer to a noncitizen, any interest in or control of a documented vessel owned by a citizen of the United States; or

(2) Place a documented vessel under foreign registry or operate that vessel under the authority of a foreign country.

(b) For purposes of this part, operation of a documented vessel "under the authority of a foreign country" means any agreement, undertaking or device by which a documented vessel is voluntarily subjected to any restriction or requirement, actual or contingent, under the laws or regulations of a foreign country or instrumentality thereof that is or may be in derogation of the rights and obligations of the owner, operator or master of the vessel under the laws of the United States, unless such restriction or requirement is of general applicability or uniformly imposed by such country or instrumentality in exercise of its sovereign prerogatives with respect to public health, safety or welfare, or in implementation of accepted principles of international law regarding cabotage or safety of navigation.

§ 221.13 Transfer of control.

(a) *Criteria.* (1) A conclusive presumption that a transfer of control of a documented vessel has taken, or will take, place will arise if the legal or beneficial owner of the vessel ceases to

be a person who qualifies as a citizen of the United States under 46 App. U.S.C. 802, as defined for purposes of these regulations.

(2) A rebuttable presumption that a transfer of control of a documented vessel has taken, or will take, place will arise if the legal or beneficial owner is a citizen of the United States and:

(i) Through any means or device whatsoever a noncitizen acquires the ability, present or prospective, to control in any manner the business decisions of the owner affecting the vessel; or

(ii) There is an acquisition of control, as defined by the United States Government, of the vessel owner by, or imputed to, a noncitizen.

(3) For purposes of this section, transfer of control to, or acquisition of control by, a noncitizen includes any noncitizen parent or other person that directly or indirectly controls the transferee or the acquiring person.

(b) *Voting interest.* In determining whether a transfer of control of the owner of a documented vessel has taken or will take place, consideration will usually be limited to voting interests or their equivalent. Non-voting interests, including *bona fide* limited partnership interests, are generally excluded. However, for convertible instruments, the following guidelines will be followed in determining whether a voting interest exists:

(1) Instruments that may be converted solely at the option of the holder (*e.g.*, debentures or preferred stock convertible to common shares) are deemed voting instruments from the date of acquisition;

(2) Instruments that specify a date or condition(s) for convertibility are deemed voting instruments from the release date; and

(3) Instruments that are convertible solely at the option of or with concurrence by the issuer are deemed voting instruments from the date convertibility is authorized.

§ 221.15 Unrestricted transfers.

(a) None of the transactions specified in § 221.11(a)(1) of this part shall require approval if the owner of a documented vessel is not a person who qualifies as a citizen of the United States under 46 App. U.S.C. 802, and that owner is not otherwise required to obtain approval pursuant to a Maritime Administration contract.

(b) None of the transactions specified in § 221.11(a)(1) of this part shall require approval of the Maritime Administrator if the vessel has been operated exclusively and with *bona fides*, for one or more of the following uses, under the appropriate license or endorsed registry and no other, since initial documentation following construction or transfer from foreign registry; or if converted to such use from a prior use, has been exclusively so operated for a period of not less than twelve (12) consecutive months prior to the date of transfer:

(1) A fishing vessel;

(2) A fish processing vessel;

(3) A fish tender vessel; or

(4) A pleasure vessel.

(c) Entitlement to either of the exemptions specified in this section shall be established by filing Maritime Administration Form MA–899 with the Coast Guard at the time of surrender of the Certificate of Documentation or of Registry, stating with particularity compliance with the grounds for exemption.

§ 221.17 General approval.

(a) *All transactions.* Except when the transferee of a vessel or an interest in or control of a vessel is a corporation holding a Certificate of Compliance issued under 46 App. U.S.C. 883–1, the Maritime Administrator grants prior approval for each of the transactions described in § 221.11(a)(1) of this part, subject, to the conditions specified below, for the following documented vessel types:

(1) A self-propelled vessel under 1,000 gross tons;

(2) A vessel operating on inland lakes or waters from which there is no navigable exit; and

(3) A non-self-propelled vessel under 1,000 tons, excluding LASH and SEABEE type barges.

(b) *Mortgages.* The Maritime Administrator grants general approval for the following mortgages of documented vessels to noncitizens:

(1) A mortgage to a noncitizen federally insured depository institution that has complied with the requirements of § 221.45(a) of this part; and

(2) A mortgage to any noncitizen of a vessel specified in § 221.17(a) of this part.

(c) *Charters.* The Maritime Administrator approves, subject to the conditions specified below, charters of a documented vessel by citizens of the United States to noncitizens, not to exceed six months. The respective dates for commencement and termination of a charter, as set forth in its provisions, shall be accepted as *prima facie* evidence of the dates of the events. This approval excludes and does not apply to the following charters:

(1) Demise or bareboat charters, other than the charter of vessel types described in §§ 221.15(b) and 221.17(a) of this part, subject (i) to the conditions therein and (ii) to submission of a copy of the charter party to the Maritime Administrator not later than 30 days following execution;

(2) Charters for the carriage of cargoes of any kind to or from the USSR (except as provided in paragraph (d) of this section), Latvia, Lithuania, Estonia, Libya, Iran, Czechoslovakia, Bulgaria, Albania, North Korea, German Democratic Republic (including East Berlin), Laos, Kampuchea, Vietnam, Outer Mongolia or Cuba [1]; and

(3) (i) Any charter to a non-citizen providing for a duration that is or may be for a period in excess of six (6) months, other than the charter of vessel types described in §§ 221.15(b) and 221.17(a) of this part. The Maritime Administrator shall consider the charter period to include any extension period, irrespective of the inclusion of a provision in the agreement that either makes any charter period extension beyond six (6) months subject to the approval of the Maritime Administrator or permits the substitution of another vessel, including other than a documented vessel. For such a charter, the vessel owner shall submit the charter party to the Maritime Administrator for approval prior to the commencement date of the first six (6) months period; and

(ii) Any new charter of a vessel to a noncitizen that is executed within thirty (30) days after the date of any charter approved under this with the same noncitizen charterer, shall be considered to be a renewal or extension of the original charter. If the cumulative period of time of the charters exceeds six (6) months, the new charter shall be submitted for approval. This requirement shall apply, notwithstanding any provision in a new charter that permits the substitution of another vessel, including other than a documented vessel.

(d) *Charters for trade with the USSR.* The Maritime Administrator hereby approves charters to noncitizens of documented bulk cargo vessels engaged in carrying bulk raw and processed agricultural commodities from the United States to ports in the USSR, or to other permissible ports of discharge for transshipment to the USSR, pursuant to an operating-differential subsidy agreement that is consistent with the requirements of part 252 of this chapter.

[1] This list of countries is subject to change from time to time. Information concerning current restrictions may be obtained from the official identified in § 221.07 of this part.

§ 221.19 Prohibited transactions.

(a) Transactions that are otherwise unrestricted or approved under § 221.15 and 221.17 (a) through (c) of this part are prohibited if the transferee or a person with a controlling interest in the transferee is a citizen or operates under the laws of any country identified in § 221.17(c)(2) of this part, unless:

(1) Such transferee is an individual who has been lawfully admitted into, and resides in the United States, and expressly undertakes under surety bond, in an amount and form and substance satisfactory to the Maritime Administrator, not to cause or allow removal of the vessel from the territorial limits of the United States, or

(2) Such transferee is a citizen of the USSR, but only for the purposes of § 221.17(d) of this part.

(b) No approval shall be granted if the vessel is to be transferred to or placed under the registry, or operated under the authority, of any such country.

§ 221.21 Requests for waiver of required documentation or approval of use.

(a) A documented vessel may be sold by order of a district court only to a person eligible to own a documented vessel or to a mortgagee of the vessel and, unless waived by the Maritime Administrator, a person purchasing the vessel pursuant to court order or from an intervening noncitizen mortgagee-purchaser must document the vessel under chapter 121 of Title 46, United States Code, unless that requirement is waived by the Maritime Administrator.

(b)(1) A purchaser wishing to obtain such a waiver of that documentation requirement must submit a written application to the official identified in § 221.7(a) of this part.

(2) The application must identify the present and former name(s) and Official Number of the vessel; present and former owner(s) of the vessel; vessel type; vessel gross tonnage; and the intended country of registry.

(c) A mortgagee not eligible to document a vessel shall not operate, or cause to be operated, in commerce a vessel purchased by order of a district court unless approved by the Maritime Administrator. An application for such approval shall be submitted in the manner prescribed in paragraph (b)(2).

Subpart C—Preferred Mortgages on Documented Vessels: Mortgagees and Trustees

§ 221.41 Purpose.

The purpose of this subpart is to implement responsibilities of the Maritime Administrator with respect to approving mortgagees and trustees of preferred mortgages on documented vessels pursuant to Pub. L. 100–710.

§ 221.43 General approval of mortgagees.

(a)(1) The Maritime Administrator will approve as a preferred mortgagee of documented vessels a federally insured depository institution that is a noncitizen if it shall first have filed with the Maritime Administrator an application, executed by the chief executive officer or other authorized official, establishing that it—

(i) Is organized and doing business in and under the laws of the United States or of a State;

(ii) Has a combined capital and surplus (as stated in its most recent published report of condition) of at least $3,000,000;

(iii) Is federally insured by an agency identified in § 221.03(c) of this part and is subject to examination by an official of the United States Government.

(2) The Maritime Administrator hereby disapproves any federally insured depository institution as a preferred mortgagee that is a noncitizen unless and until it shall have complied fully with the requirements of paragraph (a)(1).

(b)(1) Except as provided below in paragraph (b)(2), the Maritime Administrator grants approval for persons who do not meet the requirements of 46 U.S.C. 31322(a)(1)(D)(i)–(v) to be mortgagees of preferred mortgages on the types of documented vessels identified in §§ 221.15(b) and 221.17(a) of this part.

(2) To qualify for this approval, at the time the mortgage is executed, and at all times thereafter, the mortgage on such vessels shall contain no provisions allowing persons, including the mortgagee, who are not citizens of the United States: (i) To operate the vessel without the consent of the Maritime Administrator; (ii) exercise control over the vessel owner; (iii) excercise control over any charterer of the vessel; or (iv) exercise control over the management of the vessel. The term "control" as used herein means the ability, present or prospective, through any means or device whatsoever, to influence in any manner business decisions affecting the vessel.

(c) The approvals granted in this section shall not apply if the mortgagee is a person who is a citizen, or whose parent is organized and existing under the laws, or who is subject, directly or indirectly to control, of any country identified in § 221.17(c)(2) of this part.

§ 221.45 Permitted mortgages and trusts.

(a) An instrument or evidence of indebtedness secured by a mortgage on a documented vessel may be issued to the United States Government or to a State acting in the capacity of mortgagee or of trustee for the benefit of a person not qualifying as a citizen of the United States. No application to, approval by or notice to the Maritime Administrator is required on the part of the United States Government or such State, or on the part of the mortgagor.

(b) As to all other persons, an instrument or evidence of indebtedness secured by a mortgage on a documented vessel may be issued, assigned, transferred to, or held in trust by a trustee for the benefit of a person not qualifying as a citizen of the United States under 46 App. U.S.C. 802 only if the mortgagee or trustee has been approved by the Maritime Administrator under this part, in which event no further application to, approval by or notice to the Maritime Administrator is required for a particular transaction.

(c) If an approved mortgagee or trustee at any time shall no longer qualify to serve in such capacity under this part:

(1) The mortgagee or trustee shall notify immediately the official identified in § 221.7 of this part;

(2) The Maritime Administrator shall issue a disapproval notice and order and promptly serve the vessel owner with a copy; and

(3) The vessel owner shall promptly nominate a successor mortgagee or trustee to assume the mortgage or trust, which assumption shall be effected within thirty days receipt of the notice given pursuant to paragraph (c)(2) subject to approval of the Maritime Administrator.

§ 221.47 Approval of corporate citizen trustee.

A corporate trustee shall be approved under 47 U.S.C. 31328(b) if it—

(a) Is a person who qualifies as a citizen of the United States;

(b) Is organized as a corporation, and is doing business, under the laws of the United States or of a State;

(c) Is authorized under those laws to exercise corporate trust powers;

(d) Is subject to supervision of examination by an official of the United States Government or of a State; and

(e) Has a combined capital and surplus (as stated in its most recent published report of condition) of at least $3,000,000.

§ 221.49 Appoval of noncorporate citizen trustee.

A noncorporate trustee may be approved under 46 U.S.C. 31328(a)(4) if it—

(a) Is a person who qualifies as a citizen of the United States;

(b) Is otherwise organized and doing business under the laws of the United States or of a State;

(c) Is authorized under those laws to exercise trust powers;

(d) Is subject to supervision or examination by an official of the United States Government or of a State; and

(e) Has a combined capital and surplus or the equivalent (as stated in its most recently published report of condition) of at least $3,000,000.

§ 221.51 Approval of noncitizen trustee.

(a) No federally insured depository institution that is not a citizen of the United States may serve as a trustee unless it shall first have filed with the Maritime Administrator an application, executed by the chief executive officer or other authorized official, establishing that it—

(1) Is organized under the laws of the United States or of a State and is doing business in the United States;

(2) Is authorized under those laws to exercise trust powers;

(3) Has a combined capital and surplus (as stated in its most recent published report of condition) of at least $3,000,000;

(4) Is federally insured and is subject to examination by an official of the United States Government.

(b) Pursuant to 46 U.S.C. 31328 (a)(4) and (b)(5), a noncitizen federally insured depository institution that complies with the requirements of paragraph (a) of this section may act as a trustee without specific transactional approval of the Maritime Administrator.

(c) There are no restrictions on who may serve as a mortgagee of preferred mortgages on documented vessels that meet the criteria of §§ 221.15(b) or 221.17(a) of this part. Accordingly, any noncitizen is hereby approved as a trustee of such mortgages.

(d) Except as provided in paragraph (c) of this section, all other noncitizens, including a federally insured depository institution that has not complied with the filing requirement of paragraph (a) of this section, are hereby disapproved as trustees, subject to consideration on a case-by-case basis upon application for approval on Maritime Administration Form MA–29.

§ 221.53 Application for approval as mortgagee or trustee.

(a) Each applicant for specific approval as a mortgagee in a particular transaction shall submit a completed Maritime Administration Form MA–29 to the official identified in § 221.7 of this part. Each applicant for general approval as a mortgagee or as a trustee shall submit a completed Maritime Administration Form MA–579 to that official.

(b) Each approval of an application to be an approved mortgagee or trustee shall be in writing and an original copy shall be provided by the Maritime Administrator to the approved mortgagee or trustee.

(c) Each general approval of a mortgagee or trustee shall be effective for a period of one (1) year from the date of issuance, subject to renewal for additional annual periods upon satisfaction of the provisions of § 221.55.

(d) A list of generally approved mortgagees and trustees will be published from time to time in the **Federal Register**.

§ 221.55 Renewal of general approval of mortgagee or trustee.

(a) Upon filing of a complete and acceptable Maritime Administration Form MA–580, approval of a general mortgagee or trustee continuing to meet the requirements of this subpart will be extended for an additional period of one (1) year.

(b) The form shall be submitted to the official identified in § 221.7 of this part, not later than the last business day of, and not earlier than the thirtieth (30th) calendar day before expiration of, the one (1) year period then in effect.

Subpart D—Transactions Involving Maritime Interests in Time of War or National Emergency Under 46 App. U.S.C. 835 [Reserved]

Subpart E—Penalties [Reserved]

Subpart F—Other Transfers Involving Documented Vessels

§ 221.90 Uniform Bareboat Charter of a Government-owned dry-cargo vessel under section 705 of the Merchant Marine Act, 1936, as amended, "Form No. 705."

(a) On July 16, 1956, the United States Department of Commerce, through the Maritime Administration, approved and authorized publication of a standard form of bareboat charter for use in the chartering, under section 705 of the Merchant Marine Act, 1936, as amended, of Government-owned dry-cargo vessels, which are subject to Title VII of said act. The chartering of such vessels is subject to competitive bidding procedures as prescribed under section 706 of said act.

(b) Except as otherwise authorized, the form of such charter shall be substantially as follows:

Form No. 705 (7–56)..... Contract No. _____

INDEX—BAREBOAT CHARTER PARTY AGREEMENT

Clause No.	Title
	PART I
A	Agreement of the Parties.
B	Uniform Terms.
C	Period of Charter.
D	Ports and Dates of Delivery.
E	Service.
F	Rate of Basic Charter Hire.
G	Amount of Insurance.
H	Amount of Bond.
I	Special Provisions.
	PART II
	A. Charter Hire and Bond
1	Basic Charter Hire.
2	Additional Charter Hire.
3	Bond.
	B. Condition of Vessel(s), Equipment and Stores
4	Condition of Vessel(s) on Delivery.
5	Determination of Class.
6	Surveys.
7	Inventory.
8	Consumable Stores and Fuel.
9	Use of Equipment.
10	Maintenance.
11	Structural Changes.
12	Drydocking.
13	Inspections.
14(a)	Redelivery, Port or Place of.
(b)	Redelivery Conditions.
(c)	Disputes.
(d)	Vessel(s) Layup.
	C. Operation of the Vessel(s)
15	Charterer to Man, Operate and Supply.
16	Owner's Representatives.
17	Employment of Affiliates, etc.; Rental of Office Space.
18	Efficient Operation.
19	Use of United States Goods.
20	Development of American-flag Merchant Marine.
21	Services Rendered Vessel(s).
22	No Transfer or Assignment.
23	Preference and Conference Agreements.
24	Libels.
25	Insurance.
26	Bills of Lading or Voyage Charters.
27	General and Particular Average.
28	Salvage.
	D. Management—Other Activities or Charterer
29	Mergers; Business not Related to Shipping.
30	Coastwise or Intercoastal Service.
31	Supervision of Employment.
32	Salaries and Fees.
33	Employment of Managing Agent.
34	Members or Delegates of Congress.
35	Rescission Provision.
36	Foreign Flag Vessels.
	E. Accounting—Definitions
37	Accounting, Report and Supervision.
38	Definitions.

INDEX—BAREBOAT CHARTER PARTY AGREEMENT—Continued

Clause No.	Title
38(a)	"Net Voyage Profit", "Gross Income".
(b)	"Fair and Reasonable Overhead Expenses".
(c)	"Capital Necessarily Employed".
	F. *Termination—Miscellaneous*
39	Events of Default.
40	Termination Upon Default.
41	Termination of Business.
42	Cancellation or Modification by Mutual Consent.
43	Warranty Against Contingent Fees.
44	Renegotiation.
45	Citizenship.
46	Officers and Crew.
47	Nondiscrimination in Employment.
48	Notices.
49	Headnotes.

Maritime Administration—Bareboat Charter Agreement

This Charter Party Agreement (hereinafter called the "Agreement") dated as of _____, 19____, between the United States of America, acting by and through the Department of Transportation (Maritime Administration) (hereinafter called the "Owner") and _____ (hereinafter called the "Charterer"), whose address is _____. Witnesseth:

Whereas:

1. The Owner, acting pursuant to authority vested in it by the Merchant Marine Act, 1936, as amended (herein referred to as the "Act"), and particularly Title VII thereof, issued under date of _____, 19____, its Invitation for Sealed Bids for the bareboat charter of certain Vessel(s) [1] for operation in a service determined to be essential, as provided by section 221 of the Act.

2. Bids received pursuant to such Invitation were opened on _____, 19____, and the Charterer stated in its bid for the charter of said Vessel(s) that such Vessel(s) would be operated in the service hereinafter described, which has heretofore been determined to be essential, as provided in Section 211 of the Act, and established to the satisfaction of the owner its qualifications as a bidder (including the sufficiency of its capital, credit, and experience), and its compliance with the terms and conditions for the award of a charter of said Vessel(s) as set forth in said Invitation.

3. The Owner accepted the bid of the Charterer for the bareboat charter of said Vessel(s) for operation in the service described in said bid, and awarded a charter to the Charterer for the period and upon the terms and conditions herfeinafter set forth.

Now therefore, in consideration of the premises, the parties hereto agree as follows:

Part I

Clause A. *Uniform terms.* This Agreement consists of two parts, this Part I and Part II. Unless otherwise in this Part I expressly provided, all of the provisions of said Part II shall be part of this Agreement as though fully set forth in this Part I. In the event of a conflict between the provisions of Parts I and II, the provisions of Part I shall govern to the extent of such conflict.

Clause B. *Agreement of the parties.* The Owner hereby agrees to let and the Charterer agrees to hire, the _____ for the carriage of lawful merchandise and passengers during the period and upon the terms and conditions hereinafter set forth.

Clause C. *Period of charter.* Subject to termination as provided in this Clause and in Section F, Part II, hereof, the period of this Agreement shall be as follows:

Provided, That whenever the President shall proclaim that the security of the national defense makes its advisable, or during any national emergency declared by proclamation of the President, or after a declaration of war or of national emergency made by the Congress, the Owner may terminate this Agreement without cost to the United States, upon such notice to the Charterer as the President or Congress shall determine.

Clause D. *Place and date of delivery.* The Vessel shall be delivered by the Owner to the Charterer at a safe berth in the port or place, hereinafter designated, on or about the delivery date tentatively scheduled.

Vessel name	Place of delivery	Estimated delivery date

Clause E. *Service.* The Charterer shall maintain and operate the Vessel in service or services on the following described trade route and not otherwise:

Clause F. *Rate of basic charter hire.* Basic charter hire at the rate of $_____per calendar month for each Vessel or prorata of any portion thereof, shall be paid by the Charterer to the Owner in accordance with Clause I, Part II of this Agreement.

Clause G. *Amount of insurance.* The Charterer shall at all times during the period of the Vessel's use under this Agreement carry and maintain on each Vessel policies of insurance in the manner and form prescribed in Clause 25, Part II, in the minimum amounts as follows:

Marine hull and machinery.	$.....	
War risk hull and machinery.	$.....	
Marine P & I.....	$.....	per GRT
War risk P & I...	$.....	per GRT
Marine excess, general average, salvage, and collision liability.	$.....	
War risk excess, general average, salvage, and collision liability.	$.....	

together with such additional amounts of P & I and excess liability insurance as the owner may require from time to time.

The insertion of the amount of Marine and War Risk Hull and Machinery insurance shall be for the purpose of (a) fixing the minimum amount for the placing of insurance as prescribed in Clause 25, Part II, and (b) constituting the replacement or total loss value of the Vessel as between the Charterer and the Owner, but for no other purpose. The Charterer shall also at all times during the period of the Vessel's use under this Agreement carry and maintain such crew insurance as is required by the Charterer's current bargaining agreements.

Clause H. *Amount of bond.* The Charterer, at or before delivery of each Vessel under this Agreement, shall furnish the Owner with a bond in the amount of $_____ for each Vessel, in the manner prescribed in Clause 3, Part II of this Agreement.

Clause I. *Special provisions.*

In witness whereof, this Agreement has been executed in triplicate by the Owner on the _____ day of _____, ____ and by the Charterer on the ____ day of _____, 19____.

[1] The term "Vessels" as used in the plural in either Part I or Part II of this Agreement also refers to any single Vessel, whenever appropriate, and similarly the term "Vessel" as used in the singular refers to all Vessels within the Agreement whenever appropriate.

United States of America,
Department of Transportation

(Maritime Administration)
By: _____
(corporate seal)

Attest:
By: _____
Secretary _____

PART II—GENERAL PROVISIONS

A. Charter hire and bond

Clause 1. *Basic charter hire.* The Charterer shall pay the Owner the basic charter hire at the monthly rate provided for in Part I hereof from the day and hour of delivery of the Vessel until and including the day and hour of redelivery to the Owner pursuant to the terms of this Agreement; or if any Vessel shall be lost, hire shall continue until the time of such loss, if known, or if the time of loss be uncertain, then up to and including the time last heard from. Payment of such basic charter hire shall be made to the Owner at Washington, D.C., on delivery of each Vessel for the remainder of the calendar month in which delivery is made, and thereafter monthly in advance of the first day of each month.

Clause 2. *Additional charter hire.* (a) if, at the end of the calendar year in which this agreement becomes effective, or any subsequent calendar year or at the termination of this Agreement, the cumulative net voyage profit (after the payment of the basic charter hire hereinabove specified and payment of the Charterer's fair and reasonable overhead expenses applicable to operation of the Vessel(s)) shall exceed 10 per centum per annum on the Charterer's capital necessarily employed in the business of the Vessel(s) (all as herein after defined), the Charterer shall pay over to the Owner at Washington, DC., within thirty (30) days after the end of such year or other period, as additonal charter hire for such year or other period, an amount equal to one-half of such cumulative net voyage profit in excess of 10 per centum per annum on the Charterer's capital necessarily employed in the business of the Vessel(s). Such cumulative net profit so accounted for shall not be included in any calculation of cumulative net profit in any subsequent year or period.

For purposes of calculating "cumulative net voyage profit" it is agreed by the parties that at the end of each accounting period any net voyage losses and/or any unearned portion of the aforesaid allowable return of 10% per annum on capital necessarily employed, may be carried forward into the next accounting period, but that in no event shall profits in excess of 10% per annum on capital employed, at the end of any accounting period, be carried forward into the next accounting period; such profits being subject to distribution at the end of each accounting period as herein provided.

(b) The Charterer agrees to make preliminary payments to the Owner on account of such additional charter hire at such time and in such manner and amounts as may be required by the Owner; provided, however, that such payment of additional charter hire shall be deemed to be preliminary and subject to adjustment either at the time of the rendition of preliminary statements or upon the completion of each final audit by the Owner, at which times such payments will be made to the Owner as such preliminary statements or final audit may show to be due, or such overpayments refunded to the Charterer as may be required.

Clause 3. *Bond.* The Charterer, at or before delivery of each Vessel under this Agreement, shall furnish the Owner with a bond with sufficient surety, in the amount specified in Part I hereof, such bond to be approved by the Owner, both as to form and sufficiency of the sureties, and to be conditioned upon the true and faithful performance of all and singular the covenants and agreements of the Charterer contained in this Agreement, including, but not limited to, the Charterer's obligation to pay charter hire and damages and to indemnify against liens. The Charterer may, in lieu of furnishing such bond, pledge United States Government securities in the par value of the required amount under an agreement satisfactory in form and substance to the Owner.

B. Condition of Vessel(s) Equipment and Stores

Clause 4. *Condition of vessel(s) on delivery.* Each Vessel on delivery shall be in Class A-1 American Bureau of Shipping or equivalent, with all required certificates, including but not limited to marine inspection certificates of the Coast Guard, Treasury Department, and so far as due diligence can make her so, tight, staunch, strong and well and sufficiently tackled, appareled, furnished and equipped, and in every respect seaworthy and in good running condition and repair, with clean swept holds and in all respects fit for service.

Clause 5. *Surveys.* (a) Each Vessel shall be jointly surveyed before delivery and before redelivery under this Agreement to determine and state the condition of the Vessel. Such surveys shall include drydocking to determine and state the condition of the underwater parts, unless, at Owner's option, the drydocking in connection with delivery is postponed, in which event the cost and time (including Vessel expenses) of any damage to underwater parts found either upon delivery or during the period of the Vessel's use under this Agreement shall be for Owner's account unless such damage is established, from the basis of all evidence, to have occurred during the period of the Vessel's use under this Agreement. The cost and time of such delivery survey shall be for account of the Owner, and similarly the cost and time of such redelivery survey shall be for the account of the Charterer. Each party shall bear the cost of surveyors appointed by it in connection with both delivery and redelivery surveys.

(b) Except as to items sighted prior to delivery and noted on the delivery survey report as defective, which shall be for the Owner's account, including cost and time (inclusive of Vessel expenses) the delivery of each Vessel by the Owner and the acceptance thereof by the Charterer shall constitute full performance by the Owner of all the Owner's obligations under this Clause with respect to such Vessel, and thereafter the Charterer shall not be entitled to make or assert any claim against the Owner on account of any agreements, representations or warranties, expressed or implied with respect to the condition of such Vessel; provided, however, that the Owner shall nevertheless be responsible for the cost and time (exclusive of Vessel expenses) of repairs or renewals occasioned by latent defects in such Vessel, her machinery or appurtenances or defects due to locked-in stresses in such Vessel existing at the time of delivery, not recoverable under the terms and conditions of the American Hull form of policy (American Institute Time (Hulls) December, 1955) containing no deductible average clause.

Clause 6. *Determination of class.* For the purpose of this Agreement a Vessel chartered hereunder shall be deemed to be in class, whether or not any requirements or recommendations of the Classification Society are outstanding at the time of delivery or redelivery, as the case may be, unless the time limit for the accomplishment of any such requirements or recommendations, including any extension or period of grace allowed, shall have expired.

Clause 7. *Inventory.* A complete inventory of each Vessel's entire outfit, equipment, furniture, furnishings, appliances, spare and replacement parts and of all unbroached consumable stores, subsistence stores, slop chest, containers, and bunker fuel shall be jointly taken and mutually agreed upon as to items and quantities, at the time of

delivery, by representatives of the Charterer and the Owner. The parties may agree, however, to accept any suitable prior inventory which may have been taken before the delivery of the Vessel under this Agreement. Such delivery inventory of consumable and subsistence stores, slop chest, containers, and bunker fuel shall be priced by the Charterer at the current market price prevailing at the port and time of delivery. At redelivery a complete inventory of each Vessel's entire outfit, equipment, furniture, furnishings, appliances and spare and replacement parts shall, also, be jointly taken and mutually agreed upon as to items and quantities by representatives of the Charterer and the Owner. In addition, a complete inventory of all broached and unbroached consumable stores, subsistence stores, slop chest, containers, and bunker fuel shall be taken by the Charterer immediately prior to the redelivery. Such inventory shall be priced by the Charterer at the current market price prevailing at the port and time of performance of Charterer's redelivery obligations, and the Owner shall be furnished with three certified copies of such inventory, together with an affidavit certifying as to its correctness.

Clause 8. *Consumable stores and fuel.* The Charterer shall accept and pay for any unbroached consumable stores, subsistence stores, slop chest, returnable containers, and bunker fuel furnished by the Owner or on board at the time of delivery at the market prices current at the time and place of repairs and outfitting. The Owner shall have no obligation upon redelivery to accept or pay for consumable stores (either broached or unbroached), subsistence stores, slop chest, or returnable containers, and shall accept and pay for bunker fuel only in such minimum amounts as the Owner may determine. (Bunkers accepted by the Owner shall be paid for at the current market price prevailing at the port and time of redelivery, or, in event of redelivery at a Reserve Fleet site, at the current market price at the port and time of redelivery repairs.) Prior to redelivery, such items shall be removed from the Vessels by the Charterer in accordance with the provisions of NSA Order No. 64, as revised from time to time, and the fair and reasonable cost of such removal shall be charged in the Vessel's voyage accounts for the last voyage prior to redelivery. With respect to the aforesaid items, there shall be taken into account in the determination of additional charter hire, in accordance with Clause 2, Part II, of this Agreement, (a) the current market value thereof at the port and time of redelivery, in the event redelivery is effected at a redelivery port, or, in the event redelivery is effected at a Reserve Fleet site, the current market value at the port and time of redelivery repairs, or (b) the net proceeds from the disposition thereof, in the event the Charterer elects to dispose of the removed goods and notifies the Owner of such intention prior to redelivery. The manner of, time of and determination of net proceeds from such disposition of the items shall be subject to approval of the Owner.

Clause 9. *Use of equipment.* The Charterer shall have the use of all outfit, equipment, furniture, furnishings, appliances, spare and replacement parts on board the Vessel at the time of delivery under this Agreement without extra cost and the same shall be returned to the Owner upon redelivery in good order and condition. Any such items damaged or so worn in service as to be unfit for use or lost or destroyed shall be replaced or made good by the Charterer in kind at or before redelivery, or at Owner's option, the Charterer shall pay for said items at the current market prices at the port and time of performance of Charterer's redelivery obligations, based upon the condition of the items at the time of delivery. The Owner shall have a right, but not an obligation, to accept any overages on the Vessel at redelivery. Any overages accepted by the Owner shall be paid for at the current market prices at the port and time of performance of Charterer's redelivery obligations, based upon the condition of the items at the time of redelivery. Overage and shortage statements shall be prepared and priced by the Charterer, subject to review and adjustment by the Owner.

Clause 10. *Maintenance.* The Charterer, except as otherwise provided in Clause 4, shall, at its own expense, maintain each Vessel, her machinery, boilers, appurtenances, and spare parts during the period of the Vessel's use under this Agreement in good state of repair and in efficient operating condition and in accordance with good commercial maintenance practices and shall keep each Vessel in such condition as will entitle the Owner at all times to all required Certificates, including, without limitation, the highest classification and rating for vessels of the same age and type in the American Bureau of Shipping and with unexpired marine inspection certificates of the Coast Guard, Treasury Department.

Clause 11. *Structural changes.* The Charterer shall make no structural changes in the Vessel(s) and shall make no changes in the machinery, boilers, appurtenances or spare parts thereof, without in each instance first securing the written approval of the Owner.

Clause 12. *Drydocking.* The Charterer shall drydock each Vessel and clean and paint the underwater parts, when necessary, but not less than once in about every nine (9) months from date of delivery. The Charterer shall give the Owner reasonable notice of the time and place of drydocking and if practicable fifteen (15) days in advance thereof and afford the Owner an opportunity to inspect the Vessel(s) while drydocked. The Charterer shall also promptly notify the Owner sufficiently in advance to enable its respresentative to be present at repairs or surveys of the Vessel(s), and shall furnish the Owner with copies of reports made pursuant to such surveys.

Clause 13. *Inspections.* The Owner shall have the right at any time, without notice, to inspect or survey the Vessels at its own expense, to ascertain their condition and to satisfy itself that the Vessels are being properly repaired and maintained in accordance with good commercial maintenance practices, but such inspections shall be held at such time and in such manner as to not interfere with Vessels' schedule. The Charterer shall make all such repairs, at its own expense, as such inspection or survey may show to be required in compliance with the Charterer's obligations under this Agreement. The Charterer shall also permit the Owner to inspect the Vessels' logs whenever requested, and shall furnish the Owner upon request with full information regarding any casualties or other accidents or damage to the Vessels.

Clause 14. *Redelivery of vessel(s).* (a) *Port or place of redelivery.* The port of redelivery shall be the port of delivery or such other port as may be mutually agreed, *Provided,* that the Owner shall have the option of requiring the Charterer to place the Vessel(s) in layup at a Reserve Fleet site designated by the Owner, on the same coast as the port of redelivery, in the manner and on the basis provided for in subparagraph (d) of this Clause. In the event the Owner exercises this option, the Owner shall have the right to designate the port at which Charterer's redelivery obligations under this Clause will be performed.

(b) *Redelivery conditions.* Each Vessel, unless lost, shall be redelivered to the Owner, pursuant to the terms of this Agreement, in the same good order and condition as that in which she was delivered, unless the lack of good order and condition is due solely to ordinary wear and tear, and with valid

classification and Coast Guard certificates, whether or not classification or Coast Guard repairs are due wholly or in part to ordinary wear and tear. At the redelivery survey provided for in Clause 6, surveyors appointed by the Charterer and surveyors appointed by the Owner, shall be present, who shall determine and state the repairs or work necessary to place each Vessel on the date of redelivery in the condition and class required under this Clause, which findings shall include all repairs and work required to be performed at the time of redelivery by the Classification Society and all other regulatory bodies, and all repairs and work which are necessary to place each Vessel on the date of redelivery in the good order and condition required by this Clause. The Charterer, before redelivery, shall make all such repairs and do all such work so found to be necessary at its expense and time, or at Owner's option, the Charterer shall, on Owner's request, discharge such obligation by payment to the Owner of an amount sufficient to place each Vessel in such class, order and condition and to provide for the foregoing work and repairs at the prices current at the time of redelivery, which amount shall also include compensation at the rate of basic hire payable under this Agreement for the time reasonably required under then existing conditions to complete such work or repairs and compensation for all other expenses (including insurance), reasonably required incident to such work or repairs. In the event the Owner exercises this option, the Charterer's redelivery repair obligations shall be limited to the amount of Marine Hull and Machinery insurance required by the provisions of Part I hereof. The Charterer shall not be required to make any repairs which were for Owner's account under Clause 4 of this Agreement, but if such repairs were made after delivery under this Agreement and paid for by the Owner, they shall be considered as having been made at the time of delivery for the purpose of determining the Charterer's obligations under this Clause 14.

(c) *Disputes.* Should any dispute arise between the Owner and the Charterer with respect to responsibility for repairs, renewals, replacements, or condition of the Vessel(s), at the time of redelivery, the Charterer shall, without prejudice to its contentions, make and pay for such disputed repairs, renewals, or replacements, or any part thereof, before redelivery, and may recover the cost from the Owner, together with Vessel expenses and charter hire during the period required for the performance of such work over and above the time required to perform the Charterer's redelivery repairs, in event Owner's liability therefor is established.

(d) *Vessel layup.* In the event that the Owner exercises its option under subparagraph (a) of this Clause to require the Charterer to place the Vessel(s) in layup following completion of Charterer's normal redelivery obligations, the Charterer shall perform and pay for all work required in connection with the preparation for layup and movement of the Vessel(s) to the Reserve Fleet site designated by the Owner, as prescribed in NSA Order No. 64, as revised from time to time. In such event, (i) basic charter hire shall cease as of completion of Charterer's normal redelivery obligations, and (ii) all reasonable costs incurred by the Charterer during the period of the stripping and layup of the Vessel(s) as aforesaid, including but without limitation, cost of insurance, shall, to the extent authorized and approved by the Owner, be taken into account as voyage expense in the determination of additional charter hire under Clause 2.

C. Operation of the Vessel(s)

Clause 15. *Charterer to man, etc.* During the period of this Agreement, the Charterer shall, at its own expense, and by its own procurement, man, victual, navigate, operate, supply, fuel and, except as otherwise expressly provided in Clause 4 of this Agreement, repair each Vessel and pay all charges and expenses of every kind and nature whatsoever incident to the use and operation of the Vessel(s) under this Agreement. The Owner reserves the right to require the removal of the Master(s) or the Chief Engineer(s) if it shall have reason to be dissatisfied with their conduct or if it considers their employment to be prejudicial to the interests of the United States. Except as otherwise expressly provided in this Clause and Clause 40 of this Agreement, the Charterer and not the Owner shall have exclusive possession, control and command of the Vessel(s) during the entire period of use under this Agreement.

Clause 16. *Owner's representatives.* The Charterer agrees that, at its expense, it will furnish transportation on each Vessel, during the period of this Agreement, for not more than five officers and/or employees of the Federal Maritime Board—Maritime Administration, travelling on official business, who shall be given full, free and complete access at all reasonable times to all parts of such Vessel, and shall have full opportunity to observe and inspect the working of such Vessel in all of its parts, but without any directing or controlling power over such Vessel's operations. The Charterer also agrees to cooperate with such representatives in the making of any inspection or investigation which the Owner may deem desirable and to prepare and furnish full and complete reports, records or other data pertaining to such Vessel's operation, as requested by the Owner. It is mutually understood and agreed that the transportation of such Owner's representatives, shall be on the basis of not more than one round-trip per calendar year per Vessel, upon the written request of the Maritime Administrator.

Clause 17. *Employment of affiliates, etc., rental of office space.* (a) Unless granted an exemption upon such terms and conditions and for such specific period of time as the Owner shall determine pursuant to Section 803 of the Act, the Charterer shall not employ any person or concern performing or supplying stevedoring, ship-repairs, ship-chandler, towboat, or kindred services to supply such services to the chartered Vessel(s) if the Charterer or any subsidiary company, holding company, affiliate company, or associate company of the Charterer, or any officer, director, or employee of the Charterer, such subsidiary company, holding company, affiliate company, or associate company of the Charterer, or any member of the immediate family of the Charterer, or of such officer, director, or employee of the Charterer, or any member of the immediate family of any officer, director, or employee of such subsidiary company, holding company, affiliate company, or associate company of the Charterer owns any pecuniary interest, directly or indirectly, in the person or concern supplying such services to the chartered Vessel, or receives any payment or other things of value, directly or indirectly, as a result of such employment of services.

(b) Without prior approval of the Owner granted upon such terms and conditions as the Owner may prescribe, the Charterer shall not rent office space owned by the Charterer or by any subsidiary, holding company, affiliate or associate company of the Charterer, or by any officer, director, or employee of the Charterer, or any member of the immediate family of the Charterer, or of such officer, director, or employee of the Charterer, or any member of the immediate family of any officer, director, or employee of such subsidiary, holding company, affiliate, or associate company of the Charterer.

Clause 18. *Efficient operation.* The Charterer agrees to conduct its business and its operations with respect to each Vessel in an economical and efficient manner.

Clause 19. *Use of United States goods.* Whenever practicable, the Charterer shall use only articles, materials, and supplies of the growth, production, and manufacture of the United States, as defined in Section 505(a) of the Act, except when it is necessary to purchase supplies and equipment outside the United States to enable a Vessel to continue and complete a voyage, and the Charterer shall perform repairs to the Vessel(s) within the continental limits of the United States, except in an emergency.

Clause 20. *Development of American-flag merchant marine.* The Charterer shall cooperate with the Owner and with other American-flag companies in the development of the American-flag merchant marine as a whole, and, whenever practicable, the Charterer shall favor American-flag companies in transshipping of cargo, in selecting foreign domestic agents or other representatives, and in the rental of terminal and other facilities and in related matters.

Clause 21. *Services rendered vessel(s).* The Charterer, if and when requested by the Owner, shall file with the Owner rates and schedules covering any services rendered the Vessel(s) under this Agreement by any individual, firm or corporation.

Clause 22. *No transfer or assignment.* The Charterer shall not, without the Owner's written or telegraphic consent, sell, transfer, or assign this Agreement or any interest therein, or time charter or subcharter the Vessel(s), or make any arrangement whereby the maintenance, management, or operation of the Vessel(s) is to be performed by any other person.

Clause 23. *Preference and conference agreements.* (a) The Charterer shall not unjustly discriminate in any manner so as to give preference, directly or indirectly, in respect to cargo in which the Charterer has a direct or indirect ownership or purchase or vending interest. If the Charterer carries any cargo on its own behalf or for its own account or on behalf or for the account of any associate, affiliate, subsidiary, parent or holding company, the Charterer shall not discriminate in its own favor, or in favor of any such associate, affiliate, subsidiary, holding or parent company, in regard to rates charged or service rendered. The Charterer shall also hold confidential and shall not reveal to any such associate, affiliate, subsidiary, holding or parent company any information whatsoever, except such information as is generally made available to the public in the regular course of the steamship business in regard to cargo of similar kind or nature which the Charterer may at any time carry for any other interests or otherwise.

(b) The Charterer agrees not to continue as a party to or to conform to any agreement with another carrier or carriers by water, or to engage in any practice in concert with another carrier or carriers by water, which is unjustly discriminatory or unfair to any other citizen of the United States who operates a common carrier by water exclusively employing vessels registered under the laws of the United States on any established trade route from and to a United States port or ports.

Clause 24. *Libels.* Neither the Charterer nor the Master of the Vessel(s) nor any other person shall have the right, power, or authority to create, incur, or permit to be placed upon the Vessel(s) any liens whatsoever other than for crew's wages or salvage. The Charterer agrees to carry a properly certified copy of this Agreement with the ship's papers on board each Vessel and agrees to exhibit the same to any person having business with such Vessel and agrees also to exhibit the same to any representative of the Owner on demand.

The Charterer agrees to notify any person furnishing repairs, supplies, towage, or other necessaries to the Vessel(s) that neither the Charterer nor the Master has any right to create, incur, or permit to be imposed upon the Vessel(s) any liens whatsoever, except for crew's wages and salvage. Such notice as far as may be practicable shall be in writing. The Charterer further agrees to fasten in each Vessel in a conspicuous place, and to maintain during the charter period, a notice reading as follows:

This Vessel is the property of the United States of America. It is under charter to:

---

and by the terms of the charter neither the Charterer nor the Master has any right, power, or authority to create, incur, or permit to be imposed upon the Vessel any lien whatsoever, except for crew's wages and salvage.

The Owner shall indemnify and hold harmless and defend the Charterer against any liens, claims or liabilities of whatsoever nature upon the Vessel(s) at the time of delivery under this Agreement. The Charterer shall indemnify and hold harmless and defend the Owner against any liens of whatsoever nature upon the Vessel(s) and against any claims against the Owner arising out of the operation of the Vessel(s) by the Charterer, or out of any act or neglect of the Charterer, in relation to the Vessel(s) or the operation thereof, except insofar as such liens or claims arise out of any matter covered by the insurance procured and in force, as provided herein. If a libel should be filed against the Vessel(s) or if the Vessel(s) is/are otherwise levied against or taken in custody by virtue of legal proceedings in any court because of any liens or claims arising out of the operation of the Vessel(s) by the Charterer, the Charterer shall at its own expense within fifteen (15) days thereof cause the Vessel(s) to be released and the lien to be discharged.

Clause 25. *Insurance.* (a) The Charterer shall, at all times during the period of the Vessels' use under this Agreement, carry on each Vessel policies of insurance covering all marine and war risk hull and marine and war risk protection and indemnity risks, and all other hazards and liabilities in the amounts set out in Part I hereof, in such form and with such insurance companies, underwriters or funds as the Owner shall require and approve. All insurance required under the terms of this Agreement to be carried by the Charterer shall include the United States of America as an assured, without recourse against the United States for payment of premiums, or for assessments under any mutual form of policy. The underwriters shall have full rights of subrogation against the United States of America to the extent of any loss paid for which any assured other than the United States of America could bring suit against the United States of America, under the Suits in Admiralty, Public Vessels or Tucker Acts to recover for such loss, and, notwithstanding the fact that the United States of America may be named as an assured and as payee in the policy, such loss shall be considered to have been paid to and sustained by any assured other than the United States of America, in the first instance.

(b) All losses under the policies of insurance carried on the Vessels, except those payable under crew insurance policies, shall be made payable to the Owner for distribution by it to itself and the Charterer as their interests may appear, provided, however, that in the absence of specific instructions to the contrary, P and I insurance claims in amounts not exceeding $10,000 may be payable directly to the Charterer. Charterer shall at Charterer's expense keep the Vessels entered in the Marine

Index Bureau, Inc. The originals of all cover notes or binders and policies, except those for crew insurance, shall be delivered promptly to the Owner for its custody and approval.

(c) In the event that any of the insurance hereinbefore provided for shall not, by reason of any act, omission, or negligence of the Charterer, be kept in full force and effect, or for any reason, including but without limitation the existence of any deductible average, franchise provisions, or other exclusion contained therein, but excluding insolvency of the underwriters, does not cover in full all losses, damages, claims or demands, the Charterer shall indemnify and hold harmless and defend the Owner against all such losses, claims and demands.

(d) No tender of abandonment as a constructive total loss shall be made without the prior approval of the Owner, provided, however that in the event the Owner refuses to approve such tender or fails to act thereon within twenty (20) days after receipt of Charterer's request, then charter hire shall cease as of the date of such refusal or at the expiration of such twenty (20) day period, as the case may be, and provided further that charter hire shall cease only in the event that, but for the refusal of the Owner to agree to tender of abandonment, the amount which would have been recoverable from the hull insurance underwriters would have squalled or exceeded the amount set forth in Part I hereof.

Clause 26. *Bills of lading or voyage charters.* All bills of lading or voyage charters issued under this Agreement shall contain directly or by reference substantially the following clauses:

(i) *Clause paramount.* This bill of lading shall have effect subject to the provisions of the Carriage of Goods by Sea Act of United States, approved April 16, 1936, which shall be deemed to be incorporated herein, and nothing herein contained shall be deemed a surrender by the Carrier of any of its rights or immunities or an increase of any of its responsibilities or liabilities under said Act. If any term of this bill of lading be repugnant to said Act to any extent, such term shall be void to that extent but no further.

(ii) *General average clause.* General average shall be adjusted, stated, and settled, according to York-Antwerp Rules, 1950, exclusive of Rule 22, at such port or place in the United States as may be selected by the Carrier, and as to matters not provided for by these Rules, according to the laws and usages at the port of New York. In such adjustment, disbursements in foreign currencies shall be exchanged into United States money at the rate prevailing on the dates made and allowances for damage to cargo claimed in foreign currency shall be converted at the rate prevailing on the last day of discharge at the port or place of final discharge of such damaged cargo from the ship. Average agreement or bond and such additional security, as may be required by the carrier, must be furnished before delivery of the goods. Such cash deposit as the carrier or his agents may deem sufficient as additional security for the contribution of the goods and for any salvage and special charges thereon, shall, if required, be made by the goods, shippers, consignees, or owners of the goods to the carrier before delivery. Such deposit shall, at the option of the carrier, be payable in United States money, and be remitted to the adjuster. When so remitted the deposit shall be held in a special account at the place of adjustment in the name of the adjuster pending settlement of the general average and refunds or credit balances, if any, shall be paid in United States money.

(iii) *Amended "Jason" clause.* In the event of accident, danger, damage, or disaster before or after commencement of the voyage resulting from any cause whatsoever, whether due to negligence or act, for which or for the consequence of which the carrier is not responsible by statute, contract, or otherwise, the goods, shippers, consignees, or owners of the goods shall contribute with the carrier in general average to the payment of any sacrifices, losses or expenses of a general average nature that may be made or incurred, and shall pay salvage and special charges incurred in respect of the goods. If a salving ship is owned or operated by the carrier, salvage shall be paid for as fully as if the salving ship or ships belong to strangers.

(iv) *Liberties clauses.* In any situation whatsoever and wheresoever occurring and whether existing or anticipated before commencement of or during the voyage, which in the judgment of the carrier or master is likely to give rise to risk of capture, seizure, detention, damages, delay or disadvantage to or loss of the ship or any part of her cargo, or to make it unsafe, imprudent, or unlawful for any reason to commence or proceed on or continue the voyage or to enter or discharge the goods at the port of discharge, or to give rise to delay or difficulty in arriving, discharging at or leaving the port of discharge or the usual place of discharge in such port, the carrier may before loading or before the commencement of the voyage, require the shipper or other person entitled thereto to take delivery of the goods at port of shipment and upon their failure to do so, may warehouse the goods at the risk and expense of the goods; or the carrier or master, whether or not proceeding toward or entering or attempting to enter the port of discharge or reaching or attempting to reach the usual place of discharge therein or attempting to discharge the goods there, may discharge the goods into depot, lazaretto, craft or other place; or the ship may proceed or return, directly or indirectly to or stop at any such port or place whatsoever as the master or the carrier may consider safe or advisable under the circumstances, and discharge the goods, or any part thereof, at any such port or place; or the carrier or the master may retain the cargo on board until the return trip or until such time as the carrier or the master thinks advisable and discharge the goods at any place whatsoever as herein provided; or the carrier or the master may discharge and forward the goods by any means at the risk and expense of the goods. The carrier or the master is not required to give notice of discharge of the goods or the forwarding thereof as herein provided. When the goods are discharged from the ship, as herein provided, they shall be at their own risk and expense; such discharge shall constitute complete delivery and performance under this contract and the carrier shall be freed from any further responsibility. For any service rendered to the goods as herein provided the carrier shall be entitled to a reasonable extra compensation.

The carrier, master, and ship shall have liberty to comply with any orders or directions as to loading, departure, arrival, routes, ports of call, stoppages, discharge, destination, delivery or otherwise howsoever given by the Government of any nation or department thereof or any person acting or purporting to act with the authority of such government or of any department thereof, or by any committee or person having under the terms of the war risk insurance on the ship, the right to give such orders or directions. Delivery or other disposition of the goods in accordance with such orders or directions shall be a fulfillment of the contract voyage. The ship may carry contraband, explosives, munitions, warlike stores, hazardous cargo, and may sail armed or unarmed and with or without convoy.

In addition to all other liberties herein the carrier shall have the right to withhold delivery of, reship to, deposit or discharge the goods at any place whatsoever, surrender or dispose of the goods in accordance with any direction,

condition or agreement imposed upon or exacted from the carrier by any government or department thereof or any person purporting to act with the authority or either of them. In any of the above circumstances the goods shall be solely at their risk and expense and all expenses and charges so incurred shall be payable by the owner or consignee thereof and shall be a lien on the goods.

Clause 27. *General and particular average.* Average adjusters shall be appointed by the Charterer from a list of adjusters satisfactory to the Owner, who shall attend to the settlement and collection of both general and particular average losses subject to customary charges. The Charterer agrees to assist the adjuster in preparing the average statement and to take all other possible measures to protect the interests of each Vessel and the Owner.

Clause 28. *Salvage.* Earned salvage shall be prorated 25% to the Owner and 75% to the Charterer, after deducting Owner's and Charterer's expenses, Master's and Crew's shares, and legal and other expenses incident to the salvage, provided, however, that hire of the Vessel(s) shall not be considered an item of the Charterer's expense hereunder. Salvage earned by the Charterer shall be considered gross income as defined in Clause 38(a). Settlement of such claims for earned salvage shall be subject to the approval of both Owner and Charterer, Provided, that the amount of awards for the salving of vessels of which the United States, or any department or agency thereof, is the Owner or Owner pro hac vice, or for the cargoes and freights on such vessels, shall be approved by the Owner.

D. Management—Other Activities of Charterer

Clause 29. *Mergers, business not related to shipping.* The Charterer agrees that during the charter period it will not, without the prior written approval of the Owner, (1) effect any merger, consolidation or substantial acquisition or disposition of assets not in the ordinary course of business, or (2) directly or indirectly embark upon any new enterprise or business activity not directly connected with the business of shipping.

Clause 30. *Coastwise or intercoastal service.* Neither the Charterer nor any holding company, subsidiary, affiliate, or associate of the Charterer nor any officer, director, agent, or executive thereof shall, without the permission of the Owner granted pursuant to Section 805(a) of the Act, directly or indirectly, own, operate, or charter any vessel or vessels engaged in the domestic intercoastal or coastwise service, or own any pecuniary interest, directly or indirectly, in any person or concern that owns, charters or operates any vessel or vessels in the domestic intercoastal or coastwise service; Provided that, if such permission is or has been granted, none of the persons mentioned in this Clause shall divert, directly or indirectly, any moneys, property, or other thing of value, used in foreign trade operation, for which a subsidiary is paid by the United States, into any such coastwise or intercoastal operations; Provided further, that where such permission is or has been granted pursuant to the Proviso clause of the first paragraph of Section 805(a) of the Act, in the event of substantial change in the character or extent of such operations over those conducted during 1935, the foregoing permission to continue such operations may be limited or terminated by the Owner, after notice to the Charterer and opportunity for hearing, with respect to any or all of the operations thus permitted.

Clause 31. *Supervision of employment.* Whenever the Charterer receives an operating-differential subsidy and is in default with respect to any mortgage, note, purchase contract or other obligation to the Owner, or has not maintained, in a manner satisfactory to the Owner, all of the reserves provided for in the Act, the Owner shall have the right to supervise the number and compensation of all officers and employees of the Charterer, and the Charterer shall then comply with all instructions of the Owner with respect thereto.

Clause 32. *Salaries and fees.* No salary for personal services in excess of $25,000 per annum paid to a director, officer, or employee by the Charterer, its affiliates, subsidiary, or associates, directly or indirectly, shall be taken into account under this Agreement. The terms "director," "officer," or "employee" shall be construed in the broadest sense to include, but not to be limited to, managing trustee or other administrative agent. The term "salary" shall include wages and allowances or compensation in any form for personal services which will result in a director, officer, or employee receiving total compensation for his personal services from such sources exceeding in amount or value $25,000 per annum.

Clause 33. *Employment of managing agent.* The Charterer shall not without the prior consent of the Owner employ any other person or concern as the managing or operating agent of the Charterer.

Clause 34. *Members or Delegates of Congress.* The Charterer shall not employ any Member of Congress, either with or without compensation, as an attorney, agent, officer, or director. Except to the extent permitted by law, no Member of or Delegate to Congress or any Resident Commissioner is or shall be admitted to any share or interest in this Agreement, or any benefit that may arise therefrom.

Clause 35. *Rescission provision.* Upon determination by the Owner that any willful violation of any provision of Clauses, 30, 31, 32, 33 or 34 has occurred, the Owner shall have the right to rescind the Agreement, and upon such rescission, the Owner shall be relieved of all further liability under this Agreement.

Clause 36. *Foreign-flag vessels.* Neither the Charterer, nor any holding company, subsidiary, affiliate, or associate of the Charterer, nor any officer, director, agent or executive thereof shall, directly or indirectly, own, charter, act as agent or broker for, or operate any foreign-flag vessel which competes with any American-flag vessel service which may be determined by the Owner to be essential pursuant to Section 211 of the Act, except as the Owner in its discretion and for a specific period of time may otherwise permit in accordance with the provisions of the Act.

E. Accounting—Definitions

Clause 37. *Accounting, report and supervision.* (a) The Charterer and, to the extent required by the Owner, every affiliate, domestic agent, subsidiary, or holding company connected with, or directly or indirectly controlling or controlled by the Charterer:

(1) Shall keep its books, records and accounts relating to the management, operation, conduct of the business of and maintenance of the Vessel(s) covered by this Agreement in accordance with the "Uniform System of Accounts for Maritime Carriers" prescribed by the Maritime Administration, U.S. Department of Transportation, in General Order 22, Revised, (Issue of 1950) effective January 1, 1951, and under such regulations as may be prescribed by the Owner; *Provided,* That notwithstanding the provisions of said General Order 22, Revised, such reserves as may be specifically authorized by the Owner shall be taken into account in the determination of "Net Voyage Profit" hereunder or the expenses to provide for which such reserves are so authorized shall be distributed over the period of use hereunder of the Vessel involved in such manner as will accomplish the same result as though such reserves

were established, all pursuant to regulations prescribed by the Owner; and *Provided further,* That if the Charterer is subject to the jurisdiction of the Interstate Commerce Commission, the Owner shall not require the duplication of books, records, and accounts required to be kept in some other form by that Commission; and

(2) Shall file, upon notice from the Owner, balance sheets, profit and loss statements, and such other statements of financial operations, special reports, memoranda of any facts and transactions, which in the opinion of the Owner affect the financial results in, the performance of, or transactions or operations under, this Agreement. The Owner reserves the right to require that all or any of such statements, reports and memoranda shall be certified by independent certified public accountants acceptable to the Owner. Specific reporting requirements subsequently prescribed will be subject to the approval of the Bureau of the Budget pursuant to the Federal Reports Act of 1942.

(b) The Owner is hereby authorized to examine and audit the books, records and accounts of all persons referred to above in this Clause whenever it may deem it necessary or desirable, including an analysis of the surplus and all supporting accounts. The Charterer agrees to allow any and all auditors, inspectors, attorneys, and other employees, designated by the Owner, full, free and complete access at all reasonable times, to the Vessel when in port or undergoing repairs, and to all books, records, papers, memoranda or other documents of the Charterer wherever located or of any holding company, subsidiary company or affiliated company of the Charterer pertaining to any activities relating in any way to the Vessel(s), and further agrees to permit the making of photostatic or other copies of any such books, records, papers, memoranda or other documents and to furnish without charge adequate office space and other facilities reasonably required by such auditors, attorneys, or inspectors in the performance of their duties. The Charterer further agrees to establish and maintain from time to time such checks upon or systems of control of expenditures or revenues in connection with the operation of the Vessel(s) as the Owner may request.

(c) Upon the willful failure or willful refusal of any person described in this Clause to comply with the above provisions of this Clause, the Owner shall have the right to rescind this Agreement, and upon such rescission, the Owner shall be relieved of all further liability under this Agreement.

Clause 38. *Definitions.* The terms "net voyage profit," "fair and reasonable overhead expenses," and "capital necessarily employed" as used herein with respect to the operations of the Vessel(s) and services incident thereto are hereby defined for the purpose of this Agreement only, as follows:

(a) "Net voyage profit" shall be determined by deducting from gross income, as hereinafter defined, such direct vessel operating expenses, terminal and other auxiliary operating expenses, overhead expenses, interest expense, amortization of deferred charges, depreciation on property utilized in the operation of the Vessel(s), and all other charges which are customarily made in accordance with sound accounting practice in determining net profits before provision for federal income taxes, all as the Owner may deem fair and reasonable, provided, that in instances where the Charterer engages in other activities in addition to the operation of the Vessel(s) covered by this Agreement, such charges, other than those directly and exclusively allocable to the operation of the Vessel(s) shall be prorated between these activities on such basis as the Owner may determine to be fair and reasonable.

"Gross income" shall include such items as revenue earned from the carriage of cargo, passengers, and mail, terminal and other auxiliary operations and miscellaneous profits and losses, such as those arising from pooling agreements, advance and prepaid beyond items, bar and slop chest, and such other transactions as the Owner may determine are properly included. "Gross income" shall include also interest earned, dividends received, and other non-operating income, as well as all accruals, if any, to the Charterer as an operating-differential subsidy. If the Charterer engages in any other activities in addition to the operation of the Vessel(s), the revenues and miscellaneous income, other than those exclusively applicable to the operation of the Vessel(s), shall be prorated between these activities on such basis as the Owner may determine to be fair and reasonable.

Income consisting of capital gains and expenses consisting of capital losses shall in no event be included in the computation of "Net Voyage Profit," as above defined.

Income from and expenses attributable to assets, other than the Vessel(s), excluded in the computation of "Capital Necessarily Employed," as hereinafter defined, shall not be included in the computation of "Net Voyage Profit," as above defined.

In determining "Net Voyage Profit," as above defined, all profits of persons performing services or supplying facilities to the Charterer which are required to be included in the earnings of the Charterer under section 803 of the Act shall be taken into account.

(b) "Fair and reasonable overhead expenses" shall include those expenses actually and necessarily incurred in the conduct of the business of operating the Vessel(s), such as salaries of officers; wages of employees; legal and accounting fees and expenses; rent, heat, light, and power; communciation expenses; office supplies, stationery, and printing; membership dues and subscriptions; entertaining and solicitation; traveling expenses; insurance and bond premiums; postage; maintenance of office equipment; and miscellaneous administrative and general expenses, all as the Owner may determine to be fair and reasonable and properly included, provided, that there shall be deducted from the total of such expenses, agency fees, commissions, brokerage, and such other miscellaneous earnings as the Owner may determine to be properly deductible.

"Fair and reasonable overhead expenses" shall include also freight, passenger, and other expenses incident to advertising the Vessel(s) and the route served; taxes, other than Federal income taxes; and management and operating commissions, but only if and in the cases where the express written consent of the Owner has been given the Charterer to employ any other person or concern as the managing or operating agent of the Charterer; all as the Owner may determine to be fair and reasonable and properly included.

If the Charterer engages in other activities in addition to the operation of the Vessel(s), the "Fair and Reasonable Overhead Expenses" other than those directly and exclusively allocable to the Operation of the Vessel(s) shall be prorated between such activities on such basis as the Owner may determine to be fair and reasonable.

(c) Except in instances where the Charterer is granted an operating-differential subsidy (which is covered by the last paragraph of this subsection (c)), "Capital necessarily employed" shall be determined upon the basis of the net worth reported by the Charterer in its balance sheet as of the close of the month preceding the date of delivery of the first vessel under this Agreement (or in the last previous balance sheet deemed by the Owner to fairly present

the financial position of the Charterer, but adjusted to take into account subsequent changes in net worth and such other changes as the Owner may deem essential to a proper determination of "Capital Employed" as at the end of such month), and as at each succeeding December 31st during the effective period of the Agreement, adjusted as hereinafter provided. For the purpose of this determination, net worth, as stated in the balance sheet of the Charterer, shall be deemed to include capital stock, surplus and such subdivisions thereof as capital surplus, earned surplus, and accounts of like nature. Net worth, as thus stated, shall be adjusted in such manner as the Owner may determine to be fair and reasonable, including the elimination of appreciation, adequate statement of the liabilities, and such other adjustments as are consistent with sound accounting principles. In the computation of "Capital Necessarily Employed," good will, intangibles not actually purchased and paid for, and stock held in treasury shall be excluded.

Property and other assets utilized in the operation of the Vessel(s) shall be valued at cost, including betterments and reconditioning costs, to the present owner or to any former owner at any time affiliated or associated directly or indirectly with the present owner, whichever is the lower, less depreciation; provided, that the cost of acquisition of assets acquired in exchange for capital share or other securities of the Charterer from other than holding, subsidiary, affiliated, or associated companies, shall not be in excess of the fair value of such property at the date of acquisition.

Additional capital, in the form of cash or tangible property paid in during the charter period, shall be included in the computation of "Capital Necessarily Employed" from the date paid in. Conversely, any withdrawals of capital shall be deducted from the date withdrawn; provided, however, that no capital shall be withdrawn and no share capital shall be converted into debt without the prior written approval of the Owner. Earnings and capital gains (or losses) for any accounting period subsequent to the last day of the month preceding the month during which delivery of the first Vessel is made hereunder to the Charterer by the Owner shall not be included in the computation of the "Capital Necessarily Employed" for the year or other accounting period in which realized (or sustained). Dividends paid out of earnings that have not been included in "Capital Employed" shall not be deducted from "Capital Employed."

If the Charterer engages in other activities in addition to the operation of the Vessel(s), the Owner shall determine the proper allocation of capital as between such activities. The amount so allocated to the operation of the Vessel(s) shall be deemed to be the "Capital Necessarily Employed."

In the event the Charterer is granted an operating-differential subsidy, "Capital Necessarily Employed" in the business of the Vessel(s) chartered hereunder shall be determined upon the bases provided by the United States Maritime Commission with respect to subsidized vessels in its General Order No. 71 as adopted by its successors, the Federal Maritime Board and Maritime Administration, and amended from time to time, excepting inapplicable provisions of that Order (such as those relating to (1) ship equities, (2) deposits in the Special Reserve Fund, (3) deposits in the Capital Reserve Fund, and (4) progress payments on vessels under construction) as determined by the Owner.

F. Termination—Miscellaneous

Clause 39. *Events of default.* The following shall constitute events of default under this Agreement:

(a) The failure of the Charterer to pay the charter hire on each Vessel as and when the same shall be due under the terms of this Agreement.

(b) The failure of the Charterer to operate each Vessel as required by Clause E, Part I, or the operation of the Vessel(s) on some other route without the prior written approval of the Owner.

(c) Any material misrepresentation by the Charterer in connection with this Agreement whether before or after execution hereof and whether made in an application, report or otherwise, or any wilful failure by the Charterer to disclose information necessary to cause any material representation by it not to be misleading.

(d) The occurrence of any event causing the Charterer to be ineligible for charter of the Owner's vessels.

(e) A voluntary sale by the Charterer of this Agreement or any interest therein, or any assignment, transfer, agreement or any other arrangement whereby the maintenance, management or operation of the above described service, route, or Vessel(s) shall pass out of the direct control of the Charterer without the consent of the Owner.

(f) The filing of a petition in bankruptcy by the Charterer or the entry of an order, upon petition against the Charterer, adjudicating the Charterer a bankrupt, or the making of a general assignment for the benefit of creditors, or the Charterer losing its charter by foreiture or otherwise, or the appointment of a receiver or receivers of any kind whatsoever, whether appointed or not in Admiralty, Bankruptcy, Common Law or Equity proceedings, and whether temporary or permanent, for the property of the Charterer, or the filing of a petition by the Charterer for reorganization under the Bankruptcy Act, or the filing of such a petition by creditors and the same approved by the court, or the approval of the court of a reorganization of the Charterer under said Act, whether proposed by a creditor, a stockholder or any other person whomsoever.

(g) Any breach by the Charterer of its obligations under this Agreement (including but without limitation, the obligation to maintain a Performance Bond as required by Clause 3) or any agreement executed in connection therewith (including but not limited to any operating-differential subsidy agreement with respect to the Vessel), or any ship mortgage given to construction agreement made with the United States.

(h) Failure by the Charterer to comply with any applicable provision of the Merchant Marine Act, 1936, as amended, or of any law relating to the operation of the Vessel(s).

(i) Failure by any subsidiary company, holding company, affiliate company or associate company of the Charterer, or failure by any person performing services or supplying facilities to the Charterer subject to the provisions of section 803 of the Act, to conform to the provisions of this Agreement.

Clause 40. *Termination upon default.* (a) The Owner may terminate this Agreement in whole or in part without notice to the Charterer in case any event of default specified in paragraph (a), (b), (c), (d), (e) or (f) of the preceding Clause 39 shall occur, or if any other default specified in paragraph (g), (h) or (i) of said Clause shall occur and shall continue for a period of 30 days after notice thereof has been mailed or telegraphed by the Owner to the Charterer.

(b) Upon termination, the Owner may, at its option, retake the Vessel(s), wherever the same may be found, whether upon the high seas or in any port, harbor, or other place, without prior demand and without legal process and for that purpose may enter upon any dock, pier, or other premises where the Vessel(s) may be and may take possession thereof, or may require the Charterer to redeliver such Vessel(s) in accordance with terms of this

Agreement immediately upon the receipt of a notice demanding such redelivery.

(c) The rights conferred upon the Owner by this Clause are cumulative and in addition to any rights which it may have at law or in equity or by virtue of the terms of the Agreement.

Clause 41. *Termination of business.* Upon termination of this Agreement, the Charterer shall turn over to the Owner, at such time and at such place as the Owner may direct, each Vessel and all property of whatsoever nature which the Owner may theretofore have delivered to the Charterer or to which the Owner is entitled under the terms of this Agreement, and the Charterer shall at its own expense make to the owner such accounting as the Owner may require of all matters arising out of the operation of the Vessel(s) and this Agreement, and shall adjust, settle, and liquidate such accounts, provided, however, that the Owner may collect directly all freight moneys or other debts remaining unpaid and apply any moneys collected on any unpaid balance due from the Charterer to the Owner. All expenses of such collection shall be for the account of the Charterer.

Clause 42. *Cancellation or modification by mutual consent.* This Agreement may be terminated, modified, or amended at any time by mutual consent.

Clause 43. *Warranty against contingent fees.* The Charterer warrants that no person or agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial agencies maintained by the Charterer for the purpose of securing business. For breach or violation of this warranty, the Owner shall have the right to annul this contract without liability or in its discretion to require the Charterer to pay, in addition to the charter hire, the full amount of such commission, percentage, brokerage, or contingent fee.

Clause 44. *Renegotiation.* This Agreement shall be deemed to contain all the provisions required by section 104 of the Renegotiation Act of 1951, as amended and extended. The Contractor (which term as used in this sentence in the Bareboat Charterer Agreement, means the Bareboat Charterer, and, as used in this sentence in related sub-contracts shall mean the party contracting to perform the work or furnish the materials required under such sub-contract) shall, in compliance with said section 104, insert the provisions of this Clause in each sub-contract and purchase order made or issued in carrying out this Agreement.

Clause 45. *Citizenship.* The Charterer hereby warrants and represents that it is and at all time during the period of this Agreement will continue to be a citizen of the United States within the meaning of section 2 of the Shipping Act of 1916, as amended.

Clause 46. *Officers and crew.* The Charterer agrees, with respect to the Vessel(s) that during the period of this Agreement:

(a) Insofar as is practicable, officers' living quarters shall be kept separate and apart from those furnished for members of the crew; the Charterer shall comply with all rules and regulations promulgated by the appropriate agencies of the United States.

(b) Licensed officers and unlicensed members of the crew shall be entitled to make complaints or recommendations to the Owner, providing they file such complaint or recommendation directly with the Owner or with their immediate superior officer, who shall be required to forward such complaint or recommendation with his remarks to the Owner, or with the authorized representative of the respective collective bargaining agencies.

(c) Licensed officers who are members of the United States Naval Reserve shall wear on their uniforms such special distinguishing insignia as may be approved by the Secretary of the Navy; officers being those men serving under licenses issued by the United States Coast Guard or its successor.

(d) The uniform stripes, decoration, or other insignia shall be of gold braid or woven gold or silver material, to be worn by officers, and no member of the ship's crew other than licensed officers shall be allowed to wear any uniform with such officer's identifying insignia.

(e) No discrimination shall be practiced against licensed officers who are otherwise qualified, because of their failure to qualify as members of the United States Naval Reserve.

(f) The Charterer shall comply with all laws governing the citizenship of licensed officers and crews, including section 302 of the Act.

Clause 47. *Nondiscrimination in employment.* In connection with the performance of work under this Agreement, the Charterer agrees not to discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The aforesaid provision shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoffs or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Charterer agrees to post hereafter in conspicuous places, available for employees and applicants for employment, notices to be provided by the Owner setting forth the provisions of the nondiscrimination clause.

The Charterer further agrees to insert the foregoing provisions in all sub-contracts hereunder, except sub-contracts for standard commercial supplies or raw materials.

Clause 48. *Notices.* Unless otherwise provided in this Agreement or mutually agreed upon, all payments, notices and communications from the Owner to the Charterer, pursuant to the terms of or in connection with this Agreement, shall be made or addressed to the Charterer at the address provided herein, and all payments, notices and communications from the Charterer to the Owner, pursuant to the terms of or in connection with this Agreement, shall be made or addressed to the Owner at its offices in Washington, District of Columbia.

Clause 49. *Headnotes.* The use of headnotes at the beginning of the clauses of this Agreement is for the purpose of description only and shall not be construed as limiting or in any other manner affecting the substance of the clauses themselves.

(c) The charterer's books, records, and accounts, required to be kept and maintained under Clause 37(1), Part II, of Form No. 705 charter, shall be retained by the charterer for a period of three (3) years after a release or final settlement is completed between the Maritime Administration and the charterer.

Appendix to Part 221

I. Transfer of Documented Vessels to Foreign Registry or Ownership, or Both

Each application for the transfer to foreign registry or ownership or both or to the authority of a foreign country (hereinafter referred to as a "foreign transfer") of any vessel of 3,000 gross tons and over will be evaluated on its individual merits with consideration being given to the following:

(1) The type, size, speed, general condition, and age of the vessel;

(2) The acceptability of the foreign buyer and country of registry; and

(3) The need to retain the vessel under U.S. flag or ownership and control for the purposes of national defense, maintenance of an adequate merchant marine, foreign policy of the United States, and the national interest.

II. Conditions of Approval

The Maritime Administrator's approval of foreign transfer of vessels of 3,000 gross tons and over, under section 9 or 37 or both of the Shipping Act, 1916, as amended (46 App.

U.S.C. 808 and 835), whether such transfer is for operation or scrapping, shall be subject to the terms and conditions hereinafter stated.

If the vessel is being transferred for foreign flag operation, the terms and conditions shall run with the title to the vessel and shall remain in effect for the period of the remaining economic life of the vessel or for the duration of a national emergency proclaimed by the President, whichever period is longer. The economic life of a vessel for the purpose of this statement of policy is 25 years from the date the vessel was delivered by the shipbuilder. This period will be extended another five years, or such other period of time approved by the Maritime Administrator, if the vessel is converted or jumboized. The terms and conditions are as follows:

A. Transfer of Existing Vessels of 3,000 Gross Tons or Over to Either Foreign Registry or Ownership, or Both, or to the Authority of a Foreign Government

(1) *Ownership.* (a) Without the prior approval of the Maritime Administrator, there shall be no transfer in the ownership or change in the registry of such vessel.

(b) Without the prior approval of the Maritime Administrator, there shall be no transfer of stock interest in the foreign corporate contractor to persons not citizens of the United States (within the meaning of section 2 of the Shipping Act, 1916, as amended (46 App. U.S.C. 802)). However, transfers of such stock or changes in ownership resulting from the death of any stockholder or owner are not subject to this condition. Notification of any such transfer of stock or ownership occurring by reason of death shall be filed with the Maritime Administrator within 60 days from the date of the transfer of stock or change of ownership.

(2) *Availability.* The vessel shall, if requested by the United States or any qualified department or agency thereof, be sold or chartered to the United States on the same terms and conditions upon which a ship owned by a citizen of the United States could be requisitioned for purchase or charter, as provided for in section 902 of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1242). If the foreign transfer of the vessel is to the flag of a country that is a member of the North Atlantic Treaty Organization (NATO), the Administrator will consider this condition satisfied if the vessel upon request is made available to a NATO country.

(3) *Trade.* (a) The vessel shall not be chartered to aliens on a demise or bareboat basis without the prior approval of the Maritime Administrator; and,

(b) There shall be no charter or other foreign transfer to a non-citizen for carriage of cargoes of any kind to or from the USSR, Latvia, Lithuania, Estonia, Czechoslovakia, Bulgaria, Albania, North Korea, Poland, German Democratic Republic (including East Berlin), Laos, Kampuchea, Vietnam, Outer Mongolia Manchuria, Libya, Iran or Cuba, without the prior approval of the Maritime Administrator. This list of countries shall be subject to change periodically to conform to the laws and foreign policy of the United States.

(4) *Default.* In the event of default under conditions 1 or 2 or 3 above, the vessels approved for foreign transfer shall be subject to the penalties imposed by section 41 of the Shipping Act, 1916, as amended (46 App. U.S.C. 839). Pursuant to the provisions of section 38 of the Shipping Act, 1916, as amended (46 App. U.S.C. 836), the Maritime Administrator may remit the forfeiture of the vessel provided for in section 41 of the Shipping Act, 1916, as amended (46 App. U.S.C. 839), upon such conditions as may be required under the circumstances of the particular case, including the payment of a sum in lieu of forfeiture and the execution of a new agreement containing substantially the same conditions set forth above which will be applicable to the vessel for the remaining period of the original agreement. In order to secure the payment of any such sum of money, a foreign contractor owned or controlled by foreign citizens shall agree by way of a contract approved as to form by the Chief Counsel of the Maritime Administration to comply with the above conditions and to provide a United States commercial surety bond or other surety acceptable to the Maritime Administrator for an amount ranging from $25,000 to $250,000 depending upon the type, size and condition of the vessel. "Other surety" may be any one of the following:

(a) An irrevocable letter of credit directly issued by a United States bank;

(b) United States Government securities;

(c) The written guarantee of a friendly government of which the foreign person is a national; or

(d) A written guarantee or penal bond by a United States corporation which is found to be financially qualified to service the undertaking to pay the stipulated amount.

If the foreign person is owned or controlled by U.S. citizens, the foreign person and its principal U.S. citizen owners shall agree in form satisfactory to the Chief Counsel, Maritime Administration, to pay an amount ranging from $25,000 to $250,000, such agreement to be secured by the written guarantee of said parties, or other form of guarantee, as may be required by the Maritime Administrator.

B. Sale of U.S. Documented Vessels of 3,000 Gross Tons and Over to Foreign Buyers for Scrapping Abroad

(1) *Ownership.* The vessel or any interest therein shall not be sold without the prior written approval of the Maritime Administration.

(2) *Time within which to be scrapped.* Within a period of 18 months from the date of approval of the sale, the hull of the vessel shall be completely scrapped, dismantled, dismembered, or destroyed in such manner and to such extent as to prevent the further use thereof, or any part thereof, as a ship, barge, steamship, or any other means of transportation.

(3) *Distribution of scrap material.* The scrap resulting from the demolition of the hull of the vessel, the engines, machinery, and major items of equipment shall not be sold to, or utilized by, any noncitizen of the United States residing in the Soviet Union, Latvia, Lithuania, Estonia, Poland, Czechoslovakia, Hungary, Rumania, Bulgaria, Albania, North Korea, German Democratic Republic (including East Berlin), Manchuria, Libya, Iran, Vietnam, Laos, Kampuchea, Outer Mongolia, or Cuba. Such scrap shall not be exported to these countries. In addition, the engines, machinery and major items of equipment shall not be exported to destinations within the United States.

(4) *Default.* In the event of default under any or all of (1), (2), and (3) above, the contractor shall pay to the Maritime Administration, Department of Transportation, without prejudice to any other rights which the United States may have, as liquidated damages and not as a penalty, the sum of not less than $25,000, depending upon the size, type and condition of the vessel. This payment shall be secured by a surety company bond or other guarantee satisfactory to the Maritime Administration. "Other guarantee" may be one of those set out in section A(4) of this statement of policy.

(5) *Evidence of scrapping and destination of scrap materials.* There shall be filed with the Maritime Administrator a certificate or other evidence satisfactory to its Chief Counsel, duly attested and authenticated by a United States Consul, that the scrapping of the vessel (hull only) and disposal or utilization of the resultant scrap, the engines, machinery and major items of equipment have been accomplished in the manner prescribed by this section.

C. Resident Agent in the United States to Accept Service of Process for Foreign Transferee

All foreign transferees, whether corporate entities, associations, companies, partnerships, individuals, or joint ventures, which or who have been granted approval by the Maritime Administration pursuant to section 9 or 37 or both of the Shipping Act, 1916, as amended (46 App. U.S.C. 808 and 835), shall, prior to the issuance and delivery of the Transfer Order covering the vessel or vessels to be transferred, appoint and designate a resident agent in the United States to receive and accept service of process or other notice in any action or proceeding instituted by the United States of America relating to any claim arising out of the approved transaction. This appointment and designation of the resident agent shall not be terminated, revoked, amended or altered without the prior written consent and approval of the Maritime Administrator. The resident agent designated and appointed by the foreign transferee shall be subject to approval by the Maritime Administrator. To be acceptable, the resident agent must maintain a permanent place of business in the United States, shall be a banking or lending institution or a ship operating or shipowning company incorporated under the laws of the United States, or another U.S. corporation which is satisfactory to the Maritime Administrator. No individual and no foreign business entity will be accepted as a resident agent.

The foreign transferee shall file with the Maritime Administrator a written copy of the appointment of the resident agent, which copy shall be fully endorsed by the resident agent that it accepts the appointment, that it will act thereunder and that it will notify in writing the Maritime Administrator in the event it is disqualified from so acting by

reason of any legal restrictions. Service of process or notice upon any officer, agent, or employee of the resident agent at its permanent place of business shall constitute effective service on, or notice to, the foreign transferee.

The subsequent transfer of ownership or registry of vessels which have been transferred to either foreign ownership or registry or both or to authority of a foreign government subject to Maritime Administration contractual control, as set forth above, will be subject to substantially the same Maritime Administration policy that governed the original transfer and sale, including such changes or modifications that have subsequently been made and continued in effect. Approval of these subsequent transfers will be subject to the same terms and conditions governing the foreign transfer at the time of the previous transfer.

The completion of all approved transactions, either by virtue of sections 9, 37 and 41 of the Shipping Act, 1916, as amended (46 App. U.S.C. 808, 835 and 839), or the Maritime Administration's contract with the foreign person, will be authorized by notification in the form of a Transfer Order to all interested parties, upon the receipt of the executed contract, the required bond or other surety, and other supporting documents required by said contract.

In order that the Maritime Administration's records may be maintained on a current basis, the transferor and transferee of the vessel are required to notify the Maritime Administrator of the date and place where the approved transaction was completed, and the name of the vessel, if changed. This information relating to the completion of the transaction and any change in name shall be furnished to the Maritime Administrator as soon as possible, but not later than ten days after the same has occurred.

III. Vessels Under 3,000 Gross Tons

Generally, the Maritime Administrator will grant approvals required by section 9 or 37 or both of the Shipping Act, 1916, as amended, (46 App. U.S.C. 808 and 835), of vessels of under 3,000 gross tons provided the vessel is not needed for reasons of national defense and provided also that the foreign person and country of registry are acceptable to the Maritime Administration. Except an unusual circumstances, no conditions will be imposed.

Dated: January 30, 1989.

By Order of the Maritime Administrator.

James E. Saari,

Secretary, Maritime Administration.

[FR Doc. 89-2496 Filed 2-1-89; 8:45 am]

BILLING CODE 4910-81-M

Reader Aids

Federal Register

Vol. 54, No. 21

Thursday, February 2, 1989

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-5237

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	523-3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230

Other Services

Data base and machine readable specifications	523-3408
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Library	523-5240
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, FEBRUARY

5071-5206.....1
5207-5404.....2

CFR PARTS AFFECTED DURING FEBRUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

1 CFR

305.....5207

3 CFR

Administrative Orders:

Presidential Determinations:

No. 89-10 of Jan. 18, 1989.....5071

7 CFR

1.....5073

9 CFR

201.....5073

Proposed Rules:

92.....5089

10 CFR

Proposed Rules:

20.....5089

710.....5376

12 CFR

615.....5074

618.....5074

14 CFR

71.....5214-5219

Proposed Rules:

71.....5246

16 CFR

Proposed Rules:

414.....5090

18 CFR

271.....5075

284.....5219

19 CFR

148.....5076

162.....5076

207.....5077, 5220

Proposed Rules:

141.....5091

152.....5197

178.....5091

353.....5092

20 CFR

204.....5223

235.....5225

302.....5226

337.....5226

21 CFR

211.....5227

556.....5229

558.....5229

892.....5077

29 CFR

1.....5303

5.....5303

Proposed Rules:

530.....5303

31 CFR

500.....5229

515.....5229

32 CFR

286b.....5235

38 CFR

3.....5235

40 CFR

52.....5236

60.....5078

61.....5078

81.....5237

180.....5079, 5080

261.....5081

704.....5197

Proposed Rules:

52.....5083, 5247, 5249

60.....5302

42 CFR

405.....5316

442.....5316

447.....5316

483.....5316

488.....5316

489.....5316

498.....5316

43 CFR

Public Land Orders:

6696.....5302

Proposed Rules:

11.....5093

44 CFR

65.....5238, 5239

67.....5240

46 CFR

221.....5382

252.....5085

282.....5086

Proposed Rules:

550.....5253

47 CFR

73.....5243-5245

50 CFR

Proposed Rules:

17..... 5095

LIST OF PUBLIC LAWS

Last List November 30, 1988

The **List of Public Laws** will be resumed when bills are enacted into public law during the first session of the 101st Congress, which convened on January 3, 1989. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 523-6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).