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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

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WHEN: February 22, at 9:00 a.m.
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Reader Aids
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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.

Rules and Regulations

Federal Register
Vol. 54, No. 24
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DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 26

Determination of World Price for Upland Cotton

AGENCY: Office of the Secretary, USDA.
ACTION: Final Rule.

SUMMARY: The purpose of this rule is to adopt as a final rule the proposed rule published at 53 FR 47720 which would amend the regulations found at 7 CFR Part 26 with respect to the procedure for selecting the northern Europe price quotations which are used to calculate the Northern Europe price and the Northern Europe coarse count price during the period in which both current and forward shipment prices are quoted. This action is initiated under the authority of section 103A(a)(5)(E) (i)–(iii) of the Agricultural Act of 1949, as amended, in order to enhance the effectiveness of the upland cotton price support program.

EFFECTIVE DATE: February 3, 1989.

FOR FURTHER INFORMATION CONTACT: Charles V. Cunningham, Leader, Fibers Group, Commodity Analysis Division, USDA–ASCS, Room 3758 South Building, P.O. Box 2415, Washington, DC 20013 or call (202) 447–7954.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation No. 1512–1 and has been designated as "not major." It has been determined that these provisions 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 governments, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The titles and numbers of the Federal Assistance Programs to which this final rule applies are: Commodity Loans and Purchases—10.051 and Cotton Production Stabilization—10.052 as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Analysis completed when 7 CFR Part 26 was originally added to the Code of Federal Regulations adequately covers these amendments. Therefore, a new Regulatory Flexibility Analysis has not been prepared.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

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

A proposed rule was published in the **Federal Register** on November 25, 1988 (53 FR 47720) which would amend regulations found at 7 CFR Part 26 with respect to the procedure for selecting the northern Europe price quotations used to calculate the Northern Europe price and the Northern Europe coarse count price during the period in which both current and forward shipment prices are quoted. The proposed rule provided for a 30-day public comment period which ended December 27, 1988. One comment was received from an organization representing U.S. cotton shippers.

Discussion of Comments

The respondent endorsed the procedure for selecting the northern Europe price quotations used to calculate the Northern Europe price and the Northern Europe coarse count price during the period in which both current and forward shipment prices are quoted. The respondent also supported the six-week transition period from using current shipment prices to using all forward shipment prices in calculating the adjusted world price for upland cotton.

The respondent recommended that, instead of utilizing the procedure to adjust the Northern Europe price to average U.S. spot market location set forth in the proposed rule, the actual transportation cost be utilized. However, the respondent further recommended that in the event the procedure set forth in the proposed rule was adopted, the difference between the average price quotations for the U.S. Memphis territory and the California/Arizona territory as quoted each Thursday for Middling (M) 1 3/32 inch cotton C.I.F. northern Europe and the average price of M 1 3/32 inch (micronaire 3.5 through 4.9) cotton as quoted each Thursday in the designated U.S. spot markets for any week not exceed a range of 95 percent below or 105 percent above the actual transportation cost, rather than the range of 85 to 115 percent set forth in the proposed rule.

The respondent also submitted comments relating to an issue for which comments were not requested.

The respondent's recommendation to adjust the Northern Europe price to average designated spot market location by utilizing the actual cost of transportation or, in lieu thereof, substituting a value that is 5 percent above or below the actual transportation cost for any week in which the difference between the average price quotations for the U.S. Memphis territory and the California/Arizona territory as quoted each Thursday for M 1 3/32 inch cotton C.I.F. northern Europe and the average price of M 1 3/32 inch (micronaire 3.5 through 4.9) cotton as quoted each Thursday in the designated U.S. spot markets are substantially above or below the actual transportation cost was not adopted since the cost associated with transporting U.S. cotton to northern Europe may fluctuate over time. Accordingly, it has been determined that the range for substituting a value which is either 5 percent above or 5 percent below the actual cost of transportation is too narrow to allow any developing trends in transportation costs to be manifested.

The respondent's recommendation to further adjust the adjusted world price to reflect differences between the offering prices and actual transaction prices of cotton growths quoted in

northern Europe also was not adopted since the data needed to complete a historical analysis of such differences and to calculate an accurate adjustment in a timely fashion on a regular basis are not readily available.

In order to mitigate any possible adverse market impact, it has been determined that this final rule will be effective as of 12:01 a.m. Friday, February 3.

List of Subjects in 7 CFR Part 26

Upland cotton, World market price.

Final Rule

Accordingly, the proposed rule published at 53 FR 47720 is hereby adopted as follows as a final rule without change:

PART 26—[AMENDED]

1. The authority citation for Part 26, Subpart A continues to read as follows:

Authority: Sec. 103A(a)(5)(E), Pub. L. 81-439, 639 Stat. 1031, as amended (7 U.S.C. 1444-1(a)(5)(E)).

2. Section 26.2 is revised to read as follows:

§ 26.2 Determination of the prevailing world market price for upland cotton.

The prevailing world market price for upland cotton shall be determined by the Secretary of Agriculture as follows:

(a) During the period when only one daily price quotation is available for each growth quoted for Middling one and three-thirty-second inch (M 1 3/32 inch) cotton C.I.F. (cost, insurance, and freight) northern Europe, the prevailing world market price for upland cotton shall be based upon the average of the quotations for the preceding Friday through Thursday for the five lowest-priced growths of the growths quoted for M 1 3/32 inch cotton C.I.F. northern Europe.

(b) During the period when both a price quotation for cotton for shipment no later than August/September of the current calendar year (hereinafter referred to as the "current shipment price") and a price quotation for cotton for shipment no earlier than October/November of the current calendar year (hereinafter referred to as the "forward shipment price") are available for the growths quoted for M 1 3/32 inch cotton C.I.F. northern Europe, the prevailing world market price for upland cotton shall be based upon the following:

Beginning with the first week covering the period Friday through Thursday which includes April 15 or, if both the average of the current shipment prices for the preceding Friday through Thursday for the five lowest-priced growths of the growths quoted for M 1 3/32 inch cotton C.I.F. northern Europe (hereinafter referred to as the "Northern Europe current price") and the average of the forward shipment prices for the preceding Friday through Thursday for the five lowest-priced growths of the growths quoted for M 1 3/32 inch cotton C.I.F. northern Europe (hereinafter referred to as the "Northern Europe forward price") are not available during that period, beginning with the first week covering the period Friday through Thursday after the week which includes April 15 in which both the Northern Europe current price and the Northern Europe forward price are available, the prevailing world market price for upland cotton shall be based upon the result calculated by the following procedure:

Weeks 1 and 2: Northern Europe price = (2 × Northern Europe current price + Northern Europe forward price) /3.

Weeks 3 and 4: Northern Europe price = (Northern Europe current price + Northern Europe forward price) /2.

Weeks 5 and 6: Northern Europe price = (Northern Europe current price + 2 × Northern Europe forward price) /3.

Weeks 7 through July 31: Northern Europe price = Northern Europe forward price.

(c) The prevailing world market price for upland cotton as determined in accordance with § 26.2 (a) or (b) shall hereinafter be referred to as the "Northern Europe price."

(d) If quotes are not available for one or more days in the five-day period, the available quotes during the period will be used. If no quotes are available during the Friday through Thursday period, the prevailing world market price shall be based upon the best available world price information, as determined by the Secretary.

3. Section 26.3(b)(1) is revised to read as follows:

§ 26.3 Adjusted world price for upland cotton.

* * * * *

(b) * * *

(1) The Northern Europe price shall be adjusted to average designated U.S. spot market location by deducting the average difference in the immediately preceding 52-week period between:

(i)(A) The average of price quotations for the U.S. Memphis territory and the California/Arizona territory as quoted each Thursday for M 1 3/32 inch cotton C.I.F. northern Europe during the period when only one daily price quotation for such growths is available, or

(B) The average of the current shipment prices for U.S. Memphis territory and the California/Arizona territory as quoted each Thursday for M 1 3/32 inch cotton C.I.F. northern Europe during the period when both current shipment prices and forward shipment prices for such growths are available; and

(ii) The average price of M 1 3/32 inch (micronaire 3.5 through 4.9) cotton as quoted each Thursday in the designated U.S. spot markets.

* * * * *

4. Section 26.3(c) is revised to read as follows:

§ 26.3 Adjusted world price for upland cotton.

* * * * *

(c) In determining the average difference in the 52-week period as provided in paragraph (b)(1) of this section:

(1) If the difference between the average price quotations for the U.S. Memphis territory and the California/Arizona territory as quoted for M 1 3/32 inch cotton C.I.F. northern Europe and the average price of M 1 3/32 inch (micronaire 3.5 through 4.9) cotton as quoted each Thursday in the designated U.S. spot markets for any week is:

(i) More than 115 percent of the estimated actual cost associated with transporting U.S. cotton to northern Europe, then 115 percent of such actual cost shall be substituted in lieu thereof for such week.

(ii) Less than 85 percent of the estimated actual cost associated with transporting U.S. cotton to northern Europe, then 85 percent of such actual cost shall be substituted in lieu thereof for such week.

(2) If Thursday price quotations are not available for either the northern Europe or the spot market quotations for any week, that week will not be taken into consideration.

* * * * *

5. Section 26.3(e)(2) is revised to read as follows:

§ 26.3 Adjusted world price for upland cotton.

* * * * *

(e) * * *

(2) The adjustment for upland cotton provided for by paragraph (e)(1) of this section shall be determined by deducting from the adjusted world price:

(i) The difference between the Northern Europe price, and

(A) During the period when only one daily price quotation for each growth quoted for "coarse count" cotton C.I.F. northern Europe is available, the average of the quotations for the corresponding Friday through Thursday for the three lowest-priced growths of the growths quoted for "coarse count" cotton C.I.F. northern Europe.

(B) During the period when both current shipment prices and forward shipment prices are available for the growths quoted for "coarse count"

cotton C.I.F. northern Europe, the result calculated by the following procedure:

Beginning with the first week covering the period Friday through Thursday which includes April 15 or, if both the average of the current shipment prices for the preceding Friday through Thursday for the three lowest-priced growths of the growths quoted for "coarse count" cotton C.I.F. northern Europe (hereinafter referred to as the "Northern Europe coarse count current price") and the average of the forward shipment prices for the preceding Friday through Thursday for the three lowest-priced growths of the growths quoted for "coarse count" cotton C.I.F. northern Europe (hereinafter referred to as the "Northern Europe coarse count forward price") are not available during that period, beginning with the first week covering the period Friday through Thursday after the week which includes April 15 in which both the Northern Europe coarse count current price and the Northern Europe coarse count forward price are available:

(*1*) Weeks 1 and 2: Northern Europe coarse count price = (2 × Northern Europe coarse count current price + Northern Europe coarse count forward price)/3.

(*2*) Weeks 3 and 4: Northern Europe coarse count price = (Northern Europe coarse count current price + Northern Europe coarse count forward price)/2.

(*3*) Weeks 5 and 6: Northern Europe coarse count price = (Northern Europe coarse count current price + 2 × Northern Europe coarse count forward price)/3.

(*4*) Week 7 through July 31: The Northern Europe coarse count forward price, minus

(ii) The difference between the applicable loan rate for a crop of upland cotton for M 1 3/32 inch (micronaire 3.5 through 4.9) cotton and the loan rate for a crop of upland cotton for SLM 1 3/32 inch (micronaire 3.5 through 4.9) cotton.

(iii) The result of the calculation as determined in accordance with § 26.3(e)(2) shall hereinafter be referred to as the "Northern Europe coarse count price."

* * * * *

Signed at Washington, DC on January 25, 1989.

Peter C. Myers,

Acting Secretary.

[FR Doc. 89-2901 Filed 2-2-89; 4:57 pm]

BILLING CODE 3410-05-M

Federal Grain Inspection Service

7 CFR Part 68

Miscellaneous Reference Changes and Corrections

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Federal Grain Inspection Service (FGIS) is amending citations referenced in certain sections of the Part 68 regulations to reflect changes in the regulations of the Office of the Secretary of Agriculture; and to correct the fee schedule to remove references to hay and straw and their related inspection fees.

EFFECTIVE DATE: February 7, 1989.

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., RM, USDA, FGIS, Room 0628 South Building, P.O. Box 96454, Washington, DC 20090-6454, telephone: (202) 475-3428.

SUPPLEMENTARY INFORMATION: The regulations of the Office of the Secretary of Agriculture relating to official records were revised on December 31, 1987 at 52 FR 49386. As part of that action, some of the section numbers to which FGIS' regulations refer, were changed. As a result, the appropriate sections of Part 68, Subpart A, are being amended to show the correct citations. Further, § 68.90 *Fees for certain Federal inspection services* is being revised to remove references to hay and straw and their related inspection fees. On March 13, 1987 at 52 FR 7817, FGIS removed the U.S. Standards for Hay and the U.S. Standards for Straw as official standards from the Part 57 regulations under the Agricultural Marketing Act of 1946. In addition, the fees related to the inspection of hay and straw were removed from the Part 68 regulations. However, on February 9, 1988 at 53 FR 3721 the references to hay and straw and their related fees for inspection service were inadvertently reentered into § 68.90 of the repromulgated Part 68 regulations. This final rule makes necessary corrections to the FGIS regulations.

These changes are technical and nonsubstantive; further pursuant to section 553(b)(3)(A) of the Administrative Procedure Act (5 U.S.C. 553(b)(3)(A)) (APA), the requirements of general notice of proposed rulemaking do not apply to interpretive rules, general policy statements, or rules regarding agency organization, procedure, or practice. Since this rule relates to general agency management, including procedure and practice, and to agency organization, the requirements regarding general notice of rulemaking under the APA do not apply. For the same reasons, the relevant provisions of Departmental Regulation 1512-1, Executive Order 12291, and the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are also not applicable. Additionally, upon good cause, the provisions of section 553(d) of the APA (5 U.S.C. 553(d)) concerning postponing the effective date of a substantive rule until 30 days after publication in the **Federal Register** do not apply to this action.

List of Subjects in 7 CFR Part 68

Administrative practices and procedures—FGIS, Agricultural commodities, Export.

For reasons set forth in the preamble, 7 CFR Part 68 is amended as follows:

PART 68—[AMENDED]

1. The authority citation for Part 68 continues to read as follows:

Authority: Secs. 202-208, 60 Stat. 1087, as amended (7 U.S.C. 1621 *et seq.*).

§ 68.11 [Amended]

2. Section 68.11(a) is amended by removing the citations "§§ 1.1 through 1.16" and "(7 CFR 1.1 through 1.16)" and inserting in their place, "§§ 1.1 through 1.23" and "(7 CFR 1.1 through 1.23)" respectively.

3. Sections 68.11 (b) and (c) are amended by removing the citation "7 CFR 1.2(a)" and inserting in its place, "7 CFR 1.5".

4. Section 68.11(d) is amended by removing the citation "7 CFR 1.3(a)" and inserting in its place, "7 CFR 1.6".

5. Section 68.11(e) is amended by removing the citation "7 CFR 1.3(e)" and inserting in its place, "7 CFR 1.13".

6. Section 68.90 is amended by revising the undesignated center heading preceding the tables, and Table 2 to read as follows:

§ 68.90 Fees for certain Federal inspection services.

* * * * *

Fees for Inspection of Hops, Pulses, and Miscellaneous Processed Commodities

* * * * *

TABLE 2.—UNIT RATES

Service [1]	Beans, peas, lentils	Hops	Non-graded, non-processed commodities
Lot or sample (per lot or sample)		$22.40	
Field run (per lot or sample)	$15.00		
Other than field run (per lot or sample)	11.20		
Factor analysis (per factor)	3.75		$3.75
Extra Copies of certificates (per copy)	3.00	3.00	3.00

[1] Fees apply to determinations (original or appeal) for kind, class, grade, factor analysis, and any other quality designation as defined in the official U.S. Standards or applicable instructions when performed at other than the point of service.

* * * * *

Dated: February 1, 1989.

D.R. Galliart,

Acting Administrator.

[FR Doc. 89-2809 Filed 2-6-89; 8:45 am]

BILLING CODE 3410-EN-M

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7 CFR Part 800

Miscellaneous Reference Changes and Corrections

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Federal Grain Inspection Service (FGIS) is amending citations referenced in certain sections of the Part 800 regulations to reflect changes in the regulations of the Office of the Secretary of Agriculture; and is amending certain Office of Management and Budget (OMB) control numbers to reflect current authorities. In addition, FGIS is amending the regulations to reflect its current mail address.

EFFECTIVE DATE: February 7, 1989.

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., RM, USDA, FGIS, Room 0628 South Building, P.O. Box 96454, Washington, DC 20090-6454, telephone: (202) 475-3428.

SUPPLEMENTARY INFORMATION: The regulations of the Office of the Secretary of Agriculture relating to official records were revised on December 31, 1987 at 52 FR 49388. As part of that action, some of the section numbers to which FGIS' regulations refer, were changed. As a result, the appropriate sections of Part 800 are being amended to show the correct citations. Further, under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the OMB clearance authorities for information collection and reporting requirements of FGIS have been combined into two authorities. As a result, the OMB clearance numbers relating to certain sections of FGIS' regulations were changed and some additional sections of the regulations were included under these two clearance numbers. This final rule is necessary to add the appropriate OMB clearance numbers to some sections of the FGIS regulations and correct references in other sections. Also, FGIS recently changed its mail address from a street address to a post office box number. As a result of this action, applicable sections of the Part 800 regulations are being amended to reflect this change.

In addition to the above, a change is needed to § 800.73(c) of the regulations to remove an unnecessary section reference. As promulgated in March of 1980, the FGIS regulations contained a paragraph (b) as part of § 800.47 regarding agency or field office expenses when a request for service has been withdrawn by an applicant. This paragraph was removed by a final rule dated August 2, 1984 (49 FR 30911) because the applicable information was duplicated elsewhere in the regulations. A reference to the section should have been removed from § 800.73(c). This final rule makes the necessary change.

These changes are technical and nonsubstantive; further pursuant to section 553(b)(3)(A) of the Administrative Procedure Act (5 U.S.C. 553(b)(3)(A)) (APA), the requirements of general notice of proposed rulemaking do not apply to interpretive rules, general policy statements, or rules regarding agency organization, procedure, or practice. Since this rule relates to general agency management, including procedure and practice, and to agency organization, the requirements regarding general notice of rulemaking under the APA do not apply. For the same reasons, the relevant provisions of Departmental Regulation 1512-1, Executive Order 12291, and the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are also not applicable.

Additionally, upon good cause, the provisions of section 553(d) of the APA (5 U.S.C. 553(d)) concerning postponing the effective date of a substantive rule until 30 days after publication in the **Federal Register** do not apply to this action.

List of Subjects in 7 CFR Part 800

Administrative practice and procedure, Export, Grain.

PART 800—GENERAL REGULATIONS

For the reasons set out in the preamble, 7 CFR Part 800 of the regulations is amended as follows:

1. The authority citation for Part 800 continues to read as follows:

Authority: Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

§§ 800.31, 800.32, 800.33, 800.45, 800.46, 800.172, 800.187, 800.197, and 800.198 [Amended]

2. The parenthetical phrases at the end of §§ 800.31, 800.32, 800.33, 800.45, 800.46, 800.172, 800.187, 800.197, and 800.198 are amended by removing the control number "0580-0003" and inserting in its place "0580-0012".

§ 800.37 [Amended]

3. The parenthetical phrase at the end of § 800.37 is amended by removing the control number "0580-0008" and inserting in its place "0580-0012".

§§ 800.60 and 800.185 [Amended]

4. The parenthetical phrases at the end of §§ 800.60 and 800.185 are amended by removing the control number "0580-0006" and inserting in its place "0580-0011".

§§ 800.195 and 800.196 [Amended]

5. The parenthetical phrases at the end of §§ 800.195 and 800.196 are amended by removing the control numbers "0580-0003" and "0580-0006" and inserting in their place "0580-0012" and "0580-0011" respectively.

§§ 800.125 and 800.136 [Amended]

6. The following parenthetical phrase is added at the end of §§ 800.125 and 800.136.

(Approved by the Office of Management and Budget under control number 0580-0012)

§ 800.5 [Amended]

7. Section 800.5(c) is amended by removing the citations "§ 2.68(a)(15)" and "(7 CFR 2.68(a)(15))" and inserting in their place "§ 2.68(a)(14)" and "(7 CFR 2.68(a)(14))" respectively.

§ 800.7 [Amended]

8. Section 800.7 is amended by removing the address "at 14th Street and Independence Avenue, SW., Washington, DC 20250" and inserting its place "P.O. Box 96454, Washington, DC 20090-6454".

§ 800.8 [Amended]

9. Section 800.8(a) is amended by removing the citations "1.1 through 1.16" and "(7 CFR 1.1 through 1.16)" and inserting in their place "1.1 through 1.23" and "(7 CFR 1.1 through 1.23)" respectively.

10. Sections 800.8(b) and 800.8(c) are amended by removing the citation "7 CFR 1.2(a)" and inserting in its place "7 CFR 1.5".

11. Section 800.8(d) is amended by removing the citations "7 CFR 1.3(a)" and inserting in its place "7 CFR 1.6". Section 800.8(d) is further amended by removing the address "14th Street and Independence Avenue, SW., Washington, DC 20250" and inserting in its place "P.O. Box 96454, Washington, DC 20090-6454".

12. Section 800.8(e) is amended by removing the citation "7 CFR 1.3(e)" and inserting in its place "7 CFR 1.13". Section 800.8(e) is further amended by removing the address "U.S. Department of Agriculture", Washington, DC 20250" and inserting in its place "P.O. Box 96454, Washington, DC 20090-6454".

§ 800.73 [Amended]

13. Section 800.73(c) is amended by removing the phrase at the end of the

paragraph "or under the provisions set forth in § 800.47(b)".

Dated: February 1, 1989.

D.R. Galliart,

Acting Administrator.

[FR Doc. 89-2810 Filed 2-6-89; 8:45 am]

BILLING CODE 3410-EN-M

7 CFR Part 802

Display of OMB Control Number

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This amendment displays the control number assigned to information collection requirements of the Federal Grain Inspection Service (FGIS) pursuant to the regulations promulgated by the Office of Management and Budget (OMB) and the Paperwork Reduction Act of 1980.

EFFECTIVE DATE: February 7, 1989.

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., Management Improvement and Information Programs, USDA, FGIS, Room 0628 South Building, P.O. Box 96454, Washington, DC 20090-6454, telephone (202) 475-3428.

SUPPLEMENTARY INFORMATION: This amendment incorporates approved OMB control numbers for information collection into Part 802 of the regulations as required by the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), and 5 CFR Part 1320 of the regulations, Controlling Paperwork Burden on the Public.

These changes are technical and nonsubstantive; further pursuant to section 553(b)(3)(A) of the Administrative Procedure Act (5 U.S.C. 553(b)(3)(A)) (APA), the requirements of general notice of proposed rulemaking do not apply to interpretive rules, general policy statements, or rules regarding agency organization, procedure, or practice. Since this rule relates to general agency management, including procedure and practice, and to agency organization, the requirements regarding general notice of rulemaking under the APA do not apply. For the same reasons, the relevant provisions of Departmental Regulation 1512-1, Executive Order 12291, and the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are also not applicable. Additionally, upon good cause, the provisions of section 553(d) of the APA (5 U.S.C. 553(d)) concerning postponing the effective date of a substantive rule until 30 days after publication in the **Federal Register** do not apply to this action.

List of Subjects in 7 CFR Part 802

Administrative practices and procedures, Export, Grain, Incorporation by reference.

For reasons set out in the preamble, 7 CFR Part 802 is amended as follows:

PART 802—[AMENDED]

1. The authority citation for Part 802 continues to read as follows:

Authority: Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

§ 802.1 [Amended]

2. Section 802.1 is amended by adding a parenthetical phrase at the end of the section to read as follows:

(Approved by the Office of Management and Budget under control number 0580-0011).

Dated: February 1, 1989.

D. R. Galliart,

Acting Administrator.

[FR Doc. 89-2811 Filed 2-6-89; 8:45 am]

BILLING CODE 3410-EN-M

Rural Electrification Administration

7 CFR Part 1735

Standard Forms of Electric Contracts

AGENCY: Rural Electrification Administration, USDA.

ACTION: Final rule.

SUMMARY: The Rural Electrification Administration (REA) hereby amends 7 CFR Chapter XVII by adding: (1) Part 1735, REA Standard Forms of Electric Contracts; and (2) § 1735.1, List of Standard Forms of Electric Contracts. The purpose of § 1735.1 is to provide a list of the current REA standard forms of contracts available for use by REA electric borrowers as required when obtaining professional services, purchasing materials and equipment, and constructing electric facilities. The listing also provides: (1) Purpose of each form; (2) the date of the current issue; and (3) the source where copies may be obtained. This action does not change any of REA's current requirements and procedures. It is being published in final form since it is a listing of existing forms with no changes in REA procedures or requirements.

EFFECTIVE DATE: February 7, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. H. Robert Lash, Transmission Branch, Electric Staff Division, Rural Electrification Administration, Room 1263, South Building, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 382-9098.

The Impact Analysis describing the options considered in developing this rule is available on request from the above office.

SUPPLEMENTARY INFORMATION: Pursuant to the Rural Electrification Act, as amended (7 U.S.C. 901 *et seq.*), the Rural Electrification Administration (REA) hereby amends 7 CFR Chapter XVII by adding: (1) Part 1735, REA Standard Forms of Electric Contracts; and (2) § 1735.1, List of Standard Forms of Electric Contracts. Copies of all the contract forms are available upon request from the addresses stated in § 1735.1. This action will not (1) have an annual effect on the economy of $100 million or more; (2) result in a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; (3) result in significant adverse effects on competition, employment, investment or productivity, innovations, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets and; therefore, has been determined to be "not major". These actions do not fall within the scope of the Regulatory Flexibility Act. REA has concluded that promulgation of this rule would not represent a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.* (1976)) and, therefore, does not require an environmental impact statement or an environmental assessment. This program is excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with state and local officials.

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

Background

REA has issued a series of publications entitled "bulletins" which serve to implement the policy, procedures, and requirements for administering its loan and loan guarantee programs and the security instruments which provide for and secure REA financing. REA has issued in this series a number of bulletins that set forth REA's requirements and procedures for the purchase and installation of such items of material and equipment, and the construction of

system facilities by REA electric borrowers. To assist the REA borrowers and promote efficiency, a listing of all the electric program contracts involved in these activities has been established to show the purpose of each contract, its current issue date, and the source where copies may be obtained.

List of Subjects in 7 CFR Part 1735

Loan programs—electric.

In view of the above, REA hereby amends 7 CFR Chapter XVII by adding Part 1735 to read as follows:

PART 1735—STANDARD FORMS OF ELECTRIC CONTRACTS

Authority: 7 U.S.C. 901 *et seq.*; 7 U.S.C. 1921 *et seq.*

§ 1735.1 List of standard forms of electric contracts.

Following is a list of the current REA standard forms of contracts that REA prepared for use by electric borrowers when procuring engineering and architectural services, purchasing distribution and transmission materials and equipment, and constructing generating facilities with REA loan funds. Copies of the contract forms are available for the sources indicated in the testing. A notice of any change in these contract forms will be published in the **Federal Register**.

REA STANDARD FORMS OF ELECTRIC PROGRAM CONTRACTS

REA form No.	Issue date	Title	Purpose	Source of copies[1]
168b	3-62	Contractor's bond	Used in REA Forms 200, 203, 764, 790, 830 & 831	In respective contract form.
168c	4-79	Contractor's bond (less than $1 million)	In lieu of REA Form 168b, used when contractor's surety has accepted a small business administration guarantee.	REA.
173	3-55	Materials contract	Used for distribution, transmission, general plant and minor generation material and equipment purchases.	REA.
187	9-66	Certificate of completion contract construction	Used in REA Form 200.	In respective contract form.
198	3-73	Equipment contract	Used for equipment purchases	REA.
200	9-72	Construction contract generating	Used for generating plant construction or for the furnishing and installation of major items of equipment.	REA.
201	7-72	Right-of-way clearing contract	Used for distribution right-of-way clearing work which is to be performed separate from line construction.	REA.
203	3-72	Transmission system right-of-way clearing contract.	Used for transmission line right-of-way clearing work which is to be performed separate from line construction.	REA.
211	8-78	Engineering service contract for the design and construction of a generating plant.	Used to obtain the services of an engineer for the design and construction of a generating plant. This contract is optional if under $50,000.	REA.
215	5-67	Engineering service contract system planning	Used to obtain the services of an engineer for system planning.	REA.
220	1-82	Architectual services contract	Used to obtain the architectural services for the design, preparation of drawings and description of material for headquarters buildings.	REA.
224	3-55	Waiver and release of lien	Used in REA Forms 200, 203, 764, 830, and 831	In respective contract form.
231	3-55	Waiver and release of lien	Used in REA Forms 200, 203, 764, 830, and 831	In respective contract form.
235	6-72	Engineering service contract—electric substation design and construction.	Used to obtain the services of an engineer for the design and construction of substations.	REA.
236	6-72	Engineering service contract—electric system design and construction.	Used to obtain the services of an engineer for the design and construction of distribution and transmission facilities.	REA.
237	6-72	Engineering service contract—electric system design and construction.	Used to obtain the services of an engineer for the design and construction of distribution and transmission facilities.	REA.
242	11-58	Assignment of engineering service contract	Used to assign engineering service contract	REA.
244	12-55	Engineering service contract—special services	Used to obtain the engineering services for work not covered by other engineering service contracts.	REA.
251	5-53	Material receipt	Used in REA Forms 764, 830, and 831	In respective contract form.
257	3-73	Contract to construct buildings	Used to construct headquarter buildings, generating plant buildings and other structure construction.	GPO [2]
270	7-70	Equal opportunity addendum	Addendum to contracts not having current equal opportunity provisions.	REA.
297	12-55	Engineering service contract—retainer for consultation services.	Used to obtain the services of an engineer for consultation services.	REA.
307	4-60	Bid bond	Used in REA Forms 200, 203, 257, 764, 830 and 831	In respective contract form.
458	3-55	Material contract	Used to obtain generating plant material and equipment purchases over $10,000, not requiring acceptance tests at the project site.	REA.
459	9-58	Engineering service power study	Used to obtain the services of an engineer to do a power study.	REA.
764	8-72	Substation and switching station erection contract.	Used to construct substations and switching stations	REA.
786	3-72	Electric system communications and control equipment contract.	Used for delivery and installation of equipment for system communications.	REA.
790	5-70	Distribution line extension construction contract (labor & materials).	Used for limited distribution construction accounted for under work order precedure.	GPO [2]

REA STANDARD FORMS OF ELECTRIC PROGRAM CONTRACTS—Continued

REA form No.	Issue date	Title	Purpose	Source of copies[1]
792	5-70	Distribution line extension construction contract (labor only).	Used for limited distribution construction accounted for under work order procedure.	GPO [2].
792a	10-62	Contractor's bond	Used in REA Forms 201 and 792	In respective contract form.
792b	2-70	Certificate of construction and indemnity agreement.	Used in REA Forms 201, 790, and 792	In respective contract form.
792c	5-70	Supplemental contract for additional project	Used in REA Forms 201, 790 and 792	In respective contract form.
830	8-72	Electric system construction contract (labor & material).	Used for distribution and/or transmission project construction.	GPO [2].
831	2-73	Electric transmission construction contract (labor & material).	Used for transmission project construction	GPO [2].

[1] A limited number of copies of the publication will be furnished by REA upon request. As this document is published by the Federal Government and is, therefore, in the public domain, additional copies may be duplicated locally by any user as desired. Requests for copies should be sent to the Director, Administrative Services Division, U.S. Department of Agriculture, Rural Electrification Administration, Washington, DC 20250. The telephone number of the REA publication office is (202) 382-8674.

[2] Requests for copies should be submitted to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. Telephone orders may also be placed, using Mastercard or Visa, by calling (202) 783-3238.

(7 U.S.C. 901 *et seq.*; 7 U.S.C. 1921 *et seq.*)

Dated: October 12, 1988.

Harold V. Hunter,

Administrator.

[FR Doc. 89-2644 Filed 2-6-89; 8:45 am]

BILLING CODE 3410-15-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 101

INS Number: 1006-89

Rule Revision To Add New Special Immigrant Classification

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This revision will add a new special immigrant section. The rule revision is necessary to implement Pub. L. 99-603 section 312, which created new special immigrant and nonimmigrant classifications.

EFFECTIVE DATE: February 7, 1989.

FOR FURTHER INFORMATION CONTACT: Thomas E. Cook, Senior Immigration Examiner, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536, Telephone: (202) 633-3320.

SUPPLEMENTARY INFORMATION: On November 6, 1986, President Reagan signed Pub. L. 99-603, the Immigration Reform and Control Act of 1986. Section 312 of Pub. L. 99-603 amended section 101(a)(27)(I) of the Immigration and Nationality Act (INA), 8 U.S.C. 1101, to add a new category of "special immigrants," covering certain officers and employees of international organizations and their immediate relatives.

This provision was intended to alleviate hardships on long-time United States resident employees and officers of international organizations and their immediate family members. The House Judiciary Committee Report of May 13, 1983, page 60, indicates that the grant of special immigrant status was intended to reflect the fact that some aliens who have been employed by international organizations in the United States for long periods of time have in effect become fully integrated into American society, and that forced departure due to the retirement or death of the principal G-IV visa holder has an adverse effect on the family members who had become "Americanized."

The publication of implementing regulations was held in abeyance pending the passage of the Immigration Technical Corrections Act of 1988, signed by the President on October 24, 1988, which overcame certain ineligibilities not intended by the original legislation.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is impractical and unnecessary as the changes have been mandated by passage of Pub. L. 99-603.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that this rule does not have significant economic impact on a substantial number of small entities.

The information collection requirements contained in this rule have been approved by the Office of Management and Budget, under the provisions of the Paperwork Reduction Act, under control number, 1115-0053.

This is not a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have federalism implications warranting the preparation of a Federal Assessment in accordance with E.O. 12612.

List of Subjects in 8 CFR Part 101

Definitions.

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

PART 101—PRESUMPTION OF LAWFUL ADMISSION

1. The authority citation of Part 101 is revised to read as follows:

Authority: 8 U.S.C. 1103, 8 CFR Part 2.

2. A new § 101.5 is added to read as follows:

§ 101.5 Special Immigrant Status for Certain G-4 Nonimmigrants.

(a) *Application.* An application for adjustment to special immigrant status under section 101(a)(27)(I) of the INA shall be made on Form I-485. The application date of the I-485 shall be the date of acceptance by the Service as properly filed. If the application date is other than the fee receipt date it must be noted and initialed by a Service officer. The date of application for adjustment of status is the closing date for computing the residence and physical presence requirement. The applicant must have complied with all requirements as of the date of application.

(b) *Documentation.* All documents must be submitted in accordance with § 103.2(b) of this chapter. The application shall be accompanied by documentary evidence establishing the aggregate residence and physical presence required. Documentary evidence may include official employment verification, records of official or personnel transactions or recordings of events occurring during

the period of claimed residence and physical presence. Affidavits of credible witnesses may also be accepted. Persons unable to furnish evidence in their own names may furnish evidence in the names of parents or other persons with whom they have been living, if affidavits of the parents or other persons are submitted attesting to the claimed residence and physical presence. The claimed family relationship to the principle G–4 international organization officer or employee must be substantiated by the submission of verifiable civil documents.

(c) *Residence and physical presence requirements.* All applicants applying under sections 101(a)(27)(I) (i), (ii), and (iii) of the INA must have resided and been physically present in the United States for a designated period of time.

For purposes of this section only, an absence from the United States to conduct official business on behalf of the employing organization, or approved customary leave shall not be subtracted from the aggregated period of required residence or physical presence for the current or former G–4 officer or employee or the accompanying spouse and unmarried sons or daughters of such officer or employee, provided residence in the United States is maintained during such absences, and the duty station of the principle G–4 nonimmigrant continues to be in the United States. Absence from the United States by the G–4 spouse or unmarried son or daughter without the principle G–4 shall not be subtracted from the aggregate period of residence and physical presence if on customary leave as recognized by the international organization employer. Absence by the unmarried son or daughter while enrolled in a school outside the United States will not be counted toward the physical presence requirement.

(d) *Maintenance of nonimmigrant status.* Section 101(a)(27)(I) (i), and (ii) requires the applicant to accrue the required period of residence and physical presence in the United States while maintaining status as a G–4 or N nonimmigrant. Section 101(a)(27)(I)(iii) requires such time accrued only in G–4 nonimmigrant status.

Maintaining G–4 status for this purpose is defined as maintaining qualified employment with a "G" international organization or maintaining the qualifying family relationship with the G–4 international organization officer or employee. Maintaining status as an N nonimmigrant for this purpose requires the qualifying family relationship to remain in effect. Unauthorized employment will not remove an otherwise eligible alien from G–4 status for residence and physical presence requirements, provided the qualifying G–4 status is maintained.

Dated: January 18, 1989.

Richard E. Norton,

Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 89–2769 Filed 2–3–89; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88–CE–33–AD; Amdt. 39–6139]

Airworthiness Directives; Dornier Model Do–28 D–1 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to Dornier Model Do–28 D–1 airplanes, which requires a check of the location and relocation, if necessary, of the installed Station Guide Line. The Center of Gravity (C.G.) Station Guide Line has been incorrectly installed on some Do–28 D–1 airplanes, which if used to determine the airplane balance, may result in the airplane being loaded forward or aft of the C.G. limits. Operation of the airplane outside it's design C.G. envelope could cause the loss of control of the airplane. This action will preclude use of an incorrect location reference.

EFFECTIVE DATE: March 10, 1988.

Compliance: As prescribed in the body of the AD.

ADDRESSES: Dornier Service Bulletin (S/B) No. 1121–1703, dated May 20, 1988, applicable to this AD may be obtained from Dornier GmbH, D–8000 Munchen 66, Post Office Box 2160, Federal Republic of Germany. This information may also be examined at the Rules Docket, FAA, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Heinz Hellebrand, Aircraft Certification Office, AEU–100, Europe, Africa, and Middle East Office, FAA, c/o American Embassy, B–1000, Brussels, Belgium; Telephone (322) 513.38.30; or Mr. Herman C. Belderok, Project Support Section Foreign Aircraft, Central Region, ACE–109, 601 East 12th Street, Kansas City, Missouri 64106; Telephone (816) 426–6932.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations (FAR) to include an AD requiring an inspection of the C.G. Station Guide Line (SGL) location and replacement if incorrectly installed on certain Model Do–28 D–1 airplanes was published in the **Federal Register** on November 4, 1988 (53 FR 44610). The proposal resulted from the manufacturer becoming aware that the airplane C.G. SGL located in the cabin and used for determining the loading station, does not correspond to the Airplane Flight Manual and the loading station referred to in the loading tables. In certain cases, using the values determined by the C.G. SGL may result in the airplane being loaded to exceed the forward or aft C.G. loading limits, thereby adversely affecting the airplane stability characteristics. Consequently, Dornier issued S/B No. 1121–1703, dated May 20, 1988, which requires an inspection of the location of the C.G. SGL and replacement if the location guide is incorrectly installed.

The Federal Republic of Germany Civil Aviation Authority, the Luftfahrt Bundesamt (LBA), which has responsibility and authority to maintain the continuing airworthiness of these airplanes in Germany, classified this Service Bulletin and the actions recommended therein by the manufacturer as mandatory to assure the continued airworthiness of the affected airplanes.

On airplanes operated under LBA registration, this action has the same effect as an AD on airplanes certified for operation in the United States. The FAA relies upon the certification of the LBA combined with FAA review of pertinent documentation in finding compliance of the design of these airplanes with the applicable United States airworthiness requirements and the airworthiness and conformity of products of this design certificated for operation in the United States.

The FAA examined the available information related to the issuance of Dornier S/B No. 1121–1703, dated May 20, 1988, and the mandatory classification of this Service Bulletin by the LBA, and concluded that the condition addressed by Dornier S/B No. 1121–1703, dated May 20, 1988, was an unsafe condition that may exist on other airplanes of this type certificated for operation in the United States. Accordingly, the FAA proposed an amendment to Part 39 of the FAR to include an AD on this subject.

Interested persons have been afforded an opportunity to comment on the proposal. No comments or objections

were received on the proposal or the FAA determination of the related cost to the public. Accordingly, the proposal is adopted without change.

The FAA has determined that this regulation involves 3 airplanes at an approximate one-time cost of $20 for each airplane, for a total fleet cost of $60. The cost of compliance with the proposed AD is so small that the expense of compliance will not be a significant financial impact on any small entities operating these airplanes.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Therefore, I certify that this action (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) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. By adding the following new AD:

Dornier: Applies to Model Do-28 D-1 (all serial numbers) airplanes certificated in any category.

Compliance: Required within the next 50 hours time-in-service after the effective date of this AD, unless already accomplished.

To preclude operation of the airplane beyond the approved forward or rear center of gravity limits, accomplish the following:

(a) Inspect the installed Center of Gravity Station Guide Line in accordance with Dornier Service Bulletin No. 1121-1703, dated May 20, 1988, and determine its location. Prior to further flight, replace, and correctly locate the Guide Line if necessary.

(b) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(c) An equivalent means of compliance with this AD may be used if approved by the Manager, Aircraft Certification Office, AEU-100 Europe, Africa, and Middle East Office, FAA, c/o American Embassy, B-1000 Brussels, Belgium.

All persons affected by this directive may obtain copies of the document referred to herein upon request to the Aircraft Certification Office, AEU-100, Europe, Africa, and Middle East Office, FAA, c/o American Embassy, B-1000 Brussels, Belgium; or may examine this document at the FAA, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on January 26, 1989.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-2756 Filed 2-6-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 88-ACE-14]

Alteration of Transition Area Clarinda, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to final rule.

SUMMARY: This action corrects the name of the airport erroneously cited in the description of the Clarinda, Iowa, transition area, as "Clarinda Municipal Airport." It should state "Schenck Field".

EFFECTIVE DATE: February 7, 1989.

FOR FURTHER INFORMATION CONTACT: Lewis G. Earp, Airspace Specialist, Traffic Management and Airspace Branch, Air Traffic Division, ACE-540, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 426-3408.

SUPPLEMENTARY INFORMATION:

History

On December 28, 1988, the FAA published FR Document No. 88-29682 which amended the Clarinda, Iowa, transition area (53 FR 52403). Inadvertently, the incorrect airport name was used. This action corrects that error.

Adoption of the Correction

Accordingly, pursuant to the authority delegated to me, line 5 of the Clarinda, Iowa, transition area description, in **Federal Register** Document 88-29682, beginning on page 52403 of the **Federal Register** published on December 28, 1988, should be corrected to read as follows: "169° bearing from Schenck Field".

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

Billy G. Peacock,

Acting Manager, Air Traffic Division, ACE-500.

[FR Doc. 89-2757 Filed 2-6-89; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. 8560]

Fred Astaire Dance Studio of Washington, DC, et al.; Now Ronby Corp. et al.

AGENCY: Federal Trade Commission.

ACTION: Notice of period for public comment on Order to Show Cause.

SUMMARY: This document announces the public comment period on the Commission's decision to reopen and modify its order affecting acts and practices of the Fred Astaire Dance Studios to provide greater protection for the consumers.

DATES: The deadline for filing comments in this matter is March 3, 1989.

ADDRESSES: Comments should be sent to the Office of the Secretary, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580. Requests for copies of the Order to Show Cause should be sent to the Public Reference Branch, Room 130.

FOR FURTHER INFORMATION CONTACT: Wallace A. Witkowski, (202) 326-3015, or George O'Brien, (202) 326-2972, Enforcement Division, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: The order in Docket No. 8560 was published at 29 FR 4083 on March 28, 1964. Ronby Corporation, et al., licenses the operation of the Fred Astaire Dance

Studios. The proposed order modifications would provide cancellation and pro rata refund rights for the students and impose other measures for the protection of the consumer. Respondents have consented to the proposed modification. The Order to Show Cause was placed on the public record on February 1, 1989.

Lists of Subjects in 16 CFR Part 13

Dance studios, Trade practices.

Donald S. Clark,

Secretary.

[FR Doc. 89-2805 Filed 2-6-89; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

19 CFR Part 356

[Docket No. 81141-8241]

Panel Review Under Article 1904 of the U.S.-Canada Free-Trade Agreement

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice of effective date of interim-final rule.

SUMMARY: Title IV of the United States-Canada Free-Trade Agreement Implementation Act of 1988, Pub. L. No. 100-449, 102 Stat. 1851 (1988) ("the FTA Act"), establishes procedures for review by a binational panel of United States antidumping and countervailing duty final determinations involving Canadian products and for requesting panel review of Canadian antidumping and countervailing duty final determinations involving products of the United States. Title IV implements Chapter 19 of the United States-Canada Free-Trade Agreement ("Agreement"). As authorized by section 405(d) of the FTA Act, the International Trade Administration published an interim-final rule and request for comments on December 30, 1988 (53 FR 53232) intended to implement certain administrative procedures required by Article 1904 of the Agreement and the FTA Act. The regulations were to be codified at 19 CFR Part 356. The effective date of this interim-final rule was to be the date of entry into force of the Agreement. On January 6, 1989, the United States Trade Representative published a notice in the **Federal Register** (54 FR 505) announcing January 1, 1989 as the entry into force date of the Agreement. Therefore, January 1, 1989 is the effective date of ITA's interim-final rule published on December 30, 1988 (53 FR 53232).

EFFECTIVE DATE: January 1, 1989 is the effective date of the regulations published on December 30, 1988, 53 FR 53232, Part V. Written comments on the interim-final rule must be received no later than March 2, 1989.

FOR FURTHER INFORMATION CONTACT: Lisa B. Koteen, (202) 377-1754 or Jean Heilman Grier, (202) 377-0833.

Allen Moore,

Under Secretary for International Trade.

Date: January 31, 1989.

[FR Doc. 89-2773 Filed 2-6-89; 8:45 am]

BILLING CODE 3510-DS-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Bambermycins and Narasin

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 Hoechst-Roussel Agri-Vet Co. The NADA provides for using separately approved Type A medicated articles containing either bambermycins or narasin to manufacture a combination Type C medicated feed for the prevention of coccidiosis, for increased rate of weight gain, and for improved feed efficiency in broiler chickens.

EFFECTIVE DATE: February 7, 1989.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV-128), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4317.

SUPPLEMENTARY INFORMATION: Hoechst-Roussel Agri-Vet Co., Route 202-206 North, Somerville, NJ 08876, has filed NADA 140-845, providing for combining separately approved bambermycins and narasin Type A medicated articles to make a Type C medicated feed containing 1 to 2 grams of bambermycins per ton and 54 to 72 grams of narasin per ton for use in broiler chickens for the prevention of coccidiosis caused by *Eimeria tenella, E. necatrix, E. acervulina, E. maxima, E. brunetti,* and *E. mivati,* and for increased rate of weight gain and improved feed efficiency.

The application is approved and the regulations in 21 CFR 558.95 and 558.363 are amended accordingly. The basis for approval is discussed in the freedom of information summary.

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

The agency has determined under 21 CFR 25.24(d)(1)(ii) 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.

List of Subjects in 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, Part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. 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.

2. Section 558.95 is amended by adding new paragraph (b)(4)(ii) to read as follows:

§ 558.95 Bambermycins.

* * * * *

(b) * * *

(4) * * *

(ii) Narasin as in § 558.363.

3. Section 558.363 is amended by adding new paragraphs (a)(4) and (c)(1)(iv) to read as follows:

§ 558.363 Narasin.

(a) * * *

(4) To 012799: 36, 45, 54, 72, and 90 grams per pound with 2 and 10 grams per pound of bambermycins, paragraph (c)(1)(iv).

* * * * *

(c) * * *

(1) * * *

(iv) *Amount per ton.* Narasin, 54 to 72 grams, plus bambermycins, 1 to 2 grams.

(A) *Indications for use.* For prevention of coccidiosis caused by *Eimeria*

necatrix, E. tenella, E. acervulina, E. brunetti, E. mivati, and *E. maxima,* and for increased rate of weight gain and improved feed efficiency.

(B) *Limitations.* For broiler chickens only. Feed continuously as the sole ration. May be fatal if fed to adult turkeys, horses, or other equines.

* * * * *

Dated: January 31, 1989.

Richard H. Teske,

Deputy Director, Center for Veterinary Medicine.

[FR Doc. 89-2799 Filed 2-6-89; 8:45 am]

BILLING CODE 4160-01-M

VETERANS ADMINISTRATION

38 CFR Part 8

Capping of Veterans Special Life Insurance "RS" Term Premiums

AGENCY: Veterans Administration.

ACTION: Final regulation.

SUMMARY: The Veterans Administration (VA) is amending its regulations to reflect that premiums for Veterans Special Life Insurance (VSLI) "RS" term policyholders will be capped at the renewal age 70 premium rate. VSLI "RS" term policyholders who have already renewed their policies at the age 71 premium rate or above will have their premiums reduced ("rolled back") to the renewal age 70 rate. Policyholders under age 70 will have their premiums capped at their first renewal beyond age 70.

EFFECTIVE DATE: February 7, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Paul F. Koons, Assistant Director for Insurance, Veterans Administration Regional Office and Insurance Center, P.O. Box 8079, Philadelphia, PA 19101, (215) 951-5360.

SUPPLEMENTARY INFORMATION: On pages 39750 and 39751 of the Federal Register of October 12, 1988, the VA published proposed regulatory amendments providing that premiums for VSLI "RS" term policyholders will be capped at the renewal age 70 premium rate. Interested parties were given 30 days within which to submit written comments, suggestions, or objections regarding the proposed regulatory amendments. No written objections were received and the proposed regulations are hereby adopted without change as set forth below.

The Administrator hereby certifies that this final regulation will not have a significant impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), this regulation is, therefore, exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. The reason for this certification is that this regulation will affect only certain VSLI policyholders. It will, therefore, have no significant direct impact on small entities in terms of compliance costs, paperwork requirements or effects on competition.

The VA has also determined that this final regulation is non-major in accordance with Executive Order 12291, Federal Regulation. This regulation will not have a large effect on the economy, will not cause an increase in costs or prices, and will not otherwise have any significant adverse economic effects.

The Catalog of Federal Domestic Assistance Program number for this proposed regulation is 64.103.

List of Subjects in 38 CFR Part 8

Life insurance, Veterans.

Approved: January 24, 1989.

Thomas E. Harvey,

Acting Administrator.

38 CFR Part 8, National Service Life Insurance, is amended to read as follows:

PART 8—[AMENDED]

1. In § 8.3, paragraph (d) is revised and an authority citation added to read as follows:

§ 8.3 Premium rates.

* * * * *

(d) The premium rates for the term insurance issued under section 621 of the National Service Life Insurance Act, as amended, are based on the Commissioners 1941 Standard Ordinary Table of Mortality and interest at the rate of 2¼ per centum per annum; *Provided* That on or after (the date the regulation is published as final) Veterans Special Life Insurance "RS" five-year level premium term rates shall not exceed the renewal age 70 term premium rate. Policies of such term insurance which are converted to insurance on the modified life plan under 38 U.S.C. 704 (b) or (e) and such insurance subsequently issued on the ordinary life plan under 38 U.S.C. 704 (d) or (e), shall for the purposes of such provisions of law be deemed to have been issued under 38 U.S.C. 723(b) (see paragraph (e) of this section).

(Authority: 38 U.S.C. 704, 706)

* * * * *

2. In § 8.85, paragraph (a) is revised to read as follows:

§ 8.85 Renewal of National Service Life Insurance on the 5-year level premium term plan and limited convertible 5-year level premium term plan.

(a) Effective July 23, 1953, except as provided in paragraph (c) of this section, all or any part of National Service Life Insurance on the 5-year level premium term plan or limited convertible 5-year level premium term plan, in any multiple of $500 and not less than $1,000, which is not lapsed at the expiration of any 5-year term period, shall be automatically renewed without application or medical examination for a successive 5-year period at the applicable level premium term rate for the then attained age of the insured: *Provided,* That on or after September 1, 1984, National Service Life Insurance "V" 5-year level premium term rates shall not exceed the renewal age 70 term premium rate, or that on or after (the date the regulation is published as final), Veterans Special Life Insurance "RS" five-year level premium term rates shall not exceed the renewal age 70 "RS" term premium rate: *Provided further,* That in any case in which the insured is shown by satisfactory evidence to be totally disabled at the expiration of the term period of his or her insurance under conditions which would entitle the insured to continued insurance protection but for such expiration, such insurance, if subject to renewal under this paragraph shall be automatically renewed for an additional period of 5 years at the applicable premium rate. The renewal of insurance for any successive 5-year period will become effective as of the day following the expiration of the preceding term period, and the premium for such renewal will be the applicable level premium term rate on that day: *Provided further:* That no insurance is subject to renewal if the policyholder has exercised the insured's right to change to another plan of insurance.

(Authority: 38 U.S.C. 705, 706)

* * * * *

3. In § 8.113, paragraph (e) and its authority citation are revised to read as follows:

§ 8.113 Premium waiver under section 622 of the National Service Life Insurance Act, as amended, and section 724 of Title 38, United States Code.

* * * * *

(e) National Service Life Insurance on the 5-year level premium term plan or limited convertible 5-year level premium term plan shall be automatically renewed for an additional 5-year period at the premium rate for the then attained age of the insured, provided the

premiums on such insurance are being waived under this section at the expiration of the term period: *Provided,* That on or after September 1, 1984, National Service Life Insurance "V" 5-year level premium term rates shall not exceed the renewal age 70 term premium rate, or, that on or after (the date of the regulation is published as final), Veterans Special Life Insurance "RS" 5-year level premium term rates shall not exceed the renewal age 70 "RS" term premium rate: *Provided further,* That limited convertible term insurance may not be renewed after the insured's fiftieth birthday. The renewal of insurance under this section shall be effective as of the day following the expiration of the preceding term period, and the premium for such renewed insurance will be the applicable level premium term rate on that day. The premiums on the insurance renewed under this section shall continue to be waived while the insured continues in active service and for 120 days after separation therefrom.

(Authority: 38 U.S.C. 705, 706)

* * * * *

[FR Doc. 89-2856 Filed 2-6-89; 8:45 am]

BILLING CODE 8320-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6707

[OR-943-09-4214-10; GP9-046; OR-19032]

Opening of Land Subject to Section 24 of the Federal Power Act; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order opens 21.19 acres withdrawn by an Executive order in connection with Powersite Reserve No. 66 to permit consummation of a pending land exchange, subject to the provisions of section 24 of the Federal Power Act.

EFFECTIVE DATE: March 3, 1989.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503-231-6905.

SUPPLEMENTARY INFORMATION: By virtue of the authority vested in the Secretary of the Interior by section 24 of the Federal Power Act of June 10, 1920, as amended, 16 U.S.C. 818, and pursuant to the determination by the Federal Energy Regulatory Commission in DA-572-Oregon, it is ordered as follows:

1. The following described land is hereby opened to disposal by land exchange as specified in Federal Energy Regulatory Commission determination DA-572-Oregon, subject to the provisions of section 24 of the Federal Power Act of June 10, 1920, as amended, 16 U.S.C. 818:

Willamette Meridian

T. 6 S., R. 13 E.,
Sec. 13, lot 1.

The area described contains 21.19 acres in Wasco County.

2. At 8:30 a.m., on March 3, 1989, the land will be opended to disposal by land exchange under section 206 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1716, subject to valid existing rights, the provisions of existing withdrawals, the provisions of section 24 of the Federal Power Act, and the requirements of applicable law.

3. Except as provided in paragraph 2, the land remains withdrawn from operation of the public land laws generally, and has been and continues to be open to location under the United States mining laws, subject to the provisions of the Act of August 11, 1955, 69 Stat. 682; 30 U.S.C. 621, and to applications and offers under the mineral leasing laws.

J. Steven Griles,
Assistant Secretary of the Interior.
January 27, 1989.

[FR Doc. 89-2766 Filed 2-6-89; 8:45 am]

BILLING CODE 4310-33-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 86-491; RM-5557, RM-5396 and RM-6538]

Radio Broadcasting Services; St. James and Blue Earth, MN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The *Notice* in this proceeding was issued in response to two mutually exclusive petitions. Rogers Broadcasting Inc. proposed the substitution of FM Channel 283C2 for Channel 285A at St. James, Minnesota, and modification of its license for Station KXAX. Minn-Iowa Christian Broadcasting, Inc., requested the substitution of Channel 283C2 for Channel 265A at Blue Earth, Minnesota, and modification of its license for Station KJLY(FM) to specify the higher class channel. A counterproposal was also filed by Minn-Iowa Christian Broadcasting, Inc., proposing a swap of the two Class A channels and an adjacent channel upgrade on the new Class A channels. St. James Broadcasting Co. responded to the counterproposal, indicating it would file an application for Channel 263C2 at St. James, providing a second FM service to the community.

On December 6, 1988, Rogers Broadcasting, Inc., filed comments withdrawing its petition for modification of Station KXAX at St. James. Rogers Broadcasting stated its intention to continue operation on Channel 285A.

In view of the above information, we shall substitute Channel 283C2 for Channel 265A at Blue Earth, Minnesota, and modify the license of Station KJLY(FM) to specify Channel 283C2. The coordinates for Channel 283C2 at Blue Earth are 43-39-41 and 94-06-29. In response to the interest expressed by St. James Broadcasting, we shall allot Channel 263C2 to St. James, Minnesota, at coordinates 43-59-00 and 94-37-48. We shall dismiss the petition for rule making filed by Rogers Broadcasting, Inc. (RM-5396) and the counterproposal filed by Minn-Iowa Christian Broadcasting, Inc. (RM-6538).

DATES: Effective March 20, 1989; The window period for filing applications for Channel 263C2 at St. James, Minnesota, will open on March 21, 1989, and close on April 20, 1989.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-491, adopted December 22, 1988 and released February 1, 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. In § 73.202(b), the Table of FM Allotments is amended, under Minnesota by removing Channel 265A and adding Channel 283C2 at Blue Earth and by adding Channel 263C2 at St. James.

Federal Communications Commission.

Steve Kaminer,

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

[FR Doc. 89-2783 Filed 2-6-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88-25; RM-6126]

Radio Broadcasting Services; Rural Retreat, VA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 276A to Rural Retreat, Virginia, as that community's first FM service, at the request of Highlands Broadcasting, Inc. A site restriction of 3.5 kilometers (2.2 miles) east of the city is required at coordinates 36-53-39 and 81-14-20. With this action, this proceeding is terminated.

DATES: Effective March 20, 1989; The window period for filing applications will open on March 21, 1989, and close on April 20, 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. 88-25, adopted December 21, 1988 and released February 1, 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 Virginia, by adding Rural Retreat, Channel 276A.

Steve Kaminer,

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

[FR Doc. 89-2785 Filed 2-6-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-402; RM-5784, RM-6524, RM-6555]

Radio Broadcasting Services; Canadian and Amarillo, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 235C1 for Channel 276A at Canadian, Texas, and modifies the license of Station KEZP-FM to specify operation on the higher class station at the request of Megahype Broadcasting, Inc. Canadian could receive its first wide coverage area FM service. In addition, this action substitutes Channel 275C1 for Channel 276A at Amarillo, Texas, at the request of Atkins Broadcasting. The license of Station KRGN-FM at Amarillo is modified to specify operation on the higher class adjacent channel, providing expanded FM coverage to that community. The current transmitter site of Station KEZP-FM can be used for Channel 235C1 at coordinates 35-49-10 and 100-23-38. Channel 275C1 at Amarillo requires a site restriction of 11.9 kilometers (7.4 miles) northeast of the city at coordinates 35-16-38 and 101-43-57. With this action, this proceeding is terminated.

EFFECTIVE DATE: March 20, 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. 87-402, adopted November 30, 1988, and released February 1, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Docket 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 Texas, by adding Channel 235C1 and deleting Channel 276A at Canadian; and by adding Channel 275C1 and deleting Channel 276A at Amarillo.

Steve Kaminer,

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

[FR Doc. 89-2784 Filed 2-6-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 97

[PR Docket No. 88-467; FCC 89-18]

Amateur Radio Service; Amendment To Permit Use of the 17 Meter Band by the Amateur Radio Services

AGENCY: Federal Communications Commission.

ACTION: Final rules.

SUMMARY: This action amends the amateur service rules to permit use of the 17 meter band (18.068-18.168 MHz) by General, Advanced and Amateur Extra Class operator licensees beginning 0001 u.t.c., July 1, 1989. Early access to the band beginning 0001 u.t.c., January 31, 1989, was also authorized. The rule amendments are necessary so that United States amateur operators can communicate on the 17 meter band frequencies. They were allocated worldwide to the amateur service by the 1979 World Administrative Radio Conference. The rule amendments will permit United States amateur stations to make radio contacts with all parts of the world.

DATES: The rule amendments are effective 0001 u.t.c., July 1, 1989. The temporary authorization allowing early access to the 17 meter band is effective 0001 u.t.c., January 31, 1989.

ADDRESS: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Maurice J. DePont, Federal Communications Commission, Private Radio Bureau, Washington, DC 20554. (202) 632-4964.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, adopted January 27, 1989, and released January 31, 1989. The complete text of this Commission action, including the rule amendments, 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 Report and Order, including the rule amendments, may also be purchased from the Commission's copy contractor, International Transcription Services, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Report and Order

1. The amateur service rules have been amended to permit use of the 17 meter band (18.068–18.168 MHz) by General, Advanced and Amateur Extra Class operator licensees beginning 0001 u.t.c., July 1, 1989.

2. Telegraphy emission A1A is authorized for the entire 17 meter band. A 42 kHz subband at 18.068–18.110 MHz has been provided for digital emission type F1B for direct-printing, telemetry, telecommand and computer communications. A 58 kHz subband at 18.110–18.168 MHz has been provided for analog emission types, such as facsimile, television and telephony.

3. The maximum authorized transmitter power of 1500 watts that is generally available in the high frequency bands may be used in the 17 meter band.

4. In response to a request from The American Radio Relay League, Inc., the Commission also authorized amateur service stations early access to the 17 meter band beginning 0001 u.t.c., January 31, 1989. Such early access is premised upon the same conditions as the regular access beginning in July, and is on a secondary basis to Government fixed service operations. Transmissions must be immediately terminated if interference is caused.

5. The amended rules are set forth at the end of this document.

6. The rule amendments contained herein have been analyzed with respect to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure or record retention requirements and will not increase or decrease burden hours on the public.

7. The amended rules are issued under the authority of 47 U.S.C. 154(i) and 303(r). The temporary authorization for early access to the 17 meter band is granted pursuant to footnote US 248 to the Table of Frequency Allocations in § 2.106 of the Commission's Rules, 47 CFR 2.106. The authority citation for Part 97 continues to read as follows: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609, unless otherwise noted.

List of Subjects in 47 CFR Part 97

Amateur radio, Digital communications, Emissions, Frequencies.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Amended Rules

Part 97 of Chapter 1 of Title 47 of the Code of Federal Regulations is amended, as follows:

PART 97—[AMENDED]

1. Section 97.7(c) is amended by adding the following line entry in the table between the last 20 meter band entry and the first 15 meter band entry, as follows:

§ 97.7 Frequency privileges.

* * * * *

(c) * * *

Meterband	Terrestrial location of the amateur radio station			Limitations (see para. (g))
	ITU region 1	ITU region 2	ITU region 3	
	Kilohertz			
*	*	*	*	*
17	18068–18168	18068–18168	18068–18168	
*	*	*	*	*

* * * * *

2. Section 97.7(d) is amended by adding the following line entry in the table between the last 20 meter band entry and the first 15 meter band entry, as follows:

Section 97.7 Frequency privileges.

* * * * *

(d) * * *

Meterband	Terrestrial location of the amateur radio station			Limitations (see para. (g))
	ITU region 1	ITU region 2	ITU region 3	
	Kilohertz			
*	*	*	*	*
17	18068–18168	18068–18168	18068–18168	
*	*	*	*	*

* * * * *

3. Section 97.7(e) is amended by adding the following line entry in the table between the 20 meter band entry and the 15 meter band entry, as follows:

§ 97.7 Frequency privileges.

* * * * *

(e) * * *

Meterband	Terrestrial location of the amateur radio station			Limitations (see para. (g))
	ITU region 1	ITU region 2	ITU region 3	
	Kilohertz			
* * * * * * *				
17	18068–18168	18068–18168	18068–18168	
* * * * * * *				

* * * * *

4. Section 97.61(a) is amended by adding two line entries to the table between the 14150–14350 kHz and 21000–21200 kHz entries, as follows:

§ 97.61 Authorized emissions.

(a) * * *

Frequency band (kHz)	Emissions	Limitations (see paragraph (d))
* * * * *		
18068–18110	A1A, F1B	
18110–18168	A1A, A3E, F3E, G3E, A3C, F3C, A3F, F3F, H3E, J3E, R3E	
* * * * *		

* * * * *

5. Section 97.415(a) is amended by adding one line entry between the 14000–14250 and 21000–21450 entries in the kilohertz portion of the table, as follows:

§ 97.415 Frequencies available.

(a) * * *

Frequency band kilohertz	Limitations (see paragraph (b))
* * * * *	
18068–18168	
* * * * *	

* * * * *

[FR Doc. 89–2782 Filed 2–6–89; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for Thalictrum Cooleyi (Cooley's Meadowrue)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines *Thalictrum cooleyi* (Cooley's meadowrue), a perennial herb limited to 12 populations in North Carolina and Florida, to be an endangered species under the authority of the Endangered Species Act of 1973, as amended (Act). *Thalictrum cooleyi* is endangered by suppression of fire, mining, drainage activities associated with silviculture and agriculture, and residential and industrial development. This action will implement Federal protection provided by the Act for *Thalictrum cooleyi*.

EFFECTIVE DATE: March 9, 1989.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Asheville Field Office, U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina 28801.

FOR FURTHER INFORMATION CONTACT: Ms. Nora Murdock at the above address (704/259–0321 or FTS 672–0321).

SUPPLEMENTARY INFORMATION:

Background

Thalictrum cooleyi, described by H.E. Ahles (1939) from material collected in Onslow County, North Carolina, is a rhizomatous perennial herb. The stems, which generally do not exceed 1 meter in height (but sometimes reach 2 meters on recently burned sites), are erect in full sun; in shade they are lax and sometimes lean on other plants or trail along the ground. Leaflet shape (as well as texture) varies considerably but is usually narrowly lanceolate and unlobed, although occasionally two- to three-lobed leaves are seen. The unisexual flowers are borne in an open panicle on slender pedicels in mid- to late June. The flowers lack petals, but staminate ones have yellowish to white sepals and lavender filaments about 5 to 7 millimeters long. Pistillate flowers are smaller and have greenish sepals. (Flower color can vary somewhat between plants, and at different stages of maturity in the same plant.) The fruits, which mature in August and September, are narrowly ellipsoidal achenes approximately 5 to 6 millimeters long (Radford *et al.*, 1964, Kral 1983, Rome 1987, Leonard 1987). According to Ahles (1939), who described the species, *Thalictrum cooleyi* differs from other similar species in the *Leucocoma* section of this genus in having lavender rather than white filaments (although this character is not always consistent even within the same population), in having much narrower leaflets that are narrowly lanceolate instead of oblong to ovate, and in having fewer leaf divisions.

Thalictrum cooleyi is a species endemic to the Southeastern Coastal Plain where it is currently known from 11 locations in North Carolina and 1 in Florida. The species occurs in moist to wet bogs and savannas and savanna-like openings on circumneutral soils and is dependent upon some form of disturbance to maintain the open quality of its habitat. Currently, artificial disturbances, such as power line and road right-of-way maintenance, and plowed firebreaks, are maintaining some of the openings historically provided by naturally occurring periodic fires.

Seventeen populations of *Thalictrum cooleyi* have been reported historically from eight counties in North Carolina, Georgia, and Florida. The report of the Georgia population is now believed to have been based on a misidentification (Leonard 1987). The 12 remaining populations (located in Walton County, Florida; and Brunswick, Columbus, Onslow, and Pender Counties, North Carolina) are all in private ownership, with The Nature Conservancy owning part of one of the sites in Pender County, North Carolina. Extirpated populations are believed to have succumbed as a result of fire suppression and silvicultural and agricultural activities. The continued existence of *Thalictrum cooleyi* is threatened by these activities as well as mining (part of one population exists on the edge of an inactive marl pit mine), drainage, highway construction/improvement, and herbicide use.

Federal government actions on this species began with section 12 of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*), which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered,

threatened, or extinct. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. The Service published a notice in the July 1, 1975, **Federal Register** (40 FR 27832) of its acceptance of the report of the Smithsonian Institution as a petition within the context of Section 4(c)(2) (now section 4(b)(3)) of the Act and of its intention thereby to review the status of the plant taxa named within.

On December 15, 1980, the Service published a revised notice of review for native plants in the **Federal Register** (45 FR 82480); *Thalictrum cooleyi* was included in that notice as a category 1 species. Category 1 species are those species for which the Service currently has on file substantial information on biological vulnerability and threats to support proposing to list them as endangered or threatened species. Subsequent revisions of the 1980 notice have maintained *Thalictrum cooleyi* in category 1.

Section 4(b)(3)(B) of the Act, as amended in 1982, requires the Secretary to make certain findings on pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the case for *Thalictrum cooleyi* because of the acceptance of the 1975 Smithsonian report as a petition. On October 13, 1983; October 12, 1984; October 11, 1985; October 10, 1986; and October 14, 1987; the Service found that the petitioned listing of *Thalictrum cooleyi* was warranted but precluded by other listing actions of a higher priority and that additional data on vulnerability and threats was still being gathered. The April 21, 1988 (53 FR 13220), proposal to classify *Thalictrum cooleyi* as endangered constituted the final finding required for this species.

Summary of Comments and Recommendations

In the April 21, 1988, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices inviting public comment were published in North Carolina's "Wilmington Star-News" and in the Fort Walton Beach, Florida, "Playground Daily News" on May 10, 1988, and May 11, 1988, respectively.

Two written comments were received. One stated no position on the proposal but offered additional information on morphological and chromosomal characters of the species. Carolina Power and Light Company (landowner of one of the population sites) offered the other comment, which was in support of the proposal. One individual verbally provided additional distributional and threat information which has been incorporated into the appropriate sections of the rule.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Thalictrum cooleyi* should be classified as an endangered species. Procedures found at section 4(a)(1) of the Act and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Thalictrum cooleyi* Ahles (Cooley's meadowrue) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range. Thalictrum cooleyi* has been and continues to be endangered by destruction or adverse alteration of its habitat. Since discovery of the species, approximately one-fourth of the known populations have been extirpated largely due to fire suppression and conversion of the habitat for silvicultural and agricultural purposes. Fire suppression is a serious problem for this species and will be discusssed in detail under factor "E" below.

At least 11 of the remaining 12 populations are currently threatened by habitat alteration (Rayner 1980, Leonard 1987). Four of these populations survive on roadsides, and another three are in power line rights-of-way. All of these populations are small, which increases their vulnerability to extirpation as a result of highway and right-of-way maintenance and improvement, particularly if herbicides are used. The 11 populations remaining in North Carolina probably represent the fragmented remains of what were once 3 larger populations—the 6 sites in Onslow and Pender Counties are all within a 6.5-kilometer radius, the 3 sites in Columbus County are within a 4.0-kilometer radius, and the 2 sites in Brunswick County are within a 1.5-kilometer radius. These 11 sites now support a total of approximately 800 plants (which may be an overestimate due to the rhizomatous nature of the species) (Leonard 1987). Areas within the small radii occupied by the remaining colonies in North Carolina have been bulldozed, planted in fields, converted to pastures, or drained, undoubtedly destroying *Thalictrum cooleyi* populations in the process (Rayner 1980, Leonard 1987). One of the Pender County, North Carolina, populations was recently impacted by private road maintenance operations which resulted in most of the plants being covered with fill material. The Walton County, Florida, site has been recently impacted by commercial timber operations, and only nine mature plants remain there (Deborah White, Florida Natural Areas Inventory, personal communication, 1987). As stated by Mansberg (1985) the "extreme narrowness of geographic range and scarcity of appropriate habitat further increases the severity of the threats" faced by the species.

Although, as stated in the "Background" section above, this species requires some form of disturbance to maintain its open habitat and can withstand mowing and timber-harvesting operations if properly done, it cannot withstand bulldozing, drainage, conversion to pine plantation, or direct application of herbicides. In addition, the small populations that survive on road edges could be easily destroyed by highway improvement projects or right-of-way maintenance activities if these are not done in a manner consistent with protecting *Thalictrum cooleyi*.

B. *Overutilization for commercial, recreational, scientific, or educational purposes. Thalictrum cooleyi* is not currently a significant component of the commercial trade in native plants. Research is ongoing with the alkaloids in other species of *Thalictrum* which are believed to have potential medical (chemotherapy) applications; because of the large amounts of material necessary for such studies, it is unlikely that a species as rare as *Thalictrum cooleyi* could ever be analyzed for this purpose using currently available methodology. However, because of its small and easily accessible populations, Cooley's meadowrue is vulnerable to taking and vandalism that could result from increased specific publicity. Rayner (1980) stated that although it is unlikely that it will ever be of commercial or horticultural interest, delineation of critical habitat for *Thalictrum cooleyi* would probably increase collections made for scientific or educational purposes.

C. *Disease or predation.* Not applicable to this species at this time.

D. *The inadequacy of existing regulatory mechanisms. Thalictrum cooleyi* is afforded legal protection in North Carolina by North Carolina General Statutes, sections 106–202.12 to 106–202.19 (Cum. Supp. 1985), which provides for protection from intrastate trade (without a permit), for monitoring and management of State-listed species, and prohibits taking of plants without written permission of landowners. *Thalictrum cooleyi* is listed in North Carolina as endangered. This species is not listed by the State of Florida, where it was thought to have been extirpated until very recently. State prohibitions against taking are difficult to enforce and do not cover adverse alterations of habitats, such as disruption of drainage patterns and water tables or exclusion of fire. Section 404 of the Federal Water Pollution Control Act (FWPCA) could potentially provide some protection for the habitat of *Thalictrum cooleyi*; however, most, if not all, of the sites where it occurs do not meet the wetlands criteria of the FWPCA. The Endangered Species Act would provide additional protection and encouragement of active management for *Thalictrum cooleyi.*

E. *Other natural or manmade factors affecting its continued existence.* As mentioned in the "Background" section of this rule, many of the remaining populations are small in numbers of individual stems and in terms of area covered by the plants. In addition, the rhizomatous nature of the species indicates that there are many fewer individual plants in existence than stem counts would indicate. There is therefore low genetic variability within populations, making it more important to maintain as much habitat and as many of the remaining colonies as possible. In addition, the dioecious nature of the species further increases the vulnerability of extremely small populations, where plants of only one sex may remain. Leonard (1987) observed a ratio of male to female plants (in all populations) of three to one, a situation which probably hinders reproduction in recently colonized sites and in sites with very few plants.

Leonard (1987) also noted that the species is not prolific in terms of the number of seeds produced and that it seems to lack an effective seed distribution mechanism, which further inhibits colonization of new sites. Much remains unknown about the demographics and reproductive requirements of this species. Fire or some other suitable form of disturbance, such as mowing or careful clearing, is essential to maintaining the savanna and bog edges where *Thalictrum cooleyi* occurs. Without such periodic disturbance, this type of habitat is gradually overtaken and eliminated by the shrubs and trees of the adjacent woodlands. As the woody species increase in height and density, they overtop the *Thalictrum cooleyi*, which is shade-intolerant. The current distribution of this species is ample evidence of its dependence on disturbance. Of the 12 remaining populations, 7 are on roadsides or in power line rights-of-way, and the other 5 are in areas which have been exposed to periodic fire. Populations in areas that have been recently burned tend to be more vigorous and to bloom more profusely.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Thalictrum cooleyi* as endangered. With one-fourth of the species' populations already having been eliminated, and only 12 remaining in existance; and, based upon its dependence on some form of active management, it definitely warrants protection under the Act. Endangered status seems appropriate because of the imminent serious threats facing most populations. As stated by Rayner (1980), "*Thalictrum cooleyi* certainly is one of the rarest, most directly threatened species in the entire United States. It should receive top priority for listing as an endangered species." Critical habitat is not being designated for the reasons discussed below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for *Thalictrum cooleyi* at this time. As discussed under factor "B" in the "Summary of Factors Affecting the Species," *Thalictrum cooleyi* is threatened by taking, an activity difficult to enforce against. Publication of critical habitat descriptions would make this species even more vulnerable and increase State enforcement problems. All involved parties and landowners will be notified of the location and importance of protecting and managing this species' habitat.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requries Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may adversely affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Federal activities that could impact *Thalictrum cooleyi* and its habitat in the future include, but are not limited to, the following: Power line construction, maintenance, and improvement; highway construction, maintenance, and improvement; drainage alterations; and permits for mineral exploration and mining. The Service will work with the involved agencies to secure protection and proper management of *Thalictrum cooleyi* while accommodating agency activities to the extent possible.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plants. With respect to *Thalictrum cooleyi*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of commercial activity, sell or offer for sale

this species in interstate or foreign commerce, or to remove and reduce the species to possession from areas under Federal jurisdiction. In addition, for listed plants the 1988 amendments (Pub. L. 100–478) to the Act prohibit their malicious damage or destruction on Federal lands, and their removal, cutting, digging up, or damaging or destroying in known violation of any State law or regulation, including State criminal trespass law. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. It is anticipated that few trade permits would ever be sought or issued, since *Thalictrum cooleyi* is not common in cultivation or in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, P.O. Box 27329, Central Station, Washington, DC 20038–7329 (202–343–4955).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Ahles, H. 1939. *Thalictrum cooleyi* sp. nov. Brittonia 11:68–70.

Kral, R. 1983. A report on some rare, threatened, or endangered forest-related vascular plants of the south. Tech. publ. R8–TP–2. USDA Forest Service. 4:28–431.

Leonard, S. 1987. Inventory of populations of *Thalictrum cooleyi* and its occurrence sites in North Carolina. Report to the North Carolina Natural Heritage Program, Raleigh, NC. 16 pp.

Mansberg, L. 1985. *Thalictrum colleyi*; draft global element ranking form prepared for the Nature Conservancy; North Carolina Natural Heritage Program, Raleigh, NC. 2 pp.

Radford, A., H. Ahles, and C. Bell. 1964. Manual of the vascular flora of the Carolinas. UNC Press, Chapel Hill, 459–462.

Rayner, D. 1980. Status report on *Thalictrum cooleyi* Ahles, submitted to U.S. Fish and Wildlife Service, Atlanta, GA.

Rome, A. 1987. *Thalictrum cooleyi*; draft stewardship abstract. The Nature Conservancy, Arlington, VA. 9 pp.

Author

The primary author of this rule is Ms. Nora Murdock, Asheville Field Office, U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina 28801, (704/259–0321 or FTS 672–0321).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulation Promulgation

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for Part 17 is revised to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411; Pub. L. 100–478, 102 Stat. 2306; Pub. L. 100–653, 102 Stat. 3825 (16 U.S.C. 1531 *et seq.*); Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Amend § 17.12(h) for plants by adding the following, in alphabetical order under the family Ranunculaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Ranunculaceae—Buttercup family:						
*	*	*	*	*	*	
Thalictrum cooleyi	Cooley's meadowrue	U.S.A. (NC, FL)	E	344	NA	NA
*	*	*	*	*	*	

Dated: January 24, 1989.

Becky Norton Dunlop,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 89–2858 Filed 2–6–89; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 646

[Docket No. 81017–8271]

Snapper-Grouper Fishery of the South Atlantic; Corrections

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

ACTION: Final rule; corrections.

SUMMARY: This document corrects errors in the preamble of the final rule to implement Amendment 1 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic (FMP) which was published January 17, 1989 (54 FR 1720).

EFFECTIVE DATE: January 12, 1989.

FOR FURTHER INFORMATION CONTACT: Rodney C. Dalton, 813–893–3722.

In rule document 89–955 beginning on page 1720 in the issue of January 17, 1989, the following corrections are made:

1. On page 1721, column 2, under the paragraph heading "Scientific Data", line 9, the sentence is corrected to read "Although one study did indicate recovery of a trawled area after twelve months, the study was based on a single pass of the trawl through the area."

2. In the same paragraph, line 9, "The" is added before "authors".

3. On the same page, column 3, under the paragraph heading "Impact on Development of New Trawling Methods", line 4, after "growth" delete "by".

Dated: February 1, 1989.

James E. Douglas, Jr.,

Deputy Assistant Administrator For Fisheries, National Marine Fisheries Service.

[FR Doc. 89–2842 Filed 2–6–89; 8:45 am]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 54, No. 24
Tuesday, February 7, 1989

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 113

[Docket No. 88-211]

Viruses, Serums, Toxins, and Analogous Products; Standard Requirements for Bovine Virus Diarrhea Vaccine Etc.

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of reopening and extension of comment period for proposed rulemaking.

SUMMARY: This document reopens and extends the comment period by 45 days, until February 23, 1989, for a notice of proposed rulemaking entitled "Viruses, Serums, Toxins, and Analogous Products; Standard Requirements for Bovine Virus Diarrhea Vaccine etc." This action will provide interested persons with additional time to prepare comments on the proposed rule.

DATE: Written comments must be postmarked or received on or before February 23, 1989.

ADDRESSES: Send an original and two copies of written comments to Helene R. Wright, Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, Room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 87-185. Comments received may be inspected at USDA, Room 1141, South Building, 14th and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Peter L. Joseph, Senior Staff Veterinarian, Veterinary Biologics, Biotechnology, Biologics, and Environmental Protection, APHIS, USDA, Room 838, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-6332.

SUPPLEMENTARY INFORMATION: On December 9, 1988, the Animal and Plant Health Inspection Service published in the **Federal Register** (53 FR 49669-49674, Docket Number 87-185) a proposed rule to codify in the regulations standard requirements for evaluating certain vaccines.

The proposed rule provided that written comments would be accepted for 30 days until January 9, 1989. Shortly before the comment period closed, we received requests from industry associations that we extend the comment period to provide interested persons with adequate time to prepare comments.

We believe it is in the public interest to reopen and extend the comment period. Accordingly, we are reopening and extending this comment period for 45 days, until February 23, 1989. This action will allow interested persons additional time to prepare comments.

Done in Washington, DC, this 2nd day of February 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-2808 Filed 2-6-89; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[PS-260-82]

Election, Revocation, Termination, and Tax Effect of Subchapter S Status; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains corrections to the notice of proposed rulemaking (PS-260-82), which was published in the **Federal Register** on Tuesday, December 27, 1988 (53 FR 52190). The proposed regulations relate to the election, revocation, termination, and corporate effect of electing subchapter S treatment as a result of the changes to the tax law made by the Subchapter S Revision Act of 1982, as amended by the Tax Reform Act of 1984, the Tax Reform Act of 1986, and the Technical and Miscellaneous Revenue Act of 1988.

FOR FURTHER INFORMATION CONTACT: Stuart G. Wessler, (202) 566-3822 (not a toll-free number.

SUPPLEMENTARY INFORMATION:

Background

On December 27, 1988, a notice of proposed rulemaking relating to the election, revocation, termination, and corporate effect of electing subchapter S treatment was published in the **Federal Register** (53 FR 52190). The amendments were proposed to conform the regulations to changes in the applicable tax laws conform the regulations to changes in the applicable tax laws made by the Subchapter S Revision Act of 1982, as amended by the Tax Reform Act of 1984, the Tax Reform Act of 1986, and the Technical Miscellaneous Revenue Act of 1988.

Need for Correction

As published, the notice of proposed rulemaking contains omitted words, lines and typographical errors which may prove to be misleading and are in need of correction.

Correction of Publication

Accordingly, the notice of proposed rulemaking, which was the subject of FR Doc. 88-29608 (53 FR 52190), is corrected as follows:

1. On page 52190, in the preamble, column 1, under the caption "DATES", line 3 the word "by" is added immediately following the word "delivered".

§ 1.1362-0 [Corrected]

2. On page 52192, column 1, in the table of contents, § 1.362-3(d)(5)(ii)(A), line 8, should end with a period to read "(A) Exclusion of certain capital gains."

3. On page 52192, column 1, in the table of contents, § 1.1362-4(e)(4), line 63, the language "(4) Year in which income from S short year" is added in its place.

4. On page 52193, column 3, in § 1.1362-2(c)(2), line 2, the language "consent to the granted by the Internal" is removed and the language "consent to the election within such extended period of time as may be granted by the Internal" is added in its place.

§ 1.1362-3 [Corrected]

5. On page 52193, column 3, in § 1.1362-3(b)(1), (mistakenly printed as § 1.1362.3), lines 16 and 17, remove the phrase "which statement shall state section 1362(a)."

6. On page 52194, column 2, § 1.1362-3(b)(5), line 4, the language "consent of each person who became a" is removed and the language "consent of each person who consented to the revocation and by each person who became a" is added is its place.

7. On page 52195, column 3, § 1.1362-3(d)(4)(ii)(B), line 21, the word "sale" should read "sales".

8. On page 52196, column 3, § 1.1362-3(d)(5)(iv), line 16, the word "motors " should read "motor".

9. On page 52197, column 2, § 1.1362-3(d)(6), the first table in the example should be removed and the following table added in its place:

Gross receipts from operations	$75,000
Gross rental receipts	3,000
Gross interest receipts	1,000
Gross dividend receipts	500
Gains on sale of P stock (loss on Q stock is not taken into account	2,500
Net gain on sale of parcels 1 and 2	4,000
Gross receipts on sale of business asset	3,000
Total gross receipts	89,000

10. On page 52197, column 2, § 1.1362-3(d)(6), line 44, the word "treatment" is removed and the word "investment" is added in its place.

§ 1.1362-4 [Corrected]

11. On page 52197, column 3, § 1.1362-4(a), line 11, the word "section" is added immediately following the word "under".

12. On page 52197, column 3, § 1.1362-4(a), line 27, the word "gain," is removed.

13. On page 52197, column 3, § 1.1362-4(a), line 28, add a comma to read "deduction, and credit under normal tax".

14. On page 52198, column 2, § 1.1362-4(c)(4)(iii)(B), last line, the language "of paragraph (c)(4)(A) of this section, the" is removed and the language "of paragraph (c)(4)(iii)(A) of this section the " is added in its place.

15. On page 52198, column 3, § 1.1362-4(c)(4)(iv)(B), line 2, the word "established" should read "establishes".

16. On page 52198, column 3, § 1.1362-4(c)(4)(v), line 4 of Example (3), the language "the corporation" is removed and the language "the stock of N" is added in its place.

17. On page 52199, column 1, § 1.1362-4(c)(5)(i), line 3, the language "this section" is removed and the language "§ 1.1362-3;" is added in its place.

18. On page 52199, column 2, § 1.1362-4 (e)(4), line 1, the language "(4) *Year in which income from short S"* is removed and the language "(4) *year in which income from S short"* is added in its place.

§ 1.1362-5 [Corrected]

19. On page 52199, column 3, § 1.1362-5(c), line 16, the word "section" is added immediately following the word "under".

§ 1.1362-6 [Corrected]

20. On page 52000, column 3, § 1.1362-6(c), line 4, the word "corporations" is removed and the words "a corporation" are added in its place.

Dale D. Goode,

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

[FR Doc. 89-2852 Filed 2-6-89; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

Ohio Permanent Regulatory Program; Remining

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

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing the receipt of proposed amendments to the Ohio permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendments are intended to revise the State program to incorporate additional flexibility afforded by the amended Clean Water Act. The amendments would provide statutory authority and would establish criteria and standards for Ohio to authorize the remining of previously affected areas which have continuing pollutional discharges. This remining would be in accordance with remining National Pollutant Discharge Elimination System (NPDES) permits issued by the Ohio Environmental Protection Agency (OEPA).

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

DATES: Written comments must be received on or before 4:00 p.m. on March 9, 1989. If requested, a public hearing on the proposed amendments will be held at 1:00 p.m. on March 6, 1989. Requests to present oral testimony at the hearing must be received on or before 4:00 p.m. on February 22, 1989.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand-delivered to Ms. Nina Rose Hatfield, Director, Columbus Field Office, at the address listed below. Copies of the Ohio program, the proposed amendments, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays.

Each requester may receive, free of charge, one copy of the proposed amendments by contacting OSMRE's Columbus Field Office.

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

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

Ohio Department of Natural Resources, Division of Reclamation, Fountain Square, Building B-3, Columbus, Ohio 43224, Telephone: (614) 265-6675.

FOR FURTHER INFORMATION CONTACT: Ms. Nina Rose Hatfield, Director, Columbus Field Office, (614) 866-0578.

SUPPLEMENTARY INFORMATION:

I. Background

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Information on the general background of the Ohio program submission, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program, can be found in the August 10, 1982 **Federal Register** (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11, 935.12, 935.15, and 935.16.

II. Discussion of the Proposed Amendments

On February 4, 1987, the Clean Water Act was amended under Pub. L. 100-4. A new paragraph (p) was added to Section 301 of the Clean Water Act authorizing

the issuance, by the U.S. Environmental Protection Agency (EPA) or by approved State offices of the EPA, of modified NPDES permits for coal remining operations. These modified permits for remining can be issued if the applicant demonstrates that the coal remining operation will result in the potential for improved water quality from the area to be remined. The modified permits can contain approved variances for effluent limitations with respect to the pH, iron, and manganese levels in pre-existing discharges in the remining area. Modified effluent requirements can be established on a case-by-case basis for each mining permit, applying the best available technology which is economically achievable and using best professional judgment. In no case will the remining operation be allowed to worsen the pollution level of the pre-existing discharge nor exceed State water quality standards established under Section 303 of the Clean Water Act.

By letter dated January 20, 1989 (Administrative Record No. OH–1131), the Ohio Department of Natural Resources, Division of Reclamation (Ohio) submitted proposed amendments to the Ohio program at Ohio Revised Code (ORC) sections 1513.07 (B)(2)(s) and (E)(7) and 1513.16(F)(3) (a), (b), and (c) and at Ohio Administrative Code (OAC) Section 1501:13–4–15.

The proposed changes were initiated by Ohio to take advantage of the increased flexibility afforded to the OEPA under the amended Clean Water Act. Ohio's proposed changes are intended to create incentives for mine operators to enter, mine, and reclaim areas that were previously affected by mining and which, as a result, have continuing water pollution.

At the present time, coal mine operators who reaffect previously mined areas in Ohio with pre-existing water pollution are unable to obtain bond release unless they eliminate that pollution. Ohio's existing bonding regulations prevent the State from releasing bonds where there are pollutional discharges on the permit area even if those pollutional discharges were present before the operator began mining.

The program amendments submitted by Ohio would create a limited exception to the existing regulations which would allow special authorization for, and the subsequent release of bonds to, operators who mine areas with pre-existing pollutional discharges. The amendment provisions would allow Ohio to release performance bonds if, at a minimum, the operator:

(1) Satisfies the modified NPDES effluent limitations established by Ohio and approved by OEPA under the amended Clean Water Act for areas with pre-existing pollutional discharges,

(2) Has fully implemented the approved abatement and reclamation plan, and

(3) Has not caused degradation of the baseline pollution load for a specified period of time.

The specific changes proposed by Ohio are briefly discussed below:

(1) ORC section 1513.07(B)(2)(s): This paragraph is being added to require that permit applicants proposing to conduct coal mining operations on previously mined areas must provide additional information as required by the Chief of the Division of Reclamation, Ohio Department of Natural Resources (the Chief) including maps, plans, cross sections, water quality data, and a pollution abatement plan which may improve water quality.

(2) ORC section 1513.07(E)(7): This paragraph is being added to allow the Chief to grant authorization for a permit applicant to conduct coal mining operations on previously mined areas if the applicant demonstrates that neither the applicant nor any other officer, partner, or owner:

(a) Has any legal responsibility to treat the water pollution discharges from the area of proposed remining;

(b) Has any statutory responsibility for reclaiming the proposed remining area;

(c) Has had a determination by the Chief of a demonstrated pattern of willful violations of the Ohio mining law and rules with respect to water quality within eighteen months prior to the application; or

(d) Has forfeited a mining bond or similar security.

(3) ORC section 1513.16(F)(3) (a), (b), and (c): These paragraphs are being rewritten to require that an operator must comply with all additional requirements imposed by the Chief concerning remining areas in order for the Chief to release bond on areas covered by an authorization to remine previously affected areas.

(4) OAC section 1501:13–4–15: This new rule is being added to establish the terms and conditions for authorization by the Chief for mine operators to conduct coal mining operations on previously mined areas. The proposed rule includes the following:

(a) Definitions of terms;

(b) Additional permit application requirements for remining areas;

(c) Conditions for approval or denial of applications by the Chief;

(d) Performance standards for remining areas;

(e) Requirements for treatment of discharges from remining areas; and

(f) Criteria and schedules for release of bonds on remining areas by the Chief.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSMRE is now seeking comment on whether the amendments proposed by Ohio satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the Ohio program.

Written Comments

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

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "**FOR MORE INFORMATION CONTACT**" by 4:00 p.m. on February 22, 1989. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

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

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSMRE representatives to discuss the proposed amendments may request a meeting at the Columbus Field Office by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT.**" All such meetings shall be open to the public and, if possible,

notices of the meetings will be posted at the locations listed under "ADDRESSES." A written summary of each public meeting will be made a part of the Administrative Record.

List of Subjects in 30 CFR Part 935

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

Carl C. Close,

Assistant Director, Eastern Field Operations.

Date: January 30, 1989.

[FR Doc. 89-2806 Filed 2-6-89; 8:45 am]

BILLING CODE 4310-05-M

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 211

[Docket No. RM 88-7]

Mask Work Protection; Registration of Claims of Protection in Mask Works Proposed Regulations

AGENCY: Library of Congress, Copyright Office

ACTION. Proposed regulations.

SUMMARY: The Copyright Office of the Library of Congress is proposing an amendment to its regulations on mask work registration to provide an exception to the most complete form requirement. Section § 211.4(c) and (e) now require one registration per work and that the registration cover the most complete form of the semiconductor chip product in existence. The proposed exception would permit separate registration of unpersonalized gate arrays and the customized metallization layers despite the existence of a completed final form.

DATES. Comments should be received on or before March 9, 1989.

ADDRESSES: Ten copies of written comments should be addressed, if sent by mail to: Library of Congress, Department 100, Washington, DC 20540. If delivered by hand, copies should be brought to: Office of the General Counsel, James Madison Memorial Building, Room LM-407, First and Independence Avenue, SE., Washington, DC 20559, (202) 707-8380.

FOR FURTHER INFORMATION CONTACT. Dorothy Schrader, General Counsel, U.S. Copyright Office, Library of Congress, Washington, DC 20559, (202) 707-8380.

SUPPLEMENTARY INFORMATION: On November 8, 1984, the President signed into law the Semiconductor Chip Protection Act of 1984, Pub.L. 98-620. The Act created a new form of intellectual property law separate and apart from any earlier law. The legislation consisted of an amalgam of patent and copyright principles, but also contained new features. The law was codified as Chapter 9 of Title 17 of the U.S. Code, and is primarily administered by the Copyright Office.

On June 28, 1985, the Copyright Office issued final regulations implementing the Semiconductor Chip Protection Act. A public hearing (49 FR 39171) and interim regulations (50 FR 263) preceded the formulation of final regulations.

One of the most controversial issues raised in the rulemaking proceeding was the registerability of "intermediate forms" of semiconductor chip products. Section 901 of the Act defines "semiconductor chip product" as including "the final or intermediate form of any product * * *." A mask work cannot be protected under the Act until it has been fixed in such a product.

In the interim regulations, a principle was advanced allowing only one registration for the same version of a mask work. Special rules were established for registering mask works fixed as intermediate forms whereby registration of the intermediate form was possible only if the intermediate form represented twenty percent or more of the intended final form.

The purpose of the policy was to discourage applicants from fractionalizing their mask work contributions into smaller portions. The commentary preceding the interim regulation cited a number of reasons for this policy. In cases where claims were asserted on the basis of small portions of mask works fixed in semiconductor chip products, it would be difficult to develop and apply standards of originality. The practice of registering multiple claims in small portions of mask works might discourage legitimate reverse engineering under section 906 of the Act. A problem in calculating the duration of protection might also arise if several portions of a final product were registered separately at different times because duration for unexploited mask works begins upon registration. Finally, multiple registrations could lead to compounding of statutory damages in a way not contemplated by Congress.

In comments on the interim regulation, industry spokesmen attacked the prohibition against registering an intermediate form where a final form was in existence. They also attacked the twenty percent rule as an arbitrary standard which was without support under the Act.

At the heart of the argument was the industry view that applicants should have discretion to subdivide their mask work contribution. That it would be easier to prove substantial similarity in litigation was cited as the primary reason an applicant would choose to follow such a course.

The Copyright Office concluded that the basic policy of the interim regulation in favor of one registration per work was a sound policy. In implementing the policy, however, the final regulation adopted a number of changes. The language of § 211.4(e) was recast to require applicants to register mask work contributions in their most complete form. The twenty percent rule as an absolute bar to registration was eliminated. However, in cases where an applicant sought registration of a contribution of less than 20 percent of the intended final form, a full disclosure deposit was required.

The primary reason for the policy adopted in the final regulation was the belief of the Copyright Office that reference to "intermediate forms" in the Act was intended to have a limited purpose. According to testimony in the Congressional hearings on the Act, lengthy testing of semiconductor chip products often took place before a final product became commercially available. In the interim, a semiconductor chip producer might need protection before the product was completed in its final form. In order to address this problem, Congress included the reference to "intermediate forms" in the Act. This consideration, however, in no way justified making multiple registrations of completed semiconductor chip products.

The Copyright Office rejected the assertion that multiple registrations of final semiconductor chip products were necessary, in order to prevent judges from misconstruing the Act. On the contrary, far greater confusion would likely arise from permitting multiple registrations of completed semiconductor chip products. If discretionary subdivision of claims were permitted, each manufacturer would be tempted to divide his mask works into as small a portion as possible in order to maximize his level of protection. Moreover, under the interim deposit regulation, applicants were not required to disclose fully the content of their mask work contribution due to trade secret concerns. It appeared clear from the comment letters received that claims in very small portions of semiconductor chip products would be advanced. Therefore, without policies discouraging discretionary subdivision of claims, adjudicating protection in only one semiconductor chip product could require judges to take into account multiple registrations based on deposits

which were calculated to obscure the nature of the claim. The registration and the public record would be of minimal assistance to the court, if helpful at all.

A related issue concerned the registration of gate arrays. In general, unpersonalized gate arrays contain an array of unconnected cells which can be customized to create a variety of semiconductor chip products. Customizing is accomplished by adding metallization layers to the unpersonalized gate array to complete the electrical circuitry.

Commentators on the interim regulations argued that the regulations prevented the registration of unpersonalized gate arrays. In its commentary on the final regulations, the Copyright Office disputed this assertion by pointing out that under the regulations registration was possible for both the unpersonalized gate arrays as an intermediate form (or where that was the extent of the owner's right to claim) and the custom metallization layers, and this policy was continued under the final regulations. However, once a final product was produced by adding metallization layers, only registration based on the most complete form would be possible.[1]

The Copyright Office believes the general policies adopted in the final regulations have worked well. While disagreements over the necessity of the most complete form regulation may exist, applicants seemed to have experienced few problems in complying with the policy. No case litigating any aspect of the Semiconductor Chip Protection Act has been argued in federal court.

Despite the general appropriateness of the most complete form regulation, it has come to the attention of the Copyright Office that there may be one instance in which a hardship is raised. The hardship concerns the different registration treatment of unpersonalized gate arrays according to whether the owner is a merchant manufacturer or a captive manufacturer.

So-called merchant manufacturers are companies that license unpersonalized gate arrays to others who customize the chips into finished products by adding the customized metallization layers. In the typical circumstances, the merchant manufacturer will own the mask work contribution in the unpersonalized gate array, and the company manufacturing the final product will own the rights in the customized metallization layers. As a result, two separate registrations may be made covering each owner's mask work contribution.

The so-called captive manufacturer owns both the gate array and the metallization layers. Typically, captive manufacturers are large manufacturers of computer products. Once a captive manufacturer has produced any final product by adding the metallization layers, the company loses the right to register separately the unpersonalized gate array under the existing regulations. A captive manufacturer can avoid this result by registering the unpersonalized gate array before any metallization layers have been added. As a practical matter, captive manufacturers have not adopted such a practice, apparently because it is thought to be too disruptive to the manufacturing process.

Captive manufacturers have complained to the Copyright Office that the most complete form regulation puts them at a competitive disadvantage in protecting their unpersonalized gate arrays. They theorize that it would be more difficult for them to prove substantial similarity against an infringer of the gate array because their registration covers both the gate array and the metallization layers. Merchant manufacturers, on the other hand, have registrations typically covering only the gate array.

It is reasonable that captive manufacturers should be accorded the same protection in their unpersonalized gate arrays as merchant manufacturers. Whether a competitive disadvantage would arise is impossible to evaluate in the absence of cases. The Copyright Office believes it is unlikely that serious competitive disadvantage would arise. Nevertheless, the Copyright Office concedes that there is uncertainty on the issue. In order to put all manufacturers of gate arrays on equal footing, the Copyright Office proposes a limited exception to the most complete form requirement allowing separate registration of unpersonalized gate arrays and custom metallization layers.

The exception has purposely been drawn narrowly to accomplish the limited purpose of extending to captive manufacturers of gate arrays the same treatment as merchant manufacturers. Essentially, the exception allows the captive manufacturer two registrations: one in the entire unpersonalized gate array and one in the custom metallization layers. Applicants seeking to invoke the exception are required to make the nature of their claim clear at line 8 of Form MW. With respect to the Regulatory Flexibility Act, the Copyright Office takes the position that this Act does not apply to Copyright Office rulemaking. The Copyright Office is a department of the Library of Congress and is part of the legislative branch. Neither the Library of Congress nor the Copyright Office is an "agency" within the meaning of the Administrative Procedure Act of June 11, 1946, as amended [Title 5, Chapter 5 of the U.S. Code, Subchapter II and Chapter 7]. The Regulatory Flexibility Act consequently does not apply to the Copyright Office since that Act affects only those entities of the Federal Government that are agencies as defined in the Administrative Procedure Act.[2]

List of Subjects in 37 CFR Part 211

Mask works, Semiconductor chip products.

Proposed Regulations

In consideration of the foregoing, the Copyright Office proposes to amend Part 211 of 37 CFR, Chapter II.

1. The authority citation for Part 211 would continue to read as follows:

Authority: Copyright Act of 1976; Pub. L. 94–533, 90 Stat. 2541 [17 U.S.C. 702 and 908].

2. Section 211.4 (c), (d), and (e) would be revised to read as follows:

§ 211.4 [Amended]

* * * * *

(c) *One registration per mask work.* (1) Subject to the exception specified in paragraph (c)(2), only one registration can generally be made for the same version of a mask work fixed in an intermediate or final form of any semiconductor chip product. However, where an applicant for registration alleges that an earlier registration for the same version of the work is unauthorized and legally invalid and submits for recordation a signed affidavit, a registration may be made in the applicant's name.

(2) Notwithstanding the general rule permitting only one registration per work, owners of mask works in final forms of semiconductor chip products which are produced by adding metal-connection layers to unpersonalized

[1] The requirement of one registration assumes that the owner of the unpersonalized gate array and the metallization layers is the same. If the owner of the gate array is different from the owner of the metallization layers, then each owner is entitled to register his mask work contribution.

[2] The Copyright Office was not subject to the Administrative Procedure Act before 1978, and it is now subject to it only in areas specified by section 701(d) of the Copyright Act (i.e. "all actions taken by the Register of Copyrights under this title (17), except with respect to the making of copies of copyright deposits). (17 U.S C. 706(b)). The Copyright Act does not make the Office an "agency as defined in the Administrative Procedure Act. For example, personnel actions taken by the Office are not subject to APA FOIA requirements.

gate arrays may separately register the entire unpersonalized gate array and the custom metallization layers. Applicants seeking to register separately entire unpersonalized gate arrays or custom metallization layers should make the nature of their claim clear at Space 8 of application Form MW.

(d) *Registration as a single work.* Subject to the exception specified in paragraph (c)(2), for purposes of registration on a single application and upon payment of a single fee the following shall be considered a single work:

(1) In the case of a mask work that has not been commercially exploited: All original mask work elements fixed in a particular form of a semiconductor chip product at the time an application for registration is filed and in which the owner or owners of the mask work is or are the same; and

(2) In the case of a mask work that has been commercially exploited: All original mask work elements fixed in a semiconductor chip product at the time that product was first commercially exploited and in which the owner or owners of the mask work is or are the same.

(e) *Registration in most complete form.* Owners seeking registration of a mask work contribution must submit the entire original mask work contribution in its most complete form as fixed in a semiconductor chip product. The most complete form means the stage of the manufacturing process which is closest to completion. In cases where the owner is unable to register on the basis of the most complete form because he or she lacks control over the most complete form, an averment of this fact must be made at Space 2 or Form MW. Where such an averment is made, the owner may register on the basis of the most complete form in his or her possession. For applicants seeking to register an unpersonalized gate array or custom metallization layers under paragraph (c)(2), the most complete form is the entire gate array or customized metallization layers in which mask work protection is asserted.

* * * * *

Dated: January 12, 1989.

Ralph Oman,

Register of Copyrights.

Approved by:

Dr. James H. Billington,

The Librarian of Congress.

[FR Doc. 89-2853 Filed 2-6-89; 8:45 am]

BILLING CODE 1410-07-M

VETERANS ADMINISTRATION

38 CFR Part 21

Veterans Education; Procedural Protections Following Loss of Dependent

AGENCY: Veterans Administration.

ACTION: Proposed regulation.

SUMMARY: This regulation sets out procedures which the Veterans Administration (VA) will follow when considering reduction of the veteran's educational assistance allowance in certain instances because the VA has received evidence that the veteran has lost a dependent. This proposal will bring the procedures used in such circumstances into agreement with the procedures followed when a veteran is receiving disability compensation or pension and the VA receives evidence that the veteran has lost a dependent. The effect of this proposal will be to improve and more clearly define procedural protections afforded the veteran.

DATES: Comments must be received on or before March 9, 1989. Comments will be available for public inspection until March 20, 1989.

ADDRESSES: Send written comments to Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 132 of the above address, between the hours of 8 a.m. to 4:30 p.m., Monday through Friday (except holidays) until March 20, 1989.

FOR FURTHER INFORMATION CONTACT: William G. Susling, Jr., Education Advisor, Vocational Rehabilitation and Education Service (225C), Department of Veterans Benefits, (202) 233-2668.

SUPPLEMENTARY INFORMATION: The VA recently proposed regulatory amendments to 38 CFR Part 3 in order to improve certain procedural protections for disability compensation and pension claimants and beneficiaries. At that time, the VA indicated that its review of adjudication regulations was ongoing and that it might propose additional regulations in the future.

As a result of that ongoing review, the VA has decided that when the VA receives evidence that the veteran has lost a dependent, the same procedural protections will be followed for a veteran who is receiving educational assistance allowance as when that event occurs while a veteran is receiving disability compensation or pension. This proposal will provide those rights for veterans receiving benefits under the Vietnam Era GI Bill.

No additional benefits for dependents are now payable to recipients of educational assistance under the Montgomery GI Bill—Active Duty. However, we invite comments as to whether the VA should in the future propose a similar regulation for the Montgomery GI Bill—Active Duty before January 1, 1990. On that date, some people receiving educational assistance under that program will be eligible for additional assistance for dependents. Similar regulatory changes are not needed for the regulations which govern Dependents' Educational Assistance and the Post-Vietnam Era Educational Assistance Program (VEAP), because additional benefits for dependents are not payable to beneficiaries under those programs.

The VA has determined that this proposed regulation does not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulation will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. It will have no 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 Administrator of Veterans Affairs certifies that this regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), the regulation, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because the regulation affects only individuals. It will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

The Catalog of Federal Domestic Assistance number for the program affected by this regulation is 64.111.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: January 5, 1989.
Thomas K. Turnage,
Administrator.

PART 21—[AMENDED]

In 38 CFR Part 21 VOCATIONAL REHABILITATION AND EDUCATION, § 21.4132 is proposed to be added to read as follows:

§ 21.4132 Procedural protections; reduction following loss of a dependent.

(a) *Notice of reduction required when a veteran loses a dependent.*

(1) Except as provided in paragraph (2) of this section, the Veterans Administration will not reduce an award of educational assistance allowance following the veteran's loss of a dependent unless:

(i) The Veterans Administration has notified the veteran of the adverse action, and

(ii) The Veterans Administration has provided the veteran with a period of 60 days in which to submit evidence for the purpose of showing that the educational assistance allowance should not be reduced.

(2) When the reduction is based solely on written, factual, unambiguous information as to dependency or marital status provided by the veterans or his or her fiduciary with knowledge or notice that the information would be used to determine the monthly rate of educational assistance allowance:

(i) The Veterans Administration is not required to send a prereduction notice as stated in paragraph (1) of this section, but

(ii) The Veterans Administration will send notice contemporaneous with the reduction in educational assistance allowance.

(Authority: 38 U.S.C. 3012, 3013)

(b) *Prereduction notice.* Where a reduction in educational assistance allowance is warranted by reason of information concerning dependency received from a source other than the veteran, the Veterans Administration will:

(1) Prepare a proposal for the reduction of educational assistance allowance, setting forth material facts and reasons;

(2) Notify the veteran at his or her latest address of record of the contemplated action;

(3) Furnish detailed reasons for the proposed reduction;

(4) Inform the veteran that he or she has an opportunity for a predetermination hearing, provided that the Veterans Administration receives a request for such a hearing within 30 days from the date of the notice; and

(5) Give the veteran 60 days for the presentation of additional evidence to show that the educational assistance allowance should be continued at its present level.

(Authority: 38 U.S.C. 3012, 3013)

(c) *Predetermination hearing.*

(1) If the Veterans Administration receives a timely request for a predetermination hearing:

(i) The Veterans Administration will notify the veteran in writing of the date, time and place for the hearing; and

(ii) Payments of educational assistance allowance will continue at the previously established level pending a final determination concerning the proposed reduction.

(2) The hearing will be conducted by a Veterans Administration employee:

(i) Who did not participate in the preparation of the proposal to reduce the veteran's educational assistance allowance, and

(ii) Who will bear the decision-making responsibility.

(Authority: 38 U.S.C. 3012, 3013)

(d) *Final action.* The Veterans Administration will take final action following the predetermination procedures specified in paragraph (c) of this section.

(1) If a predetermination hearing was not requested or if the veteran failed to report for a scheduled predetermination hearing, the final action will be based solely upon the evidence of record.

(2) If a predetermination hearing was conducted, the Veterans Administration will base final action upon:

(i) Evidence adduced at the hearing,

(ii) Evidence contained in the claims file at the time of the hearing, and

(iii) Any additional evidence obtained following the hearing pursuant to necessary development.

(3) Whether or not a predetermination hearing was conducted, a written notice of the final action shall be issued to the veteran setting forth the reasons for the decision, and the evidence upon which it is based.

(4) When a reduction of educational assistance allowance is found to be warranted following consideration of any additional evidence submitted, the effective date of the reduction or discontinuance shall be as specified under the provisions of § 21.4135. (For information concerning the conduct of the hearing see § 3.103 (c) and (d) of this chapter.)

(Authority: 38 U.S.C. 3012, 3013)

[FR Doc. 89-2761 Filed 2-6-89; 8:45 am]
BILLING CODE 8320-01-M

38 CFR Part 21

Veterans Education; Eligibility for Dependents' Educational Assistance

AGENCY: Veterans Administration.

ACTION: Proposed regulation.

SUMMARY: Occasionally, a veteran's child will become eligible for dependents' educational assistance after the child's eighteenth birthday. The pertinent provision of the Code of Federal Regulations which addresses this situation incompletely states the applicable statutory requirement for determining the child's effective date of eligibility. This proposal will bring the Code of Federal Regulations into agreement with the law.

DATES: Comments must be received on or before March 9, 1989. Comments will be available for public inspection until March 20, 1989.

ADDRESSES: Send written comments to Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 132 of the above address, between the hours of 8 a.m. to 4:30 p.m., Monday through Friday (except holidays) until March 21, 1989.

FOR FURTHER INFORMATION CONTACT: William G. Susling, Jr., Education Advisor, Vocational Rehabilitation and Education Service (225C), Department of Veterans Benefits, (202) 233-2668.

SUPPLEMENTARY INFORMATION: The law provides an exception to the rule for determining the beginning date of a child's eligibility for dependents' educational assistance. The exception occurs when the child is eligible because he or she has a parent with a permanent and total disability permanent in nature, but the veteran is not notified of that disability rating until after the child has reached age 18. In that case the beginning date of eligibility is the date on which the Veterans Administration (VA) first finds that the parent from whom eligibility is derived has a service-connected total disability permanent in nature. The law goes on to define the term "first finds" as the effective date of the rating or the date of notification to the veteran from whom eligibility is derived, whichever is more to the child's advantage. The Code of Federal Regulations when addressing this subject mentions the effective date of the rating, but does not mention the alternative date of notification to the veteran. This proposal corrects this error.

The VA has determined that this proposed regulation does not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulation will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. It will have no 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 Administrator of Veterans Affairs has certified that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), the amended regulation, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because the regulation affects only individuals. It will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

The Catalog of Federal Domestic Assistance number for the program affected by this regulation is 64.117.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: January 9, 1989.

Thomas K. Turnage,

Administrator.

38 CFR Part 21, Vocational Rehabilitation and Education is proposed to be amended as set forth below:

PART 21—[AMENDED]

1. In § 21.3041, paragraph (b)(2) introductory, text is amended by removing the word "shall," and inserting in its place the work "may".

2. In §21.3041, paragraphs (b)(2)(ii) and (b)(2)(iii) are redesignated as paragraphs (b)(2)(iii) and (b)(2)(iv), respectively.

3. In § 21.3041, paragraph (b)(2)(i) is revised, aned pargraph (b)(2)(ii) is added, to read as follows:

§ 21.3041 Periods of eligibility—child.

* * * * *

(h) * * *

(2) * * *

(i) If the effective date of the permanent and total disability rating is before the child has reached 18 but the date of notification to the veteran from whom the child derives eligiblity occurs after the child has reached 18, the beginning date of eligibility shall be the basic beginning date as determined in paragraph (a) of this section, or the date of notification to the veteran, whichever is more advantageous to the eligible child.

(ii) If the effective date of the permanent and total disability rating occurs after the child has reached 18 but before he or she has reached 26, the beginning date of eligibility will be the effective date of the rating or the date of notification to the veteran from whom the child derives eligibility, whichever is more advantageous to the eligible child.

(Authority: 38 U.S.C. 1712(a)(3), 1712(d))

* * * * *

[FR Doc. 89–2857 Filed 2–6–89; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 405 and 415

[BERC–142–P]

Medicare Program; Payment for Physician Services Furnished in Teaching Settings; Payment to Providers for Compensation Paid to Physicians Who Furnish Services to Providers; and Payment for Consultative Pathology Services Furnished to Patients in Providers

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: We are proposing to revise the regulations governing Medicare payment for physician services in teaching settings to implement statutory provisions that specify the circumstances under which these physicians would be reimbursed on a reasonable cost basis or, alternatively, when they would be reimbursed on a reasonable charge basis. We also describe the methods that would be used to determine the customary charges for the services of these physicians.

We are also proposing to revise the regulations that govern Medicare payment for the services of physicians to health care providers. We would clarify our policy regarding allocation of provider compensation to physicians who return to a provider, directly or indirectly, some or all of the payments that those physicians receive for treating patients in the provider. In addition, the regulations concerning updates to the reasonable compensation equivalents (RCEs), which limit the amount of compensation allowable for services furnished by physicians to providers would also be revised. We propose to update the RCE limits periodically, when an update would result in a significant change in the limits, rather than annually.

Finally, we are proposing to amend the criteria that must be met in order for physician laboratory services furnished to patients in providers to be paid on a reasonable charge basis. Under our proposed changes, interpretations of laboratory test results by pathologists would have to be requested by the patient's attending physician, and a standing order policy would no longer be an acceptable substitute.

The revised regulations would be placed in a new 42 CFR Part 415. We would also redesignate under Part 415 the current regulations on teaching hospitals, the services of physicians to providers, the services of physicians in providers, and the services of interns and residents. This redesignation would locate related rules having a specialized audience in a separate part and, thereby, make them easier to use.

DATE: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5:00 p.m. on April 10, 1989.

ADDRESS: Mail comments to the following address: Administrator, Health Care Financing Administration, Department of Health and Human Services, Attention: BERC–142–P, 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–142–P.

Comments received timely will be available for public inspection as they are received, generally beginning about three weeks after the date of publicatio of a 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).

FOR FURTHER INFORMATION CONTACT:

Kenneth Marsalek, (301) 966–4502, Payment for Physician Services in Teaching Settings and Payment for Consultative Pathology Services Furnished to Patients in Providers

Ward Pleines, (301) 966–4528, Payment to Providers for Compensation Paid to Physicians Who Furnish Services to Providers.

SUPPLEMENTARY INFORMATION:

I. General Background

The Medicare statute (title XVIII of the Social Security Act (the Act)) generally provides separate coverage and payment rules for provider services and for physician services. Under Medicare, provider services such as inpatient hospital services and skilled nursing facility (SNF) services are covered under Hospital Insurance (Part A) and are paid for from the Part A Trust Fund. Outpatient hospital services are covered under Supplementary Medical Insurance (Part B) and are paid for from the Part B Trust Fund. Provider services are paid for on a prospective payment or reasonable cost basis through Medicare contractors known as fiscal intermediaries. Physician services and other "medical and other health services," as defined in section 1861(s) of the Act, are paid for under Part B, and generally are paid for on a reasonable charge basis through Medicare contractors known as carriers.

To administer the Medicare program in accordance with the statute, we must be able to distinguish clearly between provider services and physician services, to pay for each on the proper basis (prospective payment, costs, or charges) from the correct trust fund (Part A or Part B). We also must develop billing and payment procedures that—

- Permit us to meet these requirements;
- Are administratively sound, simple, and efficient;
- Ensure that Medicare payments are reasonable in amount; and
- Avoid duplicate payment.

In 1966 and 1967, we issued regulations that set forth the basic principles regarding payment for services of physicians who practice in providers (currently located at 42 CFR 405.480 through 405.488) and additional principles applicable to payment for physician services in teaching hospitals §§ 405.520 and 405.521). Since the publication of these regulations, developments have occurred that greatly affect the manner in which services of physicians in provider settings are reimbursed. First, physicians' financial agreements with providers have become more complex. Second, during this time, Congress has enacted a series of legislative changes that affect reimbursement for physician services in providers. Some of these amendments require changes in current Medicare regulations.

For example, section 948 of the Omnibus Reconciliation Act of 1980 (Pub. L. 96–499; enacted December 5, 1980) and section 2307 of the Deficit Reduction Act of 1984 (Pub. L. 98–369; enacted July 18, 1984) pertain specifically to problems that arise in the teaching setting. (See section III.D. of this preamble for a more detailed discussion of these provisions.) In addition, in section 108 of the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97–248; enacted September 3, 1982), Congress added a new section 1887 to the Act and made a conforming change to section 1861(v)(7) of the Act. This legislation dealt explicitly with distinguishing between the services a physician furnishes to individual patients in a provider and services furnished to the provider itself, as well as with the method of reimbursement for both types of services.

On March 2, 1983, we published a final rule with comment period (48 FR 8902) that implemented the provisions of section 108 of Pub. L. 97–248. That final rule revised the regulations that govern Medicare coverage and reimbursement for services of physicians who practice in providers such as hospitals, SNFs, and comprehensive outpatient rehabilitation facilities (CORFs). As a part of that final rule, we revised §§ 405.480 through 405.482, removed §§ 405.483 through 405.488, and added new §§ 405.550 through 405.557. These regulations—

- Set forth basic criteria for distinguishing those physician services furnished in providers that are reimbursed on a reasonable charge basis from those services that are reimbursed only on a reasonable cost basis;
- Establish how the amounts reimbursed are determined on both charge and cost bases;
- Set limits on the amounts reimbursable on a reasonable cost basis to providers for physician services to the provider; and
- Establish more specific criteria for determining the basis and amount of payment for physician services in the specialties of anesthesiology, radiology, and pathology.

In the preamble to the March 2, 1983 final rule (48 FR 8906), we stated that because of problems related to applying portions of the revised regulations to teaching hospitals and to implement sections 1842(b)(6) and 1861(b)(7) of the Act (as amended by section 948 of Pub. L. 96–499), we planned to publish, in a separate document, proposed regulations that would establish special rules governing payment for services of physicians in teaching hospitals. These rules were to supersede §§ 405.520 and 405.521 if they became effective. Subsequently, however, Congress enacted the Deficit Reduction Act of 1984 (Pub. L. 98–369), which further amends section 1842(b)(6) of the Act, redesignates it as section 1842(b)(7), and amends section 1886(d)(5). This proposed rule would implement the amendments of both Pub. L. 96–499 and Pub. L. 98–369.

As noted earlier, the services of physicians to individual patients, including hospital patients, generally are covered under Medicare Part B and are paid for on a reasonable charge basis. The reasonable charge for a service is the charge that the Medicare carrier for the locality determines to be reasonable under the regulations set forth at §§ 405.501 through 405.508. Carriers generally compare a charge actually billed to the physician's customary charge for similar services (as determined under § 405.503) and the prevailing charge in the locality for similar services (as determined under § 405.504). In general, the reasonable charge for a physician service is the lowest of the actual, customary, or prevailing charge.

One major exception to this general rule is the method we use to determine charges for services of physicians who practice in providers and who are compensated by providers or other organizations for their services. In many cases, these physicians are compensated both for their care of individual patients and for other services that benefit the provider's patients generally (for example, teaching, administrative services, quality control, and committee work). The rules on payment for services of physicians who practice in providers assume that the compensation a physician receives is for all services the physician performs in the provider unless the provider can demonstrate otherwise (see current § 405.481). The portion of each physician's compensation that relates to time spent by the physician in furnishing services to individual patients is used by the carrier as a basis for developing a schedule of customary charges for these services. The carrier then uses this compensation-related schedule of

customary charges, rather than charges developed under the general reasonable charge rules, to determine the amount of payment for that physician's services furnished in the provider to Medicare patients.

In this document, we are proposing to do the following:

- Revise the regulations governing Medicare payment for services of physicians in teaching settings (section II of this preamble).
- Revise the regulations governing Medicare payment to providers for compensation paid to physicians who furnish services that are of general benefit to patients in the provider (section III of this preamble).
- Revise the regulations governing Medicare payment for laboratory services furnished by physicians to patients in providers (section IV of this preamble).

II. Payment for Physician Services Furnished in Teaching Settings

A. Physician Services in Teaching Hospitals

Of the nearly 7,000 hospitals that now participate in Medicare, approximately 1,200 have graduate medical education programs. Although some services in these hospitals are personally furnished by physicians (that is, the services do not involve interns or residents), many patients in these hospitals receive services from interns and residents who work under the supervision of teaching physicians. The salaries of the interns and residents and the related direct costs of medical education are reimbursed as described in § 413.85. Administrative and supervisory services not involving interns and residents are paid either through the inpatient hospital prospective payment system or, for hospitals not subject to the prospective payment system, on a reasonable cost basis. The professional services of physicians furnished to inpatients are generally reimbursed on a reasonable charge basis.

Practices vary widely among teaching hospitals with respect to the degree of physician involvement in the care of patients. In some cases, teaching physicians personally direct interns and residents while these interns and residents are treating patients. In other cases, the interns and residents assume actual responsibility for the care patients receive and the teaching physicians exercise only general control over these interns and residents activities.

These differences in the levels of physician involvement in the delivery of services involving interns and residents raise two issues that we must resolve if we are to ensure that Medicare pays properly for these types of services. First, we must specify the level of physician involvement in the delivery to patients of services involving interns and residents that is needed to justify payment to the physicians for those services on a reasonable charge basis. Second, in the case of services for which charge payment is appropriate, we must develop payment methods that will ensure that Medicare payments for the services of teaching physicians in hospitals are not excessive in relation to the nature of the service or the payment policies of other payors.

B. Statutory and Other Developments Pertaining to Teaching Physician Services

1. Original Medicare Law and Regulations

As originally enacted, title XVIII of the Act excluded the services of physicians, interns, and residents from the definition of "inpatient hospital services", except for the services of interns and residents in approved training programs. However, it did not include specific rules on payment for physician services in teaching hospitals. On August 31, 1967, we issued regulations (§§ 405.520 and 405.521), which are substantially still in effect, to govern these payments. Under the provisions of these regulations, a physician in a teaching setting is considered the attending physician for a Medicare patient, and thereby qualifies for Part B reasonable charge payment, only if he or she furnishes "personal and identifiable direction" to the interns and residents who provide the actual services to the patient.

Although § 405.521(b) lists examples that illustrate the types of responsibilities attending physicians typically carry out, the list is not exhaustive. In individual cases, it is often difficult to determine, by reference to § 405.521, whether a physician in a teaching setting is the attending physician for a Medicare patient.

It became apparent, shortly after §§ 405.520 and 405.521 were issued, that some Medicare carriers were paying charges for physician services in some teaching hospitals, even though interns and residents were primarily responsible for the care of the patients. The physicians who were billing for these services were often assuming only limited responsibility for the medical management of the patients treatment. It also became clear that some physicians were billing charges for services to Medicare patients even though other non-Medicare patients were not charged for similar services, and patients generally were not obligated to pay for physician services.

These problems led in April 1969 to the issuance of Intermediary Letter (I.L.) 372, which sets forth specific conditions that physicians in teaching settings must meet to be considered attending physicians and, thus, qualify for charge payment for their services. It also specifies how carriers are to determine the reasonable charges for these services. Although I.L. 372 has provided specific guidance to Medicare carriers and intermediaries on payment for these services, it has not been applied uniformly by all Medicare carriers. As explained later in this preamble (section I.C.4.), the policies in I.L. 372 were considered by Congress when it enacted section 948 of Pub. L. 96–499.

2. 1972 Amendments

In 1972, Congress amended the Social Security Act to provide specific rules on payment for physician services in teaching hospitals. Section 227 of the Social Security Amendments of 1972 (Pub. L. 92–603) amended section 1861(b) of the Act to require that Medicare treat these services as hospital services and pay for them on a reasonable cost basis, except under certain specific circumstances. Section 227 also made certain incentives available to hospitals that elect to be paid for physician services on a reasonable cost basis.

In subsequent legislation (section 15 of the Social Security Amendments of 1973 (Pub. L. 93–233) and section 7 of the End-Stage Renal Disease Program Amendments of 1978 (Pub. L. 95–292)), Congress deferred implementation of all provisions of section 227 of Pub. L. 92–603 except for the incentives to be reimbursed on a reasonable cost basis. The cost reimbursement provisions were implemented through § 405.465, as published in a final rule on August 8, 1975 (40 FR 33440). The statutory provisions that were not implemented were eventually replaced by new provisions enacted by Congress in Pub. L. 96–499 on December 5, 1980. Pub. L. 96–499 reaffirmed, but did not otherwise affect, the provisions of section 227 of Pub. L. 92–603 authorizing cost reimbursement incentives.

3. Omnibus Reconciliation Act of 1980 and Deficit Reduction Act of 1984

As mentioned earlier, section 948 of Pub. L. 96–499 made several important changes in the sections of the Medicare law that deal with payment for physician services in teaching hospitals. Specifically, section 948—

• Repealed the provisions of section 1861(b) of the Act that required Medicare to pay for these services (with certain exceptions) on a reasonable cost basis;

• Amended section 1861(b) of the Act to allow hospitals with approved teaching programs to elect to be paid on a reasonable cost basis for physician services to their Medicare patients and for the supervision of interns and residents in the care of individual patients if all physicians in the hospital agree not to bill charges for their services to Medicare patients; and

• Amended section 1842(b)(6) of the Act (now section 1842(b)(7)) to specify the conditions that must be met to permit payment of charges under Part B for physician services in teaching hospitals that do not elect cost reimbursement, and to provide special payment rules for determining the customary charges applicable in this situation.

Subsequently, section 2307(a) of Pub. L. 98–369 further amended these provisions. Section 2307(a) was later amended by the technical amendments to Pub. L. 98–369 in sections 3(b) (5) and (6) of Pub. L. 98–617 (enacted on November 8, 1984). As revised, section 2307(a) amended section 1842(b)(7) of the Act (which was redesignated from 1842(b)(6) of the Act by section 2306 of Pub. L. 98–369) to provide that—

• The customary charge of a physician qualifying as a teaching physician is set no lower than 85 percent of the prevailing charge paid for similar services in the same locality; and

• If all the teaching physicians in a teaching hospital agree to accept assignment for all the services they furnish to Medicare patients in that hospital, the customary charge is set at 90 percent of the prevailing charge paid for similar services in the same locality.

4. Legislative History

In the Conference Report accompanying Pub. L. 96–499 (H.R. Rep. No. 1479, 96th Cong., 2d Sess. 145 (1980)), the Conference Committee stated that its intention was to permit payment for physician services in a teaching hospital on a reasonable charge basis only if the physician is the patient's "attending physician". The conferees also endorsed the attending physician criteria in I.L. 372. Therefore, the attending physician criteria in I.L. 372 are used as the basis for the attending physician criteria set forth in this proposed rule. The criteria in I.L. 372 have been modified to be specifically applicable to psychiatry, family practice, anesthesiology, radiology, physician laboratory, and consultative services.

The Conference Report further states that "[t]he conferees intend (without precluding reasonable changes in the future) that in determining [sic] the amount payable on a charge basis under medicare part B for services of physicians in teaching hospitals, the policies contained in Intermediary Letter 372 should be generally followed where these are not inconsistent with the provisions of the conference agreement." *Ibid.* p. 146. In addition, the Report specifies that collection of at least 50 percent of the charges billed to non-Medicare patients is to be interpreted as collection in substantial part for purposes of determining whether the conditions for charge payment are met, but that any charges paid under Medicaid, regardless of amount, are deemed to be collected in substantial part. *Ibid.* p. 145.

C. Major Provisions of Proposed Regulations Regarding Physicians in Teaching Settings

The proposed regulations would provide for the following:

1. A definition of a teaching hospital, for purposes of these rules, as a hospital engaged in a residency program in medicine, osteopathy, dentistry, or podiatry that is approved by one of the national accrediting bodies set forth in section 1861(b)(6) of the Act.

2. The continuation of the longstanding policy that provides for payment made on a reasonable cost basis for physician medical and surgical services and for the supervision of interns and residents in the care of individual patients in a teaching hospital that elects payment on this basis, if all physicians who furnish services to beneficiaries in the hospital agree not to bill charges for those services. (See section 1861(b)(7) of the Act.) Payment for physician compensation costs for the administration of intern resident programs incurred by teaching hospitals that elect cost reimbursement would be included in the per resident amounts for direct medical education as provided in the provisions of section 9202 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99–272).

3. As prescribed by section 1842(b)(7)(A)(i) (I) and (II) of the Act, payment on a reasonable charge basis under Part B for physician services in teaching hospitals that do not elect to receive payment on a reasonable cost basis under Part A for those services, if the physician services meet the following two basic requirements for charge payment:

a. The physician furnishes sufficient personal and identifiable physician services to the patient to exercise full, personal control over the management of the portion of the case for which payment is sought; that is, the physician must serve as the patient's "attending physician".

b. The physician's services to Medicare patients are of the same character as his or her services to non-Medicare patients.

4. As specified in section 1842(b)(7)(A)(i)(III) of the Act, a teaching hospital fee collection provision that requires that, during a representative fee collection period, at least 25 percent of the hospital's non-Medicare patients who received services that met the two conditions set forth in item 3 above paid at least 50 percent of the charges (other than nominal charges) imposed for the services. (Nominal charges are defined as those charges that are 10 percent or less of the prevailing charge levels for similar services in the same locality.)

5. For physician services that meet the conditions of item 3 above, but the hospital requirement in item 4 above is not met, payment would be made under the compensation-related charge rules (current §§ 405.480 through 405.482 and 405.550 through 405.557) if the physician is compensated by the teaching hospital or affiliated entity for physician services furnished to patients. If the physician is not so compensated, then payment would be made under the general reasonable charge rules (current §§ 405.501 through 405.508). (Section 1842(b)(7)(C) of the Act.)

6. For physician services that meet the conditions of item 3 above and the hospital requirement in item 4 above is also met, payment is made as described in item 5 above. However, if the physician is a teaching physician (as defined in item 7 below), the physician may elect to be paid under the compensation-related charge rules. If that election is not made, the physician would be paid on a reasonable charge basis with the customary charge determined as described in item 8 below (section 1842(b)(7) (A) and (B) of the Act).

7. A definition of a teaching physician as a physician who is compensated by a hospital, medical school, other affiliated entity, or professional practice plan for physician services furnished to patients and who generally involves interns and residents in patient care (section 1842(b)(7)(B)(i) of the Act).

8. Special rules for determining the customary charge for the services of teaching physicians that are furnished in teaching hospitals as follows:

• For services furnished by a teaching physician, if the hospital, its physicians, or another billing entity has established one or more charge schedules, customary charges would be based on the greatest of—

—The charges (other than nominal charges), that are most frequently collected in full or substantial part from the hospital's non-Medicare patients;

—The mean of all of the charges (other than nominal charges) that are collected in full or substantial part from the hospital's non-Medicare patients; or

—Eighty-five percent of the prevailing charges paid for similar services in the same locality (section 1842(b)(7)(B)(ii) of the Act).

• For services furnished by teaching physicians in a teaching hospital where all the teaching physicians have agreed to accept assignment, the customary charge is set at 90 percent of the prevailing charge paid for similar services in the same locality (section 1842(b)(7)(A)(ii) of the Act).

Each physician, hospital, or other billing entity that wishes to claim payment under these rules for services of teaching physicians based on a customary charge greater than 85 percent of the prevailing charge must submit any information required by HCFA to substantiate the claim.

9. A set of requirements governing the execution of the agreement to accept assignment for all physician services furnished by teaching physicians in a teaching hospital, the conditions under which the hospital may terminate the agreement, and the limitations placed upon entrance into a new agreement following termination of a previous agreement.

10. Physicians who use interns and residents in the care of their patients in providers that do not meet the definition of a teaching hospital (that is, hospitals with teaching programs that are not approved by one of the organizations specified in section 1861(b)(6) of the Act) must meet the requirements of item 3a and b above in order to receive payment on a reasonable charge basis for physician services. Payment would be made based on either the compensation-related charge rules or the general reasonable charge rules as described in item 5 above.

The following chart summarizes how payment to physicians in teaching settings would be made under the proposed regulations.

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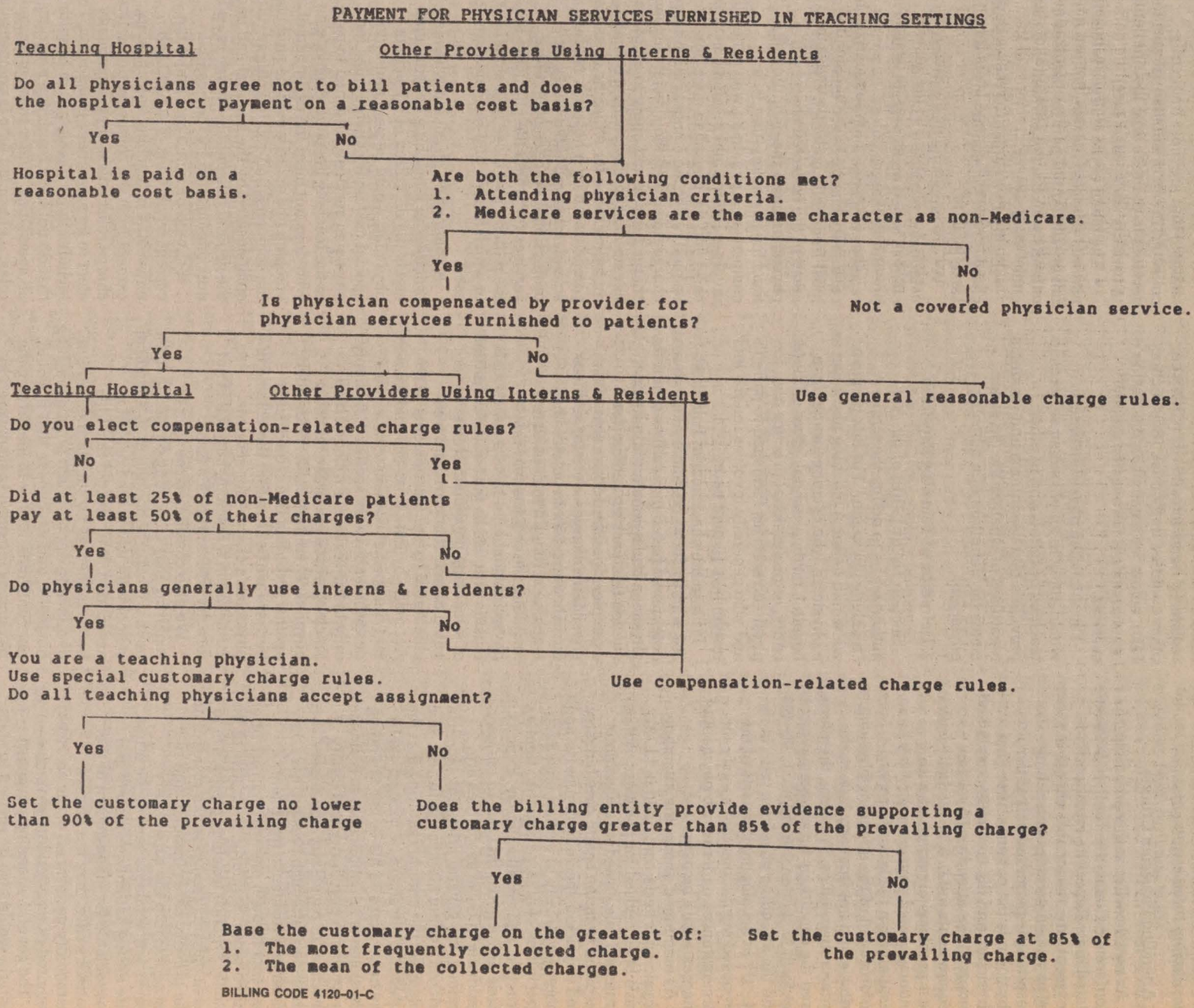

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D. Significant Issues Considered in Developing Proposed Regulations

1. Attending Physician Criteria

As noted earlier in this preamble, the Conference Committee for Pub. L. 96–499 stated in its Report its intention that payment on a reasonable charge basis for physician services in teaching hospitals be permitted only if the physician is the patient's attending physician, and the committee explicitly endorsed the attending physician requirements in I.L. 372. We believe that past problems experienced with undocumented physician services has resulted from the lack of proper enforcement of the attending physician criteria and not from any lack in the criteria themselves. We have, therefore, used the conditions for charge payments set forth in section 948 of Pub. L. 96–499 and the attending physician criteria in I.L. 372 in developing the parts of the proposed regulations that specify the circumstances under which payment of charges would be permitted.

As mentioned above, the attending physician criteria contained in I.L. 372 have been revised for purposes of this proposed rule, based on suggestions received from the health care industry and physician specialty groups, to apply more specifically to certain physician specialties; that is, psychiatry, family practice, and anesthesiology. Experts in these areas noted that due to the way residents in these specialties are trained, the general attending physician criteria are not always applicable. For example, the criteria requiring that the attending physician be recognized by the beneficiary as his or her attending physician is not applicable to residency programs in psychiatry and family practice. In psychiatry, the supervisory physician, although present, may only observe a resident's treatment of patients through one-way mirrors or on video tapes. Similarly, a purpose of the family practice teaching program is to have patients recognize the resident as the primary care physician and to recognize that the supervisory physician, while present at the office site during patient encounters and responsible for management of the patient's care, may not always personally perform all of the services required of an attending physician.

The general attending physician criteria would also be revised to state clearly the conditions that must be met by anesthesiologists. Essentially, an attending physician relationship would be established if the anesthesiologist directs no more than two concurrent procedures involving residents or interns or a "mix" of no more than one resident or intern and one certified registered nurse anesthetist (CRNA) or other qualified individual. (See section I.D.6. below for a complete discussion of reimbursement for anesthesiology services.)

The attending physician criteria would apply to all physician services in teaching hospitals and in other providers that use interns and residents regardless of whether the physician meets the definition of a teaching physician.

2. Definition of Teaching Physician

Section 1842(b)(7)(B) of the Act authorizes us to define the term "teaching physician." For this purpose, we would define a teaching physician as a physician who is compensated by a hospital, medical school, other affiliated entity, or professional practice plan for physician services furnished to patients and who generally involves interns and residents in patient care.

Prior to the enactment of Pub. L. 98–369, a physician's customary charge was determined based on whether or not the physician had a substantial practice outside the teaching setting (for example, more than 50 percent of the physician's charges were for services furnished to patients outside the teaching setting). We considered including the requirement that a physician could not have a substantial outside practice as part of the definition of a teaching physician. However, as noted above, this provision was eliminated by the amendments to the Act made by Pub. L. 98–369 and we note that the special reimbursement rules described above (in section C.8.) apply only to the services furnished by a teaching physician in the teaching hospital. Therefore, we have decided against including this requirement because we believe that the volume of a physician's charges for services furnished in a teaching hospital is not directly relevant to this issue.

We also considered the idea of requiring that a teaching physician must have a faculty appointment to a medical school with which the hospital is associated. We rejected this idea because there is no standard definition of a faculty appointment among teaching hospitals, and we believe that it would not contribute further to identifying the physicians intended to be covered by the definition.

3. Special Customary Charge Rules for Teaching Physicians

As discussed above, the customary charge of a teaching physician would be determined based on the greatest of—

- The charges (other than the nominal charges) that are most frequently collected in full or substantial part for services to patients who are not entitled to benefits under Medicare;
- The mean of the charges (other than nominal charges) that are collected in full or substantial part for services to patients who are not entitled to benefits under Medicare; or
- Eighty-five percent of the prevailing charges paid for similar services in the same locality.

We are proposing that carriers establish a physician's customary charges based on 85 percent of the prevailing charges unless the carrier receives evidence supporting a higher customary charge based on either the most frequently collected charges or the mean of the collected charges. If a physician meets the definition of a teaching physician (that is, a compensated physician who generally involves interns and residents in patient care) and the physician does not elect to be paid under the compensation-related charge rules, then the special customary charge rules would apply to all of his or her services in the teaching hospital, including those for which he or she is compensated by a hospital, medical school, other affiliated entity, or a professional practice plan; those services for which the physician bills the patient; and those occasional cases in which interns and residents are not used.

A community physician who also practices in a teaching hospital and meets the definition of a teaching physician would be paid under the special customary charge rules for physician services furnished to patients in the teaching hospital. A physician who does not meet the definition of a teaching physician would be paid under the compensation-related charge rules if compensated by the hospital and under the general reasonable charge rules if not compensated by the hospital.

It should be noted that under the current regulations (§ 405.521) all physicians in teaching hospitals are exempt from the compensation-related charge rules unless they specifically elect to be paid under those rules. This includes those physicians in hospitals that do not have residency programs in all specialties. Under these proposed rules, a physician who is compensated by a teaching hospital but who does not generally involve interns and residents in patient care would be paid under the compensation related charge rules.

We believe that the objective of the amendments made by Pub. L. 96–499 and Pub. L. 98–369 is to ensure that

unless a teaching physician elects to be paid under the compensation-related charge rules, Medicare does not pay more for teaching physician services than the most frequently collected charges or the mean of the collected charges from non-Medicare patients, subject to the customary charge "floor" described in section 1842(b)(7)(B)(ii)(III) of the Act. The law did not provide specific guidance for the calculation of the "most frequently collected charges" and "the mean of the charges". Under our proposed regulations, these calculations would be performed by the entity (for example, an individual physician, group of physicians, a medical practice plan, or a hospital) that is legally entitled to bill Medicare for the teaching physicians' services to Medicare patients in teaching hospitals. The calculations would be based on a representative past period of time, performed on either an individual physician, department, or hospital-wide basis, and updated annually to coincide with the reasonable charge update. The Medicare carrier would review and approve the calculations and perform the periodic audits to validate the schedule of charges.

In the Conference Report accompanying Pub. L. 98–369 (H.R. Rep. No. 861, 98th Cong., 2d Sess. 1311 (1984)), the Conference Committee urged us to develop a simplified or expedited methodology for calculating a customary charge when it is based on charge schedules. We plan to issue instructions in the Medicare Carrier Manual (HCFA Pub. 14–3) that will provide necessary guidance for performing customary charge calculations under this methodology. In order to minimize the number of physicians whose involvement would be necessary to perform these calculations, we wish to develop a presumptive test based on the hospital's mix of patients and payment levels of other third party payors. For example, a physician demonstrates that a majority of his or her charges that are paid in full or substantial part by non-Medicare payors is in excess of the Medicare prevailing charge. In these cases, the physician would automatically be paid for Medicare services at the lesser of the actual charges or the Medicare prevailing charge and no further calculations would be necessary. Thus, we would presume that the prevailing charge is the most frequently collected charge. We invite comments both on how to develop a presumptive test for this purpose and on a methodology for performing the calculations of the customary charges of those physicians who do not meet the presumptive test that would conform to hospital billing systems.

In the Conference Report accompanying Pub. L. 96–499, the Conference Committee specified that, in general, in determining whether charges are collected in "substantial part", it intends that "a substantial part of the charges" be interpreted as at least 50 percent of the charges (H.R. Rep. No. 1479, 96th Cong., 2d Sess. 145 (1980)). Nominal charges are excluded from the calculations. Since collection of only half of the charges is considered as collection in full, we consider nominal charges to represent an insignificant amount. Therefore, we are proposing to define nominal charges as those charges that are 10 percent or less of the prevailing charge level for similar services in the same locality.

4. Election of Payment on a Reasonable Cost Basis

Section 1861(b)(7) of the Act provides that if all the physicians who furnish medical or surgical services to Medicare beneficiaries in the hospital agree not to bill charges for these services, a teaching hospital may elect to be paid on a reasonable cost basis for those services. This provision, as added by section 227 of Pub. L. 92–603, was intended in part to simplify the administration of the program by eliminating the need for the hospital to document what portion of the physician's time is attributable to "medical and surgical services," and what portion constitutes "supervision of interns and residents." This documentation would otherwise be necessary in order to establish whether the "attending physician" criteria were met which would allow the physicians to bill charges under Part B for their medical and surgical services. (See S. Rep. No. 1230, 92d Cong., 2d Sess. 198 (1972).)

(The criteria for making this election are set forth in § 405.521(d)(2) and the cost reimbursement provisions are set forth in § 405.465, as published in a final rule on August 8, 1975 (40 FR 33440). Although § 405.521(d)(2) specifies that this special provision expires with cost reporting periods beginning before June 1, 1976, it was continued on a temporary basis by section 7 of Pub. L. 95–292 and was reaffirmed by section 948 of Pub. L. 96–499.)

Section 1886(h) of the Act, as added by section 9202 of Pub. L. 99–272, provides that effective with cost reporting periods beginning on or after July 1, 1985, the direct costs of graduate medical education are paid on the basis of per resident amounts, rather than reasonable cost. The per resident amount is based on graduate medical education costs included in the hospital's intern and resident cost center in a specified base year. (See section 1886(h) of the Act for a detailed explanation of how payment is made to hospitals for the direct costs of medical education. This provision of the law will be implemented through a separate rulemaking document.)

For those hospitals that made the election under section 1861(b)(7) of the Act for cost reporting periods beginning prior to their section 1886(h) base year (that is, the hospital's cost reporting period that began in Federal fiscal year 1984), both physicians' medical and surgical services, and any supervision of interns and residents incident to furnishing the medical and surgical services, were included in a cost center separate from the intern and resident cost center during the base year. Moreover, as explained above, there is no documentation that would provide the basis for distinguishing between the time spent on medical services as opposed to supervision. Accordingly, the supervision of interns and residents under these circumstances will not be reflected in the per resident amounts for payment of direct graduate medical education costs under section 1886(h) of the Act, but will be reimbursed separately, on a reasonable cost basis under the section 1861(b)(7) election.

However, if a hospital made the election after its section 1886(h) base year, the costs of supervising interns and residents would have been included in the intern and resident cost center, and therefore were included in the calculation of the per resident amount. Thus, the effect of the election would be a duplicate payment for the supervision services. Accordingly, for hospitals that elect the special payment method for cost reporting beginning on or after their section 1886(h) base year, we plan to propose in the rulemaking document that implements section 1886(h) of the Act an adjustment to the per resident amounts for graduate medical education to reflect proportionately lower costs from those that are represented in the amounts determined for other teaching hospitals.

5. Definition of "Patients Entitled to Benefits Under Medicare"

Under section 1842(b)(7) (A) and (B) of the Act, the applicability of the special rules on payment for physician services in a teaching hospital depends on the collection of fees for similar services to the hospital's patients who are not entitled to benefits under Medicare. The statute does not further distinguish

between those patients who have Medicare Part B (or Medicare Part B and Medicaid) as their only physician services coverage, and those who have both Medicare Part B coverage and private supplemental policies. We propose to define "patients entitled to benefits under Medicare" to mean all patients who are entitled to Medicare Part B whether or not those patients also have private supplemental insurance or are dually entitled to Medicaid.

6. Payment Procedures for Anesthesiologists in Teaching Hospitals

The regulations currently at § 405.552(a)(2) provide payment for anesthesiology services furnished to a patient in a provider on a reasonable charge basis if the physician directs the procedures. Payment is calculated using a combination of base units and time units when the physician directs no more than four concurrent procedures. (See 48 FR 8926 (March 2, 1983) and section 5218 of the Medicare Carrier Manual (HCFA Pub. 14–3) for an explanation of how base and time units are calculated.) Payment is generally calculated using only base units when the physician directs more than four concurrent procedures.

The preamble to the March 2, 1983 final rule, which added § 405.552 to the regulations, stated that the individual who performs the anesthesia procedure and who is employed by the hospital and is directed by a physician could be either a CRNA, resident, or other qualified individual. "Other qualified individual" has been defined to include interns and residents. (See 48 FR 8926.) However, instructions in section 5218.1 of the Medicare Carrier Manual provide that an attending physician relationship can be established only in the case of the concurrent direction of no more than two interns and residents.

The advice we have received from the health care industry indicates that a one-to-two ratio of physician to interns or residents is good medical practice. Therefore, we are proposing to revise the regulations to provide that an attending physician relationship cannot be established if an anesthesiologist concurrently directs more than two interns or residents. In addition, we would recognize the existence of an attending physician relationship if the anesthesiologist concurrently directs one intern or resident and no more than one CRNA or other qualified individual.

If an attending physician relationship is established, the carrier may recognize one time unit for each 15 minutes of direction furnished to an intern or resident by the anesthesiologist for each procedure. If the anesthesiologist directs a CRNA or other qualified individual, the reimbursement principles for physician medical direction set forth in current § 405.553 would apply in determining payment for the services of the CRNA or other qualified individual. We want to note that the attending physician relationship exists in the context of a physician directing an intern or resident, not in directing a CRNA or other qualified individual. An attending physician relationship (that is, the attending physician criteria are met) is required for payment based on 15 minute time units.

7. Determining Payment for Physician Services Furnished to Renal Dialysis Patients in Teaching Hospitals

Medicare pays for physician services furnished on or after August 1, 1983 to end-stage renal disease (ESRD) patients on the basis of the physician monthly capitation payment method as described in § 405.542. This payment method generally applies to renal related physician services furnished to outpatient maintenance dialysis patients, regardless of where the services are furnished (that is, in an independent ESRD facility, a hospital-based ESRD facility, or in the patient's home). We propose to continue the use of this physician payment method if a teaching hospital has an ESRD facility. No special medical record documentation requirements would be imposed solely because the ESRD facility is based in a teaching hospital.

Reasonable charges for covered physician services furnished to inpatients in a hospital by a physician who elects not to continue to receive payment on a monthly capitation basis through the period of the inpatient stay would be determined according to the rules described in proposed § 415.190. Physicians, of course, would have to either personally furnish the services, or establish an attending physician relationship with the patients as described in proposed §§ 415.172 through 415.182.

E. Application of Outpatient and Radiology Limits

The 60 percent limit on physician services furnished in outpatient settings (§ 405.502(f)(4)) and the 40 percent limit on radiology services furnished in a provider setting (currently at § 405.555(c)(2)) would apply to physician services reimbursed on a reasonable charge basis under the provisions of these proposed regulations.

III. Payment to Providers for Compensation Paid to Physicians Who Furnish Services to Providers

A. Background

As discussed earlier in this preamble, under the Medicare program, payment to a provider for services furnished by a physician in the provider is made under either Part A or Part B of the program, depending on the type of services furnished. Generally, physicians' charges for medical or surgical services to individual Medicare patients are paid for under Part B. On the other hand, the compensation that physicians receive from or through a provider for professional services that benefit patients generally is reimbursed to the provider on either a prospective payment or reasonable cost basis under Part A for inpatients, and on a reasonable cost basis under Part B for outpatients.

Professional services to a provider are those professional activities that benefit the provider or the patients generally but that do not qualify as medical services payable on a charge basis under Part B and do not necessarily require performance by a physician. They include, but are not limited to, teaching or supervision of professional or technical personnel, administration or management of a hospital department, quality control activities, and work schedule planning. Under section 1887(a)(2)(A) of the Act, as implemented by regulations at current § 405.480(a), under the cost reimbursement system, services by physicians to providers are allowable only if they are professional services that benefit patients generally, and are properly apportioned based on time. The costs of these services are allowable if—

- The services do not meet the criteria for reasonable charge reimbursement;
- The services do not include physician availability services (except for reasonable availability services furnished for emergency rooms);
- The provider has incurred a cost for salary or other compensation it furnished the physician for the services; and
- The costs of the services meet the requirements of our regulations, including § 413.9 regarding costs related to patient care.

The regulations governing payment on a reasonable cost basis for services of physicians to providers are currently set forth in §§ 405.480 through 405.482.

B. Allocation of Compensation Costs

Section 1887(a)(2)(A) of the Act requires that for purposes of cost reimbursement only the part of the total physician compensation cost that is allocated to the professional services of a physician to a provider (that is, professional services for the benefit of patients generally) be considered an allowable provider cost and be taken into account in determining payment to the provider. A provider can obtain payment for physician compensation costs for professional services for the benefit of patients generally only if it can demonstrate to the satisfaction of its intermediary that a measurable proportion of the physician's time is devoted to services to the provider.

Under current rules, to be paid, the provider must submit to its fiscal intermediary a written allocation agreement between the provider and the compensated physician showing the respective amounts of time the physician spends in furnishing physician services to the provider, physician services to patients, and services that are not reimbursable under Medicare (see § 415.60). Generally, we will attribute a physician's compensation to all the services the physician furnishes, both to patients and the provider, in direct proportion to the amounts of time the physician spends in furnishing each type of service.

In those cases in which a physician who is compensated by a provider for services furnished to it also furnishes physician services to individual patients in the provider, the terms of the provider/physician agreement must indicate professional services of a physician to a provider (that is, professional services for the benefit of patients generally) be considered an allowable provider cost and be taken into account in determining payment to the provider. A provider can obtain payment for physician compensation costs for professional services for the benefit of patients generally only if it can demonstrate to the satisfaction of its intermediary that a measurable proportion of the physician's time is devoted to services to the provider.

Under current rules, to be paid, the provider must submit to its fiscal intermediary a written allocation agreement between the provider and the compensated physician showing the respective amounts of time the physician spends in furnishing physician services to the provider, physician services to patients, and services that are not reimbursable under Medicare (see § 415.60). Generally, we will attribute a physician's compensation to all the services the physician furnishes, both to patients and the provider, in direct proportion to the amounts of time the physician spends in furnishing each type of service.

In those cases in which a physician who is compensated by a provider for services furnished to it also furnishes physician services to individual patients in the provider, the terms of the provider/physician agreement must indicate whether the physician is compensated by the provider or a related organization for the physician services furnished to individual patients. Related organizations are defined at § 413.17(b) and include entities such as medical schools or physician practice plans. If the physician is compensated by the provider or related organization for these services, the provider or related organization bills the Part B carrier for the services on behalf of the physician. Alternatively, if the physician is not compensated by the provider for those services, the physician may receive his or her payment for physician services furnished to individual patients directly from the Part B carrier on a reasonable charge basis.

Some provider/physician agreements, whether formal or informal, provide that physicians who bill the Part B carrier directly for services furnished to individual patients must return a portion of the realized charge revenue to the provider or the related organization if one is involved. Similarly, other agreements in which the provider bills the Part B carrier on behalf of the physician provide that the provider will retain a portion of the revenue received.

The revenues received by the provider in either of these situations might be utilized by the provider or related organization to defray the costs of medical educational activities, patient care, or nonpatient care related activities, including the costs of services furnished by physicians in these areas. However, if a provider compensates physicians for services to the provider, and claims Part A or Part B cost reimbursement for those services, any portion of physician charge revenue for physician services furnished to individual patients that is returned to or retained by the provider or related organization is treated as a reduction in the provider's allowable compensation costs for physician services to the provider in order to ensure that Medicare reimburses only the actual net cost to the provider for compensation. This would also avoid any duplicate payments by Part A and Part B for the same services.

However, we have determined that our policy governing this type of situation should be stated more clearly in these regulations. While the current regulation at § 405.481(d)(2) is intended to cover this type of situation, it has become apparent that that paragraph does not describe clearly enough the applicable policy for cases in which portions of the payments received from billings for physician services to individual patients are returned to or retained by the provider or an organization related to the provider. We are proposing to revise the regulations to state more clearly how we treat these situations and how the provider's allowable compensation costs are affected.

The proposal is consistent with the statute and with our regulations concerning cost related to patient care (§ 413.9). Under section 1814(b) of the Act, we may not pay more than the reasonable cost of services (under the cost reimbursement system). Section 1861(v)(1)(A) of the Act defines reasonable cost as the cost of services actually incurred by providers in furnishing patient care excluding unnecessary costs. For example, if a provider receives a rebate or discount from a supplier of goods or services, we reimburse the actual costs, net of the discount (see § 413.98). Another example would be that if a provider claims reimbursement for interest expense, generally it must reduce that amount by any investment income (§ 413.153). This provision has been upheld in court as a reasonable way to determine the "net cost" of a provider's borrowing

Similarly, if an employee, including a physician, is compensated for services to the provider and, as a condition of employment, is required to return to the provider part of the payment received for services to individual patients in the provider, this payment serves to reduce the provider's actual incurred costs for compensation. Thus, in determining reasonable costs, we base reimbursement on the net or actual compensation costs incurred. Therefore, we believe that if a hospital, related medical school, or other related organization such as a faculty practice plan compensates a physician for provider services, amounts retained by the hospital or related organization over and above the revenue retained by the physician for services furnished to individual hospital patients should be construed as a reduction in physician compensation costs for services provided by the physician to the hospital or related party, which

effectively reduces the reimbursable cost to the provider.

For example, a hospital may have an agreement with a physician group that provides for the physicians to be compensated by the hospital for administrative and various other services furnished to the provider. Further, the hospital bills fees on behalf of the physician group for the direct patient care services furnished to individual hospital patients by the physicians. The hospital retains a portion of the amounts realized from the fee billings and submits the balance of the receipts to the physician group. As a result of the agreement, under our proposed regulations, the net compensation costs incurred by the hospital for physician services to the provider and those that should be included in the hospital's allowable costs would be calculated as follows. The retained revenue for a physician for services to individual patients would be offset against that physician's compensation (for services to the provider) on the basis of the ratio of the time devoted by that physician in furnishing allowable services to the provider to total time expended by that physician in all categories of service, excluding direct patient care time.

As we discuss below in section V of this preamble, we are proposing to redesignate the regulations governing payment for services of physicians to providers (current §§ 405.480 through 405.482). Therefore, current § 405.481(d)(2) would be redesignated as § 415.60(d)(2). We would delete the second sentence of § 415.60(d)(2) and add a new paragraph (g) to that section to describe our policy concerning allowable provider costs when payments to physicians for services furnished to individual patients are returned to or withheld by the provider or a related organization.

C. Reasonable Compensation Equivalent Limits

As required by section 1887(a)(2)(B) of the Act, allowable compensation for services furnished by physicians to providers that are reimbursed by Medicare on a reasonable cost basis is subject to reasonable compensation equivalent (RCE) limits. Under these limits, reimbursement is determined based on the lower of the actual cost of the services to the provider (that is, the compensation of the physician, whatever the form) or an RCE.

Effective with cost reporting periods beginning on or after October 1, 1983, most hospitals are paid for Part A inpatient services under the prospective payment system. The RCE limits do not apply to care paid for under that system. Effective with cost reporting periods beginning on or after July 1, 1985, the RCE limits do not apply to the costs of direct medical education costs that are paid on the basis of a per resident amount; however, these limits continue to apply to services furnished to providers by physicians as follows:

- In hospitals and units of hospitals not subject to the prospective payment system, the limits apply for both inpatient and outpatient services.
- In hospitals subject to the prospective payment system, the limits apply for outpatient hospital services, and, in teaching hospitals that elect cost reimbursement under section 1861(b)(7) of the Act, the limits also apply for the medical and surgical services of physicians and compensation associated with the supervision of interns and residents.
- In CORFS and in SNFs, the limits apply for all services.

If a physician receives any compensation from a provider for his or her physician services to the provider (that is, those services that benefit patients generally or otherwise are not eligible for reimbursement on the basis of reasonable charges), reasonable cost reimbursement to the provider for the costs of compensation allocated to those services is subject to the RCE limits. The RCE limits are not applied to reimbursement for services that are identifiable medical or surgical services to individual patients and reimbursable on a reasonable charge basis, even if the physician agrees to accept compensation from a provider for those services. However, as described in section II.C.2. of this preamble, reimbursement to teaching hospitals that have elected to be reimbursed for these services on a reasonable cost basis in accordance with section 1861(b)(7) of the Act is subject to the limits. If a physician is compensated only for services to the provider, the RCE limit is applied to reimbursement to the provider for the entire cost of compensating the physician for those services.

On March 2, 1983, we published in the **Federal Register** (48 FR 8902) the RCE limits and the methodology used to calculate those limits that were applicable to cost reporting periods beginning during calendar years 1982 and 1983. As part of that same publication, we issued regulations (§ 405.482) that constitute a general authority to develop, publish, and apply limits.

Specifically, § 405.482(f) provides that before the start of a cost reporting period to which a set of limits will be applied, we must publish a notice in the **Federal Register** that sets forth the limits and explains how they were calculated. If the limits are merely updated by applying the most recent economic index data without revising the methodology, then the revised limits are published without prior publication of a proposal or public comment period. However, if we are revising the methodology by which the limits are established, we publish a notice, with opportunity for public comment, to that effect in the **Federal Register**. The latest notice that updated the RCE limits was published in the **Federal Register** on February 20, 1985 (50 FR 7123) and was effective for cost reporting periods beginning on or after January 1, 1984.

The RCE limits are intended to exert a moderating influence on rapidly increasing costs for physician services that are reimbursed on a reasonable cost basis in provider settings. However, the advent of the hospital prospective payment system has greatly reduced the total amount of physician compensation costs subject to the RCE limits. Thus, the effect of the limits as a cost savings instrument has been significantly reduced.

Although the regulations do not specifically provide for an annual adjustment to the RCE limits, the preamble to the March 2, 1983 final rule, which described the updating process, indicated that the limits would be updated annually (48 FR 8923). In addition, § 405.482(f)(1) requires that the limits be published prior to the cost reporting period to which the limits apply. The importance of updating the RCE limits annually to reflect projected increases in the Consumer Price Index has diminished considerably due to recent changes in the Medicare program. In fact, the 1984 update resulted in an overall increase of only approximately one percent in net physician compensation over the 1983 limits. We believe that publishing annual limits, an administratively burdensome procedure, has become difficult to justify. Therefore, we are proposing to make some changes in current § 405.482.

Since we believe that annual updates to the RCE limits will not always be necessary, we propose to revise current § 405.482(f) to provide that we would review the RCE limits annually and update the limits only if a significant change in the limits is warranted. In addition, we are proposing to revise current § 405.482(f)(1) to state that limits would be published in the **Federal Register** before they could be applied. That paragraph currently states that limits must be published before the start

of the cost reporting period to which they would apply. Once we have published a set of RCE limits, they would remain in effect until new, updated limits are published.

As mentioned above, we are proposing to redesignate the regulations governing payment for services of physicians to providers (current §§ 405.480 through 405.482). Therefore, current § 405.482(f) would be redesignated as § 415.70(f), and the changes we are proposing would be made in that section.

IV. Payment for Consultative Pathology Services Furnished to Patients in Providers

As we have stated several times previously in this document, the services of physicians to individual patients in a provider generally are covered under Part B on a reasonable charge basis. Under the authority of section 1887(a)(1) of the Act, regulations at current § 405.550(b) set forth the criteria that must be met in order for services furnished by physicians in providers to be paid on the basis of reasonable charges. Those criteria are the following:

- The services are personally furnished for an individual patient by a physician.
- The services contribute directly to the diagnosis or treatment of an individual patient.
- The services ordinarily require performance by a physician.

In addition to these three criteria, if the services furnished are anesthesiology, radiology, or laboratory services, additional criteria must be met. Any services furnished by a physician in a provider that do not meet these criteria but that are related to the provision of patient care by the provider are paid for as provider services.

The additional requirements for payment of physician laboratory services on a reasonable charge basis are found in current § 405.556 and are—

- The services are anatomical pathology services;
- The services are performed by a physician in personal administration of test devices, isotopes, or other materials to an individual patient; or
- The services are consultative pathology services that must—

—Be requested by the patient's attending physician;

—Relate to a test result outside the clinically significant normal or expected range in view of the patient's condition;

—Result in a written narrative report included in the patient's medical record; and

—Require the exercise of medical judgment by the consultant physician.

The condition that consultative pathology services must be requested by the patient's attending physician is located in current § 405.556(b)(1). Since October 1983 when these regulations were first implemented, we have allowed a hospital or medical staff to substitute a standing order policy for the individual request by the patient's attending physician. However, after several years of experience, we propose to change this policy for the following reasons:

- Standing orders are generating medically unnecessary consultations that are costly to the program and its beneficiaries.
- Generally, a standing order for a consultation does not meet the acceptable medical standard of care for communication between an attending physician and a consultant since this procedure does not reflect the exercise of medical judgment on the part of the requesting physician.
- Some hospitals and medical staffs have defended the standing order policy on the grounds that it is a type of quality control or a preventive measure to ensure that all diagnostic possibilities are considered. Services furnished by physicians on this basis do not meet the criteria for reasonable charge payment contained in § 405.556(b), notably that the service is specifically requested by the patient's attending physician.

Therefore, we are including in this proposed rule a revision of current § 405.556(b)(1) to require that interpretations of laboratory test results by pathologist must be requested by the individual attending physician and to state that standing orders are not acceptable. In the proposed redesignation of the regulations governing payment for services furnished by physicians to patients in providers (current §§ 405.550 through 405.557), current § 405.556(b)(1) would be redesignated as § 415.130(b)(1), and the changes we are proposing would be made in that section.

V. Redesignation of Regulations on Teaching Hospitals, Teaching Physicians, and Physicians Who Practice in Providers

As a part of this rulemaking process, we are redesignating the regulations currently set forth in §§ 405.465 and 405.466, §§ 405.480 through 405.482, §§ 405.522 through 405.525, and §§ 405.550 through 405.580 into a new Part 415, along with the new regulations proposed in this rule. This redesignation is part of our continuing effort to improve the overall organization of title 42 of the CFR and, in this case, specifically, the organization of the regulations on teaching hospitals, teaching physicians, and physicians who practice in providers. We are making only technical changes, such as changes to conform cross-references, and no substantive changes are included. We intend this redesignation to make these regulations easier to use. Following is a reference table that indicates the new section numbers that would result from the redesignation.

REDESIGNATION TABLE

Old section	New section
405.465	415.162
405.466	415.164
405.480	415.50
405.481	415.60
405.482	415.70
405.522	415.200
405.523	415.202
405.524	415.204
405.525	415.206
405.550	415.100
405.551	415.105
405.552 except (b)	415.110
405.553	415.115
405.552(b) and 405.554	415.120
405.555	415.125
405.556	415.130
405.557	415.135
405.580	415.198

VI. Impact Analysis

A. Executive Order 12291

Executive Order 12291 requires us to prepare and publish an initial regulatory impact analysis for any proposed regulations that would be considered a "major rule". A major rule is one that would 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 any geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

We do not expect this proposed rule to meet any of the criteria for a major rule. Therefore, we have not prepared an initial regulatory impact analysis.

B. Regulatory Flexibility Analysis

Consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), we prepare and publish an initial regulatory flexibility analysis for proposed regulations unless the Secretary certifies that the regulations would not have a significant impact on a

substantial number of small entities. This proposed rule would affect a substantial number of physicians, interns and residents, and teaching hospitals, all of which may be considered small entities, or the employees of small entities, under the RFA. However, we do not believe the effects would be significant.

The provisions of this proposed rule would, in general, have little economic impact. Specifically, we estimate that—

- Eliminating standing orders and requiring that pathologist's reading of the more complex orders be requested by the individual attending physician would result in an annual savings of $1 million;
- Revising the methodology for determining customary charges for teaching physicians would result in a $2 million annual increase in Federal expenditures;
- Deducting any Part B payment to provider-compensated physicians that is returned to or retained by the provider from Part A payments due the provider would result in initial savings of $6 million for the first year and lesser savings each year thereafter, and
- Publication of this proposed rule would serve as the basis for reformulated guidelines to carriers that may result in stricter enforcement of the teaching physician criteria. The lack of data, however, prevents us from quantifying these effects.

Based on these estimates, we have determined, and the Secretary certifies, that these proposed regulations would not have a significant economic impact on a substantial number of small entities. Therefore, we have not prepared an initial regulatory flexibility analysis.

C. Impact on Small Rural Hospitals

Section 1102(b) of the Act requires the Secretary to prepare an initial regulatory impact analysis for proposed regulations that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 50 beds located outside a Metropolitan Statistical Area.

Since we know of no hospitals with fewer than 50 beds located in a rural area that are also teaching hospitals, we have determined that this proposed rule would have no effect on small rural hospitals. Even if there should be one or more small rural hospitals affected by this proposed rule, the effect on the operations of such a hospital is likely to be quite small.

VII. Other Required Information

A. Responses to Public Comments

Because of the large number of items of correspondence we normally receive on proposed regulations, we cannot acknowledge or respond to them individually. However, we will consider all comments that are received by the date and time specified in the "DATE" section of this preamble and, if we proceed with a final rule, we will respond to those comments in the preamble to that rule. We note that we are inviting comments only on proposed new §§ 415.150, 415.152, 415.160, and 415.168 through 415.194, and the proposed revisions to §§ 415.60, 415.70(f), and 415.130(b). Comments are not; invited on the existing regulations that are merely being redesignated with minor stylistic and conforming changes, except that comments are invited with respect to whether we may have inadvertently made a substantive change.

B. Paperwork Reduction Act

Sections 415.60(f) (l) and (h) of this proposed rule contain information collection requirement that have been approved by EOMB under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3511). These collections of information are approved under OMB control number 0938–0285. Sections 415.160(b), 415.162(e)(2)(i), 415.172(b), 415.178(b), 415.182(c), 415.194(c)(2), and 415.194(e) of this proposed rule contain information collection requirements that are subject to review by EOMB under the Paperwork Reduction Act of 1980. As required, we have submitted a copy of this proposed rule to EOMB for its review. Other organizations and individuals who wish to submit comments on these information collection requirements should direct them to the agency official whose name appears in the preamble and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building (Room 3208), Washington, DC 20503, Attn: Allison Herron

C. List of Subjects

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health maintenance organizations (HMO), Health professions, Kidney diseases, Laboratories, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 415

Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

We are proposing to amend 42 CFR Chapter IV as set forth below:

I. The table of contents for Chapter IV is amended by adding a new Part 415 to Subchapter B to read as follows:

CHAPTER IV—HEALTH CARE FINANCING ADMINISTRATION, DEPARTMENT OF HEALTH AND HUMAN SERVICES

* * * * *

SUBCHAPTER B—MEDICARE PROGRAMS

* * * * *

PART 415—SERVICES OF PHYSICIANS, INTERNS, AND RESIDENTS IN PROVIDERS

* * * * *

II. Part 405 is amended as follows:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

Subpart D—[Removed and Reserved]

A. Subpart D, consisting of §§ 405.465 through 405.482, is removed and reserved.

B. Subpart E is amended as follows:

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

Authority: Sections 1102, 1814(b), 1832, 1833(a), 1842 (b) and (h), 1861(v), 1866(a), 1871, 1881, and 1889 of the Social Security Act as amended (42 U.S.C. 1302, 1395f(b), 1395k, 1395l(a), 1395u (b) and (h), 1395x(v), 1395cc(a), 1395hh, 1395rr, and 1395zz).

2. The heading for Subpart E is revised to read as follows:

Subpart E—Criteria for Determination of Reasonable Charges

3. Subpart E is amended by removing §§ 405.520 through 405.525 and 405.550 through 405.580, and the undesignated center heading preceding § 405.550.

III. A new Part 415 is added to read as follows:

PART 415—SERVICES OF PHYSICIANS, INTERNS, AND RESIDENTS IN PROVIDERS

Subpart A—[Reserved]

Subpart B—Services of Physicians to Providers

Sec.

415.50 Payment for services of physicans to providers: General rules.
415.60 Allocation of physician compensation costs.
415.70 Limits on compensation for services of physicians in providers.

Subpart C—Physician Services to Patients in Providers

415.100 Conditions for payment of charges for physician services to patients in providers: General provisions.

Sec.

Subpart D—Physician Services in Teaching Settings

Subpart E—Services of Interns and Residents in Providers

Authority: Secs. 1102, 1832(a), 1833(a), 1842(b), 1861(b), 1862(a)(14), 1871, 1886, and 1887, Social Security Act (42 U.S.C. 1302, 1395k(a), 1395l(a), 1395u(b), 1395x(b), 1395y(a)(14), 1395hh, 1395ww, and 1395xx).

Subpart A—[Reserved]

Subpart B—Services of Physicians to Providers

§ 415.50 Payment for services of physicians to providers: General rules.

(a) *Allowable costs.* Except as specified in § 413.102 of this chapter or Subpart D of this part, costs a provider incurs for services of physcians are allowable only if the following conditions are met:

(1) The services do not meet the conditions in § 415.100(b) regarding reasonable charge reimbursement for services of physicians to an individual patient of a provider.

(2) The services do not include physician availability services, except for reasonable availability services furnished for emergency departments.

(3) The provider has incurred a cost for salary or other compensation it furnished the physician for the services.

(4) The costs incurred by the provider for the services meet the requirements in § 413.9 of this chapter regarding costs related to patient care.

(5) The costs do not include supervision of interns and residents unless the provider elects reasonable cost reimbursement as specified in §415.160.

(b) *Allocation of costs.* In determining its costs of services that meet the conditions for payment in paragraph (a) of this section, the provider must follow the rules in § 415.60 regarding allocation of physician compensation costs.

(c) *Limits on allowable costs.* In determining its payments to a provider for the costs of services that meet the conditions for payment in paragraph (a) of this section, the intermediary must apply the limits on compensation set forth in § 415.70.

§ 415.60 Allocation of physician compensation costs.

(a) *Definition.* For purposes of this subpart, physician compensation costs means monetary payments, fringe benefits, deferred compensation and any other items of value (excluding office space or billing and colletion services) that a provider or other organization furnishes a physician in return for the physician's services. Other organizations are entities related to the provider within the meaning of § 413.17 of this chapter or entities that furnish services for the provider under arrangements as defined in § 409.3 of this chapter.

(b) *General rule on allocation of physician compensation costs.* Except as provided in paragraph (d) of this section, each provider that incurs physician compensation costs must allocate those costs, in proportion to the percentage of total time that is spent in furnishing each category of services, among—

(1) Physician services to the provider (as described in § 415.50);

(2) Physician services to patients (as described in § 415.100); and

(3) Activities of the physician, such as funded research, that are not reimbursable under either Part A or Part B of Medicare.

(c) *Allowable physician compensation costs.* Only costs allocated to reimbursable physician services to the provider (as described in § 415.50) are allowable costs to the provider under this subpart.

(d) *Allocation of all compensation to services to the provider.* The total phsician compensation received by a physician is allocated among all servicers furnished by the physician, unless—

(1) The provider certifies that the compensation is attributable solely to the physician's services to the provider; and

(2) The physician bills all of his or her patients for the physician services he or she furnishes to those patients and personally receives the payment from the billings.

(e) *Assumed allocation of all compensation to patient services.* If the provider and physician agree to accept the assumed allocation of all the physician's services to direct services to individual patients as described under § 415.100(b), a written allocation agreement is not required.

(f) *Determination and payment of allowable physician compensation costs.* (1) Except as provided under paragraph (e) of this section, the intermediary reimburses the provider for these costs only if—

(i) The provider submits to the intermediary a written allocation agreement between the provider and the physician that specifies the respective amounts of time the physician spends in furnishing physician services to the provider, physician services to patients, and services that are not reimbursable under either Part A or Part B of Medicare; and

(ii) The compensation is reasonable in terms of the time devoted to these services.

(2) In the absence of a written allocation agreement, the intermediary assumes, for purposes of determining reasonable costs of the provider, that 100 percent of the physician's compensation cost is allocated to

services to patients as specified in paragraph (b)(2) of this section.

(g) *Physician payments returned to provider or related organization.* (1) If any part of the payment a physician receives for physician services furnished to individual patients is directly or indirectly returned to or retained by the provider or a related organization (as defined in § 413.17(b) of this chapter) under a formal or informal agreement, the provider's aggregate costs of compensation to that physician for services to the provider must be reduced by the amount of payment returned to or retained by the provider or related organization.

(2) To determine the amount of the reduction to provider costs for returned or retained payments for physician services to individual patients, the payments returned or retained are allocated to the various categories of services furnished by the physician on the basis of the relative proportions of time in each category to the total time in all categories. Time expended by a physician furnishing services to individual patients is excluded in allocating the payments.

(h) *Recordkeeping requirements.* Except for services furnished in accordance with the assumed allocation under paragraph (e) of this section, each provider that claims payment for services of physicians under this subpart must—

(1) Maintain the time records or other information it used to allocate physician compensation in a form that permits the information to be validated by the intermediary or the carrier;

(2) Report the information on which the physician compensation allocation is based to the intermediary or the carrier on an annual basis, and promptly notify the intermediary or carrier of any revisions to the compensation allocation; and

(3) Retain each physician compensation allocation, and the information on which it is based, for at least four years after the end of each cost reporting period to which the allocation applies.

§ 415.70 Limits on compensation for services of physicians in providers.

(a) *Principle and scope.* (1) Except as provided in paragraphs (a) (2) and (3) of this section, HCFA establishes reasonable compensation equivalent (RCE) limits on the amount of compensation paid to physicians by providers. These limits are applied to a provider's costs incurred in compensating physicians for services to the provider, as described in § 415.50(a).

(2) Limits established under this section do not apply to costs of physician compensation attributable to furnishing inpatient hospital services that are paid for under the prospective payment system implemented under Part 412 of this chapter.

(3) Compensation that a physician receives for activities that may not be paid for under either Part A or Part B of Medicare is not considered in applying these limits.

(b) *Methodology for establishing limits.* HCFA establishes a methodology for determining reasonable annual compensation equivalents, considering average physician incomes by specialty and type of location, to the extent possible using the best available data.

(c) *Application of limits.* If the level of compensation exceeds the limits established under paragraph (b) of this section, Medicare payment is based on the level established by the limits.

(d) *Adjustment of the limits.* The intermediary may adjust limits established under paragraph (b) of this section to account for costs incurred by the physician or the provider related to malpractice insurance, professional memberships, and continuing medical education.

(1) For the costs of membership in professional societies and continuing medical education, the intermediary may adjust the limit by the lesser of:

(i) The actual cost incurred by the provider or the physician for these activities; or

(ii) Five percent of the appropriate limit.

(2) For the cost of malpractice expenses incurred by either the provider of the physician, the intermediary may adjust the reasonable compensation limit by the cost of the malpractice insurance expense related to the physician's service to provider patients.

(e) *Exception to limits.* An intermediary may grant a provider an exception to the limits established under paragraph (b) of this section only if the provider can demonstrate to the intermediary that it is unable to recruit or maintain an adequate number of physicians at a compensation level within these limits.

(f) *Notification of changes in methodologies and payment limits.* HCFA annually reviews the limits established under this section and updates them if it determines that an update is necessary.

(1) Before limits established under this section are applied, HCFA publishes a notice in the **Federal Register** that sets forth the amount of the limits and explains how the limits were calculated.

(2) If HCFA proposes to revise the methodology by which payment limits under this section are established, HCFA publishes a notice, with opportunity for public comment, to that effect in the **Federal Register**. The notice would explain the proposed basis for setting limits, specify the limits that would result, and state the date of implementation of the limits.

(3) Revised limits updated by applying the most recent economic index data without revision of the limit methodology are published in a notice in the **Federal Register** without prior publication of a proposal or public comment period.

(4) Limits established under paragraph (f)(1) of this section remain in effect until newly updated limits are published.

Subpart C—Physician Services to Patients in Providers

§ 415.100 Conditions for payment of charges for physician services to patients in providers: General provisions.

(a) *Scope.* This section implements section 1887(a)(1) of the Act by providing general conditions that must be met in order for services furnished by physicians in providers to be paid for on the basis of reasonable charges under this subpart. Section 415.105 sets forth general requirements for determining the amounts of payment for services that meet the conditions of this section. Sections 415.110 through 415.135 set forth additional conditions for payment and rules for determining reasonable charges for physician services in the specialities of anesthesiology, radiology, and pathology (laboratory services).

(b) *Conditions for payment for services of physicians to provider patients.* The carrier pays for services of physicians to patients of providers on a reasonable charge basis only if the following requirements are met:

(1) The services are personally furnished for an individual patient by a physician.

(2) The services contribute directly to the diagnosis or treatment of an individual patient.

(3) The services ordinarily require performance by a physician.

(4) In the case of anesthesiology, radiology, or laboratory services, the additional requirements in § 415.110, 415.120, or 415.130 must be met.

(c) *Services of physicians to providers.* If a physician furnishes services in a provider that do not meet the requirements in paragraph (b) of this section but are related to the provision of patient care by the provider, the

intermediary pays for those services, if otherwise covered, under the rules in §§ 415.50 and 415.60 on physician services to providers.

(d) *Effect of billing charges for physician services to a provider* (1) For services performed by a physician that may be reimbursed under the reasonable cost rules in § 415.50 or 415.60 or would be paid under those rules except for the prospective payment rules in Part 412 of this chapter, and under the payment rules for graduate medical education established by section 1886(h) of the Act, neither provider nor physician may seek charge payment from the carrier, beneficiary, or another insurer.

(2) The carrier does not pay on a reasonable charge basis for services furnished by a physician to an individual patient that do not meet the applicable conditions in §§ 415.110, 415.120, and 415.130.

(3) If the physician, the provider, or another entity bills the carrier or the beneficiary for physician services to the provider, as described in § 415.50(a), the provider in which and to which the services were furnished may be considered to have violated its provider participation agreement, and that agreement may be terminated. See Part 489 of this chapter for rules governing provider agreements.

(e) *Effect of physician's assumption of operating costs.* If a physician or other entity enters into an agreement (such as a lease or concession) with a provider, under which the physician (or entity) assumes some or all of the operating costs of the provider department in which the physician furnishes physician services in the provider, the following rules apply:

(1) The carrier makes reasonable charge payments only for a physician's services to an individual patient.

(2) To the extent the provider incurs a cost reimbursable on a reasonable cost basis under Part 413 of this chapter, the intermediary will pay the provider on a reasonable cost basis for the costs associated with producing these services, including overhead, supply, and equipment costs, and services furnished by nonphysician personnel.

(3) The physician (or other entity) is treated as related to the provider within the meaning of § 413.17 of this chapter.

(4) The physician (or other entity) must make its books and records available to the provider and the intermediary as necessary to verify the nature and extent of the costs of the services furnished by the physician (or other entity).

§ 415.105 Reasonable charges for physician services in providers: General provisions.

(a) *Scope.* The carrier determines reasonable charges for physician services to patients in providers in accordance with the general rules governing reasonable charge payment in §§ 405.501 through 405.508 of this chapter, except as provided in this section.

(b) *Application in certain settings*—(1) *Teaching hospitals.* In determining the amount of payment for physician services to individual patients in a teaching hospital, the carrier applies the rules in Subpart D of this part, in addition to those in this section.

(2) *Hospital-based ESRD facilities.* In determining the amount of payment for physician services to individual patients furnished in a hospital-based ESRD facility approved under Subpart U of Part 405 of this chapter, the carrier applies the rules in § 405.542 of this chapter instead of those in this section.

(c) *Customary and prevailing charges for physician services in provider settings.* (1) The carrier calculates customary and prevailing charges for physician services furnished to individual patients in providers, in accordance with the general rules in §§ 405.501 through 405.508 of this chapter, separating, if appropriate, charges for physician services furnished in provider-based practices and physician services furnished in office-based practices.

(2) The carrier applies the appropriate prevailing charge screens in determining reasonable charges for physician services, considering the setting.

(d) *Compensation-related charges.* (1) In developing customary charges for physician services furnished in providers by physicians compensated by the provider or a related organization for those services, the carrier establishes a schedule of charges related to that part of the physician's compensation that is allocated to physician services to individual patients under § 415.60 (In a teaching hospital, compensation-related charges may be based on payments made, to the physician for services furnished to patients in the hospital, by a political subdivision, university, or medical school, irrespectively of whether it is a related organization.) The carrier generally uses the compensation paid to the physician during the hospital's most recently ended cost reporting period for this purpose. If this information is unavailable from the intermediary, the intermediary makes a reasonable estimate of a fair compensation amount based on what is paid for similar services in another hospital.

(2) The carrier develops compensation-related charges on an item-by-item basis, considering the frequency with which the various services are furnished, and the relative values assigned to each service in a relative value study.

(3) The intermediary may pay the provider, for physicians' services to an individual patient, on the basis of a single per diem, per visit, or other time-related rate, if the provider, or the particular department in which the services are furnished, has a uniform all-inclusive rate for services to patients.

(e) *Change of agreements.* For services furnished on or after January 1, 1987, if a physician who has been compensated by or through a provider (or other entity) for physician services to individual patients ends his or her compensation agreement and instead bills all patients, or their insurers, directly for his or her services, the carrier determines the physician's customary charge for a service based on the 50th percentile of the weighted customary charges used to establish the prevailing charge for the service until the carrier has accumulated charge data from at least three months of the 12 month period of July 1 through June 30 preceding the January 1 annual reasonable charge update. However, if a physician terminates a direct billing arrangement and enters into a compensation agreement with a provider, the carrier determines compensation-related customary charges in accordance with paragraph (d) of this section except that during the first year, the total payments made on the basis of the compensation-related charges may not exceed what total payment would have been under the physician's former direct billing practice.

(f) *Rules for certain specialties.* In determining the amount of payment for anesthesiology or radiology services furnished by a physician to an individual patient, the carrier applies the rules in this section and in §§ 415.115 and 415.125 in addition to the general rules governing reasonable charges at §§ 405.501 through 405.508 of this chapter.

§ 415.110 Conditions for payment of charges: Anesthesiology services.

The carrier pays a physician for anesthesiology services furnished to patients in a provider on a reasonable charge basis only if the services meet the conditions for reasonable charge

payment in § 415.100(b) and the following additional conditions are met:

(a) For each patient, the physician—

(1) Performs a pre-anesthetic examination and evaluation;

(2) Prescribes the anesthesia plan;

(3) Personally participates in the most demanding procedures in the anesthesia plan, including induction and emergence;

(4) Ensures that any procedures in the anesthesia plan that he or she does not perform are performed by a qualified individual;

(5) Monitors the course of anesthesia administration at frequent intervals;

(6) Remains physically present and available for immediate diagnosis and treatment of emergencies; and

(7) Provides indicated postanesthesia care.

(b) The physician either performs the procedure directly, without the assistance of an anesthetist, or directs anesthesia procedures (subject to the restriction in § 415.182(a)), and does not perform any other services while he or she is directing the procedures.

§ 415.115 Reasonable charges for anesthesiology services.

(a) *General rule.* In determining reasonable charge payment for anesthesiology services that meet the conditions in § 415.110, the carrier follows the rules in paragraph (b) or (c) of this section.

(b) *Services furnished by the anesthesiologist or by an anesthetist employed by the anesthesiologist.* (1)(i) The provisions of this paragraph apply to anesthesia services furnished by an anesthesiologist without the assistance of an anesthetist or to anesthesia services furnished to hospital outpatients or SNF or CORF patients by an anesthetist who is employed by an anesthesiologist.

(ii) Except as provided in paragraph (b)(4) of this section, anesthesia services furnished to a hospital inpatient by an anesthetist under the medical direction of an anesthesiologist are paid for in accordance with paragraph (c) of this section.

(iii) Except as specified in paragraphs (d) and (e) of this section, if the anesthetist who administers anesthesia under the direction of the anesthesiologist is employed by the anesthesiologist, the carrier determines the amount of payment for the services under the reasonable charge rules for physician services in providers in § 415.105 and the general reasonable charge rules in §§ 405.501 through 405.508 of this chapter.

(2) In determining reasonable charges for these anesthesia services, the carrier allows for no more than one time unit for each 15 minute interval, or fraction thereof, beginning from the time the physician or anesthetist begins to prepare the patient for induction of anesthesia, and ending when the patient may be safely placed under post-operative supervision and the physician or anesthetist is no longer in personal attendance.

(3) If a physician constructs his or her charges using time units of other than 15 minutes, the carrier adjusts the customary and prevailing charge screens to ensure that in a one-hour period the value of four 15-minute intervals is not less than would have been allowed if the entire hour had consisted of intervals of another length, such as five 12-minute intervals or six 10 minute intervals.

(4) The provisions of paragraph (b)(1)(ii) of this section do not apply to inpatient hospital services furnished by an anesthetist employed by a physician if the services are furnished during cost reporting periods beginning on or after October 1, 1984, through any part of a cost reporting period occurring before January 1, 1989.

(c) *Anesthetist not employed by anesthesiologist.* Except as specified in paragraphs (d) and (e) of this section, if the anesthetist who administers anesthesia under the direction of the anesthesiologist is not employed by the anesthesiologist, the carrier determines reasonable charges for the services by allowing no more than one time unit for each 30 minute interval, or fraction thereof, beginning from the time the anesthetist begins to prepare the patient for induction of anesthesia, and ending when the patient may be safely placed under post-operative supervision and the anesthetist is no longer in personal attendance.

(d) *Services furnished by interns and residents.* Reasonable charges for anesthesia services furnished to a hospital inpatient by an intern or resident under the direction of an anesthesiologist are determined as follows:

(1) If an attending physician relationship, as described in § 415.182, is established, the reasonable charges are determined under the provisions of paragraphs (b)(1)(iii) and (b)(2) of this section.

(2) If an attending physician relationship is not established, the reasonable charges are determined as specified in paragraph (c) of this section.

(e) *Supervision of more than four concurrent procedures.* If the physician is involved in furnishing concurrently more than four procedures, or is performing other services while directing the concurrent procedures, the carrier determines reasonable charges for the services by allowing no more than three base units for each procedure and one time unit for each procedure for induction if the physician is physically present at induction.

§ 415.120 Conditions for payment of charges: Radiology services.

(a) *Services to patients.* The carrier pays for radiology services furnished by a physician to an individual patient on a reasonable charge basis only if the services meet the conditions for reasonable charge payment in § 415.100(b) and are identifiable, direct, and discrete diagnostic or therapeutic services to an individual patient, such as interpretation of X-ray plates, angiograms, myelograms, pyelograms, or ultrasound procedures.

(b) *Services to providers.* The carrier does not pay on a reasonable charge basis for physician services to the provider (for example, administrative or supervisory services) or for provider services needed to produce the X-ray films or other items that are interpreted by the radiologist. However, allowable costs for these services are paid to the provider by the intermediary. (See § 415.50 for provider costs, and § 415.100(e)(2) for costs borne by a physician, such as under a lease or concession agreement.)

§ 415.125 Reasonable charges for radiology services.

(a) *General rule.* In determining payment for radiology services that meet the conditions for payment of charges in § 415.120, the carrier follows the rules in paragraph (b) or (c) of this section.

(b) *Services not furnished in providers.* If the services are furnished in a radiologist's office, a freestanding radiology clinic, or any other setting that is not part of a provider, the carrier determines the amount of payment for the services under the general reasonable charge rules in §§ 405.501 through 405.508 of this chapter.

(c) *Services furnished in providers.* If the services are furnished in a hospital radiology department or any other setting that is part of a provider, the following rules apply:

(1) The carrier determines the amount of payment under the reasonable charge rules for physician services in providers in § 415.105 and the general reasonable charge rules in §§ 405.501 through 405.508 of this chapter.

(2) The reasonable charge for a physician's radiology service furnished to a hospital inpatient or furnished in a

provider to a provider patient may not exceed 40 percent of the prevailing charge for a similar service furnished in a nonprovider setting.

§ 415.130 Conditions for payment of charges: Physician laboratory services.

(a) *Physician laboratory services.* The carrier pays for laboratory services furnished by a physician to an individual patient on a reasonable charge basis only if the services meet the conditions for reasonable charge payment in § 415.100(b) and are—

(1) Anatomical pathology services;

(2) Consultative pathology services that meet the requirements in paragraph (b) of this section; or

(3) Services performed by a physician in personal administration of test devices, isotopes, or other materials to an individual patient.

(b) *Consultative pathology services.* For purposes of this section, consultative pathology services must meet the following requirements:

(1) The services must be personally requested by the beneficiary's attending physician and may not be furnished under a standing order.

(2) The services must relate to a test result that lies outside the clinically significant normal or expected range in view of the condition of the patient.

(3) The services must result in a written narrative report included in the beneficiary's medical record.

(4) The services must require the exercise of medical judgment by the consultant physician.

(c) *Independent laboratory services furnished to hospital inpatients.* Laboratory services furnished to a hospital inpatient by an independent laboratory (as defined in § 405.1310(a) of this chapter) are paid on a reasonable charge basis under the provisions of Subpart E of Part 405 of this chapter only if they are physician laboratory services as described in paragraph (a) of this section. Payment for nonphysician services furnished to a hospital inpatient by an independent laboratory is made by the intermediary to the hospital in accordance with Subpart D of Part 405 of this chapter.

§ 415.135 Reasonable charges for physician laboratory services.

The carrier pays for physician laboratory services that meet the conditions for reasonable charge payment in § 415.130(a) under the reasonable charge rules for physician services in providers in § 415.105 and the general reasonable charges rules in §§ 405.501 through 405.508 of this chapter.

Subpart D—Physician Services in Teaching Settings

§ 415.150 General provisions.

(a) *Statutory basis.* This subpart implements sections 1832(a)(2)(B)(i)(II), 1842(b)(7), and 1861(b)(7) of the Act, which provide special rules on payment for the services of physicians in teaching settings.

(b) *Scope.* This subpart sets forth the rules governing payment for the services of physicians in teaching settings and the method under which that payment is made (that is, as a provider service paid on a reasonable cost basis or as a physician service paid on a reasonable charge basis).

§ 415.152 Definitions.

As used in this subpart—

"Billing entity" means any entity that is legally entitled to bill and receive payment in its name for physician services furnished to beneficiaries.

"Charges collected in full or substantial part" means that at least 50 percent of the charged amount is collected except in the case of charges paid under Medicaid, which are considered to have been collected in substantial part, regardless of the actual amount collected.

"Nominal charges" means those charges that are 10 percent or less of the prevailing charge level for similar services in the same locality.

"Teaching hospital" means a hospital engaged in a residency program in medicine, osteopathy, dentistry, or podiatry that is approved by one of the national accrediting bodies set forth in § 415.200(a).

"Teaching physician" means a physician who is compensated by a hospital, medical school, other affiliated entity, or professional practice plan for physician services furnished to patients, and who generally involves interns or residents in patient care.

§ 415.160 Election of reasonable cost reimbursement for physician services in teaching hospitals.

(a) *Condition for election.* A teaching hospital may elect to be paid on a reasonable cost basis for physician services furnished to beneficiaries in lieu of any payment that might otherwise be made on a reasonable charge basis for those services if all physicians who furnish services to beneficiaries in the hospital agree not to bill charges for those services.

(b) *Procedure for making election.* If a teaching hospital wants to elect reasonable cost payment for physician services furnished to beneficiaries, it must notify its intermediary in writing that—

(1) It is making this election; and

(2) It meets the condition set forth in paragraph (a) of this section.

(c) *Effect of election.* If a teaching hospital elects to receive reasonable cost reimbursement for physician medical and surgical services furnished to beneficiaries, those services and the supervision of interns and residents in the care of individual patients are covered as hospital services and the intermediary pays the hospital for those services on a reasonable cost basis under the rules in § 415.162. (Payment for other physician compensation costs related to approved graduate medical education programs is made as described in § 413.85 of this chapter.) If the teaching hospital does not make this election, payment for physician services furnished to beneficiaries is made on a reasonable charge basis as described in § 415.190, and payment for the supervision of interns and residents is made as described in § 413.85.

§ 415.162 Determining reimbursement for physician services furnished to beneficiaries in teaching hospitals.

(a) *General.* Payments for services of physicians furnished to beneficiaries and supervision of interns and residents in the care of individual patients is made by Medicare on the basis of reasonable cost if the hospital exercises the election as provided for in § 415.160. If this election is made—

(1) Physician services furnished to beneficiaries and supervision of interns and residents in the care of individual patients are reimbursable-cost basis, as provided for in paragraph (b) of this section;

(2) Reimbursement for certain medical school costs may be made as provided for in paragraph (c) of this section; and

(3) Payments for services donated by volunteer physicians to beneficiaries are made to a fund designated by the organized medical staff of the teaching hospital or medical school as provided for in paragraph (d) of this section.

(b) *Reasonable cost of physician services furnished to beneficiaries and supervision of interns and residents in the care of individual patients in a teaching hospital.* Physician services furnished to beneficiaries and supervision of interns and residents in the case of individual patients, in a teaching hospital are reimbursable as provider services on a reasonable-cost basis. For purposes of this paragraph, reasonable cost is defined as the direct salary paid to these physicians, plus applicable fringe benefits. The costs

must be allocated to the services as provided by paragraph (j) of this section and apportioned to program beneficiaries as provided by paragraph (g) of this section. Other allowable costs incurred by the provider related to the services described in this paragraph are reimbursable subject to the requirements applicable to all other provider services.

(c) *Reasonable costs incurred by a teaching hospital for the services furnished by a medical school or related organization in a hospital.* An amount not in excess of the reasonable cost (as defined in paragraphs (c)(1) and (2) of this section) incurred by a teaching hospital for services furnished by a medical school or organization related thereto within the meaning of § 413.17 of this chapter for certain costs to the medical school (or such related organization) in furnishing services in the hospital are reimbursable to the hospital by the health insurance program provided that the costs would be reimbursable if incurred directly by the hospital rather than under such arrangement.

(1) *Reasonable costs of physician services furnished to beneficiaries and supervision of interns and residents in the care of individual patients in a teaching hospital by physicians on the faculty of a medical school or organization related to the medical school.* (i) If the medical school (or organization related to the medical school) and the hospital are related by common ownership or control as described in § 413.17 of this chapter, the cost of such services are allowable costs to the hospital under the provisions of § 413.17 of this chapter and the reimbursable costs to the hospital are determined under the provisions of this section in the same manner as the costs incurred for physicians on the hospital staff and without regard to payments made to the medical school by the hospital.

(ii) If the medical school and the hospital are not related organizations under the provisions of § 413.17 of this chapter and the hospital makes payment to the medical school for the costs of such services furnished to all patients, reimbursement is made by Medicare to the hospital for the reasonable cost incurred by the hospital for its payments to the medical school for services furnished to beneficiaries. Costs incurred under such an arrangement must be allocated to the full range of services provided to the hospital by the medical school physicians on the same basis as provided for under paragraph (j) of this section and costs so allocated to direct medical and surgical services furnished to hospital patients must be apportioned to beneficiaries as provided for under paragraph (g) of this section. If the medical school and the hospital are not related organizations under the provisions of § 413.17 of this chapter and the hospital makes payment to the medical school only for the costs of such services furnished to beneficiaries costs of the medical school not to exceed 105 percent of the sum of physicians' direct salaries, applicable fringe benefits, employer's portion of FICA taxes, federal and state unemployment taxes, and workmen's compensation paid by the medical school or an organization related thereto may be recognized as allowable cost of the medical school. These allowable medical school costs must be allocated to the full range of services furnished by the physicians of the medical school or organization related thereto as provided by paragraph (j) of this section. Costs so allocated to direct medical and surgical services furnished to hospital patients must be apportioned to beneficiaries as provided by paragraph (g) of this section.

(2) *Reasonable costs of other than physician services furnished to beneficiaries and supervision of interns and residents in the care of individual patients in a teaching hospital by medical school faculty (or organization related to the medical school).* These costs are determined in accordance with paragraph (c)(1) of this section except that—

(i) If the hospital makes payment to the medical school for other than physician services furnished to beneficiaries and supervision of interns and residents in the care of individual patients, these payments are subject to the required cost-finding and apportionment methods applicable to the cost of other hospital services (excepting direct medical and surgical services furnished to patients); or (ii) If the hospital makes payment to the medical school only for these services furnished to beneficiaries; then the cost of services that are so reimbursed are not subject to cost-finding and apportionment as otherwise provided by this subpart and the reasonable cost reimbursed by Medicare must be determined on the basis of the health insurance ratio(s) used in the apportionment of all other provider costs (excepting physicians' direct medical and surgical services furnished to patients) applied to the allowable medical school costs incurred by the medical school for the services furnished to all patients of the hospital.

(d) *"Salary Equivalent" payments for physicians' direct medical and surgical services furnished to beneficiaries in a teaching hospital by physicians on the voluntary staff of the hospital (or medical school or organization related thereto under arrangement with the hospital).*

(1) Payments are made to a fund as defined in § 415.164 for direct medical and surgical services furnished on a regularly scheduled basis by physicians on the unpaid voluntary medical staff of the hospital (or medical school under arrangement with the hospital) to beneficiaries. These payments represent compensation for contributed medical staff time which, if not contributed, would have to be obtained through employed staff on a reimbursable basis. Payments for volunteer services are determined by applying to the regularly scheduled contributed time an hourly rate not to exceed the equivalent of the average direct salary (exclusive of fringe benefits) paid to all full-time, salaried physicians (other than interns and residents) on the hospital staff or, if the number of full-time salaried physicians is minimal in absolute terms or in relation to the number of physicians on the voluntary staff, to physicians at like institutions in the area. This "salary equivalent" is a single hourly rate covering all physicians regardless of specialty, and is applied to the actual regularly scheduled time contributed by the physicians in furnishing direct medical and surgical services to beneficiaries including supervision of interns and residents in such care. A physician who receives any compensation from the hospital or a medical school related to the hospital by common ownership or control (within the meaning of § 413.17 of this chapter), for direct medical and surgical services furnished to any patient in the hospital is not considered an unpaid voluntary physician for purposes of this paragraph. If, however, a physician receives compensation from the hospital or related medical school or organization related thereto for only services that are other than direct medical and surgical services, a salary equivalent payment for his or her regularly scheduled direct medical and surgical services to beneficiaries of the hospital may be imputed. However, the sum of the imputed value for volunteer services and his or her actual compensation from the hospital and the related medical school (or organization related thereto) may not exceed the amount that would have been imputed if all of the physician's hospital and medical school services (compensated

and volunteer) had been (i) volunteer services, or (ii) at the rate of $30,000 per year, whichever is less.

(2) The following examples illustrate how the allowable imputed value for volunteer services is determined. In each example, it has been assumed that the average salary equivalent hourly rate is equal to the hourly rate for the individual physician's compensated services.

Example No. 1. Dr. Jones received $3,000 a year from Hospital X for services other than direct medical services to all patients, for example utilization review and administrative services. Dr. Jones also voluntarily furnished direct medical services to beneficiaries. The imputed value of the volunteer services amounted to $10,000 for the cost-reporting period. The full imputed value of Dr. Jones' volunteer direct medical services would be allowed since the total amount of the imputed value ($10,000) and the compensated services ($3,000) does not exceed $30,000.

Example No. 2. Dr. Smith received $25,000 from Hospital X for services as a department head in a teaching hospital. Dr. Smith also voluntarily furnished direct medical services to beneficiaries. The imputed value of the volunteer services amounted to $10,000. Only $5,000 of the imputed value of volunteer services would be allowed since the total amount of the imputed value ($10,000) and the compensated services ($25,000) exceeds the $30,000 maximum amount allowable for all Dr. Smith's services.

Computation:	
Maximum amount allowable for all services performed by Dr. Smith for purposes of this computation	$30,000
Less compensation received from hospital X for other than direct medical services to individual patients	$25,000
Allowable amount of imputed value for the volunteer services furnished by Dr. Smith	$5,000

Example No. 3. Dr. Brown is not compensated by Hospital X for any services furnished in the hospital. Dr. Brown voluntarily furnished direct surgical services to beneficiaries for a period of six months and the imputed value of these services amounted to $20,000. The allowable amount of the imputed value for volunteer services furnished by Dr. Brown would be limited to $15,000 ($30,000 × 6/12).

(3) The amount of the imputed value for volunteer services applicable to beneficiaries and payable to a fund is determined in accordance with the Aggregate Per Diem Method described in paragraph (g) of this section.

(4) Medicare payments to a fund must be used by the fund solely for improvement of care of hospital patients or for educational or charitable purposes (which may include but are not limited to medical and other scientific research). No personal financial gain, either direct or indirect, from benefits of the fund may inure to any of the hospital staff physicians, medical school faculty, or physicians for whom Medicare imputes costs for purposes of payment into the fund. Expenses met from contributions made to the hospital from such a fund are not included as a reimbursable cost when expended by the hospital, and depreciation expense is not allowed with respect to equipment or facilities donated to the hospital by such a fund or purchased by the hospital from monies in such a fund.

(e) *Requirements for reimbursement for physicians' direct medical and surgical services (including supervision of interns and residents) in the care of individual patients furnished in a teaching hospital—*

(1) *Physicians on the hospital staff.* The requirements under which the costs of physicians' direct medical and surgical services (including supervision of interns and residents) in the care of individual patients furnished to beneficiaries are allowed are the same as those applicable to the cost of all other covered provider services except that the costs of these services are separately determined as provided by this section and are not subject to cost-finding as described in § 413.24 of this chapter.

(2) *Physicians on the medical school faculty.* Reimbursement is made to a hospital for the costs of services of physicians on the medical school faculty, provided that if the medical school is not related to the hospital (within the meaning of § 413.17 of this chapter), the hospital does not make payment to the medical school for services furnished to all patients and the following requirements are met: If the hospital makes payment to the medical school for services rendered to all patients, these requirements do not apply (see paragraph (c)(1)(ii) of this section).)

(i) There is a written agreement between the hospital and the medical school or organization related thereto, specifying the types and extent of services to be furnished by the medical school and specifying that the hospital must pay to the medical school an amount at least equal to the reasonable cost (as defined in paragraph (c) of this section) of providing such services to beneficiaries.

(ii) The costs are paid to the medical school by the hospital no later than the date on which the cost report covering the period in which the services were furnished is due.

(iii) Payment for the services furnished under such an arrangement would have been made to the hospital had such services been furnished directly by the hospital.

(3) *Physicians on the voluntary staff of the hospital (or medical school under arrangement with the hospital).* Payments are made on a "salary equivlant" basis (as defined in paragraph (d) of this section) to a fund if the conditions outlined in § 415.164 are met.

(f) *Requirements for reimbursement for medical school faculty services other than physicians' direct medical and surgical services furnished in a teaching hospital.* Reimbursement is made to a hospital for the costs of medical school faculty services other than physicians' direct medical and surgical services furnished in a teaching hospital where the requirements described in paragraph (e) of this section are met.

(g) *Aggregate per diem methods of apportionment for physicians' direct medical and surgical services (including supervision of interns and residents) in the care of individual patients, furnished in a teaching hospital—*

(1) *Aggregate per diem method of apportionment for the costs of physicians' direct medical and surgical services (including supervision of interns and residents) in the care of individual patients.* The cost of physicians' direct medical and surgical services furnished in a teaching hospital to beneficiaries is determined on the basis of an average cost per diem as defined in paragraph (h)(1) of this section for physicians' direct medical and surgical services to all patients (see §§ 415.172 through 415.182) for each of the following categories of physicians:

(i) Physicians on the hospital staff.

(ii) Physicians on the medical school faculty.

(2) *Aggregate per diem method of apportionment for the imputed value of physicians' volunteer direct medical and surgical services.* The imputed value of physicians' direct medical and surgical services furnished beneficiaries in a teaching hospital is determined on the basis of an average per diem, as defined in paragraph (h)(1) of this section, for physicians' direct medical and surgical services to all patients

except that the average per diem is derived from the imputed value of the physician volunteer direct medical and surgical services furnished to all patients.

(h) *Definitions*—(1) *Average cost per diem for physicians' direct medical and surgical services (including supervision of interns and residents) furnished in a teaching hospital.* Average cost per diem for physicians' direct medical and surgical services furnished in a teaching hospital to patients in each category of physicians' services as described in paragraphs (g)(1) (i) and (ii) of this section means the amount computed by dividing total reasonable costs of these services in each category by the sum of—

(i) Inpatient days (as defined in paragraph (h)(2) of this section); and

(ii) Outpatient visit days (as defined in paragraph (h)(3) of this section).

(2) *Inpatient days.* Inpatient days are determined by counting the day of admission as 3.5 days and each day subsequent to a patient's day of admission except the day of discharge, as one day.

(3) *Outpatient visit days.* Outpatient visit days are determined by counting only one visit day for each calendar day that a patient visits the outpatient department.

(i) *Application.* (1) The following illustrates how apportionment based on the Aggregate Per Diem Method for cost of physicians' direct medical and surgical services furnished in a teaching hospital to patients is determined.

Teaching Hospital Y

Statistical and financial data:	
Total inpatient days as defined in paragraph (h)(2) of this section and outpatient visit days as defined in paragraph (h)(3) of this section	75,000
Total inpatient part A days applicable to beneficiaries	20,000
Total inpatient part B days applicable to beneficiaries where part A coverage is not available	1,000
Total inpatient part B visit days applicable to beneficiaries	5,000
Total cost of direct medical and surgical services furnished to all patients by physicians on the hospital staff as determined in accordance with paragraph (i) of this section	$1,500,000
Total cost of direct medical and surgical services furnished to all patients by physicians on the medical school faculty as determined in accordance with paragraph (i) of this section	$1,650,000
Computation of cost applicable to program for physicians on the hospital staff:	
Average cost per diem for direct medical and surgical services to patients by physicians on the hospital staff: $1,500,000 ÷ 75,000 = $20 per diem.	
Cost of physicians' direct medical and surgical services furnished to inpatient beneficiaries covered under part A: $20 per diem × 20,000	$400,000
Cost of physicians' direct medical and surgical services furnished to inpatient beneficiaries covered under part B: $20 per diem × 1,000	$20,000
Cost of physicians' direct medical and surgical services furnished to outpatient beneficiaries covered under part B: $20 per diem × 5,000	$100,000
Computation of cost applicable to program for physicians on the medical school faculty:	
Average Cost per diem for direct medical and surgical services to patients by physicians on the medical school faculty: $1,650,000 ÷ 75,000 = $22 per diem.	
Cost of physicians' direct medical and surgical services furnished to inpatient beneficiaries covered under part A: $22 per diem × 20,000	$440,000
Cost of physicians' direct medical and surgical services furnished to inpatient beneficiaries covered under part B: $20 per diem × 1,000	$22,000
Cost of physicians' direct medical and surgical services furnished to outpatient beneficiaries covered under part B: $22 per diem × 5,000	$110,000

(2) The following illustrates how the imputed value of physicians' volunteer direct medical and surgical services furnished in a teaching hospital applicable to beneficiaries is determined.

Example: The physicians on the medical staff of Teaching Hospital Y donated a total of 5,000 hours in furnishing direct medical and surgical services to patients of the hospital during a cost-reporting period and did not receive any compensation from either the hospital or the medical school. Also, the imputed value for any physicians' volunteer services did not exceed the rate of $30,000 per year per physician.

Statistical and financial data:	
Total salaries paid to the full-time salaried physicians by the hospital (excluding interns and residents)	$800,000
Total physicians who were paid for an average of 40 hours per week or 2,080 (52 weeks × 40 hours per week) hours per year	20
Average hourly rate equivalent: $800,000 ÷ 41,600 (2,080 × 20)	$19.23
Computation of total imputed value of physicians' volunteer services applicable to all patients:	
(Total donated hours × average hourly rate equivalent): 5,000 × $19.23	$96,150
Total inpatient days (as defined in paragraph (h)(2) of this section) and outpatient visit days (as defined in paragraph (h)(3) of this section)	75,000
Total inpatient part A days applicable to beneficiaries	20,000
Total inpatient part B days applicable to beneficiaries where part A coverage is not available	1,000
Total outpatient part B visit days applicable to beneficiaries	5,000
Computation of imputed value of physicians' volunteer direct medical and surgical services applicable to beneficiaries:	
Average per diem for physicians' direct medical and surgical services to patients: $96,150 ÷ 75,000=$1.28 per diem.	
Imputed value of physicians' direct medical and surgical services furnished to inpatient beneficiaries covered under part A: $1.28 per diem × 20,000	25,600
Imputed value of physicians' direct medical and surgical services furnished to inpatient beneficiaries covered under part B: $1.28 per diem × 1,000	1,280
Imputed value of physicians' direct medical and surgical services furnished to outpatient beneficiaries covered under part B: $1.28 per diem × 5,000	$6,400
Total	$33,280

(j) *Allocation of compensation paid to physicians in a teaching hospital.* In determining reasonable cost under this section, the compensation paid by a teaching hospital, or a medical school or related organization under arrangement with the hospital, to physicians in a teaching hospital must be allocated to the full range of services implicit in the physicians' compensation arrangements. (However, see paragraph (d) of this section for the computation of the "salary equivalent" payments for volunteer services furnished to patients.) This allocation must be made and must be capable of substantiation on the basis of the proportion of each physician's time spent in furnishing each type of service to the hospital or medical school.

§ 415.164 Payment to a fund.

(a) *General.* Payment for certain voluntary services by physicians in teaching hospitals (as these services are described in § 415.160) is made on a salary equivalent basis (as described in § 415.162(d) subject to the conditions and limitations contained in Parts 405 and 413 of this chapter and this Part 415, to a single fund (as defined in paragraph (b) of this section) designated by the organized medical staff of the hospital (or, if the services are furnished in the hospital by the faculty of a medical

school, to a fund as may be designated by the faculty), if—

(1) The hospital (or medical school furnishing the services under arrangement with the hospital) incurs no actual cost in furnishing the services;

(2) The hospital has an agreement with HCFA under Part 489 of this chapter; and

(3) The intermediary, or HCFA as appropriate, has received written assurances that—

(i) The payment if used solely for the improvement of care of hospital patients or for educational or charitable purposes; and

(ii) Neither the individuals who are furnished the services nor any other persons are charged for the services (and if charged, provision is made for the return of any monies incorrectly collected).

(b) *Definition of a fund.* For purposes of paragraph (a) of this section, a fund is an organization that meets either of the following requirements:

(1) The organization has and retains exemption, as a governmental entity or under section 501(c)(3) of the Internal Revenue Code (nonprofit educational, charitable, and similar organizations), from Federal taxation.

(2) The organization is an organization of physicians who, under the terms of their employment by an entity that meets the requirements of paragraph (b)(1) of this section, are required to turn over to that entity all income that the physician organization derives from the physicians' services.

(c) *Status of a fund.* A fund approved for payment under paragraph (a) of this section has all the rights and responsibilities of a provider under Medicare except that it does not enter into an agreement with HCFA under Part 489 of this chapter.

§ 415.170 Conditions for payment on a reasonable charge basis for physician services in a teaching setting.

(a) *General rule.* The manner in which the carrier calculates the reasonable charge for physician services furnished to beneficiaries in a teaching setting depends on which of the following conditions are met.

(b) *Degree of physician involvement.* The physician furnishes sufficient personal and identifiable physician services to the patient to exercise full, personal control over the management of the portion of the case for which payment is sought, as evidenced by the physician's compliance with the attending physician requirements in §§ 415.172 through 415.174 or—

(1) In the case of psychiatry services, the physician requirements in § 415.176;

(2) In the case of services furnished in an emergency room or in a family practice program in a hospital outpatient department, the physician requirements in § 415.178;

(3) In the case of renal dialysis services, the physician requirements in § 415.180;

(4) In the case of anesthesiology services, the physician requirements in § 415.182; and

(5) In the case of radiology, physician laboratory services, and consultative services, the physician requirements in § 415.184;

(c) *Character of physician services.* The physician's services to beneficiaries are of the same character as the services the physician furnishes to patients not entitled to benefits under Medicare.

(d) *Fee collection.* During the specified fee collection period, at least 25 percent of the hospital's patients who were not entitled to benefits under Medicare and who received physician services of the type described in paragraphs (b) and (c) of this section paid all or a substantial part of the charges (other than nominal charges) imposed for those services. For purposes of determining whether a hospital meets this condition, the following rules apply:

(1) The fee collection period for a hospital may be any 60-day period specified by the carrier that ended at least 120 days before the start of the cost reporting period in which the physician services for which payment is claimed under this section were furnished.

(2) All patients who are entitled to Medicare Part B, regardless of whether they also have private insurance or are dually entitled to Medicaid, are considered to be patients entitled to benefits under Medicare. For purposes of this paragraph (d), all other patients are considered to be patients not entitled to Medicare.

(3) During its fee collection period, at least 25 percent of the hospital's patients who were not entitled to benefits under Medicare paid at least 50 percent of the amounts billed for physician services or had physician services' paid for under—

(i) Medicaid; or

(ii) A private insurance plan that pays amounts for physician services that are—

(A) Accepted as payment in full by entities legally entitled to bill for physician services in the hospital; or

(B) At least 50 percent of the amounts billed for those services.

§ 415.172 Attending physician requirements: Entire hospital stay.

(a) *Requirements.* Except as specified in §§ 415.176 through 415.184, to qualify as a beneficiary's attending physician for the beneficiary's entire hospital stay, a physician must—

(1) Review the beneficiary's medical history, physical examination, and record of tests and therapies in the hospital;

(2) Personally examine the beneficiary within a reasonable period after admission;

(3) Personally examine the beneficiary on a regular basis during the hospital stay;

(4) Make the admission diagnosis or, if another physician admitted the beneficiary to the hospital, confirm or revise the admission diagnosis;

(5) Determine the course of treatment to be followed;

(6) Be recognized by the beneficiary as his or her personal physician;

(7) Assume responsibility for the continuity of the beneficiary's care;

(8) When a surgical procedure or a dangerous or complex medical procedure is performed, be ready to furnish any service that would be furnished by the beneficiary's personal physician in a nonteaching hospital;

(9) Personally direct interns or residents who furnish services to the beneficiary and assure that these services are appropriate; and

(10) Be expected by the beneficiary to furnish, or arrange for others to furnish, any care the beneficiary may require immediately after he or she is discharged from the hospital.

(b) *Documentation.* At a minimum, the patient's medical record must be annotated as follows to document the attending physician requirements set forth in paragraph (a) of this section:

(1) The medical record must contain signed or countersigned notes by the physician that shows that he or she personally—

(i) Reviewed the beneficiary's medical history;

(ii) Performed a physical examination;

(iii) Confirmed or revised the diagnosis;

(iv) Visited the beneficiary during the more critical period of illness; and

(v) Discharged the beneficiary.

(2) With respect to other services, the medical record must contain a notation made by an intern, resident, or nurse that indicates that the physician was physically present when the required service was furnished.

§ 415.174 Attending physician requirements: Discrete part of hospital stay.

(a) Except as specified in §§ 415.176 through 415.182, a physician may qualify as a beneficiary's attending physician

for a part of a hospital stay if that part of the stay—

(1) Constitutes a distinct segment of the beneficiary's course of treatment; and

(2) Is long enough to require the physician to assume a substantial responsibility for the continuity of the beneficiary's care.

(b) To qualify as a beneficiary's attending physician for a part of a hospital stay that does not include the date the beneficiary is admitted to the hospital, the physician must meet all the requirements in § 415.172 except the personal examination requirement in § 415.172(a)(2).

(c) To qualify as a beneficiary's attending physician for a part of a hospital stay that does not include the date the beneficiary is discharged from the hospital, the physician must meet the requirements in § 415.172 except the care after discharge requirement in § 415.172(a)(10).

§ 415.176 Special attending physician requirements: Psychiatry services.

To qualify as a beneficiary's attending physician for psychiatry services, a physician must meet the requirements in § 415.172 (a)(1), (a)(2), (a)(3), (a)(4), (a)(5), (a)(7), (a)(9), (b)(1), and (b)(2).

§ 415.178 Special attending physician requirements: Outpatient services.

(a) To qualify as a beneficiary's attending physician for physician services furnished in an outpatient setting, including an emergency department or a family practice program in a hospital outpatient department, the physician must—

(1) Direct interns or residents who furnish services to the beneficiary from such proximity as to constitute immediate availability;

(2) Assure that these services are appropriate; and

(3) Review the beneficiary's medical history, physical examination, and record of tests and therapies that are received in the hospital outpatient department.

(b) Documentation must include notes signed by the physician that reflect the extent of his participation in services furnished.

§ 415.180 Special attending physician requirements: Renal dialysis services.

To qualify as a beneficiary's attending physician for renal dialysis services, physicians who are not reimbursed under the physician monthly capitation payment method (as described in § 405.542(c) of this chapter) must meet all the requirements of § 415.172 or § 415.174, as applicable.

§ 415.182 Special attending physician requirements: Anesthesiology services.

(a) *General rule.* The anesthesiology services must be performed by a physician who furnishes services that meet the conditions for charge payment set forth in § 415.110. An attending physician relationship may be recognized if an anesthesiologist—

(1) Directs no more than two interns or residents concurrently; or

(2) Directs an intern or resident and concurrently directs no more than one certified registered nurse anesthetist or other qualified individual.

(b) *Documentation.* Documentation must indicate the physician's presence or participation in the administration of the anesthesia and a pre-operative and a post-operative visit by the physician.

§ 415.184 Requirements for radiology, physician laboratory, and consultative services

(a) *Radiology and physician laboratory services.* The radiology or physician laboratory services must be performed by a physician and meet the conditions for charge payment set forth and described in § 415.100(b). Documentation must indicate that the physician performed the services.

(b) *Consultative services.* (1) For purposes of this paragraph, "consultative services" means services (other than consultative pathology services) a physician furnishes to a beneficiary at the request of the beneficiary's attending physician, including history taking, examination of the beneficiary and the beneficiary's medical record, and furnishing the attending physician, for inclusion in the beneficiary's medical record, a written opinion concerning diagnosis or treatment.

(2) Consultative services must—

(i) Be ordered by the beneficiary's attending physician;

(ii) Be personally performed by the consulting physician, or by interns or residents under the personal direction of the consulting physician; and

(iii) Be documented by including the name of the referring physician in the medical records.

§ 415.190 Payment on a reasonable charge basis for physician services in a teaching setting.

(a) *Teaching hospitals.* If a teaching hospital does not elect to receive payment on a reasonable cost basis for physician services furnished to beneficiaries, the following rules, subject to the limits in § 405.502(f)(4) of this chapter and § 415.125(c)(2), apply:

(1) If the physician services meet the conditions for charge payment set forth in § 415.170 (b) and (c) but the hospital does not meet the condition in § 415.170(d), payment is made as follows:

(i) A physician who is compensated by a hospital, medical school, other affiliated entity, or professional practice plan for physician services furnished to patients is paid under the compensation-related charge rules set forth in Subparts B and C of this part.

(ii) A physician who is not compensated as described in paragraph (a)(1)(i) of this section is paid under the general reasonable charge rules set forth in §§ 405.501 through 405.508 of this chapter and Subpart C of this part.

(2) If all the conditions set forth § 415.170 are met, payment is made as follows:

(i) If the physician is not a teaching physician, as described in § 415.152, payment is made as described in (a)(1) of this section.

(ii) If the physician is a teaching physician, as described in § 415.152, payment is made under—

(A) The compensation-related charge rules set forth in Subparts B and C of this part if the physician so elects; or

(B) The special customary charge rules set forth in §§ 415.192 and 415.194.

(b) *Other providers using interns and residents.* Physician services that meet the conditions for charge payment in § 415.170 (b) and (c) and are furnished in providers that are not teaching hospitals as defined in § 415.152 but that use interns and residents to furnish care to their patients are paid under the following rules:

(1) A physician furnishing services who is compensated for them by the provider or another organization is paid under the compensation-related charge rules in Subparts B and C of this part.

(2) A physician furnishing services who is not compensated for them by the provider or another organization is paid under the general reasonable charge rules in §§ 405.501 through 405.508 and Subpart C of this part.

§ 415.192 Determination of the customary charge for the services of teaching physicians.

(a) *Basis of determination.* Except as specified in § 415.194, if a teaching hospital, its physicians, or another appropriate billing entity (see § 415.152) has established one or more schedules of charges that are collected for medical and surgical services, the customary charges for the physician services that a teaching physician furnishes in that hospital or affiliated entities are based on the greatest of—

(1) The charges (other than nominal charges) that are most frequently collected in full or substantial part for services to patients who are not entitled to benefits under Medicare and who were furnished services of the type described in § 415.170 (a) and (b);

(2) The mean of the charges (other than nominal charges) that are collected in full or substantial part for services to patients who are not entitled to benefits under Medicare and who were furnished services of the type described in § 415.170 (a) and (b); or

(3) Eighty-five percent of the prevailing charges paid for similar services in the same locality.

(b) *Evidence requirement.* Unless the billing entity provides evidence satisfactory to its carrier supporting a higher customary charge under the rules in paragraph (a)(1) or (a)(2) of this section, the customary charge is based on paragraph (a)(3) of this section.

§ 415.194 Determination of the customary charge if all teaching physicians agree to accept assignment.

(a) *General rule.* If all the teaching physicians in a teaching hospital agree to accept assignment as described in § 405.1675 of this chapter or under the procedure described in § 405.1684 of this chapter for all covered physician services they furnish in the hospital, the customary charge is set at 90 percent of the prevailing charge paid for similar services in the same locality.

(b) *Execution of the agreement.* The agreement to accept assignment must be executed by—

(1) The teaching physician for those physician services for which the teaching physician bills in his or her own name; and

(2) The hospital, medical group, or other entity authorized by the physician to accept assignment on his or her behalf for those physician services for which the entity bills in its name.

(c) *Notification of the carrier by the hospital.* To establish that the requirements for payment in accordance with paragraph (a) of this section are met, the hospital must file a statement with the carrier having jurisdiction of the claims for the services of the teaching physicians that—

(1) Certifies that all agreements stipulated by paragraph (a) of this section are on file in the hospital and are available for inspection by HCFA or the carrier; and

(2) Agrees to notify the carrier immediately if—

(i) Any teaching physician that has executed an agreement to accept assignment and has staff privileges in the hospital has submitted to the hospital a written request for termination of the agreement; or

(ii) Any teaching physician has furnished covered physician services in the hospital that are not covered by an agreement to accept assignments; for example, a new physician or medical group begins to furnish services in the hospital and fails to execute such an agreement.

(d) *Notification by the carrier and effective date of the agreement.* As soon as practicable after receiving the hospital's statement described in paragraph (c) of this section, the carrier notifies the hospital that the agreement is effective on the 20th day after the date of the carrier's notice to the hospital.

(e) *Voluntary termination of the agreement*—(1) *Basis for termination.* The agreement to accept assignment under paragraph (a) of this section terminates if the hospital notifies the carrier in writing that—

(i) A teaching physician that has staff privileges in the hospital has requested termination of the physician's or entity's agreement;

(ii) A teaching physician has furnished covered physician services that are not covered by an agreement to accept assignment; or

(iii) The hospital wishes to terminate its agreement with respect to those physicians for which the hospital bills in its name.

(2) *Notification by the carrier and effective date of termination.* As soon as practicable after receiving the hospital's notice described in paragraph (e)(1) of this section, the carrier notifies the hospital that its agreement is terminated effective on the 20th day after the date of the carrier's notice to the hospital.

(3) *Limitation on reentrance into an agreement.* Teaching physicians and entities may not enter into an agreement to accept assignment under paragraph (a) of this section for the services of teaching physicians in a hospital until at least 12 months have elapsed since a previous agreement concerning teaching physicians services in that hospital was terminated.

(f) *Effect of violation of the agreement to accept assignment*—(1) *Relationship between agreement and assignment privilege.* A physician or entity that has entered into an agreement to accept assignment under this section is deemed to have accepted assignment with respect to all services furnished under the agreement for purposes of—

(i) Determining the liability of the beneficiary or other person for payment for the services under the terms of the assignment as set forth in § 405.1675 and § 405.1684 of this chapter; and

(ii) Revoking the physician's or entity's right to receive assigned payment, in accordance with § 405.1681 of this chapter, because the physician or entity has violated the undertakings required for assigned payment under §§ 405.1675 and 405.1684 of this chapter.

(2) *Termination of the agreement for cause.* As soon as practicable after learning that a physician's or entity's right to accept assignment has been revoked under § 405.1681 of this chapter and the physician or entity still has staff privileges in the hospital, the carrier notifies the hospital that the agreement under paragraph (a) of this section will terminate—

(i) On the date of that revocation for purposes of payment to a teaching physician or entity whose right to accept assignments has been revoked; and

(ii) On the 20th day after the date of the notice from the carrier to the hospital for purposes of payment under paragraph (a) of this section to any other teaching physician or entity furnishing services in that hospital.

(3) *Limitation on reentrance into an agreement.* If an agreement to accept assignment for teaching physicians' services furnished in a teaching hospital are terminated for cause, a new agreement may not be entered into until at least 12 months after the termination of the agreements has passed and HCFA is satisfied that violations will not recur.

§ 415.198 Conditions of payment for assistants at surgery in teaching hospitals.

(a) *Basis, purpose, and scope.* This section describes the conditions under which Medicare pays on a reasonable charge basis for the services of an assistant at surgery in a teaching hospital. This section is based on section 1842(b)(7)(D) of the Act and applies only to hospitals with an approved teaching program. Except as specified in paragraph (c) of this section, reasonable charge reimbursement is not available for assistants at surgery in hospitals with—

(1) A training program relating to the medical specialty required for the surgical procedure; and

(2) A qualified individual on the staff of the hospital available to serve as an assistant at surgery.

(b) *Definitions.* For purposes of this section, the following definitions apply:

"Assistant at surgery" means a physician who actively assists the physician in charge of a case in performing a surgical procedure.

"Qualified individual on the staff of the hospital" means a resident in a training program relating to the specialty required for the surgery.

"Teaching hospital" means a hospital with a graduate education program approved as specified in § 415.200(a).

"Team physicians" means a group of physicians, each performing a discrete, unique function integral to the performance of a complex medical procedure that requires the special skills of more than one physician.

(c) *Conditions for payment for assistants at surgery.* Beginning October 1, 1982, payment on the basis of reasonable charges may be made for the services of an assistant at surgery in a teaching hospital only if the services—

(1) Are required due to exceptional medical circumstances;

(2) Are performed by team physicians needed to perform complex medical procedures;

(3) Constitute concurrent medical care relating to a medical condition which requires the presence of and active care by a physician of another specialty during surgery; or

(4) Are medically required and are furnished by a physician who is primarily engaged in the field of surgery and the preliminary surgeon does not utilize interns and residents in the surgical procedures he or she performs (including preoperative and postoperative care).

Subpart E—Services of Interns and Residents in Providers

§ 415.200 Interns' and residents' services in approved teaching programs.

(a) Medicare recognizes hospital teaching programs that are approved in their respective fields by the Accreditation Council for Graduate Medical Education, by the Committee on Hospitals of the Bureau of Professional Education of the American Osteopathic Association, by the Council on Dental Education of the American Dental Association, or, for provider cost reporting periods beginning after December 31, 1972, by the Council on Podiatry Education of the American Podiatry Association.

(b) Services of interns and residents in these approved programs are explicitly excluded from the definition of "physicians' services" and are covered as hospital services. This exclusion applies whether or not the intern or resident may be authorized to practice as a physician under the laws of the State in which he or she performs services. In accordance with the basis for payment under Medicare for services provided by participating hospitals, the cost of the services or interns and residents is reimbursable to the hospital, specifically as a component of allowable costs defined by the principles of reimbursement for provider costs set forth in Part 413 of this chapter. Under the principles discussed in Part 413 of this chapter, an appropriate share of the provider's total allowable costs is reimbursable under the Medicare program. (For purposes of including services of interns and residents as an element of allowable cost in accordance with these principles, recording and reporting by the hospital of the specific services furnished to individual beneficiaries is not necessary.)

(c) Conversely, services of interns and residents are not reimbursable under Medicare on the basis that applies to physicians' services, that is, reasonable charges (see §§ 405.501–405.508 of this chapter). This distinction with respect to the basis for Medicare reimbursement applies to services of interns and residents whether covered under Medicare Part A or Part B. Outpatient services that are provided by a hospital, including intern and resident services, are reimbursed to the hospital under the supplementary medical insurance program to the extent of 80 percent of the cost of the services furnished to beneficiaries after recognition of the deductible amount (see § 405.240(c) of this chapter). The beneficiary incurs the expense of the deductible and coinsurance amounts as determined on the basis of the hospital's charges to the beneficiary. Hospital charges may include a charge for the services of interns and residents as a specific item, or these services may be included in the general charges to the beneficiary made by the hospital for the covered services it provides.

§ 415.202 Interns' and residents' services not in approved teaching programs.

(a) The services of a hospital resident or intern who is not under an approved teaching program described in § 415.200(a) are reimbursable to the hospital on a cost basis under Medicare Part B. For purposes of this section, these services are deemed to include services of a physician employed by the hospital who is authorized to practice only in a hospital setting. Even if the services are furnished to inpatients, the cost of the services is not an allowable cost under Medicare Part A but is allowable under Medicare Part B.

(b) In his connection reimbursement under Medicare for services discussed in paragraph (a) of this section is made to the hospital in an amount of 80 percent of the cost of services furnished to the beneficiaries after recognition of the deductible. The beneficiary incurs the expense of the deductible and coinsurance amounts as determined on the basis of the hospital's charges to the beneficiary for its services that are covered under Medicare Part B.

§ 415.204 Interns' and residents' services outside the hospital.

(a) Under Medicare Part A, the allowable costs on which reimbursement to a participating extended care facility for covered services is based may include the cost of services of an intern or resident who is under an approved teaching program in a hospital with which the facility has a transfer agreement (see § 405.1133 of this chapter) which provides, in part, for the transfer of patients and the interchange of medical records. Likewise, a participating home health agency may be reimbursed under the Medicare Part A for the cost of the services of an intern or resident who is under an approved teaching program of a hospital with which the home health agency is affiliated or under common control where these services are furnished as part of the posthospital home health visits for a beneficiary.

(b) Medical services of a resident or intern of a hospital that are furnished by a provider of services are reimbursed under Medicare Part B on an 80 percent of allowable cost basis if reimbursement is not provided under Medicare Part A.

§ 415.206 Basis of reimbursement to providers for services of interns and residents.

Status of patient	Status of intern or resident [1]	Reimbursment provided under [2]	Basis of payment [3]
Hospital inpatient	Under approved program	Part A	Cost
	Other	Part B	80 percent of cost.
Hospital outpatient	Under approved program	Part B	80 percent of cost.
	Other	Part B	80 percent of cost.
Skilled nursing facility patient	Under approved program of a hospital with which facility has a transfer agreement.	Part A	
		Cost.	

Home health plan patient	Other	80 percent of cost	
	Posthospital services furnished under approved program of hospital with which the home health agency is affiliated or under common control.	Part A	Cost.
	Other	Part B	Cost.

[1] An "approved program" means a program approved by the Accreditation Council for Graduate Medical Education, by the Committee on Hospitals of the Bureau of Professional Education of the American Osteopathic Association, or by the Council on Dental Education of the American Dental Association; or with respect to providers' accounting periods beginning after Dec. 31, 1972, by the Council on Podiatry Education of the American Podiatry Association. "Other" interns and residents include, in addition to interns and residents-in-training, a physician employed by the hospital who is authorized to practice only in the hospital setting.
[2] "Part A" refers to the hospital insurance program and "part B" refers to the supplementary medical insurance program.
[3] The term "cost" refers to reimbursement on a cost basis in accordance with the principles in Part 413 of this chapter.

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare-Hospital Insurance Program; No. 13.774, Medicare-Supplementary Medical Insurance Program)

Dated: June 30, 1988.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: October 3, 1988.

Otis R. Bowen,

Secretary.

[FR Doc. 89-2318 Filed 2-6-89; 8:45 am]

BILLING CODE 4120-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-6948]

Proposed Flood Elevation Determinations; Arizona et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed Rule.

SUMMARY: Technical information or comments are solicited on the proposed modified base (100-year) flood elevations listed below for selected locations in the nation. 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.

DATES: The period for comment will be ninety (90) days following the second publication of the proposed rule in a newspaper of local circulation in each community.

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 proposed determinations of modified base (100-year) flood elevations for selected locations in the nation, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance 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 67.4(a).

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 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 on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed modified elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents. 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 the proposed modified flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the floodplain area. The local community voluntarily adopts floodplain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the floodplain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement) of itself it has no economic impact.

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.

The proposed modified base flood elevations for selected locations are:

PROPOSED MODIFIED BASE FLOOD ELEVATIONS

State	City/Town/County	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Arizona	Town of Cave Creek, Maricopa County.	Andora Hills Wash	Approximately 0.6 mile upstream of confluence with Cave Creek.	*2,068	*2,068
			Approximately 0.15 mile downstream of Grapevine Road.	*2,072	*2,074
			Approximately 0.05 mile downstream of Grapevine Road.	*2,083	*2,083

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/Town/County	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Maps are available for review at Town Hall, 37622 North Cave Creek Road, Cave Creek, Arizona. Send comments to The Honorable Jacqueline Davis, Mayor, Town of Cave Creek, 37622 North Cave Creek Road, Cave Creek, Arizona 85331.					
Arizona	City of Glendale, Maricopa County.	New River	At the confluence with Agua Fria River	*1,031	*1,032
			Approximately 925 feet downstream of Glendale Avenue.	*1,055	*1,054
			Approximately 425 feet downstream of Northern Avenue.	*1,080	*1,077
			Approximately 500 feet downstream of Olive Avenue.	*1,092	*1,091
			Approximately 1,000 feet downstream of Mountainview Road.	*1,100	*1,099
			Approximately 600 feet downstream of Peoria Avenue.	*1,109	*1,108
			Approximately 1,100 feet downstream of Grand Avenue.	*1,130	*1,123
			Approximately 0.5 mile upstream of Atchison Topeka and Santa Fe Railroad Bridge.	*1,144	*1,143
			Approximately 1,530 feet downstream of Thunderbird Road.	*1,150	*1,148
			Approximately 1,850 feet upstream of Thunderbird Road.	*1,165	*1,157
			At confluence of Skunk Creek	*1,163	*1,170
			Approximately 3,700 feet upstream of confluence of Skunk Creek.	*1,170	*1,182
			Approximately 1.0 mile upstream of confluence of Skunk Creek.	*1,178	*1,191
			Approximately 800 feet downstream of Bell Road.	*1,195	*1,195
Maps are available for review at the City Engineering Department, 5850 West Glendale Avenue, Glendale, Arizona. Send comments to The Honorable George Renner, Mayor, City of Glendale, 5850 West Glendale Avenue, Glendale, Arizona 85301.					
Arizona	Maricopa County Unincorporated Areas.	New River	At the confluence with Agua Fria River	*1,031	*1,032
			Approximately 925 feet downstream of Glendale Avenue.	*1,055	*1,054
			Approximately 425 feet downstream of Northern Avenue.	*1,080	*1,077
			Approximately 500 feet downstream of Olive Avenue.	*1,092	*1,091
			Approximately 1,000 feet downstream of Mountainview Road.	*1,100	*1,099
			Approximately 600 feet downstream of Peoria Avenue.	*1,109	*1,108
			Approximately 1,100 feet downstream of Grand Avenue.	*1,130	*1,123
			Approximately 0.5 mile upstream of Atchison Topeka and Santa Fe Railroad Bridge.	*1,144	*1,143
			Approximately 1,530 feet downstream of Thunderbird Road.	*1,150	*1,148
			Approximately 1,850 feet upstream of Thunderbird Road.	*1,165	*1,157
			At confluence of Skunk Creek	*1,163	*1,170
			Approximately 3,700 feet upstream of confluence of Skunk Creek.	*1,170	*1,182
			Approximately 1.0 mile upstream of confluence of Skunk Creek.	*1,178	*1,191
			Approximately 800 feet downstream of Bell Road.	*1,195	*1,195
			Approximately 2.3 miles downstream of Carefree Highway.	None	*1,480
			Approximately 260 feet upstream of Carefree Highway.	None	*1,550
			Approximately 1.0 mile upstream of Carefree Highway.	None	*1,590

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/Town/County	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 3.0 miles upstream of Carefree Highway.	None	*1,668
			Approximately 5.0 miles upstream of Carefree Highway.	None	*1,751
			Approximately 3.0 miles downstream of Interstate Highway 17.	None	*1,836
			Approximately 1.0 mile downstream of Interstate Highway 17.	None	*1,928
			Immediately downstream of Interstate Highway 17.	None	*1,980
			Immediately downstream of Frontage Road	None	*2,000
			Approximately 600 feet upstream of New River Road.	None	*2,030
			Approximately 2.0 miles upstream of New River Road.	None	*2,130
			Approximately 4 miles upstream of New River Road.	None	*2,240
			Approximately 5.0 miles upstream of New River Road.	None	*2,300
			Approximately 5.6 miles upstream of New River Road.	None	*2,342
		New River East Split	At confluence with New River main channel	None	*1,536
			Approximately 300 feet downstream of Carefree Highway.	None	*1,552
			Approximately 3,900 feet upstream of Carefree Highway.	None	*1,584
		New River Middle Split	At confluence with New River main channel	None	*1,574
			Approximately 1.54 miles upstream of confluence with New River main channel.	None	*1,640
		New River West Split	At split with New River main channel	None	*1,682
			At confluence with Sweat Canyon Wash	None	*1,596
			Approximately 2.0 miles upstream of confluence with Sweat Canyon Wash.	None	*1,684
			Approximately 3.0 miles upstream of confluence with Sweat Canyon Wash.	None	*1,732
		Sweat Canyon Wash	At split from New River main channel	None	*1,809
			Approximately 0.4 mile upstream of confluence with New River.	None	*1,576
			Approximately 2.0 miles upstream of confluence with New River.	None	*1,632
			Approximately 3.0 miles upstream of confluence with New River.	None	*1,669
			Approximately 4.1 miles upstream of confluence with New River.	None	*1,714
		Buchanan Wash	Approximately 0.7 mile upstream of confluence with Skunk Creek.	None	*1,460
			Approximately 1.0 mile upstream of confluence with Skunk Creek.	None	*1,464
			Approximately 2.0 miles upstream of confluence with Skunk Creek.	None	*1,491
			Approximately 2.2 miles upstream of confluence with Skunk Creek.	None	*1,496

Maps are available for review at the Maricopa County Flood Control District, 3335 West Durango Street, Phoenix, Arizona.

Send comments to The Honorable Tom Freestone, Chairman, Maricopa County Board of Supervisors, 111 South Third Avenue, Phoenix, Arizona 85003.

Arizona	City of Peoria, Maricopa County.	New River	At the confluence with Agua Fria River	*1,031	*1,032
			Approximately 925 feet downstream of Glendale Avenue.	*1,055	*1,054
			Approximately 425 feet downstream of Northern Avenue.	*1,080	*1,077
			Approximately 500 feet downstream of Olive Avenue.	*1,092	*1,091
			Approximately 1,000 feet downstream of Mountainview Road.	*1,100	*1,099
			Approximately 600 feet downstream of Peoria Avenue.	*1,109	*1,108
			Approximately 1,100 feet downstream of Grand Avenue.	*1,130	*1,123
			Approximately 0.5 mile upstream of Atchison Topeka and Santa Fe Railroad Bridge.	*1,144	*1,143

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/Town/County	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 1,530 feet downstream of Thunderbird Road.	*1,150	*1,148
			Approximately 1,850 feet upstream of Thunderbird Road.	*1,165	*1,157
			At confluence of Skunk Creek	*1,163	*1,170
			Approximately 3,700 feet upstream of confluence of Skunk Creek.	*1,170	*1,182
			Approximately 1.0 mile upstream of confluence of Skunk Creek.	*1,178	*1,191
			Approximately 800 feet downstream of Bell Road.	*1,195	*1,195
			Approximately 2.3 miles downstream of Carefree Highway.	None	*1,480
			Approximately 260 feet upstream of Carefree Highway.	None	*1,550
			Approximately 1,900 feet upstream of Carefree Highway.	None	*1,560
		New River East Split	At confluence with New River main channel	None	*1,536
			Approximately 300 feet downstream of Carefree Highway.	None	*1,552
			Approximately 3,900 feet upstream of Carefree Highway.	None	*1,584
Maps are available for review at the City Engineering Department, 8320 W. Madison Street, Peoria, Arizona.					
Send comments to The Honorable Ronald Travers, Mayor, City of Peoria, P.O. Box 38, Peoria, Arizona 85345.					
Arizona	City of Phoenix, Maricopa County.	New River	At the confluence with Agua Fria River	*1,031	*1,032
			Approximately 925 feet downstream of Glendale Avenue.	*1,055	*1,054
			Approximately 425 feet downstream of Northern Avenue.	*1,080	*1,077
			Approximately 500 feet downstream of Olive Avenue.	*1,092	*1,091
			Approximately 1,000 feet downstream of Mountainview Road.	*1,100	*1,099
			Approximately 600 feet downstream of Peoria Avenue.	*1,109	*1,108
			Approximately 1,100 feet downstream of Grand Avenue.	*1,130	*1,123
			Approximately 0.5 mile upstream of Atchison Topeka and Santa Fe Railroad Bridge.	*1,144	*1,143
			Approximately 1,530 feet downstream of Thunderbird Road.	*1,150	*1,148
			Approximately 1,850 feet upstream of Thunderbird Road.	*1,165	*1,157
			At confluence of Skunk Creek	*1,163	*1,170
			Approximately 3,700 feet upstream of confluence of Skunk Creek.	*1,170	*1,182
			Approximately 1.0 mile upstream of confluence of Skunk Creek.	*1,178	*1,191
			Approximately 800 feet downstream of Bell Road.	*1,195	*1,195
Maps are available for review at the City Engineering Department, Flood Management Section, 125 East Washington Street, Phoenix, Arizona.					
Send comments to The Honorable Terry Goddard, Mayor, City of Phoenix, Municipal Building, 251 West Washington Street, Phoenix, Arizona 85003.					
Arizona	Town of Pinetop-Lakeside, Navajo County.	Billy Creek	Approximately 1,900 feet upstream of Porter Mountain Road.	*6,724	*6,724
			Approximately 2,800 feet downstream of Meadow Drive.	None	*6,767
			Just upstream of Meadow Drive	None	*6,783
			Approximately 2,100 feet upstream of Meadow Drive.	None	*6,800
			Approximately 4,300 feet upstream of Meadow Drive.	None	*6,818

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/Town/County	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Maps are available for review at the Planning and Zoning Department, 1546 East White Mountain Road, Pinetop, Arizona. Send comments to The Honorable Richard J. Mullins, Mayor, Town of Pinetop-Lakeside, P.O. Drawer 1459, Pinetop, Arizona 85935.					
Connecticut	Somers, Town, Tolland County.	Unnamed Tributary	At confluence with Abbey Brook	None	*210
			Just upstream of State Route 83 (South Road)	None	*325
		Abbey Brook	Approximately 550 feet upstream of Ninth District Road.	None	*210
			Approximately 1,720 feet upstream of Ninth District Road.	None	*210
Maps available for inspection at the Town Office, 600 Main Street, Somers, Connecticut. Send comments to The Honorable Steve Kominski, First Selectman of the Town of Somers, Tolland County, P.O. Box 308, Somers, Connecticut 06071.					
Florida	Unincorporated Areas of Polk County.	Lake Garfield	Along shoreline	*102	*107
Maps available for inspection at the Polk County Engineering Department, 168 West Main, P.O. Box 1519, Bartow, Florida. Send comments to The Honorable Frank B. Smith, County Administrator, Polk County, P.O. Box 60, Bartow, Florida 33830.					
Georgia	City of Marietta, Cobb County.	Ward Creek	About 100 feet upstream of confluence of Westside Branch.	*1,018	*1,018
			About 350 feet downstream of Whitlock Drive	*1,029	*1,030
			Just downstream of Whitlock Drive	*1,032	*1,032
		Westside Branch	About 400 feet upstream of confluence with Ward Creek.	*1,019	*1,017
			About 325 feet downstream of Polk Street	*1,048	*1,052
			About 900 feet upstream of Polk Street	*1,068	*1,065
		Elizabeth Branch	About 580 feet downstream of Cobb Industrial Boulevard.	*1,033	*1,033
			Just upstream of Interstate 75	*1,057	*1,058
			About 450 feet upstream of Interstate 75	*1,068	*1,068
		Sope Creek	At confluence of Sope Branch	*1,022	*1,022
			Just downstream of Page Street	*1,029	*1,027
			Just upstream of Page Street	*1,037	*1,037
		Poorhouse Creek	Just downstream of U.S. Highway 41	*938	*938
			About 500 feet upstream of U.S. Highway 41	*949	*942
			About 0.83 mile upstream of U.S. Highway 41	*951	*950
Maps available for inspection at the City Hall, Marietta, Georgia. Send comments to The Honorable Vicki Chastain, Mayor, City of Marietta, City Hall, P.O. Box 1247, Marietta, Georgia 30061.					
Maryland	Prince George's County, Unincorporated Areas.	Indian Creek	Approximately 230 feet upstream of Interstate Route 95.	*74	*75
			Approximately 0.5 mile upstream of Sunnyside Avenue.	*93	*92
Maps available for inspection at the County Administrative Building, Upper Marlboro, Maryland. Send comments to The Honorable Parris N. Glendening, County Executive, Prince George's County, County Administrative Building, Upper Marlboro, Maryland 20772.					
Minnesota	City of St. Paul, Ramsey County.	Mississippi River	About 2.7 miles downstream of Chicago & North Western railroad bridge.	*705	*704
Maps available for inspection at the St. Paul Planning Division, Division of Planning and Economic Development, 25 West Fourth Street, St. Paul, Minnesota. Send comments to the Honorable George Latimer, Mayor, City of St. Paul, City Hall, Room 347, St. Paul, Minnesota 55102.					
Mississippi	City of Madison, Madison County.	Hearn Creek	About 1,920 feet downstream of Northbay Drive.	*300	*300
			About 170 feet downstream of Northbay Drive	*306	*303
			About 1,780 feet upstream of Northbay Drive	*310	*310

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/Town/County	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the Maintenance Facility Building, 525 Post Oak Road, Madison, Mississippi. Send comments to The Honorable Mary Hawkins, Mayor, City of Madison, 105 Old Canton Road, P.O. Box 40, Madison, Mississippi 39110.					
Missouri	Unincorporated Areas of Jackson County.	Little Blue River	At confluence with Missouri River	*723	*723
			About 1.6 miles downstream of Blue Hills Road	*723	*726
			Just upstream of U.S. Highway 24	None	*732
Maps available for inspection at the Jackson County Courthouse, 415 East 12th Street, Kansas City, Missouri. Send comments to The Honorable Bill Waris, County Executive, Jackson County, Jackson County Courthouse, 415 East 12th Street, Kansas City, Missouri 64106.					
New Jersey	Bordentown, City, Burlington County.	Crosswicks Creek	At upstream corporate limits	*14	*15
			At downstream corporate limits (at confluence with Blacks Creek).	*14	*15
		Blacks Creek	At upstream corporate limits	*14	*15
			At downstream corporate limits (at confluence with Crosswicks Creek).	*14	*15
Maps available for inspection at the City Hall, 324 Farnsworth Avenue, Bordentown, New Jersey. Send comments to The Honorable Gloria Scholey, Mayor of the City of Bordentown, Burlington County, City Hall, 324 Farnsworth Avenue, Bordentown, New Jersey 08505.					
New Jersey	Burlington, City, Burlington County.	Delaware River	Approximately 0.2 mile upstream of Delaware Memorial Bridge, at the upstream corporate limits.	*11	*12
			Approximately 1.9 miles downstream of the Delaware Memorial Bridge.	*11	*12
Maps available for inspection at the Department of Engineering, Township Building, 851 Old York Road, Burlington, New Jersey. Send comments to The Honorable Joseph Foy, Mayor of the Township of Burlington, Burlington County, 851 Old York Road, P.O. Box 340, Burlington, New Jersey 08016.					
New Jersey	Wanaque, Borough, Passaic County.	Stephens Lake Brook	Approximately 200 feet upstream of Wilson Drive.	*270	*269
Maps available for inspection at the Borough Clerk's Office, Borough Hall, 579 Ringwood Avenue, Wanaque, New Jersey. Send comments to The Honorable Angelo Cutillo, Mayor of the Borough of Wanaque, Passaic County, Municipal Office, 579 Ringwood Avenue, Wanague, New Jersey 07465.					
New York	Hempstead, Town, Nassau County.	Negro Bar Channel	At the intersection of Chestnut Road and Bayswater Boulevard.	None	*8
Maps available for inspection at the Department of Engineering, 350 Front Street, Hempstead, New York. Send comments to The Honorable David Levy, Supervisor for the Town of Hempstead, Nassau County, 350 Front Street, Hempstead, New York 11550.					
Ohio	City of Brecksville, Cuyahoga County.	Chippewa Creek	Just downstream of Chippewa Road	*809	*812
			Just upstream of Brecksville Road	*815	*832
			Just upstream of the upstream crossing of Old Royalton Road.	*869	*874

Maps available for inspection at the Building Department, 9069 Brecksville Road, Brecksville, Ohio.

Send comments to the Honorable Jerry N. Hruby, Mayor, of City Brecksville, 9069 Brecksville Road, Brecksville, Ohio 44141.

Ohio	Village of Chilo, Clermont County.	Ohio River	At downstream corporate limits (river mile 434.8).	*509	*508
			At upstream corporate limits (river mile 434.0)	*510	*508

Maps available for inspection at the Community Building, 310 Washington Street, Chilo, Ohio.

Send comments to The Honorable Jane Snell, Mayor, Village of Chilo, 308 Washing Street, Chilo, Ohio 45112.

Ohio	City of Dublin, Franklin, Delaware and Union Counties.	North Fork Indian Run	Just upstream of Brand Road	*886	*886
			About 500 feet downstream of Brandonway Drive.	*889	*887
			About 500 feet upstream of confluence of Tributary I1.	*891	*891
		Tributary S1	About 850 feet upstream of Interstate 270	*899	*899
			About 1,000 feet upstream of Interstate 270	None	*900

Maps available for inspection at the City Hall, 6665 Coffman Road, Dublin, Ohio.

Send comments to The Honorable Michael Close, Mayor, City of Dublin, City Hall, 6665 Coffman Road, Dublin, Ohio 43017.

Oklahoma	Oklahoma City, City, Canadian, Cleveland, Oklahoma, McClain, and Pottawatomie Counties.	Deep Fork Tributary 12	Approximately 850 feet upstream from confluence with Deep Fork.	*1,070	*1,071
			Approximately 1,400 feet downstream of 50th Street.	*1,079	*1,078
		Deep Fork Tributary 13	Approximately 60 feet upstream from confluence with Deep Fork.	*1,071	*1,072
			Approximately 40 feet downstream from Northeast Lake Dam.	*1,075	*1,077

Maps available for inspection at the City Hall, 200 North Walker, Suite 302, Oklahoma City, Oklahoma.

Send comments to The Honorable Ronald J. Norick, Mayor of the City of Oklahoma City, Canadian, Cleveland, Oklahoma, McClain, and Pottawatomie Counties, 302 Municipal Building, 200 North Walker, Oklahoma City, Oklahoma 73102.

South Carolina	Unincorporated Areas of Greenwood County.	Turner Branch	At mouth	None	*525
			Just downstream of Newcastle Road	None	*590
			Just upstream of Newcastle Road	None	*600
			Just downstream of Earl Court	None	*602
			Just upstream of Earl Court	None	*608
			Just upstream of Lakeforest Road	None	*622

Maps available for inspection at the Greenwood County Courthouse, Office of the County Engineers, Room 107, Greenwood, South Carolina.

Send comments to The Honorable Carroll H. Brooks, Chairman, Greenwood County Council, Greenwood County Courthouse, Room 203, Greenwood, South Carolina 29646.

Tennessee	Town of Collierville, Shelby County.	Wolf River Lateral K	About 1.3 miles downstream of Collierville-Arlington Road.	*293	*294
			About 1 mile downstream of Collierville-Arlington Road.	*299	*303
			About 2,100 feet downstream of Collierville-Arlington Road.	*317	*312
			Just downstream of Collierville-Arlington Road	*334	*334

Maps available for inspection at the Town Hall, 101 Walnut Street, Collierville, Tennessee.

Send comments to The Honorable Jerry Robinson, Town Administrator, Town of Collierville, Town Hall, 101 Walnut Street, Collierville, Tennessee 38017.

Tennessee	Unincorporated Areas of Rutherford County.	East Fork Stones River	At mouth	*501	*506
			About 1,000 feet downstream of Old Jefferson Pike.	*506	*506
		West Fork Stones River	At mouth	*499	*506
			About 1.2 miles upstream of Old Jefferson Pike.	*506	*506

Maps available for inspection at the County Courthouse, 100 North Maple Street, Room 200 Murfreesboro, Tennessee.

Send comments to The Honorable John Mankin, County Executive Rutherford County, County Courthouse, 224 North Maple Street, Murfreesboro, Tennessee 37130.

Texas	Coppell, City, Dallas County.	Grapevine Creek	Confluence with Elm Fork of the Trinity River	*438	*439
			Approximately 750 feet downstream of Beltline Road.	*456	*455
		Denton Creek	Confluence with Elm Fork of the Trinity River	*445	*446
			Approximately 2,600 feet upstream of Denton Tap Road.	*463	*462
		Elm Fork of the Trinity River	At the confluence of Grapevine Creek	*438	*439
			At Interstate Highway 35E	*451	*452
		Cottonwood Branch	Confluence with Denton Creek	*461	*458
			Upstream side of Denton Tap Road	*462	*461

Maps available for inspection at 255 Parkway Boulevard, Coppell, Texas 75019.

Send comments to The Honorable Lou Duggan, Mayor of the City of Coppell, Dallas County, P.O. Box 478, Coppell, Texas 75019.

Texas	Grapevine, City, Dallas and Tarrant Counties.	Bear Creek	Approximately 1,200 feet downstream of confluence of Tributary BB-5.	*554	*553
			Approximately 1,300 feet upstream of confluence of Tributary BB-5.	*559	*558
		Tributary BB-5	Confluence with Bear Creek	*556	*554
			Approximately 10 feet downstream on Creekwood Drive.	*564	*563

Maps available for inspection at the Department of Public Works, 307 West Dallas Road, Grapevine, Texas.

Send comments to The Honorable William Tate, Mayor of the City of Grapevine, Dallas and Tarrant Counties, P.O. Box 729, Grapevine, Texas 76051.

Texas	Montgomery County	Panther Branch	At confluence with Spring Creek	*112	*113
			Downstream face of MacDonald Road	*121	*120
		Spring Creek	At confluence of Panther Branch	*112	*113
			3.4 miles upstream of the confluence of Panther Branch.	*120	*121
		Bear Branch	Approximately 1.68 miles upstream of confluence with Panther Branch.	*148	*147
			Approximately 3.75 miles upstream of confluence with Panther Branch.	*162	*161

Maps available for inspection at the Department of Engineering, 326½ North Main, Conroe, Texas 77301.

Send comments to The Honorable Al Stahl, Montgomery County Judge, 300 North Main Street, Conroe, Texas 77301.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

Issued: January 26, 1989.

[FR Doc. 89-2796 Filed 2-6-89; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA-6938]

Proposed Flood Elevation Determinations; Correction

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule; Correction.

SUMMARY: This document corrects a Notice of Proposed Determinations of base (100-year) flood elevations previously published at 53 FR 40105 on October 13, 1988. This correction notice provides a more accurate representation of the Flood Insurance Study and Flood Insurance Rate Map for the Township of Morris, Clearfield County, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: 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 correction to the Notice of Proposed Determinations of base (100-year) flood elevations for selected locations in the Township of Morris, Clearfield County, Pennsylvania, previously published at 53 FR 40105 on October 13, 1988, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234). 87 Stat. 980, which added section 1363 to the National Flood Insurance 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.

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. 4002 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

On page 40105, in the October 13, 1988 issue of the **Federal Register**, the entries under Morris (Township), Clearfield County, are correctly revised to read as follows:

Source of flooding and location	Depth in feet above ground. *Elevation in feet (NGVD)
Moshannon Creek:	
At Conrail bridge	*1,415
At upstream corporate limits	*1,422

Issued: January 31, 1989.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 89–2797 Filed 2–6–89; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88–604, RM–6271]

Radio Broadcasting Services; Prairie Grove, AR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Southside Broadcasting, proposing the allotment of FM Channel 235A to Prairie Grove, Arkansas, as that community's first local broadcast service. Reference coordinates used for proposed Channel 235A at Prairie Grove are 35–53–52 and 94–19–29.

DATES: Comments must be filed on or before March 24, 1989, and reply comments on or before April 10, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In additional to filing comments with the FCC, interested parties should serve the petitioner, as follows: Southside Broadcasting, c/o C.R. Crisler, Box 415, Johnson, AR 72741.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–604, adopted November 29, 1988, and released January 31, 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 Commision's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contracts are prohibited in Commision proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Pat 73

Radio broadcasting.

Federal Communications Commission.

Steve Kramer,

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

[FR Doc. 89–2786 Filed 2–6–89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88–608, RM–6497]

Radio Broadcasting Services; Goulds, Immokalee and LaBelle, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Hispanic American Radio Broadcasting Corporation seeking the substitution of Channel 252C for Channel 252A at Goulds, Florida, and the modification of its license for Station WTHM to specify operation on the higher powered channel. In addition, the petitioner requests the substitution of Channel 221A for Channel 252A at Immokalee, Florida, with the modification of Station WCOO(FM)'s license accordingly, and the substitution of Channel 223A for Channel 221A at LaBelle, Florida, with the modification of Station WKZY's license accordingly. All of the channel substitutions can be made in compliance with the Commission's minimum distance separation requirements and can be used at each station's present transmitter site. The coordinates for Channel 252C at Goulds are North Latitude 25–32–24 and West Longitude 80–28–07. The coordinates for Channel 221A at Immokalee are North Latitude 26–21–19 and West Longitude 81–21–03. The coordinates for Channel 223A at LaBelle are North Latitude 26–48–46 and West Longitude 81–21–16.

DATES: Comments must be filed on or before March 24, 1989, and reply comments on or before April 10, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Lee W. Shubert, Esq., David

G. O'Neil, Esq., Haley, Bader & Potts, 2000 M Street, NW., Suite 600, Washington, DC 20036–4574 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making and Orders to Show Cause, MM Docket No. 88–608, adopted December 2, 1988, and released January 31, 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 contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

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

[FR Doc. 89–2787 Filed 2–6–89; 8:45 am]

BILLING CODE 6712–09–M

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47 CFR Part 73

[MM Docket No. 88–611, RM–6494]

Radio Broadcasting Services; Rockland, ME

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Passamaquoddy Broadcasting, Inc., proposing the substitution of FM Channel 277B for Channel 277B1 at Rockland, Maine. Petitioner also requests modification of its license for 277B1 to specify operation on Channel 277B. Canadian concurrence is required for the allotment of Channel 277B at Rockand at coordinates 44–07–34 and 69–08–19.

DATES: Comments must be filed on or before March 24, 1989, and reply comments on or before April 10, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Richard J. Hayes, Jr., 1359 Black Meadow Road, Spotsylvania, VA 22553 (Counsel to the petitioner).

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–611, adopted December 2, 1988, and released January 31, 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.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission

Steve Kaminer,

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

[FR Doc. 89–2788 Filed 2–6–89; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 88–619, RM–6477]

Radio Broadcasting Services; Ridge, MD

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Keith A. Mayo and Chih Ping Mayo, proposing the allotment of FM Channel 261A to Ridge, Maryland, as that community's first FM broadcast service. The coordinates for Channel 261A are 38–07–09 and 76–22–27.

DATES: Comments must be filed on or before March 27, 1989, and reply comments on or before April 11 , 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Keith A. Mayo & Chih Ping Mayo, 4747 Hummingbird Drive, Waldorf, Maryland 20601.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–619, adopted December 20, 1988 and released February 1, 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.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to the proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

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

[FR Doc. 89-2789 Filed 2-6-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88-620, RM-6504]

Radio Broadcasting Services; Traverse City, MI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Fabiano-Strickler Communications, Inc., proposing the substitution of FM Channel 298C2 for Channel 298A at Traverse City, Michigan, and modification of the license for Station WCCW-FM to special operation on Channel 298C2. The license for Station WCCW-FM was modified in MM Docket 87-529 (3 FCC Rcd 4024 1988) to specify operation on Channel 298A in lieu of Channel 221A. That action was effective August 12, 1988. The coordinates for Channel 298C2 at Traverse City are 44-46-11 and 85-41-22. Canadian concurrence will be obtained for this allotment.

DATES: Comments must be filed on or before March 27, 1989, and reply comments on or before April 11, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Jerrold Miller, Miller & Fields, P.C., P.O. Box 33003, Washington, DC 20033, (Counsel for the petitioner).

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-620, adopted December 13, 1988, and released February 1, 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.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, as *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

Federal Communications Commission

Steve Kaminer,

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

[FR Doc. 89-2790 Filed 2-6-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88-617, RM-6493]

Radio Broadcasting Services; Walker, MN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Midland Broadcasting Company, proposing the substitution of FM Channel 256C2 for Channel 257A at Walker, Minnesota, and modification of its license for Station KLLR-FM, to reflect the new channel. Canadian concurrence is required for the allotment of Channel 256C2 at Walker at coordinates 47-05-37 and 94-34-47.

DATES: Comments must be filed on or before March 27, 1989, and reply comments on or before April 11, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Thomas L. Ferebee, President, Midland Broadcasting Company, Station KLLR-FM, P.O. Box 70—Highway 34 West, Walker, Minnesota 56484.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-617, adopted December 20, 1988, and released February 1, 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.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to the proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission

Steve Kaminer,

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

[FR Doc. 89-2791 Filed 2-6-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88-607, RM-6488]

Radio Broadcasting Services; Ashtabula, OH

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Rod A. Callahan proposing the allotment of Channel 252A to Ashtabula, Ohio, as the community's second local FM service. Channel 252A can be allotted to Ashtabula in compliance with the Commission's minimum distance separation requirements with a site restriction of 6.0 kilometers (3.7 miles) northeast to avoid a short-spacing to Station WNCX, Channel 253B, Cleveland, Ohio. The coordinates for this allotment are North Latitude 41-54-27 and West Longitude 80-43-52. Canadian concurrence is required since Ashtabula is located within 320 kilometers of the U.S.-Canadian border.

DATES: Comments must be filed on or before March 24, 1989, and reply comments on or before April 10, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Timothy K. Brady, Esq., P.O. Box 986, Brentwood, Tennessee 37027–0986 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–607, adopted December 2, 1988, and released January 31, 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 contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW, Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

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

[FR Doc. 89–2792 Filed 2–6–89; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 88–610, RM–6496]

Radio Broadcasting Services; Wellston, OH

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Jackson County Broadcasting, Inc. seeking the substitution of Channel 244B1 for Channel 244A at Wellston, Ohio, and the modification of its license for Station WKOV–FM to specify the higher powered channel. Channel 244B1 can be allotted to Wellston in compliance with the Commission's minimum distance separation requirements and can be used at Station WKOV–FM's present transmitter site. The coordinates for this allotment are North Latitude 39–01–45 and West Longitude 82–35–51. Canadian concurrence is required. In accordance with Section 1.420(g) of the Commission's rules, we shall not accept competing expressions of interest in use of Channel 244B1 at Wellston or require the petitioner to demonstrate the availability of an additional equivalent channel for use by such interested parties.

DATES: Comments must be filed on or before March 24, 1989, and reply comments on or before April 10, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Marvin Rosenberg, Esq., Frank R. Jazzo, Esq., Garrison Klueck, Esq., Fletcher, Heald & Hildreth, 1225 Connecticut Avenue, NW., Suite 400, Washington, DC 20036 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–610, adopted December 2, 1988, and released January 31, 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 contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission

Steve Kaminer,

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

[FR Doc. 89–2793 Filed 2–6–89; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 88–609, RM–6498]

Radio Broadcasting Services; Galeton, PA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Lori L. Michael to allot Channel 264B1 to Galeton, Pennsylvania, as the community's first local FM service. The Commission has substituted Channel 264B1 in lieu of originally proposed Channel 268B1 for consideration herein to avoid a conflict with the possible allotment of Channel 268A to Covington, Pennsylvania (MM Docket 88–258, 3 FCC Rcd 3181 (1988)). Channel 264B1 can be allotted to Galeton in compliance with the Commission's minimum distance separation requirements with a site restriction of 15.4 kilometers (9.6 miles) southeast to avoid a shortspacing to Stations WQIX, Channel 265A, Horseheads, NY and WBJZ, Channel 265A, Olean, NY. The coordinates for the allotment are North Latitude 41–36–26 and West Longitude 77–33–43. Canadian concurrence is required since Galeton is located within 320 kilometers (200 miles) of the U.S.-Canadian border.

DATES: Comments must be filed on or before March 24, 1989, and reply comments on or before April 10, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Lori L. Michael, R.D. #1, Box 59, Benton, Pennsylvania 17814 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–609, adopted December 2, 1988, and released January 31, 1989. The full text of the 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 contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

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

[FR Doc. 89–2794 Filed 2–6–89; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 88–621, RM–6519]

Radio Broadcasting Services; Beeville, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Hamon Broadcasting Inc., permittee of Station KYTX(FM), Channel 250A at Beeville, Texas, proposing the substitution of Channel 250C2 for Channel 250A at Beeville and modification of its license to specify operation on the higher class co-channel. The proposal could provide the community with its first wide coverage area FM service. A site restriction of approximately 21.7 kilometers (13.5 miles) west of the city is required. Petitioner specified its desire to utilize a site 26.5 kilometers (16.4 miles) west of the city at coordinates 28–24–00 and 98–01–00. Concurrence of the Mexican government is also required.

DATES: Comments must be filed on or before March 27, 1989, and reply comments on or before April 11, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554 In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Christopher D. Imlay, Esquire; Booth, Freret & Imlay, 1920 N Street NW., Suite 520, Washington, DC 20036 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No.88–621, adopted December 14, 1988, and released February 1, 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 Streat NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as the one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

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

[FR Doc. 89–2795 Filed 2–6–89; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Threatened Status for Calyptronoma rivalis

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine *Calyptronoma rivalis* (palma de manaca) to be a threatened species pursuant to the Endangered Species Act of 1973, as amended (Act). Critical habitat is not proposed. *Calyptronoma rivalis* is endemic to the island of Puerto Rico. The two remaining natural populations are restricted to the subtropical moist and subtropical wet limestone forests of the northwestern part of the island. The species is threatened by erosion due to flash flooding, agricultural expansion, and rural development. Flash flooding has increased due to extensive deforestation in surrounding areas. This proposal, if made final, would implement the Federal protection and recovery provisions afforded by the Act for *Calyptronoma rivalis*. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by April 10, 1989. Public hearing requests must be received by March 24, 1989.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boqueron, Puerto Rico 00622. Comments and materials received will be available for public inspection, by appointment, at this office during normal business hours, and at the Service's Southeast Regional Office, Suite 1282, 75 Spring Street, SW., Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Silander at the Caribbean Field Office address (809/851–7297) or Mr. Tom Turnipseed at the Atlanta Regional Office address (404/331–3583 or FTS 242–3583).

SUPPLEMENTARY INFORMATION:

Background

Calyptronoma rivalis was first collected in 1901 by L.M. Underwood and R.F. Grigg in San Sebastian of western Puerto Rico. In 1923, N. Britton and P. Wilson referred to this species as *Calyptrogyne occidentalis;* however,

L.H. Bailey, in his 1938 monograph on the group, provided sufficient evidence to place the species in a separate genus *Calyptronoma*. Authorities on the palm family accept this opinion and view this palm as an endemic species. Until recently, the species was known only from the type locality, where 44 individuals are known to occur. An additional population was discovered along the Camuy River of northwestern Puerto Rico in 1981 (Vivaldi and Woodbury 1981). About 200 individuals are presently known from this population. In addition, seeds have been collected from mature specimens and a small number of seedlings cultivated from these have been introduced into the Puerto Rico Department of Natural Resource's Rio Abajo Commonwealth Forest.

Calyptronoma rivalis is an arborescent palm which may reach 30 to 40 feet (9 to 13 meters) in height and 6 to 10 inches (15 to 25 centimeters) in diameter. The spineless, pinnate leaves may reach up to 12 feet (4 meters) and have petioles and sheaths up to 2 feet long (.7 meter). The inflorescence is a drooping panicle about 3 feet (1 meter) long. The flowers are in triads of two males and one female and are borne on sunken pits. Fruits are only 0.24 inch (6 millimeters) in diameter and are subglobose and reddish when ripe. All fruits mature at approximately the same time and fall with the persistent flower parts still attached to the base.

Only two natural populations and one small, introduced population are known: San Sebastion, Camuy, and the Rio Abajo Commonwealth Forest. All occur in the semievergreen seasonal forests of the karst region of northwestern Puerto Rico at elevations of 100 to 150 meters. All three populations are found in level or nearly level areas along stream banks. Deforestation in the surrounding areas has increased the threat of flash flooding and therefore the establishment of seedlings may be difficult. The construction of a road in the Camuy area resulted in the destruction of a large portion of that population.

Calyptronoma rivalis was recommended for Federal listing by the Smithsonian Institution (Ayensu and DeFilipps 1978). The species was included among the plants being considered as a candidate endangered or threatened species by the Fish and Wildlife Service, as published in the Federal Register (45 FR 82480) dated December 15, 1980; the November 28, 1983, update (48 FR 53640) of the 1980 notice; and the September 27, 1985, revised notice (50 FR 39526). The species was designated Category 1 (species for which the Service has substantial information supporting the appropriateness of proposing to list them as endangered or threatened) in each of the three notices.

In a notice published in the Federal Register on February 15, 1983 (48 FR 6752), the Service reported the earlier acceptance of the new taxa in the Smithsonian's 1978 book as under petition within the context of section 4(b)(3)(A) of the Act, as amended in 1982. The Service made subsequent petition findings in 1984, 1985, 1986, 1987, and 1988 that listing *Calyptronoma rivalis* was warranted but precluded by other pending listing actions of a higher priority, and that additional data on vulnerability and threats were still being gathered. This proposed rule constitutes the final required petition finding in accordance with section 4(b)(3)(B)(ii) of the Act.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (50 CFR Part 424) set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Calyptronoma rivalis* (O.F. Cook) L.H. Bailey (palma de manaca) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Modification of the original semievergreen seasonal forest and conversion to agricultural and pasture land may have eliminated populations and reduced available habitat. Direct destruction of plants through deforestation and flash flooding and the continued modification of habitat appear to be the most serious threats to *Calyptronoma rivalis*. Road construction eliminated part of the Camuy River population. Fires in surrounding sugar cane fields have burned some individuals. Flash flooding, increased by deforestation in surrounding areas, may cause erosion of stream banks, may reduce germination by washing away the seeds, and may result in poor establishment and survival of seedlings.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Taking for these purposes has not been a documented factor, but it could become a problem if information on the palm were to be widely publicized.

C. *Disease or predation.* Disease and predation have not been documented as factors in the decline of this species.

D. *The inadequacy of existing regulatory mechanisms.* The Commonwealth of Puerto Rico has adopted a regulation that recognizes and provides protection for certain Commonwealth listed species. Although the Puerto Rico Department of Natural Resources issued an internal directive in 1979 to try to protect this endemic palm, *Calyptronoma rivalis* is not yet on the Commonwealth list. Federal listing would provide interim protection and, if the species is ultimately placed on the Commonwealth list, enhance its protection and possibilities for funding needed research.

E. *Other natural or manmade factors affecting its continued existence.* All 3 populations, totaling perhaps 250 individuals, are known to inhabit areas that are susceptible to flash flooding.

Although germination may occur readily, establishment of seedlings is often impossible due to the frequency of such occurrences. Cattle have been observed feeding on and trampling young seedlings.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Calyptronoma rivalis* as threatened. Since the species appears to produce large quantities of viable seed, improvement in the species' status may only require mechanisms to protect it from the effects of deforestation in surrounding areas. In addition, introduction efforts in the Rio Abajo Forest appear to have been initially successful, although it is not yet known if the palms will reproduce and colonize the area naturally. Therefore, threatened rather than endangered status seems an accurate assessment of the species' condition. The reasons for not proposing critical habitat for this species are discussed below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species that is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time. The number of individuals of *Calyptronoma rivalis* is sufficiently small that vandalism could seriously affect the survival of the species. Such

an activity is difficult to enforce against and only regulated by the Act with respect to plants in cases of (1) removal and reductions to possession of endangered plants from lands under Federal jurisdiction or malicious damage or destruction on such lands; and (2) removal, cutting, digging up, or damaging or destroying in knowing violation of any State laws or regulation, including State criminal trespass law. Publication of critical habitat descriptions and maps in the Federal Register would increase the likelihood of such activities. The Service believes that Federal involvement in the areas where this plant occurs can be identified without the designation of critical habitat. All involved parties and principal landowners have been notified of the location and importance of protecting this species' habitat. Protection of this species' habitat will also be addressed through the recovery process and through the section 7 jeopardy standard. Therefore, it would not be prudent to determine critical habitat for *Calyptronoma rivalis* at this time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, Commonwealth and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the Commonwealth, and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is subsequently listed, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may adversely affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. No critical habitat is being proposed for *Calyptronoma rivalis*, as discussed above. Federal involvement is not expected where the species is known to occur.

The Act and its implementing regulations found at 50 CFR 17.71 and 17.72 set forth a series of general trade prohibitions and exceptions that apply to all threatened plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.71, would apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export any threatened plant, transport it in interstate or foreign commerce in the course of a commercial activity, sell or offer it for sale in interstate or foreign commerce, or to remove and reduce the species to possession from areas under Federal jurisdiction. In addition for listed plants, the 1988 amendments to the Act (Pub. L. 100–478) prohibit (1) their malicious damage or destruction on Federal lands, and (2) their removal, cutting, digging up, or damaging or destroying in knowing violation of any State law or regulation, including State criminal trespass law. Seeds from cultivated specimens of threatened plant species are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their containers. Certain exceptions can apply to agents of the Service and Commonwealth conservation agencies.

The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened species under certain circumstances. It is anticipated that few trade permits for *Calyptronoma rivalis* will ever be sought or issued since the species is not common in cultivation and is uncommon in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, P.O. Box 27329, Washington, DC 20038–7329 (202/343–4955).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposed rule are hereby solicited. Comments are particularly sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Calyptronoma rivalis;*

(2) The location of any additional populations of *Calyptronoma rivalis*, and the reasons why any habitat should or should not be determined to be critical habitat as provided by Section 4 of the Act;

(3) additional information concerning the range and distribution of this species; and

(4) current or planned activities in the subject areas and their possible impacts on *Calyptronoma rivalis.*

Final promulgation of the regulation on *Caluptronoma rivalis* will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of this proposal. Such requests must be made in writing and addressed to the Field Supervisor, Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boqueron, Puerto Rico 00622.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

References Cited

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Vivaldi, J. L., and R. 0. Woodbury. 1981. Status report on *Calyptronoma rivalis* (0. F. Cook) L. H. Bailey. Unpublished status report submitted to the Fish and Wildlife Service, Atlanta, Georgia. 35 pp.

Author

The primary author of this proposed rule is Ms. Susan Silander, Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boqueron, Puerto Rico 00622 (809/851-7297).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 96-304, 96 Stat. 1411; Pub. L. 100-478, 102 Stat. 2306; Pub. L. 100-653, 102 Stat. 3825 (16 U.S.C. 1531 *et seq.*); Pub. L. 99-625,100 Stat. 3500, unless otherwise noted.

2. It is proposed to amend § 17.12(h) by adding the following family, and Arecaceae entries, in alphabetical order to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
*	*	*	*	*	*	*
Arecaceae—Palm family:						
Calyptronoma rivalis	Palma de manaca	U.S.A. (PR)	T		NA	NA
*	*	*	*	*	*	*

Dated: December 22, 1988.

Becky Norton Dunlop,

[FR Doc. 89-2861 Filed 2-6-89; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Threatened Status for the Pygmy Sculpin, Cottus pygmaeus

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine the pygmy sculpin, *Cottus pygmaeus*, to be a threatened species under the authority of the Endangered Species Act of 1973, as amended (Act). This small fish is known to exist in only Coldwater Spring and the spring run in Calhoun County, Alabama. Groundwater contamination and restricted population represent major threats to this small sculpin. Water sampling has revealed low levels of trichloroethylene in Coldwater Spring. This proposal, if made final, would implement the protection of the Act for the pygmy sculpin. The Service seeks relevant data and comments from the public.

DATES: Comments from all interested parties must be received by April 10, 1989. Public hearing requests must be received by March 24, 1989.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Jackson, Mississippi, Field Office, U.S. Fish and Wildlife Service, Jackson Mall Office Center, Suite 316, 300 Woodrow Wilson Avenue, Jackson, Mississippi 39213. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: James Stewart at the above address (601/965-4900 or FTS 490-4900).

SUPPLEMENTARY INFORMATION:

Background

The pygmy sculpin was first collected from Coldwater Spring, Calhoun County, Alabama in 1963 and described in 1968 (Williams 1968). This species rarely exceeds 45 millimeters (1.8 inches) in total length. The head is large, body moderately robust and the lateral line is incomplete. Coloration varies by sex, maturity, and breeding condition, while pigmentation is generally consistent (Williams 1968). Pigmentation generally consists of up to three dorsal saddles and mottled or spotted fins. Juveniles have a grayish black body with three light colored saddles. With maturity, the body color becomes lighter, with the grayish black color that remains forming two dark saddles. In juveniles, the head is black, changing to white with small, scattered melanophores in adults. In breeding males, the dark spots in the spinous dorsal fin enlarge and become more intense and the fin margin becomes reddish orange. The entire body becomes suffused with black pigment which almost completely conceals the underlying pattern. The breeding color of females tends to be slightly darker than in non-breeding females.

The only known population of pygmy sculpins is in Coldwater Spring and the spring run. Coldwater Spring is impounded to form a pool of over one acre, 2 to 4 feet deep (McCaleb 1973). The spring run is up to 60 feet wide and 500 feet long where it is joined by Dry Creek. Below this confluence, the stream is known as Coldwater Creek until it joins Choccolocco Creek. The spring flows from the brecciated zone of the Jacksonville fault in the Weisner formation (Williams 1968, McCaleb 1973, Scott et al., 1987). The average flow is 32 million gallons per day with a fairly constant temperature of 16 to 18 degrees centigrade (61° to 64°F). The bottom is gravel and sand with large rocks where the spring boils occur. Large mats of vegetation are present in the spring pool and along the edges of the spring run. Water excess to needs of the Anniston Water Department flows over a low weir dam that is approximately 22 feet wide, to form the spring run. The downstream limit of the pygmy sculpin population occurs at the confluence of Dry Creek. This small stream drains the area of Anniston Army Depot and of a clay mining operation. Water quality degradation has been a long-term problem in Dry Creek. Historic records are not available to document if the pygmy sculpin occurred below the confluence of Dry Creek prior to the water quality degradation.

The City of Anniston owns Coldwater Spring, the spring run, and approximately 240 surrounding acres. The spring pool serves as the primary water supply for Anniston. The average daily withdrawl by Anniston is 16.5 million gallons with an average spring flow of 31.2 million gallons (Scott et al.

1987). The recharge area for Coldwater Spring is estimated at 90 square miles. This area includes portions of Anniston Army Depot, Fort McClellan, the Cities of Anniston and Jacksonville, several smaller towns, and private lands.

Previous Service actions on this species include a notice of review on March 18, 1975 (40 FR 12297), a proposal to list the pygmy sculpin and three other fishes as endangered with critical habitat on November 29, 1977 (42 FR 60765), notice of extension of the comment period and public hearing on February 6, 1978 (43 FR 4872), notice of withdrawal of critical habitat on March 6, 1979 (44 FR 12382), reproposal of critical habitat and notice of public meeting on July 27, 1979 (44 FR 44418), notice of withdrawal of proposed rule on January 24, 1980, (45 FR 5782), and notices of review on December 30, 1982 (47 FR 58454), and September 18, 1985 (50 FR 37958). The pygmy sculpin was placed in category 3C for the 1982 notice, and in category 1 for the 1985 notice. Category 3C candidates were defined as taxa that have proven to be more abundant or widespread than was previously believed and/or those that are not subject to any identifiable threat. In the 1985 notice, category 1 candidates are defined as comprising taxa for which the Service currently has information on hand to support the biological appropriateness of proposing to list as endangered or threatened.

Public meetings on the 1977 listing proposal were held in Birmingham, Alabama, on March 15, 1978, and in Anniston, Alabama, on August 28, 1979. Numerous individuals spoke at the these meetings both for and against the proposal. The opposition was based upon the fear of economic impacts and loss of the spring as a water supply. Some individuals expressed doubt that the pygmy sculpin was confined to just Coldwater Spring. Former Governor Wallace opposed the proposal to list the pygmy sculpin and three other fish species based upon questions concerning the listing procedures, and the potentially adverse economic impact that he perceived would result from the listing of two species other than the pygmy sculpin. The Anniston Water Works and Sewer Board opposed the proposal because they did not believe there was sufficient data to support the listing. The Service discontinued efforts to list the species, and on November 29, 1979, 2 years after publication in the **Federal Register**, the species had not been listed and was therefore automatically withdrawn from proposed status in accordance with provisions of the Endangered Species Act.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to the pygmy sculpin (Cottus pygmaeus) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The pygmy sculpin is known to exist in only Coldwater Spring and the spring run. It has never been collected below the confluence of Dry Creek after water from these two streams has completely mixed. Thus, its present range is also the known historic range. However, the historic range may have extended downstream of the Dry Creek confluence prior to the occurrence of environmental pollution as discussed in Factor E. The pygmy sculpin and its habitat are threatened by the proposed construction of a highway bypass from Interstate Highway 20 to the City of Anniston. The Alabama Highway Department has identified three alternate routes for the proposed Anniston Bypass. The early planning preferred route (alternate one) is along the side of Coldwater Mountain immediately above and to the east of Coldwater Spring. The second alternate is to the west of Coldwater Spring. The third alternate is an enlargement of the existing road immediately adjacent to and west of Coldwater Spring and the spring run (Carwile *in litt.*). All three of these proposed routes pass through the recharge area for Coldwater Spring (Scott et al. 1987). Water in subsurface aquifers moves along fissures, faults and cracks in reaching the aquifer and in returning to the surface. The recharge area for Coldwater Spring is estimated at 90 square miles and includes Coldwater Mountain. Construction of alternate one will be along the side of Coldwater Mountain and will undoubtedly require the use of explosives in carving out the roadway. This use of explosives might result in the shifting and closing or cracks and fissures which allow water to surface at Coldwater Spring. An additional threat posed by the completion of alternate one is the accidental spillage of toxic substances. Coldwater Mountain is so steep and the underlying rock formations of such relatively low permeability that the susceptibility for contamination from the mountain is low. However, parallel to Coldwater Mountain and in the valley, is the Jacksonville Fault. The valley has a thick residual mantle with underlying cavernous carbonate rocks over the Fault. This area is highly susceptible to contamination because sinkholds and depressions on the land surface are common in parts of this recharge area (Scott et al. 1987). Any accidental spill from the proposed roadway into this highly permeable area would likely result in rapid contamination of Coldwater Spring to the detriment of the pygmy sculpin. Alternates two and three are to the west of Coldwater Spring and do not pose the same magnitude of threat as alternate one. However, they are still within a portion of the recharge area and the potential for contamination by accidental spillage does exist.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Coldwater Spring and the spring run are owned and protected from trespassing and collecting by the Anniston Water Department. As long as this protection exists, this species should not be overutilized.

C. *Disease or predation.* Although the pygmy sculpin may be a prey species for larger carnivorous fish and water snakes, and may be afflicted by diseases and parasites common to fish, there is no evidence to indicate that natural mortalities from these sources are a problem at present.

D. *The inadequacy of existing regulatory mechanisms.* The inadequacy of existing regulatory mechanisms. The State of Alabama requires a scientific collector's permit if a species such as the pygmy sculpin is to be collected. This species is listed as threatened by the Alabama Nongame Conference (Mount 1986) and is designated a nongame species by the State of Alabama. As a nongame species, it is unlawful to possess more than four individuals without a scientific collection permit. The difficulty of enforcing the permit requirement and the priority demands for a law enforcement officer's time virtually eliminate any protection for this species. Therefore, the most effective protection has been provided by a cooperative agreement between the Anniston Water Works and Sewer Board and the U.S. Fish and Wildlife Service that no action will be taken which would endanger the pygmy sculpin. While this good faith agreement provides protection from actions under the control of the Board, it does not provide protection from water contamination and construction projects

discussed in Factors A and E or from other factors beyond the Board's control.

E. *Other natural or manmade factors affecting its continued existence.* Water contamination is occurring in surface water and the subsurface aquifer and is affecting both Coldwater Spring and Dry Creek. Water sampling on and adjacent to the Anniston Army Depot (Depot) indicates hexavalent chromium is discharged to Dry Creek and that chlorinated hydrocarbons are in the ground water at the Depot (Schalla et al. 1984). Schalla et al. conclude that the migration of chlorinated hydrocarbon is not of immediate concern but may have long-range impacts. Trichloroethylene occurs in strong concentrations (up to 120,000 parts per billion) in test wells on Annistan Army Depot and up to 3.4 parts per billion in Coldwater Spring (ESE 1986). Sampling in 1986 did not find phenols and hexavalent chromium in Coldwater Spring yet these chemicals may be migrating in the aquifer since they are found in test wells 2 and 4 on the Depot. Shallow ground water in the area of these wells likely contributes to the recharge of the Jacksonville fault zone (Kangas 1987). Kangas' assessment indicates that water is lost from the shallow aquifer between the Depot boundary and test well 2. This indicates that water from the Depot's shallow aquifer is sinking to a deeper aquifer and possibly surfacing at Coldwater Spring. The 90 square mile recharge area includes several potential contamination sources, including a chemical manufactring industry, Fort McClellan, the City of Anniston, at least one landfill, and the proposed highway connecting Interstate 20 and State Highway 202.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list the pygmy sculpin as threatened. Threatened status was chosen because the species does not appear to be in imminent danger, but it does face threats which could place it in danger of extinction within the foreseeable future. Critical habitat is not designated for reasons discussed in the following section.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the same time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time owing to lack of benefit from such designation. No additional benefits would accrue from a critical habitat designation that do not already accrue from the listing.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibition against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or theatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interageny cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may adversely affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Federal involvement with this species is expected to include the Federal Highway Administration relative to highway construction, and the Environmental Protection Agency and Department of Defense relative to pollution of the subsurface aquifer.

The Act and implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of general prohibitions and exceptions that apply to all threatened wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions would apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving threatened wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22, 17.23, and 17.32. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. For threatened species, there are also permits for zoological exhibition, educational purposes, or special purposes consistent with the purposes of the Act. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship that would be suffered if such relief were not available.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposal are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by Section 4 of the Act;

(3) Additional information concerning the range and distribution of this species; and

(4) Current or planned activities in the subject area and their possible impacts on this species.

Final promulgation of the regulation on this species will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such

requests must be made in writing and addressed to Field Supervisor (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

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Author

The primary author of this proposed rule is James H. Stewart (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411; Pub. L. 100–478, 102 Stat. 2306; Pub. L. 100–653, 102 Stat. 3825 (16 U.S.C. 1531 *et seq.*); Pub. L. 99–652, 100 Stat. 3500; unless otherwise noted.

2. It is proposed to amend § 17.11(h) by adding the following, in alphabetical order under FISHES, to the List of Endangered and Threatened Wildlife.

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Fishes							
*	*	*	*	*	*	*	*
Sculpin, pygmy	*Cottus pygmaeus*	U.S.A. (AL)	Entire	T		NA	17.44(u)
*	*	*	*	*	*	*	*

3. It is further proposed to add the following as special rule to § 17.44(u).

§ 17.44 Special rules—FISHES

* * * * *

(u) Pygmy sculpin (*Cottus pygmaeus*). The City of Anniston Water Works and Sewer Board will continue to use Coldwater Spring as a municipal water supply. Pumpage may remove all spring flow in excess of six cubic feet per second (3,888,000 gallons per day).

Dated: December 22, 1988.

Becky Norton Dunlop,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 89–2859 Filed 2–6–89; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 54, No. 24
Tuesday, February 7, 1989

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[TB-89-003]

National Advisory Committee for Tobacco Inspection Service; Meeting

In accordance with the Federal Advisory Committee Act (5 U.S.C. App. 1) announcement is made of the following committee meeting:

Name: National Advisory Committee for Tobacco Inspection Services.

Date: March 7, 1989.

Time: 9:30 a.m.

Place: Agricultural Marketing Service, U.S. Department of Agriculture, Conference Room, Room 3505 South Building, 14th and Independence Avenue, Washington, DC 20250.

Purpose: To review various regulations issued pursuant to the Tobacco Inspection Act (7 U.S.C. 511 *et seq.*), to hear persons who have asked to address the committee and who have been scheduled to do so, and to discuss the level of tobacco inspection and related services. In particular, the committee will consider an increase in the user fee to recover costs involved in the inspection and grading of tobacco sold at designated auction markets beginning with the 1989-90 selling season.

The meeting is open to the public. Public participation will be limited to written statements submitted before, at, or after the meeting unless otherwise requested by the committee chairperson.

Persons, other than members who wish to address the committee at the meeting, should contact Ernest L. Price, Director, Tobacco Division, Agricultural Marketing Service, U.S. Department of Agriculture, 300 12th Street SW., Room 502 Annex Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-2567, prior to the meeting.

Dated: February 1, 1989.

J. Patrick Boyle,

Administrator.

[FR Doc. 89-2807 Filed 2-6-89; 8:45 am]

BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

[Docket No. 88-213]

U.S. Veterinary Biological Product and Establishment Licenses Issued

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: By this notice, we are advising the public of licenses for production of veterinary biological products and licenses for establishments producing veterinary biological products that have been issued by the Animal and Plant Health Inspection Service during the month of November, 1988. The licenses have been issued in accordance with 9 CFR Part 102, which regulates the licensing of veterinary biological products and establishments producing veterinary biological products.

FOR FURTHER INFORMATION CONTACT: Dr. Peter L. Joseph, Senior Staff Veterinarian, Veterinary Biologics, Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 838, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-6332.

SUPPLEMENTARY INFORMATION: The regulations in 9 CFR Part 102, "Licenses For Biological Products," require that every person who prepares certain biological products that are subject to the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*) shall hold an unexpired, unsuspended, and unrevoked U.S. Veterinary Biological Product License. The regulations set forth the procedures for applying for a license, the criteria for determining whether a license shall be issued, and the form of the license.

Pursuant to these regulations, APHIS has issued the following U.S. Veterinary Biological Product Licenses during the month of November, 1988:

Product license code	Date issued	Product	Establishment	Establishment license No.
7160.00	11-1-88	Clostridium Chauvoei-Septicum-Haemolyticum-Novyi-Sordellii-Pefringens, Types C & D Bacterin-Toxoid.	Beecham Laboratories	225
C600.00	11-3-88	Normal Serum, Equine Origin, For Further Manufacture	Quad Five	366
A101.20	11-4-88	Bovine Rhinotracheitis Virus, Modified Live Virus, For Further Manufacture	Beecham Laboratories	225
A841.20	11-4-88	Bovine Parainfluenza, Virus, Modified Live Virus, For Further Manufacture	Beecham Laboratories	225
2101.01	11-7-88	Bordetella Bronchiseptica-Erysipelothrix Rhusiopathiae-Pasteurella Multocida Bacterin.	Ambico, Inc	281
A201.20	11-9-88	Bovine Virus Diarrhea Virus, Modified Live Virus, For Further Manufacdture	Beecham Laboratories	225
2679.00	11-14-88	Leptospira Bratislava Bacterin	Norden Laboratories	189
3601.01	11-21-88	Normal Plasma, Equine Origin	Lake Immunogenics, Inc	318

The regulations in CFR Part 102 also require that each person who prepare biological products that are subject to the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*) shall hold a U.S. Veterinary Biological Establishment License. The regulations set forth the procedures for applying for a license, the criteria for determining whether a license shall be issued, and the form of the license.

Pursuant to these regulations, APHIS has issued the following U.S. Veterinary Biological Establishment License during the month of November, 1988:

Establishment	Establishment license No.	Date issued
Quad Five, 361 Rothiemay Road, Box 5, Ryegate, Montana 59074.	366	Nov. 3, 1988.

Done at Washington, DC, this 2nd day of February 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-2869 Filed 2-6-89; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF COMMERCE

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

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

Agency: Bureau of Economic Analysis
Title: Unemployment Insurance Benefit Payments by County
Form Number: Agency—NA; OMB—0608-0038
Type of Request: Renewal of a currently approved collection
Burden: 24 Respondents; 144 reporting hours
Average Hours Per Response: 6 Hours
Needs and Uses: The Bureau of Economic Analysis prepares county estimates of personal income. To produce county estimates of unemployment insurance benefit payments, which are a part of personal income, it is necessary to request data directly from the responsible State agencies. The data which are compiled by the States for their own administrative purposes are only available from the State administering the programs.
Affected Public: State government agencies
Frequency: Annually
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 H6622, 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 February 1, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89-2771 Filed 2-6-89; 8:45 am]

BILLING CODE 3510-CW-M

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

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

Agency: Patent and Trademark Office
Title: Patent Processing
Form Number: Agency—Numerous; OMB—0651-0011
Type of Request: Extension of the expiration date of a currently approved collection
Burden: 125,000 respondents; 331,574 reporting hours; Average hours per response is 2.43 hours
Needs and Uses: The Patent and Trademark Office is responsible for issuing patents. The information collected is for use by the staff of the Patent and Trademark Office in order to process patent applications and assess the propriety of granting United States patents.
Affected Public: Individuals; State of local governments; Farms; Businesses or other for-profit institutions; Federal agencies; Non-profit institutions; and Small businesses or organizations
Frequency: On occasion
Respondent's Obligation: Required to obtain or retain a benefit
OMB Desk Officer: Robert Veeder, 395-3785

Agency: Patent and Trademark Office
Title: Miscellaneous Patent Provisions
Form Number: Agency—None; OMB—0651-0018
Type of Request: Extension of the expiration date of a currently approved collection
Burden: 2,215 respondents; 2,046 burden hours; Average hours per response—.92 burden hours
Needs and Uses: The information requested is used by PTO in determining whether or not to grant a patent when two or more individuals are responsible for the invention. The data requirements under this clearance, however, are primarily related to applying for a Statutory Invention Registration. This provision allows firms or individuals to register for a special benefit. Under this provision, a patent is not issued but no other person or corporation can apply for ownership of the invention. However, others can use, make or sell the invention.
Affected Public: Individuals; Businesses or other for-profit institutions; Federal agencies; Non-profit institutions; Small businesses or organizations
Frequency: On occasion
Respondent's Obligation: Required to obtain or retain a benefit
OMB Desk Officer: Robert Veeder, 395-3785.

Copies of the above information collection proposals 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 collections should be sent to Robert Veeder, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

Dated: January 31, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89-2774 Filed 2-6-89; 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: Service Supply Licensing Procedure.
Form Number: BXA-6026P and E.A.R. section 773.7 (d) & (k); OMB-0094-0002.
Type of Request: Extension of the expiration date of a currently approved collection.
Burden: 115 respondents; 530 responses; 489 reporting/recordkeeping hours. Approximate hours per respondent is 4 hours.
Needs and Uses: The Service Supply License procedure provides U.S. firms a means to provide prompt service for equipment, (A) previously exported from the U.S., (B) produced abroad by a subsidiary, affiliate or branch of a U.S. firm or (C) produced abroad with U.S. parts included in the manufactured product.
Affected Public: Businesses or other for-profit institutions; small businesses or organizations.
Frequency: On occasion; quarterly, recordkeeping.
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 31, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89–2775 Filed 2–6–89; 8:45 am]

BILLING CODE 3510-CW-M

Foreign-Trade Zones Board

[Order No. 428]

Approval for Expansion of Foreign-Trade Zone No. 17, Kansas City, KS

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), and the Foreign-Trade Zones Board Regulations (15 CFR Part 400), the Foreign-Trade Zones Board (the Board) adopts the following order:

Whereas, the Greater Kansas City Foreign-Trade Zone, Inc., Grantee of Foreign-Trade Zone No. 17, has applied to the Board for authority to expand its general-purpose zone in Kansas City, Kansas, to include two additional public warehouse sites in Kansas City, within the Kansas City Customs port of entry:

Whereas, the application was accepted for filing on November 10, 1987, and notice inviting public comment was given in the **Federal Register** on November 24, 1987 (Docket 33–87, 52 FR 45003);

Whereas, an examiners committee has investigated the application in accordance with the Board's regulations and recommends approval;

Whereas, the expansion is necessary to improve and expand zone services in the Kansas City area; and,

Whereas, the Board has found that the requirements of the Foreign-Trade Zones Act, as amended, and the Baord's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby orders:

That the Grantee is authorized to expand its zone in accordance with the application filed November 10, 1987. The grant does not include authority for manufacturing operations, and the Grantee shall notify the Board for approval prior to the commencement of any manufacturing or assembly operations. The authority given in this Order is subject to settlement locally by the District Director of Customs and the District Army Engineer regarding compliance with their respective requirements relating to foreign-trade zones.

Signed at Washington, DC, this 31st day of January 1989.

Jan W. Mares,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates Foreign-Trade Zones Board.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 89–2862 Filed 2–6–89; 8:45 am]

BILLING CODE 3510-DS-M

[Order No. 429]

Approval for Expansion of Foreign-Trade Zone No. 29 Louisville, KY

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), and the Foreign-Trade Zones Board Regulations (15 CFR Part 400), the Foreign-Trade Zones Board (the Board) adopts the following order:

Whereas, the Louisville and Jefferson County Riverport Authority, Grantee of Foreign-Trade Zone No. 29, has applied to the Board for authority to expand its general-purpose zone in Louisville, Kentucky, to include additional acreage at the existing zone site at the Riverport Industrial Complex and to add a site in eastern Jefferson County, within the Louisville Customs port of entry;

Whereas, the application was accepted for filing on November 16, 1987, and notice inviting public comment was given in the **Federal Register** on November 24, 1987 (Docket 34–87, 52 FR 45003);

Whereas, an examiners committee has investigated the application in accordance with the Board's regulations and recommends approval;

Whereas, the expansion is necessary to improve and expand zone services in the Louisville area; and

Whereas, the Board has found that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby orders:

That the Grantee is authorized to expand its zone in accordance with the application filed November 16, 1987. The grant does not include authority for manufacturing operations, and the Grantee shall notify the Board for approval prior to the commencement of any manufacturing or assembly operations. The authority given in this Order is subject to settlement locally by the District Director of Customs and the District Army Engineer regarding compliance with their respective requirements relating to foreign-trade zones.

Signed at Washington, DC, this 31st day of January 1989.

Jan W. Mares,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates Foreign-Trade Zones Board.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 89–2863 Filed 2–6–89; 8:45 am]

BILLING CODE 3510-DS-M

[Order No. 427]

Approval for Expansion of Foreign-Trade Zone No. 74 Baltimore, MD

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), and the Foreign-Trade Zones Board Regulations (15 CFR Part 400), the Foreign-Trade Zones Board (the Board) adopts the following order:

Whereas, the City of Baltimore, Grantee of Foreign-Trade Zone No. 74, has applied to the Board for authority to expand its general-purpose zone in Baltimore, Maryland, to include the Point Breeze Business Center, within the Baltimore Customs port of entry;

Whereas, the application was accepted for filing on October 29, 1987, and notice inviting public comment was given in the **Federal Register** on November 12, 1987 (Docket 29–87, 52 FR 43378);

Whereas, an examiners committee has investigated the application in accordance with the Board's regulations and recommends approval;

Whereas, the expansion is necessary to improve and expand zone services in the Baltimore area; and

Whereas, the Board has found that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby orders:

That the Grantee is authorized to expand its zone in accordance with the application filed October 29, 1987. The grant does not include authority for manufacturing operations, and the

Grantee shall notify the Board for approval prior to the commencement of any manufacturing or assembly operations. The authority given in this Order is subject to settlement locally by the District Director of Customs and the District Army Engineer regarding compliance with their respective requirements relating to foreign-trade zones.

Signed at Washington, DC, this 31st day of January 1989.

Jan W. Mares,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates Foreign-Trade Zones Board.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 89-2864 Filed 2-6-89; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-588-810]

Initiation of Antidumping Duty Investigation: Mechanical Transfer Presses From Japan

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating an antidumping duty investigation to determine whether imports of mechanical transfer presses from Japan are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of mechanical transfer presses materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before February 26, 1989. If that determination is affirmative, we will make a preliminary determination on or before June 21, 1989.

EFFECTIVE DATE: February 7, 1989.

FOR FURTHER INFORMATION CONTACT: James P. Maeder, Jr. or Mary S. Clapp, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377-4929 or (202) 377-3965, respectively.

SUPPLEMENTARY INFORMATION:

The Petition

On January 12, 1989, we received a petition filed in proper form by the Verson Division of Allied Products Corporation, the United Auto Workers, and the United Steelworkers of America (AFL-CIO-CLC) on behalf of the domestic mechanical transfer press industry. In compliance with the filing requirements of 19 CFR 353.36, petitioners allege that imports of mechanical transfer presses from Japan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a U.S. industry.

United States Price and Foreign Market Value

Petitioners' estimate of United States price is based on Verson's bid price less the estimated amount by which the winning company underbid it. U.S. duty, movement charges, U.S. Customs merchandise processing fee, and U.S. Customs harbor maintenance fee were deducted. Petitioners' estimate of foreign market value (FMV) is based on a constructed value, calculated on the basis of Verson's actual cost of manufacture, adjusted for known differences between Japanese and U.S. costs.

Based on a comparison of FMV to the United States price, petitioners allege dumping margins ranging from 8.19 to 97.68 percent.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation, and whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on mechanical transfer presses from Japan and found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of mechanical transfer presses from Japan are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination by June 21, 1989.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the United States fully converted to the *Harmonized Tariff Schedule* (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS item number(s). The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive as to the scope of the product coverage.

Imports covered by this investigation are shipments of mechanical transfer presses from Japan. For purposes of this investigation, the term "mechanical transfer presses" refers to automatic metal-forming machine tools with multiple die stations in which the workpiece is move from station to station by a transfer mechanism synchronized with the press action, whether imported as machines or parts suitable for use solely or principally with these machines. These presses may be assembled or unassembled. During most of the review period, such merchandise was classifiable under items 674.3583, 674.3586, 674.3587, 674.3592, 674.3594, 674.3596, 674.5315, and 674.5320 of the *Tariff Schedules of the United States Annotated* (TSUSA). This merchandise is currently classifiable under HTS items 8462.29.00, 8462.39.00, 8462.49.00, 8462.99.00, 8466.94.50.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in our files, provided it confirms in writing that it will not disclose such information either publicly or under administrative protective order without the written consent of the Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by February 26, 1989, whether there is a reasonable indication that imports of mechanical transfer presses from Japan materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will terminate; otherwise, it will proceed according to the statutory and regulatory procedures.

This notice is published pursuant to section 732(c)(2) of the Act.

Jan W. Mares,

Assistant Secretary for Import Administration.

February 1, 1989.

[FR Doc. 89-2866 Filed 2-6-89; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-014]

Tuners (of The Type Used in Consumer Electronic Products) From Japan; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On December 13, 1988, the Department of Commerce published the preliminary results of its antidumping duty administrative review on tuners (of the type used in consumer electronic products) from Japan. The review covers one manufacturer/exporter of this merchandise to the United States and the period December 1, 1986 through November 30, 1987.

We gave interested parties an opportunity to comment on our preliminary results. We received no comments. The final results of review are unchanged from those presented in the preliminary results.

EFFECTIVE DATE: February 7, 1989.

FOR FURTHER INFORMATION CONTACT: Edward Haley or Robert Marenick, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230: (202) 377-5255.

SUPPLEMENTARY INFORMATION:

Background

On December 13, 1988, the Department of Commerce ("The Department") published in the **Federal Register** (53 FR 50063) the preliminary results of its administrative review of the antidumping duty finding on tuners (of the type used in consumer electronic products) from Japan (35 FR 18914, December 12, 1970). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

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

Imports covered by the review are shipments of tuners (of the type used in consumer electronic products) consisting primary of television receiver tuners and tuners used in radio receivers such as household radios, stereo and high fidelity radio systems, and automobile radios. They are vitrually all in modular form, aligned and ready for simple assembly into the consumer electronic product for which they were designed. The term "consumer electronic product" includes television sets, radios, and other electronic products of the type commonly bought at retail by household consumers, whether or not used in or around the household. Excluded are complete stereophonic tuners which are consumer products themselves, but not excluded are modular-type stereophonic tuners. During the review period, such merchandise was classifiable under items 685.0200 and 685.3300 of the Tariff Schedules of the United States Annotated. This merchandise is currently classifiable under HTS items 8529.90.10 and 8529.90.50. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers one manufacturer/exporter of Japanese tuners to the United States, Toa Electric Co., Ltd., and the period December 1, 1986 through November 30, 1987.

Final Results of the Review

We invited interested parties to comment on the preliminary results. We received no comments. Based on our analysis, the final results of review are the same as those presented in the preliminary results of review, and we determine that a dumping margin of 1.9 percent exists for Toa Electric Co., Ltd. for the period December 1, 1986 through November 30, 1987.

The Department will instruct the Customs Service to assess antidumping duties at the above rate on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided for by section 751(a)(1) of the Tariff Act, the Department shall require a cash deposit of estimated duties of 1.9 percent for Toa Electric Co., Ltd. For any future shipments from the remaining known manufacturers and/or exporters not covered in this review, the cash deposit will continue to be at the rate published in the final results of the last administrative review for each of those firms. The above margin does not change the current rate of cash deposit for new exporters. These deposit requirements are effective for all shipments of Japanese tuners (of the type used in consumer electronic products) entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and will remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.53a

Jan W. Mares,

Assistant Secretary for Import Administration.

Date: February 1, 1989.

[FR Doc. 89-2865 Filed 2-6-89; 8:45 am]

BILLING CODE 3510-DS-M

[C-122-404]

Live Swine From Canada; Correction to Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of correction to final results of countervailing, administrative review.

EFFECTIVE DATE: February 7, 1989.

FOR FURTHER INFORMATION CONTACT: Sylvia Chadwick or Bernard Carreau, Office of Countervailing Duty Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

Correction

On January 9, 1989, we published the Notice of Final Results of Countervailing Duty Administrative Review on Live Swine from Canada (54 FR 651). We hereby correct the Final Results by removing the following cite from page 652, third column, first paragraph, lines nine through thirteen:

See, e.g., Preliminary Affirmative Countervailing Duty Determination: Certain Softwood Lumber Products from Canada (51 FR 37453, Oct. 22, 1986).

Date: January 30, 1989.

Timothy N. Bergan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 89-2772 Filed 2-6-89; 8:45 am]

BILLING CODE 3510-DS-M

Minority Business Development Agency

Business Development Center Applications; Arizona

AGENCY: Minority Business Development Agency.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Indian Business Development Center (IBDC) program to operate an IBDC for approximately a 3 year period, subject to the availability of funds. The cost of performance for the first 12 months is $193,000 in Federal funds for the budget period July 1, 1989 to June 30, 1990. The IBDC will operate in the State of Arizona.

The I.D. Number for this project will be 09-10-89009-01.

The funding instrument for the IBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The IBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can coordinate and broker public and private resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated on the following criteria: the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodology) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive.

The IBDC may continue to operate, after the initial competitive year, for up to 2 additional budget periods. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an IBDC's satisfactory performance, the availability of funds and Agency priorities.

DATE: The closing date for applications is March 13, 1989. Applications must be postmarked on or before March 13, 1989.

ADDRESS:

San Francisco Regional Office,
Minority Business Development Agency,
U.S. Department of Commerce,
221 Main Street, Room 1280,
San Francisco, California 94105,
415/974-0597.

A pre-application conference to assist all interested applicants will be held at the following address and time:

Minority Business Development Agency,
U.S. Department of Commerce,
221 Main Street, Room 1280,
San Francisco, California 94105.
February 23, 1989.

FOR FURTHER INFORMATION CONTACT: Dr. Xavier Mena, Regional Director, San Francisco Regional Office.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372 "Intergovernmental Review of Federal Programs" is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

(11.801 Indian Business Development Catalog of Federal Domestic Assistance)

Xavier Mena,

Regional Director, San Francisco Regional Office.

February 1, 1989.

[FR Doc. 89-2777 Filed 2-6-89; 8:45 am]

BILLING CODE 3510-21M-M

Business Development Center Applications, California

AGENCY: Minority Business Development Agency.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Indian Business Development Center (IBDC) program to operate an IBDC for approximately a 3 year period, subject to the availability of funds. The cost of performance for the first 12 months is $303,000 in Federal funds for the budget period July 1, 1989 to June 30, 1990. The IBDC will operate in the State of California.

The I.D. Number for this project will be 09-89010-01.

The funding instrument for the IBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The IBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority business. To this end, MBDA funds organizations that can coordinate and and broker public and private resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated on the following criteria: the experience and capabilities of the firms and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodology) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to a considered programmatically acceptable and responsive.

The IBDC may continue to operate, after the initial competitive year, for up to 2 additional budget periods. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an IBDC's satisfactory performance, the availability of funds and Agency priorities.

DATE: The closing date for applications is March 13, 1989. Applications must be postmarked on or before March 13, 1989.

ADDRESS:

San Francisco Regional Office,
Minority Business Development Agency,
U.S. Department of Commerce,

221 Main Street, Room 1280,
San Francisco, California 94105,
415/974–9597.

A pre-application conference to assist all interested applicants will be held at the following address and time:

Minority Business Development Agency,
U.S. Department of Commerce,
221 Main Street, Room 1280,
San Francisco, California 94105.
February 23, 1989.

FOR FURTHER INFORMATION CONTACT:
Dr. Xavier Mena, Regional Director, San Francisco Regional Office.

SUPPLEMENTARY INFORMATION:
Anticipated processing time of this award is 120 days. Executive Order 12372 "Intergovernmental Review of Federal Programs" is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

(11.801 Indian Business Development Catalog of Federal Domestic Assistance)

Xavier Mena,

Regional Director, San Francisco Regional Office.

February 1, 1989.

[FR Doc. 89–2778 Filed 2–6–89; 8:45 am]

BILLING CODE 3510–21M–M

Business Development Center Applications; Riverside, CA

AGENCY: Minority Business Development Agency.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) program to operate an MBDC for approximately a 3-year period, subject to the availability of funds. The cost of performance for the first 12 months is $230,400 in Federal funds and a minimum of $40,659 in non-Federal contributions for the budget period July 1, 1989 to June 30, 1990. Cost-sharing contributions may be in the form of cash contributions, client fees for services, in-kind contributions, or combinations thereof. The MBDC will operate in the Riverside, California geographic service area.

The I. D. Number for this project will be 09–10–89006–01.

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can coordinate and broker public and private resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated on the following criteria: the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodology) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive.

MBDCs shall be required to contribute at least 15% of the total project cost through non-Federal contributions. Client fees for billable management and technical assistance (M&TA) rendered must be charged by MBDCs. Based on a standard rate of $50 per hour, MBDCs will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less and 35% of the total cost for firms with gross sales of $500,000.

The MBDC may continute to operate, after the initial competitive year, for up to 2 additional budget periods. Periodic reviews culminating in year-to-year quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds and Agency priorities.

DATE: The closing date for applications is March 13, 1989. Applications must be postmarked on or before March 13, 1989.

ADDRESS:

San Francisco Regional Office, Minority Business Development Agency, U.S. Department of Commerce, 221 Main Street, Room 1280, San Francisco, California 94105, 415/974–9597.

A pre-application conference to assist all interested applicants will be held at the following address and time:

Minority Business Development Agency, U.S. Department of Commerce, 221 Main Street, Room 1280, San Francisco, California 94105.
February 23, 1989.

FOR FURTHER INFORMATION CONTACT:
Dr. Xavier Mena, Regional Director, San Francisco Regional Office.

SUPPLEMENTARY INFORMATION:
Anticipated processing time of this award is 120 days. Executive Order 12372 "Intergovernmental Review of Federal Programs" is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Xavier Mena,

Regional Director, San Francisco Regional Office.

February 1, 1989.

[FR Doc. 89–2779 Filed 2–6–89; 8:45 am]

BILLING CODE 3510–21–M

Business Development Center Applications; San Francisco, CA

AGENCY: Minority Business Development Agency.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) program to operate an MBDC for approximately a 3 year period, subject to the availability of funds. The cost of performance for the first 12 months is $553,000 in Federal funds and a minimum of $97,588 in non-Federal contributions for the budget period July 1, 1989 to June 30, 1990. Cost-sharing contributions may be in the form of cash contributions, client fees for services, in-kind contributions, or combinations thereof. The MBDC will operate in the San Francisco, California geographic service area.

The I.D. Number for this project will be 09–10–89007–01.

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end,

MBDA funds organizations that can coordinate and broker public and private resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated on the following criteria: the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodology) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive.

MBDCs shall be required to contribute at least 15% of the total project cost through non-Federal contributions. Client fees for billable management and technical assistance (M&TA) rendered must be charged by MBDCs. Based on a standard rate of $50 per hour, MBDCs will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less and 35% of the total cost for firms with gross sales of over $500,000.

The MBDC may continue to operate, after the initial competitive year, for up to 2 additional budget periods. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds and Agency priorities.

DATE: The closing date for applications is March 13, 1989. Applications must be postmarked on or before March 13, 1989.

ADDRESS:

San Francisco Regional Office,
Minority Business Development Agency,
U.S. Department of Commerce,
221 Main Street, Room 1280,
San Francisco, California 94105,
415/974-9597.

A pre-application conference to assist all interested applicants will be held at the following address and time:

Minority Business Development Agency,
U.S. Department of Commerce,
221 Main Street, Room 1280,
San Francisco, California 94105,
February 23, 1989.

FOR FURTHER INFORMATION CONTACT: Dr. Xavier Mena, Regional Director, San Francisco Regional Office.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372 "Intergovernmental Review of Federal Programs" is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

(11.800 Minority Business Development, Catalog of Federal Domestic Assistance)

Xavier Mena,

Regional Director, San Francisco Regional Office.

February 1, 1989.

[FR Doc. 89-2780 Filed 2-6-89; 8:45 am]

BILLING CODE 3510-21-M

Business Development Center Applications; Seattle, WA

AGENCY: Minority Business Development Agency.

ACTION: Notice.

SUMMARY: The Minority Business Development Ageny (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) program to operate an MBDC for approximately a 3 year period, subject to the availability of funds. The cost of performance for the first 12 months is $184,260 in Federal funds and a minimum of $32,516 in non-Federal contributions for the budget period July 1, 1989 to June 30, 1990. Cost-sharing contributions may be in the form of cash contributions, client fees for services, in-kind contributions, or combinations thereof. The MBDC will operate in the Seattle, Washington geographic service area.

The I.D. Number of this project will be 10-10-89008-01.

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can coordinate and broker public and private resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated on the following criteria: the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodology) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive.

MBDCs shall be required to contribute at least 15% of the total project cost through non-Federal contirbutions. Client fees for billable management and technical assistance (M&TA) rendered must be charged by MBDCs. Based on a standard rate of $50 per hour, MBDCs will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less and 35% of the total cost for firms with gross sales of over $500,000.

The MBDC may continue to operate, after the initial competitive year, for up to 2 additional budget periods. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds and Agency priorities.

DATE: The closing date for applications is March 13, 1989. Applications must be postmarked on or before March 13, 1989.

ADDRESS:

San Francisco Regional Office,
Minority Business Development Agency,
U.S. Department of Commerce,
221 Main Street, Room 1280,
San Francisco, California 94105,
415/974-9597.

A pre-application conference to assist all interested applicants will be held at the following address and time:

Minority Business Development Agency,
U.S. Department of Commerce,
221 Main Street, Room 1280,
San Francisco, California 94105,
February 23, 1989.

FOR FURTHER INFORMATION CONTACT: Dr. Zavier Mena, Regional Director, San Francisco Regional Office.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372 "Intergovernmental Review of Federal Programs" is not applicable to this program. Questions concerning the proceding information, copies of application kits and applicable regulations can be obtained at the above address.

(11.800 Minority Business Development, Catalog of Federal Domestic Assistance)

Xavier Mena,

Regional Director, San Francisco Regional Office.

February 1, 1989.

[FR Doc. 89-2781 Filed 2-6-89; 8:45 am]

BILLING CODE 3510-21M-M

National Technical Information Service

Intent To Grant Exclusive Patent License

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Academic Catalyst Corporation, having a place of business at 14 Madison Avenue, Valhalla, NY 10595, an exclusive right in the United States to practice the invention embodied in U.S. Patent No. 4,722,851 "Flan-Type Pudding Using Cereal Flour". 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 Robert P. Auber, 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. 89-2874 Filed 2-6-89; 8:45 am]

BILLING CODE 3510-04-M

Intent to Grant Exclusive Patent License; Salsbury Laboratories, Inc.

Correction

In notice document 89-114 appearing on page 1980 in the issue of Wednesday, January 18, 1989, please make the following correction:

In the first column, in the 6th and 7th lines, "U.S. Patent Application Serial Number 7-128,386" should read U.S. Patent Application Serial Number 7-128,836.

Douglas J. Campion,

Associate Director, Office of Federal Patent Licensing.

[FR Doc. 89-2913 Filed 2-6-89; 8:45 am]

BILLING CODE 3510-04-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment of Coverage for Import Limits and Visa and Certification Requirements for Part-Category 659-C Produced or Manufactured in Various Countries

February 1, 1989.

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

ACTION: Issuing a directive to the Commissioner of Customs amending coverage for import limits and visa and certification requirements.

EFFECTIVE DATE: February 8, 1989.

FOR FURTHER INFORMATION CONTACT: Brian Fennessy, Commodity Industry Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-3400.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 205 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

To facilitate the implementation of bilateral textile agreements and export visa arrangements based upon the Harmonized Tariff Schedule, for goods exported on and after January 1, 1989, the coverage of part-Category 659-C is being amended to include HTS number 6210.10.4020 in all import limits and visa and certification arrangements for countries with that part-category.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988). Also see 53 FR 46910, published on November 21, 1988; 53 FR 52464, published on December 28, 1988; and 53 FR 52759, published on December 29, 1988.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

February 1, 1989.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directives issued to you on December 2, 1988, December 6, 1988, December 8, 1988, May 13, 1988, December 13, 1988 and December 22, 1988 by the Chairman, Committee for the Implementation of Textile Agreements. These directives concern imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in China, Japan, Korea, Mexico, Sri Lanka and Taiwan.

This directive also amends, but does not cancel, the directive of December 22, 1988 which amended visa requirements for all countries for which visa arrangements are in place with the United States Government. The directive of September 1, 1988 establishing export visa requirements for Sri Lanka is also being amended.

Effective on February 8, 1989, you are directed to add HTS number 6210.10.4020 for part-Category 659-C to the import control directives for the aforementioned countries. Also, HTS number 6210.10.4020 will be required for all countries with part-Category 659-C (or 659(1) in the case of Hong Kong) icluded in their visa and certification arrangement.

The complete coverage for part-Category 659-C is listed below: 6103.23.0055, 6103.43.2020, 6103.49.2000, 6103.49.3038, 6104.63.1020, 6104.69.1000, 6104.69.3014, 6114.30.3040, 6114.30.3050, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.4020, 6211.33.0010, 6211.33.0017, 6211.43.0010.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89-2838 Filed 2-6-89; 8:45 am]

BILLING CODE 3510-DR-M

COMMODITY FUTURES TRADING COMMISSION

Financial Products Advisory Committee Meeting

This is to give notice pursuant to section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. 1, 10(a)

and 41 CFR 101–6.1015(b), that the Commodity Futures Trading Commission's Financial Products Advisory Committee will conduct a public meeting on Tuesday, February 21, 1989, in Room 1310–A of the Longworth House Office Building, Independence Avenue, between C Street and South Capitol Street, SE, in Washington, DC. The meeting will be held between 10:00 a.m. and 3:30 p.m. The agenda will consist of the following:

1. Discussion of off-exchange trading of instruments with futures-like and options-like characteristics;

2. Discussion of electronic trading systems and their introduction and adaptation to futures trading;

3. Discussion of systems and techniques which might facilitate the trading of large orders; and

4. Discussion of other Committee business, including:

a. A discussion of agenda items and scheduling for future Committee meetings; and

b. Any other business that may properly come before the committee.

The purpose of this meeting is to solicit the views of the Committee on the above-listed agenda matters. The Advisory Committee was created by the Commodity Futures Trading Commission for the purpose of receiving advice and recommendations on financial products issues. The purposes and objectives of the Advisory Committee are more fully set forth at 52 FR 17313 (May 7, 1987).

The meeting is open to the public. The Chairman of the Advisory Committee, Commissioner Robert R. Davis, is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Advisory Committee should mail a copy of the statement to the attention of: The Commodity Futures Trading Commission Financial Products Advisory Committee, c/o Brian A. Marks, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, to be received prior to the date of the meeting. Members of the public who wish to make oral statements also should inform Mr. Marks in writing at the above address at least three days prior to the meeting. Provision will be made, if time permits, for an oral presentation of reasonable duration.

Issued in Washington, DC this 2nd day of February 1989, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 89–2912 Filed 2–6–89; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

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

Title, Applicable Form, and Applicable OMB Control Number: DoD FAR Supplement, Part 203, Improper Business Practices and Personal Conflicts of Interest, Control Number 0704–0277.

Type of Request: Revision.

Average Burden Hours/Minutes Per Response: 125.81 hours

Frequency of Response: As required

Number of Respondents: 31,000

Annual Burden Hours: 3,900,000

Annual Responses: 31,000

Needs and Uses: This request concerns information collection requirements related to (1) annual reporting of compensation provided to former DoD employees and (2) establishment of a Mandatory Code of Conduct Program

Affected Public: Businesses or other for-profit.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Ms. Eyvette R. Flynn.

Written comments and recommendations on the proposed information collection should be sent to Ms. Eyvette R. Flynn at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Ms. Pearl Rascoe-Harrison.

A copy of the information collection proposal may be obtained from, Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302, telephone (202) 746–0933.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

February 2, 1989.

[FR Doc. 89–2868 Filed 2–6–89; 8:45 am]

BILLING CODE 3810–01–M

Department of the Air Force

Jose M. Mendonca and Frozen Lightning Products; Intent To Grant Partially Exclusive Patent License

Pursuant to the provisions of Part 101–4 of Title 41, Code of Federal Regulations, which implements Pub. L. 96–517, the Department of the Air Force announces its intention to grant to Jose M. Mendonca, 20 Tiffany Road, Apartment 11, Salem, New Hampshire 03079, an individual, and Frozen Lightning Products, 8628 South 228th, Kent, Washington 98031, a corporation of the State of Washington, a partially exclusive royalty-bearing license under application Serial No. 158,447, filed 22 February 1988 in the name of Jose M. Mendonca for "A Method of Controlling the Discharge of Stored Electric Charge in a Plastic."

The licenses described above will be granted unless an objection thereto, together with a request for an opportunity to be heard, if desired, is received in writing by the addressee set forth below within sixty (60) days from the date of publication of this Notice. Copies of the patent application may be obtained, on request, from the same addressee.

All communications concerning this Notice should be sent to: Mr. Donald J. Singer, Chief, Patents Division, Office of The Judge Advocate General, HQ USAF/JACP, 1900 Half Street, SW., Washington, DC 20324–1000, Telephone No. (202) 475–1386.

Patsy J. Conner,

Air Force Federal Register, Liaison Officer.

[FR Doc. 89–2875 Filed 2–6–89; 8:45 am]

BILLING CODE 3910–01–M

Department of the Navy

Intent To Prepare an Environmental Impact Statement for Aircraft Operations at Naval Air Station Whidbey Island, WA

In accordance with the Council on Environmental Quality regulations (40 CFR Parts 1500–1508) implementing the procedural provisions of the National Environmental Policy Act (NEPA), the Navy provides notice of the intent to prepare an Environmental Impact Statement (EIS) for the conduct of air operations at Naval Air Station Whidbey Island (NASWI). Washington.

All Navy EA–6B Prowler electronic warfare squadrons and all west coast A–6E Intruder squadrons are stationed at NASWI. The A–6E Intruder and EA–6B Prowler are tactical jet aircraft that form an essential aircraft carrier-based

combat team critical to the mission of the Navy.

Aircrew readiness through intensive training is essential to the successful functioning of these aircraft in the role of national defense and the projection of power at sea. The Navy must ensure efficient, realistic, and cost effective training opportunities for Prowler and Intruder aircrews and support personnel for the entire west coast at or near NASWI. The continued use of existing training fields is of vital importance in fulfilling this responsibility.

Ault Field and Outlying Field (OLF) Coupeville are currently used for training exercises on Whidbey Island. OLF Coupeville, located on Whidbey Island only 10 nautical miles by air from Ault Field, is used for field carrier landing practice. Its proximity to Ault Field results in maximum benefit to the aircrew in short transit times and availability of on-site ground support teams. The rural setting for Coupeville provides an area relatively free of development and associated lighting, thus allowing closer simulation of dark "at sea" conditions representative of nighttime carrier landings.

In recent years regional population increases have resulted in more people residing in noise and accident-potential zones adjacent to NASWI and Couperville. This high rate of growth is projected to continue. Over the pat five years, the level of training operations has also gradually increased. The Navy is preparing an EIS to plan for the long-term capability of NASWI to effectively train carrier aircrews while integrating the environmental concerns of the public. The EIS will address the potential environmental impacts associated with training operations currently being conducted and to evaluate possible alternatives to mitigate impacts that may be identified.

Four alternatives are currently identified for evaluation in the EIS. They are:

1. No-Action Alternative (i.e., no change in current operations)
2. Training operations redistributed between Ault Field and OLF Coupeville
3. Establish a new OLF to replace OLF Coupeville, with training operations distributed between Ault Field and a new OLF
4. Establish a new OLF for use in conjunction with OLF Coupeville, with training operations distributed between Ault Field, OLF Coupeville, and a new OLF.

The Navy will initiate a scoping process for the purpose of determining the scope of issues to be addressed and for identifying the significant issues related to this action. Public scoping meetings will be held at the Coupeville Junior-Senior High School on Tuesday. January 21, 1989, beginning at 7:00 pm and at the Oak Harbor High School on Wednesday, 22 Jan 1989 beginning at 7:00 pm. At these meetings, Navy representatives will be available to receive comments from the public regarding issues of concern to the public. In the interest of available time, each speaker will be asked to limit there oral comments to 5 minutes. Further scoping meetings may be held at new OLF locations or other locations as the study progresses. It is important that Federal, state, and local agencies, and interested individuals take the opportunity to identify environmental concerns that should be addressed during the preparation of the EIS.

Agencies and the public are also invited and encouraged to provide written comment in addition to, or in lieu of, oral comments at the public meetings. To be most helpful, scoping comments should clearly describe specific issues or topics which the commentor believes the EIS should address. Written statements and or questions regarding the scoping process should be mailed no later than 31 March 1989 to: Officer in Charge of Construction, Northwest, Western Division Naval Facilities Engineering Command, Attention Code 09EP 3505 Anderson Hill Rd., P.O. Box 2360, Silverdale, Washington 98383.

Date. February 1, 1989.

Jane M. Virga,

Lt., JAGC, USNR, Federal Register Liaison Officer.

[FR Doc. 89-2758 Filed 2-6-89; 8:45 am]

BILLING CODE 3810-AE-M

Chief of Naval Operations Executive Panel Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Navy Strategy Formation Task Force will meet February 14–15, 1989 from 9 a.m. to 5 p.m. each day, at 4401 Ford Avenue, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to discuss the Formation of Navy Strategy. The entire agenda for the meeting will consist of discussions of key issues regarding formation of Navy Strategy in support of U.S. national security and related intelligence. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

This Notice is being published late because operational necessity constitutes an exceptional circumstance, not allowing for 15 days' notice of this meeting.

For further information concerning this meeting, contact Faye Buckman, Secretary to the CNO Executive Panel Advisory Committee, 4401 Ford Avenue, Room 601, Alexandria, Virginia 22302–0268. Phone (703) 756–1205.

Dated: February 3, 1989.

Sandra M. Kay,

Department of the Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 89-2947 Filed 2-6-89; 8:45 am]

BILLING CODE 3810-AE-M

Chief of Naval Operations Executive Panel Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Latin America Task Force will meet February 16–17, 1989 from 9 a.m. to 5 p.m. each day, at 4401 Ford Avenue, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to gain a broad overview and insight on Latin America related to U.S. security and naval interests. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

This Notice is being published late because operational necessity constitutes an exceptional circumstance, not allowing for 15 days' notice of this meeting.

For further information concerning this meeting, contact Faye Buckman, Secretary to the CNO Executive Panel Advisory Committee, 4401 Ford Avenue,

Room 601, Alexandria, Virginia 22302–0268. Phone (703) 756–1205.

Dated: February 3, 1989.

Sandra M. Kay,

Department of the Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 89–2948 Filed 2–6–89; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF ENERGY

Intent To Prepare Environmental Impact Statement for Clean Coal Technology Program

AGENCY: Department of Energy (DOE).

ACTION: Notice of Intent (NOI) To prepare an Environmental Impact Statement (EIS).

SUMMARY: DOE announces its intent to prepare a Programmatic EIS pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended, to evaluate the potential environmental impacts of the Clean Coal Technology (CCT) Program. Under the CCT program, DOE solicits proposals for, evaluates, selects, and subsequently provides cost-shared funding support for a new generation of environmentally improved, cost-effective, coal utilization technologies. The proposed Programmatic EIS will analyze the potential environmental impacts of projected commercialization of successfully demonstrated innovative clean coal technologies by the private sector in the year 2010. The environmental aspects of the actual individual demonstration projects will be addressed in separate site-specific NEPA documents (see "Background Information," below).

Invitation To Comment: To ensure that the full range of environmental issues related to the CCT program are addressed, comments on the proposed scope and content of the Programmatic EIS are invited from all interested parties. Comments are also solicited on the *Programmatic Environmental Impact Analysis* (PEIA) (see "Background Information," below), which will be used as the basis for the preparation of the draft Programmatic EIS. Comments and suggestions received during the scoping period will be considered in preparing the draft EIS. Upon completion of the draft EIS, its availability will be announced in the **Federal Register**, and public comments will be solicited again. Comments on the draft EIS will be considered in preparing the final EIS.

ADDRESSES: Requests for copies of the PEIA, and written coments or suggestions on the scope of the EIS, should be directed to: Dr. Jerry Pell, Senior Environmental Scientist, Clean Coal Technology Program, Office of Fossil Energy, FE–22, U.S. Department of Energy, Washington, DC 20585, (202) 586–7166.

Envelopes should be marked: "CCT EIS."

FOR FURTHER INFORMATION CONTACT: For general information on the EIS process, contact: Ms. Carol M. Borgstrom, Director, Office of NEPA Project Assistance, EH–25, U.S. Department of Energy, Washington, DC 20585, (202) 586–4600.

Requests for general information on the CCT Program should be directed to: Dr. C. Lowell Miller, Associate Deputy Assistant Secretary for Clean Coal, Office of Fossil Energy, FE–22, U.S. Department of Energy, Washington, DC, 20585, (202) 586–7150.

DATES: To ensure their consideration in the preparation of the draft Programmatic EIS, written comments and suggestions on the proposed scope of the EIS should be postmarked by the 20th (twentieth) day after the date of publication of this NOI in the **Federal Register**. In the event that the 20th day coincides with a Saturday, Sunday, or federal holiday, the deadline postmark date shall be the first business day that follows thereafter. Comments received after the twenty-day period will be considered to the extent practicable.

Background Information

The CCT program is an ongoing technology development program, jointly funded by government and industry, whereby the supported demonstration projects provide a "showcase" to prospective commercial users (i.e., "consumers") of the selected innovative clean coal technologies. By assisting with the demonstration of their readiness, the program substantively contributes to the acquisition and technology transfer of the data necessary for the private sector to be able to judge the attributes and commercial potential of the technologies. Hence, the CCT program serves as a vital bridge between research and development and readiness for consideration of these new technologies by the marketplace.

The advanced concepts for using domestic coal more efficiently, while better protecting the environment, embrace technologies that range from approaches to and methods of preparing and cleaning the coal prior to combustion, to burning the coal with reduced emissions of sulfur dioxide (SO_2) and/or oxides of nitrogen (NO_x), and to controlling the emissions of pollutants during or subsequent to combustion. The CCT program is interested in potential applications of these technologies to all users and generators of energy in the economy, including the electric utility, industrial, commercial, transportation, and residential sectors.

The CCT program is a major component of the U.S. strategy to curb acid rain emissions. On March 18, 1987, President Reagan announced his decision to seek $2.5 billion to fund the demonstration of innovative clean coal technologies over a five-year period. The President directed that projects be selected, to the extent possible, using the criteria recommended by the Special Envoys on Acid Rain, Drew Lewis of the United States, and William Davis of Canada. In January of 1986, the appointees issued the *Joint Report of the Special Envoys on Acid Rain*, also known as "the Lewis/Davis Report." The Report contained twelve recommendations, the first of which was that the:

> U.S. government should implement a five-year, five-billion-dollar control technology commercial demonstration program. The federal government should provide half the funding * * * for projects which industry recommends, and for which industry is prepared to contribute the other half of the funding.

DOE proposes to issue the third solicitation under the CCT program, requesting proposals for cost-shared demonstration projects, by May 1, 1989. The first CCT solicitation was conducted in accordance with Pub. L. No. 99–190 of December 19, 1985. The second solicitation was conducted in accordance with Pub. L. No. 100–202 of December 22, 1987. The next solicitation will be conducted in accordance with Pub. L. No. 100–446, enacted on September 27, 1988, which provides $575 million be made available for additional CCT demonstration projects. Conference Report 100–862, accompanying the legislation, specifies that the "request for proposals should be issued by May 1, 1989, with proposals due no later than 120 days after issuance of the request for proposals [by August 29, 1989], and that the Secretary of Energy should make project selections no later than 120 days after receipt of proposals [by December 27, 1989]."

To accomplish NEPA compliance for the CCT program, DOE proposes to take the following actions:

- Issue a publicly available Programmatic EIS prior to the selection of projects;
- Prepare a pre-selection project-specific environmental review for use by

the Source Selection Official (SSO) for proposals that undergo comprehensive evaluation. (The SSO's responsibilities include designating the Source Evaluation Board (SEB), reviewing the SEB's procurement plan and schedule, reviewing the statement of work and qualification and evaluation criteria developed by the SEB, reviewing the relative importance of the evaluation criteria, and making the selection decision.) This review will focus on environmental issues pertinent to decisionmaking. This review will contain proprietary and business confidential information, such that it will not be released to the public;

• Prepare detailed site-specific NEPA documents for each of the individual projects selected by DOE, and for which cooperative agreements have been successfully executed. Federal funds from the CCT program will not be provided for project detailed design, construction, operation and/or dismantlement until the NEPA process has been successfully completed.

The *Programmatic Environmental Impact Analysis* (PEIA), Report DOE/PEIA–0002, completed by DOE in September 1988 in support of the February 22, 1988, solicitation, will serve as the basis for the preparation of the Programmatic EIS for the CCT program. Copies of the PEIA may be obtained from the address provided above. Copies of this notice and of the PEIA are being sent to selected agencies, organizations, members of Congress, and others known to be interested in the CCT program. The PEIA is also available for review at the DOE Freedom of Information Reading Room in Room 1E–190 of the Forrestal Building, 1000 Independence Avenue, SW., Washington, DC. Preparation of the EIS will be in accordance with NEPA, the Council on Environmental Quality Regulations for Implementing NEPA (40 CFR Parts 1500–1508), and the DOE NEPA Guidelines (52 FR 47662).

Alternatives Proposed for Consideration

The direct action being considered in the draft Programmatic EIS is the selection, for cost-shared federal funding, of one or more projects to demonstrate innovative clean coal technologies. The indirect effect of this program is expected to be the widespread commercialization by the private sector of the successfully demonstrated innovative clean coal technologies. It is the potential environmental consequence of the indirect effects of widespread commercialization of these technologies in the year 2010 that will be addressed in the draft Programmatic EIS.

The alternatives proposed for consideration in the draft Programmatic EIS include the major coal utilization technologies. These technologies, which are described in the PEIA, are representative of the proposals that DOE expects to receive in response to the proposed third solicitation (described above). Technologies proposed as alternatives can be categorized as follows:

1. Fluidized Bed Combustion, Atmospheric and Pressurized;
2. Integrated Gasification Combined Cycle;
3. Fuel Cells;
4. Advanced Slagging Combustors;
5. Limestone Injection Multi-Stage Burners;
6. Low NO_x Burners;
7. Advanced Flue Gas Cleanup with Spray Dryer, Reburning, Sorbent Injection and Selective Catalytic Reduction;
8. Coal Liquefaction, Direct and Indirect;
9. Coal-Oil Coprocessing;
10. Advanced Coal Cleaning, Physical and Chemical;
11. Ultrafine Coal Processing; and
12. Industrial Processes.

Modifications and improvements to the above technologies likely will be proposed for demonstration in response to the proposed CCT solicitation. Proposed new technologies, not included as alternatives in the above list, will be added as necessary. As required by NEPA, a "No Action" alternative also will be analyzed.

Identification of Environmental Issues

The issues listed below have been tentatively identified for programmatic analysis in the EIS. This list is not all inclusive nor does it imply any predetermination of potential impacts. Additions or deletions to this list may occur as the result of the scoping process. Furthermore, many issues that are site-specific and/or project-specific in nature will be dealt with in the individual NEPA documents to be prepared later for each of the selected demonstration projects. Only issues that can be considered on a regional, national, or global basis are listed here:

1. Air resources, including air quality and the quantitative aspects of atmospheric emissions such as sulfur dioxide, oxides of nitrogen, and carbon dioxide.
2. Water resources, including the acidification of surface waters, nutrient enrichment, and other quantitative and qualitative aspects of water use.
3. Regulatory compliance, including discussion of applicable federal statutes and regulations.
4. Land use, including discussion of coal processing, power plant land use, and disposal of solid waste generated by coal combustion technologies.
5. Socioeconomic impacts, including impacts on communities affected by coal cleaning, impacts from the construction and operation of, and provision of support services to, coal-fired power plants, and impacts related to coal-related waste disposal.

Signed in Washington, DC, this 31st day of January, 1989, for the United States Department of Energy.

Raymond P. Berube,

Acting Assistant Secretary, Environment, Safety and Health.

[FR Doc. 89–2870 Filed 2–6–89; 8:45 am]

BILLING CODE 6450–01–M

Financial Assistance Award; Intent To Award Grant to Lektrocorp, Inc.

AGENCY: Department of Energy.

ACTION: Notice of unsolicited financial assistance award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.14, it is making a financial assistance award based on an unsolicited application under Grant Number DE FG01–89CE15409 to Lektrocorp, Inc., to develop and test the invention, "Self-Dressing Resistance Spot Welding Electrode Tip."

Scope: This Grant will aid in providing funding for Lektrocorp, Inc., as follows: (1) Determine field performance data for all embodiments of the self-dressing electrode; (2) establish optimum weld parameters; (3) establish energy consumption data for the invention and standard electrodes; and (4) design, fabricate and test electrode tips using ceramic implants to improve energy efficiency.

The purpose of this project will be "to build, test and develop the advanced tip prototype in order to increase energy efficiency by minimizing tip mushrooming." The anticipated objective is to improve the interior cooling and provide renewable layers that give the tip a longer useful life.

Eligibility: Based on receipt of an unsolicited application, eligibility of this award is being limited to Lektrocorp, Inc., a private corporation with high qualifications in this specialized field of technology. The inventor and principal investigator for Lektrocorp, Inc., Mr. Bryan Prucher, holds the patent on this tip. Lektrocorp, Inc., will subcontract this work to three companies who have substantial facilities and expertise in their respective specialties. It has been

determined that this project has high technical merit, representing an innovative and novel idea which has a strong possibility of allowing for future reductions in the nations energy consumption.

The term of this grant shall be two years from the effective date of award. The estimated cost of this grant is $57,102.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Procurement Operations, Attn: Lisa Tillman, MA–453.2, 1000 Independence Avenue SW., Washington, DC 20585.

Arnold Gjerstad,

Acting Director, Contract Operations Division "B", Office of Procurement Operations.

[FR Doc. 89–2872 Filed 2–6–89; 8:45 am]

BILLING CODE 6450–01–M

Energy Information Administration

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration.

ACTION: Notice of requests submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The listing does not include information collection requirements contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection (the DOE component or Federal Energy Regulatory Commission (FERC)); (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, or extension; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden, and (13) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed within 30 days of publication of this notice.

ADDRESS: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards, at the address below.)

For further information and copies or relvant materials contact: Carole Patton, Office of Statistical Standards (EI–70), Energy Information Administration, M.S. 1H–023, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–2222.

SUPPLEMENTARY INFORMATION: If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this Notice, you should advise the OMB DOE Desk Officer of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the DOE contact listed above.)

The energy information collection submitted to OMB for review was:

1. Energy Information Administration
2. EIA–846A/D
3. 1905–0169
4. Manufacturing Energy Consumption Survey
5. Revision
6. Triennially
7. Mandatory
8. Businesses or other for profit
9. 13,025 respondents
10. 4,342 responses
11. 7.99 hours per response
12. 34,700 hours (total)
13. EIA–846A/D will collect data on the consumption of energy sources and the fuel-switching capability of establishments in the manufacturing sector. Respondents are primarily manufacturing establishments in SIC–20 through 39.

Statutory Authority: Sec. 5(a), 5(b), 13(b), and 52, Pub. L. 93–275, Federal Energy Administration Act of 1974, 15 U.S.C. 764(a), 764(b), 772(b), and 790a.

Issued in Washington, DC, February 1, 1989.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 89–2871 Filed 2–6–89; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. QF89–131–000]

Alameda County Water District; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

February 3, 1989.

On January 24, 1989, Alameda County Water District (Applicant), of P.O. Box 5110, 43885 South Grimmer Boulevard, Fremont, California 94537 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 900 kilowatt hydroelectric small power production facility will be located in Fremont, California. The facility will consist of a new turnout structure located on the existing South Bay Aqueduct, a new pipeline, and a new powerhouse and other associated equipment.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. 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 petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

Lois D. Cashell,

Secretary.

[FR Doc. 89–2910 Filed 2–6–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. ER89-172-000, et al.]

Florida Power & Light Co., et al., Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. Florida Power & Light Company

[Docket No. ER89-172-000]

January 31, 1989.

Take notice that on January 9, 1989, Florida Power & Light Company (FPL) tendered for filing a document entitled Amendment Number Twelve to Revised Agreement to Provide Specified Transmission Service Between Florida Power & Light Company and Jacksonville Electric Authority (Rate Schedule FERC No. 60) and a document entitled Schedule TX Operating Agreement Between Florida Power & Light Company and Jacksonville Electric Authority which document supplements Amendment Number Twelve.

FPL states that under Amendment Number Twelve FPL will transmit power and energy for Jacksonville Electric Authority as is required in the implementation of its interchange agreement with the Utility Board of The Florida Municipal Power Agency, the utility Board of the City of Key West, Fort Pierce Utilities Authority, City of Gainesville, City of Homestead, City of Kissimmee, City of Lake Worth, New Smyrna Beach Utilities Commission, City of Starke, City of Tallahassee, Tampa Electric Company and City of Vero Beach.

FPL further states that the Schedule TX Operating Agreement defines the methodology used to determine the additional incremental cost under section I.4 of Amendment Number Twelve.

FPL requests that waiver of the Commission's regulations be granted and that the proposed Amendment and the proposed Operating Agreement be made effective immediately. FPL states that copies of the filing were served on Jacksonville Electric Authority.

Comment date: February 14, 1989, in accordance with Standard Paragraph E at the end of this notice.

2. Northern States Power Company (Minnesota)

[Docket No. ER88-347-000]

January 31, 1989.

Take notice that on April 11, 1988, Northern States Power Company (Minnesota) (NSPM) tendered for filing a Sales Agreement dated March 15, 1988 among NSPM, Northern States Power Company (Wisconsin) (NSPW) and Wisconsin Public Power Incorporated System (WPPI). Take further notice that on November 28, 1988 and January 23, 1989 NSPM submitted additional information to supplement the original filing.

The Sales Agreement, as supplemented, provides that NSPM and NSPW will sell and transmit energy, on a non-firm basis, to WPPI when transmission capacity is available. The Sales Agreement sets forth the energy transaction procedures, and terms and conditions.

NSPM requests that the Commission expedite its consideration of its filing so that transactions under the Sales Agreement may begin January 27, 1989. In this regard, NSPM requests waiver of the Commission's 60-day notice requirement to permit the early effective date of the proposed rate schedule, if the Commission's order is issued within the 60-day period.

Copies of this filing have been provided to the respective parties and to the State Commissions of Minnesota, North Dakota, South Dakota, Wisconsin and Michigan.

Comment date: February 10, 1989, in accordance with Standard Paragraph E at the end of this notice.

3. Southwestern Electric Power Company

[Docket No. ER89-157-000]

January 31, 1989.

Take notice that on December 29, 1988, Southwestern Electric Power Company (SWEPCO) tendered for filing a letter agreement (Letter Agreement), dated December 2, 1988, between SWEPCO and the City of Lafayette, Louisiana (Lafayette). Under the Letter Agreement, SWEPCO will continue to furnish transmission service through its system for up to 26 megawatts of power and associated energy from the Southwestern Power Administration (SWPA) for delivery to SWEPCO's interconnections with Central Louisiana Electric Company (CLECO) and Gulf States Utilities Company (GSU) for Lafayette's benefit.

SWEPCO requests an effective date of January 1, 1989, to assure that there is no break in service to Lafayette and, accordingly, requests waiver of the Commission's notice requirements. Copies of the filing were served upon Lafayette, SWPA, CLECO, GSU, the Arkansas Public Service Commission, the Louisiana Public Service Commission and the Public Utility Commission of Texas.

Comment date: February 13, 1989, in accordance with Standard Paragraph E at the end of this notice.

4. ONSITE/Molokai Limited Partnership

[Docket No. QF89-127-000]

February 1, 1989.

On January 19, 1989, ONSITE/Molokai Limited Partnership (Applicant), c/o ONSITE Energy, Inc., 306 SW First Avenue, Suite 200, Portland, Oregon 97204 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The proposed small power production facility will be located at Palaau, Molokai, Hawaii. The facility will consist of a boiler and a steam turbine generator. The net electric power production capacity of the facility will be 3400 kilowatts. The primary source of energy will be biomass in the form of wood chips. Petroleum coke may be used as supplemental fuel.

Applicant is a limited partnership comprised of Westinghouse Credit Corporation, a Delware corporation and ONSITE Energy Inc., an Oregon corporation (ONSITE). ONSITE is a wholly owned subsidiary of PacifiCorp, which is an electric utility.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-2911 Filed 2-6-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. G-8087-000 et al.]

Texaco Inc. et al., Applications for Certificates, Abandonment of Service and Amendment of Certificates [1]

February 1, 1989

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce, to abandon service or to amend certificates as described herein, all as more fully described in the respective applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before February 15, 1989, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). 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 in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

Docket No. and date filed	Applicant	Purchaser and location	Description
G-8070-000, B, Jan. 9, 1989	Texaco Inc., P.O. Box 52332, Houston, TX 77052.	Colorado Interstate Gas Company, Greenwood Field, Morton County, Kansas.	Lease reverted.
G-10143-007, D, Jan. 13, 1989.	ARCO Oil and Gas Company, Division of Atlantic Richfield Company, P.O. Box 2819, Dallas, TX 75221.	Tennessee Gas Pipeline Company, West Delta and Grand Isle Area, Plaquemines Parish, Louisiana.	Acreage assigned to Chevron U.S.A. Inc., 10-1-87.
CI84-252-000, D, Jan. 13, 1989.	Tenneco Oil Company, P.O. Box 2511, Houston, Texas 77252.	Northern Natural Gas Company, Division of Enron Corp., McKinney Field, Clark and Meade Counties, Kansas.	Assigned 8-13-86 to Beresco Properties, Inc.
CI89-190-000, B, Dec. 20, 1988.	Nielson Enterprises Inc., *et al.*, P.O. Box 370, Cody, WY 82414.	Western Gas Interstate Company, Sec. 24, T4N R22ECM, Beaver County, Oklahoma.	Uneconomical to continue service. Since 1-1-87, expenses exceeded revenues by $4,860.
CI89-209-000, (CI76-409), D, Jan. 5, 1989.	Chevron U.S.A. Inc., P.O. Box 3725, Houston, TX 77253.	Northern Natural Gas Company, Division of Enron Corp., Farnsworth Field, Ochiltree County, Texas.	Assigned 7-1-87 to Atlantic Energy (USA) Corporation.
CI89-210-000, B, Jan. 6, 1989.	Samedan Oil Corporation, P.O. Box 909, Ardmore, OK 73401.	Transcontinental Gas Pipe Line Corporation, Kaplan Field, Vermilion Parish, Louisiana.	Gas reserves depleted.
CI89-211-000 (CI64-1035), B, Jan. 6, 1989.	Tenneco Oil Company	Mississippi River Transmission Corporation, Woodlawn Field, Harrison and Marion Counties, Texas.	Three wells plugged and abandoned. Other interests assigned 3-1-79 to Paramount Petroleum Corporation.
CI89-212-000 (CI64-1073), B, Jan. 6, 1989.	do	KN Energy, Inc., Minto *et al.* Field, Logan, County, Colorado.	No production on leases.
CI89-213-000 (CI66-697), B, Jan. 6, 1989.	do	Mississippi River Transmission Corporation, Woodlawn Field, Harrison County, Texas.	Well plugged and abandoned.
CI89-214-000, E, Jan. 9, 1989.	Diamond Shamrock Offshore Partners Limited Partnership, 717 N. Harwood St., Dallas, TX 75201.	Trunkline Gas Company, Block A-542, High Island Area, South Addition, Offshore Texas.	Acreage acquired 10-1-88 from Pacific Enterprises Oil Company (formerly Pacific Lighting Exploration Company).
CI89-218-000 (CI75-765), B, Jan. 9, 1989.	Tennoco Oil Company	Arkla Energy Resources a division of Arkla, Lacy SW Field, Kingfisher County, Texas.	Leases released and/or surrendered. Other interests assigned 2-1-84 to Jack P. Speed.
CI89-221-000 (CI79-535), B, Jan. 9, 1989.	Pogo Producing Company, P.O. Box 61289, Houston, TX 77208-1289.	United Gas Pipe Line Company, High Island Block 279, Offshore Texas.	Reserves depleted, lease terminated.
CI89-222-000 (CI77-452), D, Jan. 11, 1989.	Union Pacific Resources Company, P.O. Box 7, M.S. 3202, Fort Worth, TX 76101-0007.	El Paso Natural Gas Company, Burton Flat Field, Eddy County, New Mexico.	Acreage assigned to Bristol Resources 1987-1 Acquisition Program 10-1-88.
CI89-224-000, (CI82-42-000), D, Jan. 9, 1989.	Diamond Shamrock Offshore Partners Limited Partnership.	Columbia Gas Transmission Company, Block A-471, High Island Area, South Addition, Offshore Texas.	Acreage assigned to Energy Development Corporation 9-1-88.
CI89-225-000, B, Jan. 13, 1989.	Houston Oil & Minerals Corporation, c/o Tennoco Oil Company.	United Gas Pipe Line Company, Poehler Field, Goliad County, Texas.	Release and surrender of dedicated acreage effective 11-15-84.
CI89-226-000 (CI84-268-000), D, Jan. 13, 1989.	Tennoco Oil Company	Williams Natural Gas Company, South Liberal Field, Seward County, Kansas.	Assigned 8-14-86 to Beresco Properties, Inc.
CI89-227-000 (CI63-312), B, Jan. 13, 1989.	do	Panhandle Eastern Pipe Line Company, Avard NW Field, Woods County, Oklahoma.	Well plugged and abandoned.
DCI89-230-000 (CI64-1015), D, Jan. 13, 1989.	do	Colorado Interstate Gas Company, Keyes Field, Cimmarron County, Oklahoma.	Assigned 2-4-87 to Bruce L. Shannon d/b/a Shannon Energy.
CI89-231-000 (CI79-399), D, Jan. 13, 1989.	do	Panhandle Eastern Pipe Line Company, Waynoka NE Field, Woods County, Oklahoma.	Assigned 3-18-85 to Redgate Petroleum.
CI89-234-000 (CI64-988), D, Jan. 13, 1989.	do	United Gas Pipe Line Company, Sibley Field, Webster Parish, Louisiana.	Assigned 10-1-72 to Franks Petroleum Inc.
CI89-236-000 (G-1063), B, Jan. 13, 1989.	do	Florida Gas Transmission Company, Cortez and South McAllen Fields, Starr and Hidalgo Counties, Texas.	J.S. Lehman Gas Unit 2 plugged and abandoned.
CI89-237-000, E, Jan. 17, 1989.	ARCO Oil and Gas Company, Division of Atlantic Richfield Company.	Arkla Energy Resources, a division of Arkla, Inc., Wilburton Field, Latimer County, Oklahoma.	Acreage acquired 12-1-87 from Samson Resources Company.
CI89-238-000, E, Jan. 17, 1989.	do	do	Acreage acquired 10-1-87 from Philomena M. Wahl.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Description
CI89-239-000, E, Jan. 18, 1989.	....do....	....do....	Acreage acquired 9-1-87 from Gadsco, Inc.
CI89-243-000, (CI71-386), D, Jan. 13, 1989.	Tenneco Oil Company	Williams Natural Gas Company, Niles East Field, Canadian County, Oklahoma.	Assigned 11-1-87 to Woods Petroleum Corporation.

Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total succession; F—Partial succession.

[FR Doc. 89-2825 Filed 2-6-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. ST89-471-000 et al.]

El Paso Natural Gas Co. et al; Self-Implementing Transactions

February 2, 1989.

Take notice that the following transactions have been reported to the Commission as being implemented pursuant to Part 284 of the Commission's Regulations, and sections 311 and 312 of the Natural Gas Policy Act of 1978 (NGPA.)[1]

The "Recipient" column in the following table indicate the entity receiving or purchasing the natural gas in each transaction.

The "Part 284 Subpart" column in the following table indicates the type of transaction. A "B" indicates transportation by an interstate pipeline on behalf of an intrastate pipeline or a local distribution company pursuant to § 284.102 of the Commission's Regulations and section 311(a)(1) of the NGPA.

A "C" indicates transportation by an intrastate pipeline on behalf of an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.122 of the Commission's Regulations and section 311(a)(2) of the NGPA. In those cases where Commission approval of a transportation rate is sought pursuant to § 284.123(b)(2), the table lists the proposed rate and the expiration date of the 150-day period for staff action. Any person seeking to participate in the proceeding to approve a rate listed in the table should file a motion to intervene with the Secretary of the Commission on or before February 17, 1989.

A "D" indicates a sale by an intrastate pipeline to an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.142 of the Commission's Regulations and section 311(b) of the NGPA. Any interested person may file a complaint concerning such sales pursuant to § 284.147(d) of the Commission's Regulations.

An "E" indicates an assignment by an intrastate pipeline to any interstate pipeline or local distribution company pursuant to § 284.163 of the Commission's Regulations and section 312 of the NGPA.

A "G" indicates transportation by an interstate pipeline on behalf of another interstate pipeline pursuant to § 284.222 and a blanket certificate issued under § 284.221 of the Commission's Regulations.

A "G(LT)" or "G(LS)" indicates transportation, sales or assignments by a local distribution company on behalf of or to an interstate pipeline or local distribution company pursuant to a blanket certificate issued under § 284.224 of the Commission's Regulations.

A "G(HT)" or "G(HS)" indicates transportation, sales or assignments by a Hinshaw Pipeline pursuant to a blanket certificate issued under § 284.224 of the Commission's Regulations.

Lois D. Cashell,

Secretary.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Subpart	Expiration date[2]	Transportation rate (cents per MMBTU)
ST89-0471	El Paso Natural Gas Co	Cabot Gas Supply Corp	11-01-88	B		
ST89-0472	Northwest Pipeline Corp	Northwest Natural Gas Co	11-01-88	B		
ST89-0473	Trunkline Gas Co	Consumers Power Co	11-01-88	B		
ST89-0474	Trunkline Gas Co	Western Gas Marketing USA, Ltd	11-01-88	G-S		
ST89-0475	Trunkline Gas Co.	Northern Indiana Public Service Co	11-01-88	B		
ST89-0476	Trunkline Gas Co	CSX NGL Corp	11-01-88	G-S		
ST89-0477	Trunkline Gas Co	American Central Gas Marketing Co	11-01-88	G-S		
ST89-0478	Trunkline Gas Co	Central Illinois Public Service Co	11-01-88	B		
ST89-0479	United Gas Pipe Line Co	TXG Gas Marketing Co	11-01-88	G-S		
ST89-0480	United Gas Pipe Line Co	Tejas Power Corp	11-01-88	G-S		
ST89-0481	Phillips Natural Gas Co	Acadia Pipeline Corp	11-01-88	C	3-31-89	35.55
ST89-0482	ONG Transmission Co	Natural Gas Pipeline Co. of America	11-01-88	C	3-31-89	24.32
ST89-0483	ONG Transmission Co	Natural Gas Pipeline Co. of America	11-01-88	C	3-31-89	24.32
ST89-0484	Natural Gas Pipeline Co. of America	Amoco Production Co	11-01-88	G-S		
ST89-0485	Natural Gas Pipeline Co. of America	Tennessee Gas Pipeline Co	11-01-88	G		
ST89-0486	BP Gas Transmission Co	ANR Pipeline Co., et al	11-02-88	IC	3-31-89	19.00
ST89-0487	BP Gas Transmission Co		11-01-88	C	3-31-89	13.7/28.8
ST89-0488	Transok, Inc	Natural Gas Pipeline Co. of America	11-01-88	C	3-31-89	32.50
ST89-0489	Tekas Corp	Northern Natural Gas Co	11-01-88	C	3-31-89	55.00
ST89-0490	Arkla Energy Resources	Neches Gas Distribution Co	11-01-88	B		
ST89-0491	Colorado Interstate Gas Co	Ohio Valley Gas Corp	11-01-88	B		
ST89-0492	Houston Pipe Line Co	Tennessee Gas Pipeline Co	11-02-88	C		
ST89-0493	Valero Transmission, L.P	Trunkline Gas Co	11-02-88	C		
ST89-0494	Valero Transmission, L.P	Transcontinental Gas Pipe Line Corp	11-02-88	C		
ST89-0495	Texas Gas Transmission Corp	Western Kentucky Gas Co	11-02-88	B		
ST89-0496	Oasis Pipe Line Co	Northern Natural Gas Co	11-02-88	C		
ST89-0497	Oasis Pipe Line Co	Natural Gas Pipeline Co. of America	11-02-88	C		

[1] Notice of a transaction does not constitute a determination that the terms and conditions of the proposed service will be approved or that the noticed filing is in compliance with the Commission's Regulations.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Subpart	Expiration date [2]	Transportation rate (cents per MMBTU)
ST89-0498	Oasis Pipe Line Co	Transwestern Pipeline Co	11-02-88	C		
ST89-0499	Houston Pipe Line Co	Transwestern Pipeline Co	11-02-88	C		
ST89-0500	Houston Pipe Line Co	Florida Gas Transmission Co	11-02-88	C		
ST89-0501	Houston Pipe Line Co	Transcontinental Gas Pipe Line Corp	11-02-88	C		
ST89-0502	Houston Pipe Line Co	Transcontinental Gas Pipe Line Corp	11-02-88	C		
ST89-0503	Arkla Energy Resources	Llano, Inc	11-02-88	B		
ST89-0504	United Gas Pipe Line Co	Amoco Production Co	11-02-88	G-S		
ST89-0505	United Gas Pipe Line Co	Eastex Gas Transmission Co	11-02-88	B		
ST89-0506	Texas Gas Transmission Corp	Corning Natural Gas Corp., et al	11-02-88	B		
ST89-0507	Texas Gas Transmission Corp	Mid-South Oil & Gas, Inc	11-02-88	G-S		
ST89-0508	Texas Gas Transmission Corp	Columbia Gas of Ky, Inc., et al	11-02-88	B		
ST89-0509	Northwest Pipeline Corp	Williams Gas Marketing Co	11-02-88	G-S		
ST89-0510	Williams Natural Gas Co	Armco, Inc	11-02-88	G-S		
ST89-0511	Williams Natural Gas Co	NGC Intrastate Pipeline Co	11-02-88	B		
ST89-0512	Williams Natural Gas Co	Missouri Public Service Co	11-02-88	B		
ST89-0513	Delhi Gas Pipeline Corp	Northern Natural Gas Co	11-03-88	C	04-02-89	35.00
ST89-0514	United Gas Pipe Line Co	Llano, Inc	11-03-88	B		
ST89-0515	United Texas Transmission Co	United Gas Pipe Line Co., et al	11-03-88	C		
ST89-0516	Natural Gas Pipeline Co. of America	Texaco Producing, Inc	11-03-88	G-S		
ST89-0517	Panhandle Eastern Pipe Line Co	General Motors Corp	11-03-88	G-S		
ST89-0518	Panhandle Eastern Pipe Line Co	Ohio Gas Co	11-03-88	B		
ST89-0519	Panhandle Eastern Pipe Line Co	Central Illinois Light Co	11-03-88	B		
ST89-0520	Panhandle Eastern Pipe Line Co	Great River Gas Co	11-03-88	B		
ST89-0521	Panhandle Eastern Pipe Line Co	Citizens Gas Fuel Co	11-03-88	B		
ST89-0522	ANR Pipeline Co	Coastal Gas Marketing Co	11-03-88	G-S		
ST89-0523	Williams Natural Gas Co	Quivira Gas Co	11-03-88	B		
ST89-0524	Williams Natural Gas Co	NGC Intrastate Pipeline Co	11-03-88	B		
ST89-0525	Williams Natural Gas Co	Union Gas System, Inc	11-03-88	B		
ST89-0526	Williams Natural Gas Co	V.H.C. Pipeline, L.P	11-03-88	B		
ST89-0527	Williams Natural Gas Co	Hadson Gas Systems, Inc	11-03-88	G-S		
ST89-0528	Williams Natural Gas Co	Energy Marketing Exchange, Inc	11-03-88	G-S		
ST89-0529	Williams Natural Gas Co	Access Energy Corp	11-03-88	G-S		
ST89-0530	Williams Natural Gas Co	Maxus Exploration Co	11-03-88	G-S		
ST89-0531	Northwest Pipeline Corp	Mallon Oil Co	11-03-88	G-S		
ST89-0532	Trunkline Gas Co	Consumers Power Co	11-03-88	B		
ST89-0533	Trunkline Gas Co	Entrade Corp	11-03-88	G-S		
ST89-0534	Panhandle Eastern Pipe Line Co	Michigan Gas Utilities Co	11-03-88	B		
ST89-0535	Panhandle Eastern Pipe Line Co	General Motors Corp	11-03-88	G-S		
ST89-0536	Williston Basin Interstate P/L Co	MGTC, Inc	11-03-88	B		
ST89-0537	Williston Basin Interstate P/L Co	MGTC, Inc	11-03-88	B		
ST89-0538	Williston Basin Interstate P/L Co	MGTC, Inc	11-03-88	B		
ST89-0539	Texas Eastern Transmission Corp	City of Anna	11-03-88	G		
ST89-0540	Texas Eastern Transmission Corp	Columbia Gas of Ohio, Inc	11-03-88	B		
ST89-0541	Texas Eastern Transmission Corp	Valero Transmission, L.P	11-03-88	B		
ST89-0542	Texas Eastern Transmission Corp	Access Energy Pipeline Corp	11-03-88	B		
ST89-0543	Texas Eastern Transmission Corp	East Ohio Gas Co	11-03-88	B		
ST89-0544	Texas Eastern Transmission Corp	Northern Illinois Gas Co	11-03-88	B		
ST89-0545	Texas Eastern Transmission Corp	Elizabethtown Gas Co	11-03-88	B		
ST89-0546	Texas Eastern Transmission Corp	Hope Gas, Inc	11-03-88	B		
ST89-0547	Northern Border Pipeline Co	Natural Gas Pipeline Co. of America	11-04-88	G		
ST89-0548	Natural Gas Pipeline Co. of America	Continental Natural Gas, Inc	11-04-88	G-S		
ST89-0549	Transcontinental Gas Pipeline Line Corp	Philadelphia Gas Works, Inc	11-04-88	B		
ST89-0550	Transcontinental Gas Pipeline Line Corp	Brooklyn Union Gas Co	11-04-88	B		
ST89-0551	ONG Transmission Co	Panhandle Eastern Pipe Line Co	11-04-88	C	04-03-89	24.32
ST89-0552	ONG Transmission Co	Panhandle Eastern Pipe Line	11-04-88	C	04-03-89	24.32
ST89-0553	ONG Transmission Co	Natural Gas Pipeline Co. of America	11-04-88	C	04-03-89	24.32
ST89-0554	Qeustar Pipeline Co	Mountain Fuel Supply Co	11-04-88	B		
ST89-0555	Tennessee Gas Pipeline Co	East Tennessee Natural Gas Co	11-04-88	G		
ST89-0556	Tennessee Gas Pipeline Co	Chevron U.S.A.	11-04-88	G-S		
ST89-0557	Tennessee Gas Pipeline Co	Cornerstone Production Corp	11-04-88	G-S		
ST89-0558	Panhandle Eastern Pipe Line Co	General Motors Corp	11-04-88	G-S		
ST89-0559	Truckline Gas Co	United Gas Pipe Line Co	11-07-88	G		
ST89-0560	Truckline Gas Co	American Central Gas Marketing Co	11-07-88	G-S		
ST89-0561	Truckline Gas Co	City of Somerville	11-07-88	B		
ST89-0562	Truckline Gas Co	Northern Indiana Public Service Co	11-07-88	B		
ST89-0563	Truckline Gas Co	American Central Gas Marketing Co	11-07-88	G-S		
ST89-0564	Northwest Pipeline Corp	Smurfit Newsprint Corp	11-07-88	G-S		
ST89-0565	Northwest Pipeline Corp	Chevron U.S.A.	11-07-88	G-S		
ST89-0566	El Paso Natural Gas Co	Associated Intrastate Pipeline Co	11-07-88	B		
ST89-0567	Northern Natural Gas Co	Adobe Gas Co	11-07-88	B		
ST89-0568	Oasis Pipe Line Co	Transwestern Pipeline Co	11-07-88	C		
ST89-0569	Oasis Pipe Line Co	Transwestern Pipeline Co	11-07-88	C		
ST89-0570	Oasis Pipe Line Co	Transwestern Pipeline Co	11-07-88	C		
ST89-0571	Houston Pipe Line Co	Texas Gas Transmission Corp.	11-07-88	C		
ST89-0572	Houston Pipe Line Co	Natural Gas Pipeline Co. of America	11-07-88	C		
ST89-0573	Houston Pipe Line Co	Natural Gas Pipeline Co. of America	11-07-88	C		
ST89-0574	Houston Pipe Line Co	Northern Natural Gas Co	11-07-88	C		
ST89-0575	Panhandle Gas Co	Southern California Gas Co	11-07-88	D		
ST89-0576	Channel Industries Gas Co	Tennessee Gas Pipeline Co	11-07-88	C		

Docket No.[1]	Transporter/seller	Recipient	Date filed	Subpart	Expiration date [2]	Transportation rate (cents per MMBTU)
ST89-0577	Tennessee Gas Pipeline Co	Citizens Gas Supply Corp.	11-07-88	G-S		
ST89-0578	Gas Co. of NM (DIV. PUBLIC SERV. CO. NM)	El Paso Natural Gas Co	11-07-88	G-HT		
ST89-0579	Superior Offshore Pipeline Co	Alabama Tennessee Nat. Gas Co., et al	11-07-88	B		
ST89-0580	United Gas Pipe Line Co	Resource Group, Inc	11-07-88	G-S		
ST89-0581	United Gas Pipe Line Co	Southern Natural Gas Co	11-04-88	G		
ST89-0582	United Gas Pipe Line Co	Delhi Gas Pipeline Corp	11-04-88	B		
ST89-0583	United Gas Pipe Line Co	Amalgamated Pipeline Co	11-04-88	B		
ST89-0584	United Gas Pipe Line Co	Mobile Gas Service Corp	11-04-88	B		
ST89-0585	United Gas Pipe Line Co	Eastex Gas Transmission Co	11-04-88	B		
ST89-0586	Texas Eastern Transmission Corp	Ugi Corp	11-04-88	B		
ST89-0587	Northwest Pipeline Corp	Evanite Fiber Corp	11-04-88	G-S		
ST89-0588	Northwest Pipeline Corp	Cascade Steel Rolling Mills, Inc	11-04-88	G-S		
ST89-0589	Northern Border Pipeline Co	Northern Natural Gas Co	11-07-88	G		
ST89-0590	Northern Border Pipeline Co	Northern Natural Gas Co	11-07-88	G		
ST89-0591	Transcontinental Gas Pipe Line Corp	Commonwealth Gas Pipeline Corp	11-07-88	B		
ST89-0592	Transcontinental Gas Pipe Line Corp	Lynchburg Gas Co	11-07-88	B		
ST89-0593	Transcontinental Gas Pipe Line Corp	Carnation Co	11-7-88	G-S		
ST89-0594	Northern Natural Gas Co	Gastrak Corp	11-07-88	G-S		
ST89-0595	Tennessee Gas Pipeline Co	North Atlantic Utilities, Inc	11-08-88	G-S		
ST89-0596	Tennessee Gas Pipeline co	Union Pacific Resources Co	11-08-88	G-S		
ST89-0597	Tennessee Gas Pipeline Co	Houston Gas Exchange Corp	11-08-88	G-S		
ST89-0598	El Paso Natural Gas Co	Gas Co. of NM (Div. Public Serv. Co. NM)	11-08-88	B		
ST89-0599	United Gas Pipe Line Co	Consolidated Fuel Corp	11-08-88	G-S		
ST89-0600	Transcontinental Gas Pipe Line Corp	Union Gas Co	11-08-88	B		
ST89-0601	Transcontinental Gas Pipe Line Corp	South Carolina Pipeline Corp	11-08-88	B		
ST89-0602	Arkla Energy Resources	Arkansas Louisiana Gas Co	11-08-88	B		
ST89-0603	Trunkline Gas Co	Amgas, Inc	11-08-88	G-S		
ST89-0604	Trunkline Gas Co	Loutex Energy, Inc	11-08-88	G-S		
ST89-0605	Trunkline Gas Co	Exxon Corp	11-08-88	G-S		
ST89-0606	Panhandle Eastern Pipe Line Co	Northern Indiana Public Service Co	11-08-88	B		
ST89-0607	Panhandle Eastern Pipe Line Co	Citizens Gas and Coke Utility	11-08-88	B		
ST89-0608	Panhandle Eastern Pipe Line Co	Amgas, Inc	11-08-88	G-S		
ST89-0609	Panhandle Eastern Pipe Line Co	Conoco, Inc	11-08-88	G-S		
ST89-0610	Northwest Pipeline Corp	Occidental Chemical Co	11-08-88	G-S		
ST89-0611	Northwest Pipeline Corp	Unocal Canada Limited	11-08-88	G-S		
ST89-0612	Williams Natural Gas Co	Continental Natural Gas, Inc	11-08-88	G-S		
ST89-0613	Williams Natural Gas Co	Cabot Energy Marketing Corp	11-08-88	G-S		
ST89-0614	Williams Natural Gas Co	Enogex Service Corp	11-08-88	G-S		
ST89-0615	Williams Natural Gas Co	Gulf Energy Marketing Co	11-08-88	G-S		
ST89-0616	Williams Natural Gas Co	Reliance Pipeline Co	11-08-88	B		
ST89-0617	Transwestern Pipeline Co	Southern California Gas Co	11-09-88	B		
ST89-0618	Valero Transmission, L.P.	El Paso Natural Gas Co	11-09-88	C		
ST89-0619	Texas Gas Transmission Corp.	Columbia Gas of OHIO, Inc., et al	11.09-88	B		
ST89-0620	Texas Gas Transmission Corp.	Summit Pipeline & Producing Co.	11-09-88	G-S		
ST89-0621	Texas Gas Transmission Corp.	East Ohio Gas Co., et al	11-09-88	B		
ST89-0622	Texas Gas Transmission Corp.	Columbia Gas of KY, Inc., et al	11-09-88	B		
ST89-0623	Texas Gas Transmission Corp.	East Ohio Gas Co.	11-09-88	B		
ST89-0624	Texas Gas Transmission Corp.	Sun Gas Transmission Co., Inc	11-09-88	B		
ST89-0625	Texas Gas Transmission Corp.	Corning Natural Gas Corp., et al	11-09-88	B		
ST89-0626	Panhandle Eastern Pipe Line Co.	Central Illinois Light Co.	11-10-88	B		
ST89-0627	Panhandle Eastern Pipe Line Co.	Central Illinois Light Co.	11-10-88	B		
ST89-0628	Panhandle Eastern Pipe Line Co.	Illinois Power Co	11-10-88	B		
ST89-0629	Panhandle Eastern Pipe Line Co.	Illinois Power Co	11-10-88	B		
ST89-0630	Channel Industries Gas Co.	Natural Gas Pipeline Co. of America	11-10-88	C		
ST89-0631	Natural Gas Pipeline Co. of America	Central Illinois Public Service Co.	11-10-88	B		
ST89-0632	Natural Gas Pipeline Co. of America	Peoples Natural Gas Co.	11-10-88	B		
ST89-0633	Natural Gas Pipeline Co. of America	United Cities Gas Co.	11-10-88	B		
ST89-0634	Natural Gas Pipeline Co. of America	Delhi Gas Pipeline Corp.	11-10-88	B		
ST89-0635	Natural Gas Pipeline Co. of America	Columbia Gas of PA, Inc., et al	11-10-88	B		
ST89-0636	Natural Gas Pipeline Co. of America	Northern Indiana Public Service Co	11-10-88	B		
ST89-0637	El Paso Natural Gas Co.	Southern California Gas Co.	11-10-88	B		
ST89-0638	El Paso Natural Gas Co.	Southwest Gas Corp	11-10-88	B		
ST89-0639	Transcontinental Gas Pipe Line Corp	Transco Energy Marketing Co.	11-10-88	G-S		
ST89-0640	Transcontinental Gas Pipe Line Corp.	Niagara Mohawk Power Corp	11-10-88	G-S		
ST89-0641	ONG Transmission Co	Panhandle Eastern Pipe Line Co.	11-10-88	C	04-09-89	24.32
ST89-0642	ONG Transmission Co	Panhandle Eastern Pipe Line Co.	11-10-88	C	04-09-89	24.32
ST89-0643	ANR Pipeline Co.	Apache Transmission Corp	11-10-88	B		
ST89-0644	ANR Pipeline Co.	Pacific Gas and Electric Co.	11-10-88	B		
ST89-0645	ANR Pipeline Co.	Consumers Power Co	11-10-88	B		
ST89-0646	ANR Pipeline Co.	Placid Oil Co	11-10-88	G-S		
ST89-0647	ANR Pipeline Co.	City of Milan	11-10-88	B		
ST89-0648	ANR Pipeline Co.	Wisconsin Power and Light Co.	11-10-88	B		
ST89-0649	ANR Pipeline Co.	Wisconsin Natural Gas Co	11-10-88	B		
ST89-0650	ANR Pipeline Co.	St. Joseph Light & Power Co.	11-10-88	B		
ST89-0651	ANR Pipeline Co.	City of Bethany	11-10-88	B		
ST89-0652	Enogex Inc.	Arkla Energy Resources	11-14-88	C	04-13-89	28.50
ST89-0653	Enogex Inc.	ANR Pipeline Co	11-14-88	C	04-13-89	28.50
ST89-0654	Enogex Inc.	Natural Gas Pipeline Co. of America, et al	11-14-88	C	04-13-89	28.50
ST89-0655	Enogex Inc.	Natural Gas Pipeline Co. of America	11-14-88	C	04-13-89	28.50

Docket No.[1]	Transporter/seller	Recipient	Date filed	Subpart	Expiration date [2]	Transportation rate (cents per MMBTU)
ST89-0656	Enogex Inc.	Phillips Gas Pipeline Co., et al	11-14-88	C	04-13-88	28.50
ST89-0657	Enogex Inc.	Natural Gas Pipeline Co. of America	11-14-88	C	04-13-89	28.50
ST89-0658	Enogex Inc.	Natural Gas Pipeline Co. of America	11-14-88	C	04-13-89	28.50
ST89-0659	Enogex Inc.	ANR Pipeline Co.	11-14-88	C	04-13-89	28.50
ST89-0660	Enogex Inc.	ANR Pipeline Co.	11-14-88	C	04-13-89	28.50
ST89-0661	Enogex Inc.	Phillips Gas Pipeline Co.	11-14-88	C	04-13-89	28.50
ST89-0662	Enogex Inc.	ANR Pipeline Co	11-14-88	C	04-13-89	28.50
ST89-0663	Enogex Inc.	Phillips Gas Pipeline Co.	11-14-88	C	04-13-89	28.50
ST89-0664	Enogex Inc.	Phillips Gas Pipeline Co	11-14-88	C	04-13-89	28.50
ST89-0665	Enogex Inc.	ANR Pipeline Co	11-14-88	C	04-13-89	28.50
ST89-0666	Enogex Inc.	Natural Gas Pipeline Co. of America	11-14-88	C	04-13-89	28.50
ST89-0667	Enogex, Inc.	Arkla Energy Resources	11-14-88	C	04-13-89	28.50
ST89-0668	Enogex, Inc.	Natural Gas Pipeline Co. of America	11-14-88	C	04-13-89	28.50
ST89-0669	Enogex, Inc.	ANR Pipeline Co.	11-14-88	C	04-13-89	28.50
ST89-0670	Natural Gas Pipeline Co. of America	CNG Trading Co.	11-14-88	G-S		
ST89-0671	Transcontinental Gas Pipe Line Corp.	Transco Energy Marketing Co.	11-14-88	G-S		
ST89-0672	Transcontinental Gas Pipe Line Corp.	Trunkline Gas Co.	11-14-88	G		
ST89-0673	Transcontinental Gas Pipe Line Corp.	Delmarva Power and Light Co.	11-14-88	B		
ST89-0674	Transcontinental Gas Pipe Line Corp.	Apache Transmission Corp.	11-14-88	B		
ST89-0675	Transcontinental Gas Pipe Line Corp.	South Jersey Gas Co.	11-14-88	B		
ST89-0676	Northwest Pipeline Corp.	Northwest Natural Gas Co.	11-14-88	B		
ST89-0677	Northwest Pipeline Corp.	Williams Gas Marketing Co.	11-14-88	G-S		
ST89-0678	Northwest Pipeline Corp.	Williams Gas Marketing Co.	11-14-88	G-S		
ST89-0679	Phillips Gas Pipeline Co.	Intersearch Gas Corp.	11-14-88	B		
ST89-0680	Questar Pipeline Co.	Gossner Foods, Inc.	11-14-88	G-S		
ST89-0681	United Texas Transmission Co.	United Gas Pipe Line Co., et al	11-14-88	C		
ST89-0682	Midcon Texas Pipeline Corp.	Natural Gas Pipeline Co. of America	11-14-88	C		
ST89-0683	United Texas Transmission Co.	Natural Gas Pipeline Co. of America	11-14-88	C		
ST89-0684	Valero Transmission, L.P.	El Paso Natural Gas Co.	11-14-88	C		
ST89-0685	Tennessee Gas Pipeline Co.	City of Adamsville	11-14-88	B		
ST89-0686	Tennessee Gas Pipeline Co.	Boston Gas Co.	11-14-88	B		
ST89-0687	Texas Gas Transmission Corp.	Clinton Gas Marketing	11-14-88	G-S		
ST89-0688	Texas Gas Transmission Corp.	Peoples Gas Co., et al.	11-14-88	B		
ST89-0689	Texas Gas Transmission Corp.	Conoco, Inc.	11-14-88	G-S		
ST89-0690	United Gas Pipe Line Co.	Texaco Gas Marketing, Inc.	11-14-88	G-S		
ST89-0691	United Gas Pipe Line Co.	PSI, Inc.	11-14-88	G-S		
ST89-0692	United Gas Pipe Line Co.	Texaco Gas Marketing, Inc.	11-14-88	G-S		
ST89-0693	United Gas Pipe Line Co.	Victoria Gas Corp.	11-14-88	G-S		
ST89-0694	Gulf Energy Pipeline Co.	Trunkline Gas Co.	11-15-88	C		
ST89-0695	Questar Pipeline Co.	Associated Intrastate Pipeline Co.	11-15-88	B		
ST89-0696	Transcontinental Gas Pipe Line Corp.	Shell Gas Trading Co.	11-14-88	G-S		
ST89-0697	Transcontinental Gas Pipe Line Corp.	Southern California Gas Co., et al.	11-14-88	B		
ST89-0698	Columbia Gulf Transmission Co.	Connecticut Natural Gas Corp.	11-15-88	B		
ST89-0699	Columbia Gulf Transmission Co.	Penn. & Southern Gas Co., et al.	11-15-88	B		
ST89-0700	Columbia Gulf Transmission Co.	Commonwealth Gas Co.	11-14-88	B		
ST89-0701	Tennessee Gas Pipeline Co.	Reliance Pipeline Co.	11-15-88	B		
ST89-0702	Tennessee Gas Pipeline Co.	PSI, Inc.	11-15-88	G-S		
ST89-0703	Texas Eastern Transmission Corp.	City of Cobden	11-14-88	B		
ST89-0704	Texas Eastern Transmission Corp.	Neches Gas Distribution Co.	11-14-88	B		
ST89-0705	Texas Eastern Transmission Corp.	Mountaineer Gas Co.	11-14-88	B		
ST89-0706	Texas Eastern Transmission Corp.	Equitable Gas Co.	11-14-88	B		
ST89-0707	Texas Eastern Transmission Corp.	Columbia Gas of Pennsylvania, Inc.	11-14-88	B		
ST89-0708	Texas Eastern Transmission Corp.	City of Chireno	11-14-88	B		
ST89-0709	Texas Eastern Transmission Corp.	Cincinnati Gas and Electric Co.	11-14-88	B		
ST89-0710	Texas Eastern Transmission Corp.	Peoples Natural Gas Co.	11-14-88	B		
ST89-0711	Texas Eastern Transmission Corp.	Cincinnati Gas and Electric Co.	11-14-88	B		
ST89-0712	Texas Eastern Transmission Corp.	Columbia Gas of Ohio, Inc.	11-14-88	B		
ST89-0713	Texas Eastern Transmission Corp.	Woodward Pipeline, Inc.	11-14-88	B		
ST89-0714	Trunkline Gas Co.	City of Newbern	11-14-88	B		
ST89-0715	Panhandle Eastern Pipe Line Co.	Central Illinois Light Co.	11-14-88	B		
ST89-0716	ANR Pipeline Co	Michigan Gas Co.	11-14-88	B		
ST89-0717	ANR Pipeline Co	West Ohio Gas Co.	11-14-88	B		
ST89-0718	ANR Pipeline Co	Wisconsin Natural Gas Co.	11-14-88	B		
ST89-0719	ANR Pipeline Co	City of Stanberry	11-14-88	B		
ST89-0720	ANR Pipeline Co	Gulf Fuels, Inc	11-14-88	B		
ST89-0721	ANR Pipeline Co	Wisconsin Gas Co.	11-14-88	B		
ST89-0722	ANR Pipeline Co	Wisconsin Fuel and Light Co.	11-14-88	B		
ST89-0723	ANR Pipeline Co	Ohio Gas Co.	11-14-88	B		
ST89-0724	ANR Pipeline Co	Michigan Consolidated Gas Co.	11-14-88	B		
ST89-0725	Williams Natural Gas Co.	City of Mulberry	11-15-88	G-S		
ST89-0726	Williams Natural Gas Co.	MEGA Operating Limited Partnership	11-15-88	G-S		
ST89-0727	Williams Natural Gas Co.	St. Francis Hospital & Medical Center	11-15-88	G-S		
ST89-0728	Williams Natural Gas Co.	Apache Corp.	11-15-88	G-S		
ST89-0729	Natural Gas Pipeline Co. of America	Northern Illinois Gas Co.	11-15-88	B		
ST89-0730	Natural Gas Pipeline Co. of America	Wisconsin Southern Gas Co., Inc.	11-15-88	B		
ST89-0731	Natural Gas Pipeline Co. of America	Iowa Southern Utilities Co.	11-15-88	B		
ST89-0732	Transcontinental Gas Pipe Line Corp.	Delmarva Power and Light Co.	11-15-88	B		
ST89-0733	Transcontinental Gas Pipe Line Corp.	Delmarva Power and Light Co.	11-15-88	B		
ST89-0734	United Gas Pipe Line Co.	Amoco Production Co.	11-15-88	G-S		

Docket No.[1]	Transporter/seller	Recipient	Date filed	Subpart	Expiration date [2]	Transportation rate (cents per MMBTU)
ST89-0735	United Gas Pipe Line Co	Chevron U.S.A	11-15-88	G-S		
ST89-0736	United Gas Pipe Line Co	Amoco Production Co	11-15-88	G-S		
ST89-0737	United Gas Pipe Line Co	Valley Gas Co., et al	11-15-88	B		
ST89-0738	United Gas Pipe Line Co	Brock Gas Systems and Equipment Co	11-15-88	G-S		
ST89-0739	Transcontinental Gas Pipe Line Corp	United Cities Gas Co., SC Div	11-15-88	B		
ST89-0740	ANR Pipeline Co	EP Operating Co	11-15-88	G-S		
ST89-0741	Valero Transmission, L.P	Tennessee Gas Pipeline Co	11-16-88	C		
ST89-0742	Panhandle Eastern Pipe Line Co	Western Gas Marketing USA, LTD	11-16-88	G-S		
ST89-0743	Texas Gas Transmission Corp	Total Minatome Corp	11-16-88	G-S		
ST89-0744	Texas Gas Transmission Corp	City of Alexandria, et al	11-16-88	B		
ST89-0745	Texas Gas Transmission Corp	Corning Nat. Gas Corp., et al	11-16-88	B		
ST89-0746	Texas Gas Transmission Corp	BP Gas Transmission Co	11-16-88	B		
ST89-0747	Texas Gas Transmission Corp	BP Gas Transmission Co	11-16-88	B		
ST89-0748	Texas Gas Transmission Corp	Total Minatome Corp	11-16-88	G-S		
ST89-0749	Texas Gas Transmission Corp	Total Minatome Corp	11-16-88	G-S		
ST89-0750	Texas Gas Transmission Corp	Total Minatome Corp	11-16-88	G-S		
ST89-0751	Texas Gas Transmission Corp	Total Minatome Corp	11-16-88	G-S		
ST89-0752	ANR Pipeline Co	Michigan Consolidated Gas Co	11-16-88	B		
ST89-0753	ANR Pipeline Co	Wisconsin Power and Light Co	11-16-88	B		
ST89-0754	Natural Gas Pipeline Co. of America	Quivira Gas Co	11-17-88	B		
ST89-0755	Natural Gas Pipeline Co. of America	Natural Gas Clearinghouse, Inc	11-15-88	G-S		
ST89-0756	Western Gas Supply Co	El Paso Natural Gas Co	11-17-88	C		
ST89-0757	Delhi Gas Pipeline Corp	Tennessee Gas Pipeline Co	11-17-88	C		
ST89-0758	Houston Pipe Line Co	Northern Natural Gas Co	11-17-88	C		
ST89-0759	Houston Pipe Line Co	United Gas Pipe Line Co	11-17-88	C		
ST89-0760	Houston Pipe Line Co	Transcontinental Gas Pipe Line Corp	11-17-88	C		
ST89-0761	Enserch Gas Transmission Co	Trunkline Gas Co	11-17-88	C		
ST89-0762	Lone Star Gas Co	Natural Gas P/L Co. of America, et al	11-17-88	C		
ST89-0763	Delhi Gas Pipeline Corp	Natural Gas Pipeline Co. of America	11-17-88	C	04-16-89	35.00
ST89-0764	Tennessee Gas Pipeline Co	LL & E Gas Marketing, Inc	11-17-88	G-S		
ST89-0765	Tennessee Gas Pipeline Co	NGC Intrastate Pipeline Co	11-17-88	B		
ST89-0766	Texas Gas Transmission Corp	Ford Motor Co	11-17-88	G-S		
ST89-0767	Texas Gas Transmission Corp	Ford Motor Co	11-17-88	G-S		
ST89-0768	Texas Gas Transmission Corp	Ford Motor Co	11-17-88	G-S		
ST89-0769	Texas Gas Transmission Corp	Ford Motor Co	11-17-88	G-S		
ST89-0770	Texas Gas Transmission Corp	Ford Motor Co	11-17-88	G-S		
ST89-0771	United Gas Pipe Line Co	Laser Marketing Co	11-17-88	G-S		
ST89-0772	United Gas Pipe Line Co	Louisiana Gas Service Co	11-17-88	B		
ST89-0773	United Gas Pipe Line Co	Intercon Gas, Inc	11-17-88	G-S		
ST89-0774	United Gas Pipe Line Co	Entex, Inc	11-17-88	B		
ST89-0775	United Gas Pipe Line Co	Texaco Gas Marketing, Inc	11-17-88	G-S		
ST89-0776	United Gas Pipe Line Co	Acadian Gas Pipeline System	11-17-88	B		
ST89-0777	Arkla Energy Resources	Northern States Power Co	11-17-88	B		
ST89-0778	ONG Transmission Co	Williams Natural Gas Co	11-18-88	C	04-17-89	24.32
ST89-0779	ONG Transmission Co	Panhandle Eastern Pipe Line Co	11-18-88	C	04-17-89	24.32
ST89-0780	Exxon Gas System, Inc	Texas Eastern Transmission Corp	11-18-88	C	04-17-89	12.80
ST89-0781	Tenngasco Gas Supply Co	Tennessee Gas Pipeline Co., et al	11-18-88	C		
ST89-0782	El Paso Natural Gas Co	City of Long Beach	11-18-88	B		
ST89-0783	Natural Gas Pipeline Co. of America	Peoples Gas Light & Coke Co	11-18-88	B		
ST89-0784	Natural Gas Pipeline Co. of America	Wisconsin Natural Gas Co	11-18-88	B		
ST89-0785	Southern Natural Gas Co	Consolidated Fuel Corp	11-18-88	G-S		
ST89-0786	Southern Natural Gas Co	Shell Gas Trading Co	11-18-88	G-S		
ST89-0787	United Gas Pipe Line Co	United Texas Transmission Co	11-18-88	B		
ST89-0788	United Gas Pipe Line Co	Chevron U.S.A	11-18-88	G-S		
ST89-0789	Northern Natural Gas Co	Minnegasco, Inc	11-16-88	B		
ST89-0790	Northern Natural Gas Co	Watertown Municipal Utility	11-16-88	B		
ST89-0791	Northern Natural Gas Co	Wisconsin Gas Co	11-16-88	B		
ST89-0792	Northern Natural Gas Co	NGC Intrastate Pipeline Co	11-16-88	B		
ST89-0793	ANR Pipeline Co	Tennessee Gas Pipeline Co	11-18-88	G		
ST89-0794	ANR Pipeline Co	Entrade Corp	11-18-88	G-S		
ST89-0795	ANR Pipeline Co	PSI, Inc	11-18-88	G-S		
ST89-0796	ANR Pipeline Co	NGC Intrastate Pipeline Co	11-16-88	B		
ST89-0797	ANR Pipeline Co	Ohio Gas Co	11-16-88	B		
ST89-0798	ANR Pipeline Co	Baltimore Gas and Electric Co	11-16-88	B		
ST89-0799	ANR Pipeline Co	Louisville Gas & Electric Co	11-16-88	B		
ST89-0800	ANR Pipeline Co	Michigan Consolidated Gas Co	11-16-88	B		
ST89-0801	ANR Pipeline Co	Wisconsin Gas Co	11-16-88	B		
ST89-0802	Columbia Gulf Transmission Co	Louisville Gas & Electric Co	11-16-88	B		
ST89-0803	Columbia Gulf Transmission Co	City Gas Co	11-16-88	B		
ST89-0804	Columbia Gulf Transmission Co	Southern Conn. Gas Co., et al	11-16-88	B		
ST89-0805	Northern Natural Gas Co	Lone Star Gas Co	11-16-88	B		
ST89-0806	El Paso Natural Gas Co	Southern California Gas Co	11-21-88	B		
ST89-0807	El Paso Natural Gas Co	Southern California Gas Co	11-21-88	B		
ST89-0808	Tennessee Gas Pipeline Co	Pennsylvania Gas and Water Co	11-21-88	B		
ST89-0809	Tennessee Gas Pipeline Co	Jala Pipe Line Corp	11-21-88	B		
ST89-0810	Tennessee Gas Pipeline Co	Western Massachusetts Electric Co	11-21-88	G-S		
ST89-0811	Natural Gas Pipeline Co. of America	Excel Intrastate Pipeline Co	11-21-88	B		
ST89-0812	Natural Gas Pipeline Co. of America	Panhandle Trading co	11-21-88	G-S		
ST89-0813	Channel Industries Gas Co	Tennessee Gas Pipeline Co., et al	11-21-88	C		

Docket No.[1]	Transporter/seller	Recipient	Date filed	Subpart	Expiration date [2]	Transportation rate (cents per MMBTU)
ST89-0814	Tennagasco Gas Supply Co	Tennessee Gas Pipeline Co	11-21-88	C		
ST89-0815	Panhandle Eastern Pipe Line Co	Kansas Pipeline Co	11-21-88	B		
ST89-0816	Panhandle Eastern Pipe Line Co	Dayton Power and Light Co	11-21-88	G-S		
ST89-0817	Panhandle Eastern Pipe Line Co	Northern Indiana Fuel & Light Co	11-21-88	B		
ST89-0818	Panhandle Eastern Pipe Line Co	Access Energy Pipeline Corp	11-21-88	B		
ST89-0819	Panhandle Eastern Pipe Line Co	Archer Daniels Midland Co	11-21-88	G-S		
ST89-0820	Panhandle Eastern Pipe Line Co	Illinois Power Co	11-21-88	B		
ST89-0821	Panhandle Eastern Pipe Line Co	Central Illinois Light Co	11-21-88	B		
ST89-0822	Panhandle Eastern Pipe Line Co	KPL Gas Service	11-21-88	B		
ST89-0823	Panhandle Eastern Pipe Line Co	Illinois Power Co	11-21-88	B		
ST89-0824	Columbia Gulf Transmission Co	Chevron U.S.A	11-21-88	G-S		
ST89-0825	United Gas Pipe Line Co	Mississippi Fuel Co	11-21-88	B		
ST89-0826	United Gas Pipe Line Co	Citizens Gas Supply Corp	11-21-88	G-S		
ST89-0827	United Gas Pipe Line Co	Louisiana Gas Service Co	11-21-88	B		
ST89-0828	United Gas Pipe Line Co	Texaco, Inc	11-21-88	G-S		
ST89-0829	United Gas Pipe Line Co	Seagull Marketing Services, Inc	11-21-88	G-S		
ST89-0830	Northern Natural Gas Co	Canterra Natural Gas, Inc	11-21-88	G-S		
ST89-0831	Northern Natural Gas Co	Mobil Natural Gas, Inc	11-21-88	G-S		
ST89-0832	Northern Natural Gas Co	Texaco Gas Marketing, Inc	11-21-88	G-S		
ST89-0833	Northern Natural Gas Co	Mobil Natural Gas, Inc	11-21-88	G-S		
ST89-0834	Northern Natural Gas Co	Amoco Production Co	11-21-88	G-S		
ST89-0835	Northern Natural Gas Co	Apache Corp	11-21-88	G-S		
ST89-0836	Northern Natural Gas Co	Northern States Power Co	11-21-88	B		
ST89-0837	Northern Natural Gas Co	Wisconsin Gas Co	11-21-88	B		
ST89-0838	Northern Natural Gas Co	Colony Pipeline Corp	11-21-88	B		
ST89-0839	Colorado Interstate Gas Co	Cominco American, Inc	11-21-88	G-S		
ST89-0840	Colorado Interstate Gas Co	Northern Gas Co	11-21-88	B		
ST89-0841	Colorado Interstate Gas Co	Cominco American, Inc	11-21-88	G-S		
ST89-0842	Colorado Interstate Gas Co	Union Pacific Resources Co	11-21-88	G-S		
ST89-0843	Algonquin Gas Transmission Co	City of Middleborough	11-21-88	B		
ST89-0844	Algonquin Gas Transmission Co	Central Hudson Gas and Electric Co	11-21-88	B		
ST89-0845	Algonquin Gas Transmission Co	Fall River Gas Co	11-21-88	B		
ST89-0846	Northwest Pipeline Corp	Gulf Gas Utilities Co	11-21-88	B		
ST89-0847	United Gas Pipe Line Co	Tennessee Gas Pipeline Co	11-21-88	G		
ST89-0848	ONG Transmission Co	Natural Gas Pipeline Co. of America	11-22-88	C	04-21-89	24.32
ST89-0849	United Texas Transmission Co	Natural Gas Pipeline Co. of America	11-22-88	C		
ST89-0850	United Texas Transmission Co	Natural Gas Pipeline Co. of America	11-22-88	C		
ST89-0851	United Texas Transmission Co	Natural Gas Pipeline Co. of America	11-22-88	C		
ST89-0852	United Texas Transmission Co	United Gas Pipe Line Co	11-22-88	C		
ST89-0853	Natural Gas Pipeline Co. of America	BP Gas Marketing Co	11-22-88	G-S		
ST89-0854	United Gas Pipe Line Co	Arco Oil & Gas Co	11-22-88	G-S		
ST89-0855	United Gas Pipe Line Co	Arkla Energy Marketing	11-22-88	G-S		
ST89-0856	United Gas Pipe Line Co	Entex, Inc	11-22-88	B		
ST89-0857	Texas Eastern Transmission Corp	National Fuel Gas Distribution Corp	11-22-88	B		
ST89-0858	Texas Eastern Transmission Corp	Reliance Pipeline Co	11-22-88	B		
ST89-0859	Texas Eastern Transmission Corp	Peoples Natural Gas Co	11-22-88	B		
ST89-0860	Texas Eastern Transmission Corp	Kengas of Texas, Inc	11-22-88	B		
ST89-0861	Texas Eastern Transmission Corp	TPC Pipeline Co	11-22-88	B		
ST89-0862	Texas Eastern Transmission Corp	Niagara Mohawk Power Corp	11-22-88	B		
ST89-0863	Texas Eastern Transmission Corp	Hanley and Bird	11-22-88	B		
ST89-0864	Texas Eastern Transmission Corp	Cincinnati Gas and Electric Co	11-22-88	B		
ST89-0865	EL Paso Natural Gas Co	Cabot Gas Supply Corp	11-23-88	B		
ST89-0866	EL Paso Natural Gas Co	Meridian Oil Hydrocarbons, Inc	11-23-88	B		
ST89-0867	Tennessee Gas Pipeline Co	Delhi Gas Pipeline Corp	11-23-88	B		
ST89-0868	Tennessee Gas Pipeline Co	Energy Marketing Services, Inc	11-23-88	G-S		
ST89-0869	Tennessee Gas Pipeline Co	Tejas Hydrocarbons Co	11-23-88	B		
ST89-0870	Tennessee Gas Pipeline Co	Cornerstone Production Corp	11-23-88	G-S		
ST89-0871	Tennessee Gas Pipeline Co	Lighthouse Gas Marketing Co	11-23-88	G-S		
ST89-0872	Tarpon Transmission Co	Panhandle Trading Co	11-23-88	G-S		
ST89-0873	Transcontinental Gas Piple Line Corp	Philadelphia Gas Works, Inc	11-23-88	B		
ST89-0874	United Gas Pipe Line Co	Huggs Intrastate Gas Transmission, LTD	11-22-88	B		
ST89-0875	United Gas Pipe Line Co	Jala Pipe Line Corp	11-23-88	B		
ST89-0876	United Gas Pipe Line Co	Midcon Marketing Corp	11-23-88	G-S		
ST89-0877	United Gas Pipe Line Co	Marathon Oil Co	11-23-88	G-S		
ST89-0878	United Gas Pipe Line Co	Mobil National Gsa, Inc	11-23-88	G-S		
ST89-0879	Texas Gas Transmission Corp	Txg Gas Marketing Co	11-23-88	G-S		
ST89-0880	Texas Gas Transmission Corp	Txg Gas Marketing Co	11-23-88	G-S		
ST89-0881	Texas Gas Transmission Corp	Corning Natural Gas Corp., ET AL	11-23-88	B		
ST89-0882	Texas Gas Transmission Corp	Columbia Gas of Ohio, Inc	11-23-88	B		
ST89-0883	Texas Gas Transmission Corp	Columbia Gas of Ohio, Inc	11-23-88	B		
ST89-0884	Texas Gas Transmission Corp	Columbia Gas of Ohio, Inc	11-23-88	B		
ST89-0885	Texas Gas Transmission Corp	Txg Gas Marketing Co	11-23-88	G-S		
ST89-0886	Texas Gas Transmission Corp	Columbia Gas of Ohio, Inc	11-23-88	B		
ST89-0887	Texas Gas Transmission Corp	Columbia Gas of Ohio, Inc	11-23-88	B		
ST89-0888	Texas Gas Transmission Corp	Columbia Gas of Ohio, Inc	11-23-88	B		
ST89-0889	Texas Gas Transmission Corp	Txg Gas Marketing Co	11-23-88	G-S		
ST89-0890	Texas Gas Transmission Corp	Columbia Gas of Ohio, Inc	11-23-88	B		
ST89-0891	Tennessee Gas Pipeline Co	Mountaineer Gas Co	11-25-88	B		
ST89-0892	Tennessee Gas Pipeline Co	Entrade Corp	11-25-88	G-S		

Docket No.[1]	Transporter/seller	Recipient	Date filed	Subpart	Expiration date [2]	Transportation rate (cents per MMBTU)
ST89-0893	Northern Natural Gas Co.	Union Exploration Partners, LTD.	11-25-88	G-S		
ST89-0894	Northern Natural Gas Co.	Conoco, Inc.	11-25-88	G-S		
ST89-0895	Northern Natural Gas Co.	Sun Operating Limited Partnership	11-25-88	G-S		
ST89-0896	Northern Natural Gas Co.	Tranam Energy Inc.	11-25-88	G-S		
ST89-0897	Northern Natural Gas Co.	Peoples Natural Gas Co.	11-25-88	B		
ST89-0898	Northern Natural Gas Co.	Texaco, Inc.	11-25-88	G-S		
ST89-0899	Williston Basin Interstate P/L Co.	Mgtc, Inc.	11-25-88	B		
ST89-0900	Williston Basin Interstate P/L Co.	Northern Illinois Gas Co.	11-25-88	B		
ST89-0901	Williston Basin Interstate P/L Co.	Mgtc, Inc.	11-25-88	B		
ST89-0902	Williston Basin Interstate P/L Co.	Montana-Dakota Utilities Co.	11-25-88	B		
ST89-0903	Williston Basin Interstate P/L Co.	Montana-Dakota Utilities Co.	11-25-88	B		
ST89-0904	Williston Basin Interstate P/L Co.	Quivira Gas Co.	11-25-88	B		
ST89-0905	Williston Basin Interstate P/L Co.	Quivira Gas Co.	11-25-88	B		
ST89-0906	Williston Basin Interstate P/L Co.	Quivira Gas Co.	11-25-88	B		
ST89-0907	Columbia Gulf Transmission Co.	East Ohio Gas Co.	11-23-88	B		
ST89-0908	Columbia Gulf Transmission Co.	Florida Gas Transmission Co.	11-23-88	G		
ST89-0909	Columbia Guld Transmission Co.	Tennessee Gas Pipeline Co.	11-23-88	G		
ST89-0910	Columbia Guld Transmission Co.	Louisiana Gas System, Inc.	11-23-88	B		
ST89-0911	Columbia Guld Transmission Co.	Chevron U.S.A.	11-23-88	G-S		
ST89-0912	Columbia Gulf Transmission Co.	Public Service Electric and Gas Co.	11-23-88	B		
ST89-0913	Northwest Pipeline Corp.	Illinois Power Co.	11-23-88	B		
ST89-0914	Texas Eastern Transmission Corp.	East Ohio Co.	11-23-88	B		
ST89-0915	Williston Basin Interstate P/L Co.	Quivira Gas Co.	11-25-88	B		
ST89-0916	Phillips Natural Gas Co.	Phillips Gas Pipeline Co.	11-25-88	C	04-24-89	35.55
ST89-0917	Phillips Natural Gas Co.	Phillips Gas Pipeline Co.	11-25-88	C	04-24-89	35.55
ST89-0918	Delhi Gas Pipeline Corp.	Phillips Gas Pipeline Co.	11-25-88	C	04-24-89	46.78
ST89-0919	Valero Transmission, L.P.	Natural Gas Pipeline Co. of America	11-25-88	C		
ST89-0920	Houston Pipe Line Co.	Natural Gas Pipeline Co. of America	11-25-88	C		
ST89-0921	Houston Pipe Line Co.	Tennessee Gas Pipeline Co.	11-25-88	C		
ST89-0922	Oasis Pipe Line Co.	El Paso Natural Gas Co.	11-25-88	C		
ST89-0923	Cabot Pipeline Corp.	El Paso Natural Gas Co., et al.	11-25-88	C	4-24-89	53.95
ST89-0924	Trunkline Gas Co.	Conoco, Inc.	11-28-88	G-S		
ST89-0925	Trunkline Gas Co.	American Central Gas Marketing Co.	11-28-88	G-S		
ST89-0926	Trunkline Gas Co.	Eastex Gas Transmission Co.	11-28-88	B		
ST89-0927	Trunkline Gas Co.	Northern Indiana Public Service Co.	11-28-88	B		
ST89-0928	Trunkline Gas Co.	Baltimore Gas and Electric Co.	11-28-88	B		
ST89-0929	Trunkline Gas Co.	Alabama Gas Corp., et al.	11-28-88	B		
ST89-0930	Trunkline Gas Co.	Peoples Natural Gas Co., et al.	11-28-88	B		
ST89-0931	Delhi Gas Pipeline Corp.	Cincinnati Gas and Electric Co.	11-28-88	C		
ST89-0932	Ozona Residue Systems Co.	Northern Natural Gas Co.	11-28-88	C		
ST89-0933	Moraine Pipeline Co.	Natural Gas Pipeline Co. of America	11-28-88	G		
ST89-0934	Moraine Pipeline Co.	PST, Inc.	11-28-88	G-S		
ST89-0935	Moraine Pipeline Co.	Wisconsin Natural Gas Co.	11-28-88	B		
ST89-0936	Natural Gas Pipeline Co. of America	Wisconsin Natural Gas Co.	11-28-88	B		
ST89-0937	Natural Gas Pipeline Co. of America	Texaco Producing, Inc.	11-28-88	G-S		
ST89-0938	United Gas Pipe Line Co.	Santa Fe International Corp.	11-28-88	G-S		
ST89-0939	United Gas Pipe Line Co.	Sun Operating Limited Partnership	11-28-88	G-S		
ST89-0940	Trunkline Gas Co.	Transtate Gas Service Co.	11-28-88	G-S		
ST89-0941	Trunkline Gas Co.	Ohio Valley Gas Corp.	11-28-88	B		
ST89-0942	Colorado Interstate Gas Co.	Northern Indiana Fuel & Light Co.	11-28-88	B		
ST89-0943	Colorado Interstate Gas Co.	Energy Pipeline Co.	11-28-88	B		
ST89-0944	Colorado Interstate Gas Co.	MGTC, inc.	11-28-88	B		
ST89-0945	Colorado Interstate Gas Co.	NGC Intrastate Pipeline Co.	11-28-88	B		
ST89-0946	Valero Transmission, L.P.	El Paso Natural Gas Co.	11-29-88	C		
ST89-0947	Valero Transmission, L.P.	Tennessee Gas Pipeline Co.	11-29-88	C		
ST89-0948	Northern Natural Gas Co.	Hadson Gas Systems, Inc.	11-29-88	G-S		
ST89-0949	Tennessee Gas Pipeline Co.	Columbia Gas Transmission Corp.	11-29-88	G		
ST89-0950	BP Gas Transmission Co.	ANR Pipeline Co., et al.	11-30-88	C	04-29-89	9.50
ST89-0951	BP Gas Transmission Co.	ANR Pipeline Co., et al.	11-30-88	C	04-29-89	5.00
ST89-0952	Valero Transmission, L.P.	Trunkline Gas Co.	11-30-88	C		
ST89-0953	Sabine Pipe Line Co.	Excel Intrastate Pipeline Co.	11-30-88	B		
ST89-0954	Sabine Pipe Line Co.	Excel Intrastate Pipeline Co.	11-30-88	B		
ST89-0955	Sabine Pipe Line Co.	Indiana Gas Co., et al.	11-30-88	B		
ST89-0956	Trunkline Gas Co.	East Ohio Gas Co.	11-30-88	B		
ST89-0957	Trunkline Gas Co.	Dayton Power & Light, et al.	11-30-88	B		
ST89-0958	Phillips Natural Gas Co.	Phillips Gas Pipeline Co.	11-30-88	C	04-29-89	35.55
ST89-0959	Northern Border Pipeline Co.	Northern Natural Gas Co.	11-30-88	G		
ST89-0960	Williams Natural Gas Co.	Terra Resources, Inc.	11-30-88	G-S		
ST89-0961	Williams Natural Gas Co.	Associated Natural Gas Co., Inc.	11-30-88	G-S		
ST89-0962	Williams Natural Gas Co.	Reliance Gas Marketing Co.	11-30-88	B		
ST89-0963	Williams Natural Gas Co.	Union Gas System, Inc.	11-30-88	B		
ST89-0964	Gas Transport, Inc.	Conoco, Inc.	11-30-88	G-S		
ST89-0965	Northwest Pipeline Corp.	PPG Industries	11-30-88	G-S		
ST89-0966	United Gas Pipe Line Co.	Catamount Natural Gas, Inc.	11-30-88	G-S		
ST89-0967	United Gas Pipe Line Co.	KM Gas Co.	11-30-88	G-S		
ST89-0968	El Paso Natural Gas Co.	Public Service Co of New Mexico	11-30-88	B		
ST89-0969	Transok, Inc.	Natural Gas Pipeline Co. of America	11-30-88	C	04-29-89	32.50
ST89-0970	Transok, Inc.	Natural Gas Pipeline Co. of America	11-30-88	C	04-29-89	32.50
ST89-0971	Transok, Inc.	Natural Gas Pipeline Co. of America	11-30-88	C	04-29-89	32.50

Docket No.[1]	Transporter/seller	Recipient	Date filed	Subpart	Expiration date [2]	Transportation rate (cents per MMBTU)
ST89-0972	ANR Pipeline Co	Coastal States Gas Transmission Co	11-30-88	B		
ST89-0973	ANR Pipeline Co	Michigan Consolidated Gas Co	11-30-88	B		
ST89-0974	ANR Pipeline Co	Trinity Pipeline, Inc	11-30-88	B		
ST89-0975	ANR Pipeline Co	Fountaintown Gas Co	11-30-88	B		
ST89-0976	ANR Pipeline Co	Michigan Gas Co	11-30-88	B		
ST89-0977	ANR Pipeline Co	Coastal States Gas Transmission Co	11-30-88	B		
ST89-0978	CNG Transmission Corp	Nestle Foods Corp	11-30-88	G-S		
ST89-0979	CNG Transmission Corp	Gulf Oil Corp	11-30-88	G-S		
ST89-0980	CNG Transmission Corp	Sharon Tube Co	11-30-88	G-S		
ST89-0981	CNG Transmission Corp	Natural Gas Clearinghouse, Inc	11-30-88	G-S		
ST89-0982	CNG Transmission Corp	Peoples Natural Gas Co	11-30-88	B		
ST89-0983	CNG Transmission Corp	General Chemical	11-30-88	G-S		
ST89-0984	CNG Transmission Corp	IESCO	11-30-88	G-S		
ST89-0985	CNG Transmission Corp	Beechnut Nutrition Corp	11-30-88	G-S		
ST89-0986	CNG Transmission Corp	Hammermill Paper Co	11-30-88	G-S		
ST89-0987	CNG Transmission Corp	Robinson & Smith	11-30-88	G-S		
ST89-0988	CNG Transmission Corp	Revere Copper Products, Inc	11-30-88	G-S		
ST89-0989	CNG Transmission Corp	BP Gas Marketing Co	11-30-88	G-S		
ST89-0990	CNG Transmission Corp	Special Metals Corp	11-30-88	G-S		
ST89-0991	CNG Transmission Corp	Bristol Myers	11-30-88	G-S		
ST89-0992	CNG Transmission Corp	Johnstown Knitting Mills	11-30-88	G-S		
ST89-0993	CNG Transmission Corp	BP Gas Marketing Co	11-30-88	G-S		
ST89-0994	CNG Transmission Corp	The City of Syracuse	11-30-88	G-S		
ST89-0995	CNG Transmission Corp	Access Energy Corp	11-30-88	G-S		
ST89-0996	CNG Transmission Corp	Scott Paper Co	11-30-88	G-S		
ST89-0997	CNG Transmission Corp	Will & Bauner, Inc	11-30-88	G-S		
ST89-0998	CNG Transmission Corp	Welch Allyn, Inc	11-30-88	G-S		
ST89-0999	CNG Transmission Corp	Nelson A. Taylor Company, Inc	11-30-88	G-S		
ST89-1000	CNG Transmission Corp	Gulf Ohio Corp	11-30-88	G-S		
ST89-1001	CNG Transmission Corp	Alcan Rolled Products	11-30-88	G-S		
ST89-1002	CNG Transmission Corp	CNG Transmission Co	11-30-88	G-S		
ST89-1003	CNG Transmission Corp	Latrobe Steel Co	11-30-88	G-S		
ST89-1004	CNG Transmission Corp	Cranberry Pipeline Corp	11-30-88	B		
ST89-1005	CNG Transmission Corp	Boston Gas Co	11-30-88	B		
ST89-1006	CNG Transmission Corp	Upton Court, Wesley-on-East LTD	11-30-88	G-S		
ST89-1007	CNG Transmission Corp	Natural Gas Clearinghouse, Inc	11-30-88	G-S		
ST89-1008	CNG Transmission Corp	Smiths Laundry & Dry Cleaning	11-30-88	G-S		
ST89-1009	CNG Transmission Corp	BP Gas Marketing Co	11-30-88	G-S		
ST89-1010	CNG Transmission Corp	Natural Gas Clearinghouse, Inc	11-30-88	G-S		
ST89-1011	CNG Transmission Corp	Capitol Dist. Energy Cent. Cogen. Assoc.	11-30-88	G-S		
ST89-1012	CNG Transmission Corp	Somerset Dyeing & Finishing	11-30-88	G-S		
ST89-1013	CNG Transmission Corp	Pass & Seymour, Inc	11-30-88	G-S		
ST89-1014	CNG Transmission Corp	Texas Ohio Gas, Inc	11-30-88	G-S		
ST89-1015	CNG Transmission Corp	Natural Gas Clearinghouse, Inc	11-30-88	G-S		
ST89-1016	CNG Transmission Corp	Pentech Papers, Inc	11-30-88	G-S		
ST89-1017	CNG Transmission Corp	The Trustees of Hamilton College	11-30-88	G-S		
ST89-1018	CNG Transmission Corp	Cranberry Pipeline Corp.	11-30-88	B		
ST89-1019	CNG Transmission Corp	Natural Gas Clearinghouse, Inc	11-30-88	G-S		
ST89-1020	CNG Transmission Corp	Natural Gas Clearinghouse, Inc	11-30-88	G-S		
ST89-1021	CNG Transmission Corp	Natural Gas Clearinghouse, Inc	11-30-88	G-S		
ST89-1022	CNG Transmission Corp	MCA Manufacturing	11-30-88	G-S		
ST89-1023	CNG Transmission Corp	Iesco	11-30-88	G-S		
ST89-1024	CNG Transmission Corp	Kogas, Inc	11-30-88	G-S		
ST89-1025	CNG Transmission Corp	Rome Strip Steel Co	11-30-88	G-S		
ST89-1026	CNG Transmission Corp	Brandywine Industrial Gas, Inc	11-30-88	G-S		
ST89-1027	CNG Transmission Corp	Southern Connecticut Gas Co	11-30-88	B		
ST89-1028	CNG Transmission Corp	Wayne Finger Lakes Boces	11-30-88	G-S		
ST89-1029	CNG Transmission Corp	Utica Corp	11-30-88	G-S		
ST89-1030	CNG Transmission Corp	Hussman Corp	11-30-88	G-S		
ST89-1031	CNG Transmission Corp	Gold Bond Building Products	11-30-88	G-S		
ST89-1032	CNG Transmission Corp	Crown Leather	11-30-88	G-S		
ST89-1033	Colorado Interstate Gas Co	Citizens Utilities Co	11-30-88	B		
ST89-1034	Transcontinental Gas Pipe Line Corp	Piedmont Natural Gas Co	11-30-88	B		
ST89-1035	ANR Pipeline Co	Battle Creek Gas Co	11-30-88	B		
ST89-1036	ANR Pipeline Co	Missouri Valley Natural Gas Co	11-30-88	B		
ST89-1037	ANR Pipeline Co	Coastal States Gas Transmission Co	11-30-88	B		
ST89-1038	ANR Pipeline Co	BP Gas Transmission Co	11-30-88	B		
ST89-1039	ANR Pipeline Co	Consumers Power Co	11-30-88	B		
ST89-1040	ANR Pipeline Co	NGC Instrastate Pipeline Co	11-30-88	B		
ST89-1041	ANR Pipeline Co	Wisconsin Public Service Corp	11-30-88	B		
ST89-1042	ANR Pipeline Co	Baltimore Gas and Electric Co	11-30-88	B		
ST89-1043	ANR Pipeline Co	Ohio Gas Co	11-30-88	B		

[1] Notice of transactions does not constitute a determination that filings with Commission regulations in accordance with order No. 436 (Final rule and notice requesting supplemental comments, 50 FR 42,372, 10/18/85).

[2] The Intrastate Pipeline has sought Commission approval of its transportation rate pursuant to § 284.123(B)(2) of the Commission's regulations (18 CFR 284.123(B)(2)). Such rates are deemed fair and equitable if the Commission does not take action by the date indicated.

[FR Doc. 89-2907 Filed 2-6-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP89-702-000, et al.]

United Gas Pipe Line Co., et al.; Natural Gas Certificate Filings

Take notice that the following fillings have been made with the Commission:

1. United Gas Pipe Line Company

[Docket No. CP89-702-000]

January 31, 1989.

Take notice that on January 26, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket CP89-702-000, 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 for United Texas Petroleum Corporation (UTPC), a producer, under United's blanket certification issued in Docket No. CP88-6-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United proposes to transport up to 4,120 million Btu equivalent of natural gas per day on an interruptible basis for UTPC. United states it would receive the gas at an existing point of receipt offshore Louisiana, and redeliver the gas for the account of UTPC at an existing interconnection also located offshore Louisiana. United states it commenced service for under UTPC § 284.223(a) on January 13, 1989, as reported in Docket No. ST89-1741.

Comment date: March 17, 1989, in accordance with Standard Paragraph G at the end of this notice.

2. Texas Gas Transmission Corporation

[Docket No. CP89-678-000]

January 31, 1989.

Take notice that on January 23, 1989, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed on Docket CP89-678-000 a request pursuant to § 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to provide an interruptible transportation service for RMI Company (RMI) under the blanket certificate issued in Docket No. CP88-686-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Texas Gas requests authorization to transport on a peak day up to 4,000 MMBtu of natural gas for RMI, with an estimated average daily quantity of 3,288 MMBtu. On an annual basis, RMI estimates a volume of up to 1,200 MMBtu. The ultimate consumer of the gas would be RMI.

It is stated that transportation service for RMI commenced December 6, 1988, under the 120-day automatic provisions of Section 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-1380.

Comment date: March 17, 1989, in accordance with Standard Paragraph G at the end of this notice.

3. Arkla Energy Resources, a division of Arkla, Inc.

[Docket No. CP89-701-000]

January 31, 1989.

Take notice that on January 26, 1989, Arkla Energy Resources (AER), a division of Arkla, Inc., P.O. Box 21734, Shreveport, Lousiana 71151, filed in Docket No. CP89-701-000 a request pursuant to §§ 157.205 (18 CFR 157.205) of the Commission's Regulations under the Natural Gas Act for authorization to construct and operate two pipeline taps in Lee and Faulkner Counties, Arkansas, for the delivery of gas to Arkansas Louisiana Gas Company (Arkla), a division of Arkla, Inc., for resale, pursuant to AER's blanket certificate issued under section 7 of the Natural Gas Act in Docket Nos. CP82-384-000 and CP82-384-001, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

AER proposes to construct and operate a two-inch tap facility on its JM-1 pipeline in Lee County, Arkansas, to serve approximately 348 consumers in the communities of Moro and Aubry, Arkansas, up to 912 Mfc of gas on a peak day or approximately 33,825 Mcf annually. Estimated cost of the facility is $21,858. AER also proposes to construct and operate a two-inch tap facility on its JM-30 pipeline in Faulkner County, Arkansas to serve approximately 96 consumers in the town of Mt. Vernon, Arkansas, up to 288 Mcf of gas per peak day or approximately 9,185 Mfc annually. Estimated cost of the facility is $13,170.

Comment date: March 17, 1989, in accordance with Standard Paragraph G at the end of this notice.

4. Texas Gas Transmission Corporation

[Docket No. CP89-680-000]

January 31, 1989.

Take notice that on January 23, 1989, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89-680-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to provide an interruptible transportation service for Unicorp Energy, Inc. (Unicorp) under the blanket certificate issued in Docket No. CP88-686-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Texas Gas requests authorization to transport on a peak day up to 100,000 MMBtu of natural gas for Unicorp, with an estimated average daily quantity of 30,000 MMBtu. On an annual basis, Unicorp estimates a volume of up to 10,950,000 MMBtu. The ultimate consumer of the gas would be Unicorp.

It is stated that transportation service for Unicorp commenced December 3, 1988, under the 120-day automatic provisions of § 284.233(a) of the Commission's Regulations, as reported in Docket No. ST89-1404.

Comment date: March 17, 1989, in accordance with Standard Paragraph G at the end of this notice.

5. Texas Gas Transmission Corporation

[Docket No. CP89-686-000]

February 1, 1989.

Take notice that on January 24, 1989, Texas Gas Transmission Corporation (Texas Gas), P.O. Box 1160, Owensboro, Kentucky 42302, filed in Docket No. CP89-686-000, an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon by removal certain measurement facilities in Assumption Parish, Louisiana, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Texas Gas states it has installed the measurement facility to facilitate transportation service for various end-users. It is claimed that this facility was installed under Texas Gas's blanket certificate issued in Docket No. CP82-407-000 and that it is known as the Ballard Exploration—North Thibodaux Meter Station. Texas Gas states that production associated with this facility has been abandoned by the producer and all wells have been plugged.

Comment date: February 22, 1989, in accordance with Standard Paragraph F at the end of this notice.

6. United Gas Pipe Line Company

[Docket No. CP89-705-000]

February 1, 1989.

Take notice that on January 26, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-

1478, filed in Docket No. CP89–705–000, 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. CP88–6–000, pursuant to section 7 of the Natural Gas Act, for EnTrade Corporation (EnTrade), a marketer, all as more fully set forth in the request on file with the Commission and open to public inspection.

United proposes to transport up to a maximum of 103,000 MMBtu of natural gas per day for EnTrade from specifc existing receipt points in various states to specific delivery points in various states. United anticipates transporting up to 103,000 MMBtu on a peak day and average day, and 12,360,000 MMBtu annually for EnTrade. United explains that service commmenced November 28, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89–1699.

Comment date: March 20, 1989, in accordance with Standard Paragraph G at the end of this notice.

7. Northern Natural Gas Company, Division of Enron Corp.

[Docket No. CP89–677–000]

February 1, 1989.

Take notice that on January 23, 1989, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP89–677–000 an application pursuant to section 7(b) of the Natural Gas Act and Part 157 of the Commission's Regulations for an order authorizing Northern to partially abandon firm sales service to a utility customer, Peoples Natural Gas, Division of Utilicorp United Inc. (Peoples), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northern states that Peoples has converted from sales service under Rate Schedule CD–1 to firm transportation service under Rate Schedule FT–1 57,463 Mcf of firm entitlements as of November 1, 1988. It is indicated that the contract demand option made available to Peoples is due to Northern's settlement in Docket No. RP85–206–000 which Northern indicates is generally consistent with Order No. 436 guidelines. It is also indicated that Northern seeks approval in the application to permanently abandon that portion of certificated sales obligation to Peoples which was converted to firm transportation service.

Northern states that Peoples has executed a new CD–1 service agreement reflecting the reduced sales volumes.

Comment date: February 22, 1989, in accordance with Standard Paragraph F at the end of this notice.

8. Natural Gas Company of America

[Docket No. CP89–660–000]

February 1, 1989.

Take notice that on January 18, 1989, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois, 60148, filed on Docket No. CP89–660–000 pursuant §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act of (18 CFR 157.205) for authorization to transport for CEPEX Inc. (CEPEX) under the blanket certificate issued in Docket No. CP86–582–000, all as more fully set forth in the request on file with the Commission and open to public inspection.

Natural indicates that it proposes to transport up to 26,500 MMBtu per day, on an interruptible basis, on behalf of CEPEX pursuant to a Transportation Agreement dated November 1, 1988 between Natural and CEPEX (Transportation Agreement). The Transportation Agreement Proposes to transport natural gas for CEPEX from points of receipt located in Kansas and Iowa. The point of delivery is located in Nebraska.

Natural further indicates that it commenced this service on December 1, 1988, as reported in Docket No. ST89–1790–000.

Comment date: March 20, 1989, in accordance with Standard Paragraph G at the end of this notice.

9. United Gas Pipe Line Company

[Docket No. CP89–703–000]

February 1, 1989.

Take notice that on January 26, 1989, United Gas Pipe Line Company, (United) P.O. Box 1478, Houston, Texas, 77251–1478 filed in Docket No. CP89–703–000 a request pursuant to § 157.205 under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Sonat Marketing Company (Sonat), under its blanket authorization issued in Docket No. CP88–6–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United would perform the proposed interruptible transportation service for Sonat, a marketer of natural gas, pursuant to a gas transportation service agreement under Rate Schedule ITS dated October 17, 1988, as amended (Contract No. T1–21–1915). The term of the transportation agreement is for a primary term of one month from the first delivery of gas and shall continue in effect for successive one month terms thereafter until terminated. United proposes to transport on a peak day up to 91,670 MMBtu; on an average day up to 91,670 MMBtu; and on an annual basis 33,459,550 MMBtu for Sonat. United proposes to receive the subject gas from various exiting points of receipt on it system in Texas and Louisiana. United would then transport and redeliver such volumes to Sonat at existing points of interconnection in Alabama, Florida and Louisiana for use by industrial end users. The proposed rate to be charged is 32.26 cents per Mcf pursuant to Rate Schedule ITS. United indicates that it would be using existing facilities to provide the proposed transportation service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's Regulations. United commenced such self-implementing service on December 7, 1988, as reported in Docket No. ST88–1737–000.

Comment date: March 20, 1989, in accordance with Standard Paragraph G at the end of this notice.

10. ANR Pipeline Company

[Docket No. CP89–699–000]

February 1, 1989.

Take notice that on January 24, 1989, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243 filed in Docket No. CP89–699–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization for an additional sales delivery point for Illinois Power Company (IPC), under the authorization issued in Docket No. CP82–480–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

ANR states pursuant to § 157.212(a) of the Commission's Regulations, it requests authorization to add the new delivery point by means of a new meter station for delivery of natural gas to IPC. The location of the proposed meter station will be section 22, Township 16 North, Range 5 East, Henry County, Illinois (Kewanee Meter Station). It is stated that ANR's sales to IPC are made pursuant to a service agreement dated December 14, 1987. IPC's purchases of natural gas are made from the general system supply of ANR under Rate Schedule CD–1 of ANR's FERC Gas Tariff, Original Volume No. 1. ANR

states that the volumes intended for delivery to IPC at the Kewanee Meter Station are within IPC's current and proposed peak day and annual entitlements. ANR further states that its tariff does not prohibit the new delivery point and that it has sufficient capacity to accomplish the specified deliveries without detriment or disadvantage to its other customers.

Comment date: March 20, 1989, in accordance with Standard Paragraph G at the end of this notice.

11. Eastern Shore Natural Gas Company

[Docket No. CP89-611-000]

February 1, 1989.

Take notice that on January 13, 1989, Eastern Shore Natural Gas Company (Eastern Shore), P.O. Box 615, Dover, Delaware 19903-0615, filed in Docket No. CP89-611-000 a request pursuant to § 157.205, 157.211(b) and 157.212(a) of the Commission's Regulations for authorization to construct and operate one sales tap for a local distribution company, under the blanket certificate issued in Docket No. CP83-40-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Eastern Shore proposes to construct and operate one sales tap for its existing customer, Delaware Division of Chesapeake Utilities Corporation (Delaware Division). It is stated that the tap would be located on Hazlettville Road in Dover, Delaware. Eastern Shore states that it was granted original authority to serve Delaware Division in Docket No. G12-200 and that the current level of service was authorized in Docket No. CP85-89-000, *et al.* Eastern Shore proposes to initially deliver through the proposed tap an average of 5 MMBtu per day or 1,725 MSCF per year. It is stated that Delaware Division intends to resell the gas to residential customers.

Eastern Shore states that the volumes that it would deliver through the proposed tap would be within the Delaware Division's certificated entitlement. It is further stated that the impact of the proposed sales tap on Eastern Shore's other customers' annual and peak day deliveries would be insignificant.

Comment date: March 20, 1989, in accordance with Standard Paragraph G at the end of this notice.

12. Panhandle Eastern Pipe Line

[Docket No. CP89-706-000]

February 1, 1989.

Take notice that on January 26, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas, 77251, filed in Docket No. CP89-706-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon a firm transportation service being provided to Diamond Shamrock Corporation (Diamond Shamrock), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Panhandle states that diamond Shamrock has requested discontinuance of the tranportation service being provided pursuant to a transportation agreement dated March 31, 1978, under Panhandle's Rate Schedule T-27 of its FERC Gas Tariff, Original Volume No. 2, on the basis that the service is no longer required. Panhandle further states that the service invovles the transportation of up to 100 Mcf per day of natural gas from the inlet of Diamond Shamrock's measuring station located at its McKee Plant in Moore County, Texas, and redelivered at an interconnection between Panhandle and Diamond Shamrock in Hutchinson County, Texas, and was authorized under the certificate issued in Docket No. CP78-396 on October 23, 1978. Panhandle advises that there would be no abandonment of facilities.

Comment date: February 22, 1989, in accordance with Standard Paragraph F at the end of this notice.

13. Panhandle Eastern Pipe Line Company

[Docket No. CP89-597-000]

February 1, 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. CP89-597-000 and application pursuant to section 7(b) of the Natural Gas Act for permission and approval to partially abandon sales service to Northern Indiana Fuel & Light Company, Inc. (NIFL), 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 Panhandle and NIFL have entered into a sales agreement dated November 1, 1988, providing for a 8.57% reduction of sales contract demand (CD) level corresponding to volumes converted to firm transportation service. Panhandle explains that NIFL has elected under § 284.10 of the Commission's regulations to convert a portion of its daily contract demand to firm transportation. Panhandle states that the firm transportation service is being rendered under the terms and conditions of its Rate Schedule PT-Firm. Accordingly, Panhandle proposes to reduce NIFL's current sales contract demand quantity, to be effective November 1, 1988, by the daily amount in Column No. 2, as shown below.

Month	Current CD mcf/d	Reduction mcf/d	Resulting CD mcf/d
	(1)	(2)	(3)
January	23,068	915	22,153
February	23,068	915	22,153
March	23,068	915	22,153
April	12,608	1,432	11,176
May	9,368	1,432	7,936
June	6,308	1,432	4,876
July	3,968	1,432	2,536
August	4,868	1,432	3,436
September	7,568	1,432	6,136
October	11,168	1,432	9,736
November	23,068	915	22,153
December	23,068	915	22,153

Panhandle further states that the proposed abandonment would reduce the annualized total CD from 5,188,320 Mcf to 4,743,707 Mcf.

Comment date: February 22, 1989, in accordance with Standard Paragragh F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Ruels of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the

Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89-2890 Filed 2-6-89; 8:45am]

BILLING CODE 6717-01-M

[Project No. 10116-001, California]

Triple Star Hydro Ltd.; Surrender of Preliminary Permit

January 31, 1989.

Take notice that Triple Star Hydro Limited, permittee for the North County Hydroelectric Project, located on Eagle Creek in Trinity County, California, has requested that its preliminary permit be terminated. The preliminary permit was issued on February 9, 1987, and would have expired on January 31, 1990. The permittee states that analysis of the project did not indicate feasibility for development.

The permittee filed the request on January 11, 1989, and the preliminary permit for Project No. 10116 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 89-2824 Filed 2-6-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2407, Alabama]

Alabama Power Co.; Intent to File an Application for a New License

February 2, 1989.

Take notice that on December 21, 1988, Alabama Power Company, the existing licensee for the Yates Hydroelectric Project No. 2407, filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Pub. L. 99-495. The original license for Project No. 2407 was issued effective April 1, 1962, and expires December 31, 1993.

The project is located on the Tallapoosa River in Elmore and Tallapoosa Counties, Alabama. The principal works of the Yates Project include a 70-foot-high concrete dam; a reservoir of 2,000 acres at elevation 344 feet m.s.l.; a powerhouse with an installed capacity of 32,000 kW; a substation and transmission line connection; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM87-7-000, Order No. 496 (Final Rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street NE., Washington, DC 20426. The above information as described in the rule is now available form the licensee at 600 North 18th Street, Birmingham, AL 35291.

Pursuant to section 15(c)(1) of the Act, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 89-2819 Filed 2-6-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2408, Alabama]

Alabama Power Co.; Intent To File an Application for a New License

February 2, 1989.

Take notice that on December 21, 1988, Alabama Power Company, the existing licensee for the Thurlow Hydroelectric Project No. 2408, filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Pub. L. 99-495. The original license for Project No. 2408 was issued effective April 1, 1962, and expires December 31, 1993.

The project is located on the Tallapoosa River in Elmore and Tallapoosa Counties, Alabama. The principal works of the Thurlow Project include a concrete dam and spillway; a reservoir of 574 acres at elevation 288.85 feet m.s.l.; a powerhouse with an installed capacity of 58,000 kW; a substation and transmission line connection; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM87-7-000, Order No. 496 (Final Rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426. The above information as described in the rule is now available from the licensee at 600 North 18th Street, Birmingham, AL 35291.

Pursuant to section 15(c)(1) of the Act, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 89-2820 Filed 2-6-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-246-004]

ANR Pipeline Co.; Proposed Changes in FERC Gas Tariff

February 2, 1989.

Take notice that ANR Pipeline Company ("ANR") on January 27, 1989 tendered for filing as a part of its FERC Gas Tariff Original Volume No. 1-A,

Third Substitute Original Sheet No. 136B.

ANR states that the above referenced tariff sheet is being filed in compliance with the Commission's Letter Order of January 19, 1989 in Docket Nos. RP88-246-001 and RP88-246-003 to correct a typographical error.

ANR has requested that the Commission accept this filing to become effective as of October 1, 1988.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Such protests or motions must be filed by February 9, 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. 89-2891 Filed 2-6-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-56-000]

Blue Dolphin Pipe Line Co.; Tariff Change

February 1, 1989.

Take notice that on January 27, 1989, Blue Dolphin Pipe Line Company (Blue Dolphin), tendered for filing with the Commission, to be effective on March 1, 1989, the following tariff sheets to be included in Blue Dolphin's FERC Gas Tariff:

Original Volume No. 1

First Revised Sheet No. 59
First Revised Sheet No. 91
First Revised Sheet No. 92
Original Sheet No. 92a
Original Sheet No. 92b
First Revised Sheet No. 95

Blue Dolphin states that the purpose of the revised tariff sheets is to revise sections of Blue Dolphin's Order No. 436 transportation tariff to comply with the requirements of Order No. 509, as they relate to OCS pipelines conducting an open season for firm transportation capacity with respect to any presently uncommitted firm capacity and with respect to firm capacity that existing shippers may be willing to relinquish. Blue Dolphin states that it is submitting changes to the capacity allocation sections of its open access transportation tariff to establish such an open season on an annual basis. Blue Dolphin states that its filing is intended also to provide reasonable notice of Blue Dolphin's firm capacity open season, which shall begin on March 1, 1989.

Blue Dolphin asks for whatever waivers are necessary for the Commission to approve the proposed tariff sheets, and for the tariff sheets to go into effect on March 1, 1989.

Any persons desiring to be heard or to make any protest with reference to said filing should, on or before February 9, 1989, file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). 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 conference or hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Secretary.

[FR Doc. 89-2813 Filed 2-6-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-3-63-000]

Carnegie Natural Gas Co.; Proposed Changes in FERC Gas Tariff

February 2, 1989.

Take notice that Carnegie Natural Gas Company ("Carnegie") on January 27, 1989, tendered for filing the following tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1:

Thirteenth Revised Sheet No. 47
Thirteenth Revised Sheet No. 48

Carnegie states that pursuant to the Purchased Gas Adjustment in Article 22 of its FERC Gas Tariff, it proposes to adjust its rates effective March 1, 1989, to reflect a $.1077 per Dth decrease in the applicable commodity components of its LVWS and CDS Rate Schedules, a $.0875 per Dth decrease in the D-1 components, and a $.0007 per Dth decrease in the D-2 components of those Rate Schedules. The proposed decrease in the LVIS Rate Schedule is $.1141 per Dth.

Carnegie states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before February 9, 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 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. 89-2892 Filed 2-6-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-3-22-000]

CNG Transmission Corp.; Proposed Changes in FERC Gas Tariff

February

Take notice that CNG Transmission Corporation ("CNG"), on January 27, 1989, pursuant to section 4 of the Natural Gas Act, Part 154 of the Commission's regulations (18 CFR Part 154) and section 12 of the General Terms and Conditions of CNG's tariff, filed the following revised tariff sheet to Original Volume No. 1 of its FERC Gas Tariff: Sixth Revised Sheet No. 31.

The filing constitutes CNG's regular quarterly PGA filing for effectiveness on March 1, 1989.

Copies of the filing were served upon CNG's sales customers as well as interested state commissions.

Any person desiring to be heard or to protest said filing should file a protest or motion to intervene 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 and 385.211). All motions or protests should be filed on or before February 9, 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. 89-2902 Filed 2-6-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-55-000]

El Paso Natural Gas Co.; Proposed Changes in FERC Gas Tariff

February 1, 1989.

Take notice that El Paso Natural Gas Company ("El Paso") on January 26, 1989, tendered for filing pursuant to Part 154 of the Federal Energy Regulatory Commission's ("Commission") Regulations Under the Natural Gas Act certain revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1-A.

El Paso states on December 1, 1988 it filed its acceptance of the blanket certificate authorization granted by the Commission's order issued November 2, 1988 at Docket No. CP88-433-000. The blanket certificate authorizes certain transportation of natural gas in interstate commerce under the terms and conditions provided in Part 284, Subpart G of the Regulations promulgated in Order Nos. 436 and 500. As a result of El Paso's acceptance of said blanket certificate authorization, it is necessary to make certain revisions to the Transportation Service Request Form contained in El Paso's Original Volume No. 1-A Tariff. Accordingly, the tendered revised tariff sheets, when accepted for filing and permitted to become effective, will (i) revise El Paso's Transportation Service Request Form in recognition of El Paso accepting its blanket certificate authorizing certain transportation of natural gas in interstate commerce under the terms and conditions provided in Part 284, Subpart G of the Regulations promulgated in Order Nos. 436 and 500; and (ii) make certain clarifications in existing tariff provisions.

El Paso has requested that the tariff sheets tendered be accepted for filing and permitted to become effective thirty (30) days after the date of filing.

Copies of the filing were served upon all shippers of El Paso and interested state regulatory Commissions.

Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before Feb. 8, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-2814 Filed 2-6-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-87-030]

Granite State Gas Transmission, Inc.; Proposed Changes in Tariff Provisions

February 2, 1989.

Take notice that on January 27, 1989, Granite State Gas Transmission, Inc., (Granite State), 120 Royall Street, Canton, Massachusetts 02021 tendered for filing with the Commission the revised tariff sheets listed below in its FERC Gas Tariff, First Revised Volume No. 1 for effectiveness on December 7, 1988:

Substitute Fifth Revised Sheet No. 70
Substitute Fourth Revised Sheet No. 71
Substitute Fourth Revised Sheet No. 72
Substitute Third Revised Sheet No. 73

According to Granite State, it filed revised tariff sheets on December 22, 1988 in compliance with a settlement of a rate proceeding in Docket No. RP87-87-000 approved by the Commission in an order issued November 20, 1988. The compliance filing included revisions in the purchased gas cost provision of Granite State's tariff to conform with the requirements of the settlement. Granite State further states that the revised tariff sheets listed above replace certain parts of the purchased gas adjustment provision to comply strictly with the requirements of the Commission's revised purchased gas cost regulations.

According to Granite State copies of its filing were served upon its customers, Bay State Gas Company and Northern Utilities, Inc., and the regulatory commissions of the States of Maine, Massachusetts and New Hampshire.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with sections 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before February 9, 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. 89-2893 Filed 2-6-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-1-45-001]

Inter-City Minnesota Pipelines Ltd., Inc.; Tariff Filing

February 2, 1989.

Take notice that on January 27, 1989, Inter-City Minnesota Pipelines Ltd., Inc. ("Inter-City"), 245 Yorkland Boulevard, North York, Ontario, Canada M2J 1R1, filed Substitute First Revised Thirty-First Revised Sheet No. 4 to Original Volume No. 1 of its FERC Gas Tariff.

Inter-City states the revised tariff sheet reflects its quarterly PGA. Inter-City requests that the tariff sheet be made effective February 1, 1989.

Copies of the filing were served on Inter-City's jurisdictional customers and interested state commissions.

Any persons 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, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before February 9, 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. 89-2903 Filed 2-6-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-14-003]

Inter-City Minnesota Pipelines Ltd., Inc.; Tariff Filing

February 2, 1989.

Take notice that on January 27, 1989, Inter-City Minnesota Pipelines Ltd., Inc.

("Inter-City"), 245 Yorkland Boulevard, North York, Ontario, Canada M2J 1R1, tendered for filing the following revised tariff sheet to its FERC Gas Tariff:

Original Volume No. 1

Substitute Thirty-Second Revised Sheet No. 4

Original Volume No. 2

Substitute Sixth Revised Sheet No. 11
Substitute Sixth Revised Sheet No. 12

Inter-City states that this revised tariff sheet is submitted in compliance with the Commission's order issued in this proceeding on November 30, 1988. The revised tariff sheet and attached workpapers reflect revised D-2 charges, rates developed on the basis of D-1 costs allocated between zones using a three-day peak methodology, a refund to Inter-City's customers of deferred income times and a PGA surcharge.

Copies of this filing were served on Inter-City's jurisdictional customers and interested state commissions.

Any persons desiring to be heard or to protect said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before February 9, 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. 89-2908 Filed 2-6-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA89-1-45-003]

Inter-City Minnesota Pipelines Ltd., Inc.; Tariff Filing

February 2, 1989.

Take notice that on January 27, 1989, Inter-City Minnesota Pipelines Ltd., Inc. ("Inter-City"), 245 Yorkland Boulevard, North York, Ontario, Canada M2J 1Rl, submitted Second Substitute Thirty-First Revised Sheet No. 4 to Volume No. 1 of its FERC Gas Tariff.

Inter-City states the filing is made to correct Substitute Thirty-First Revised Sheet No. 4 submitted on January 12, 1989.

Inter-City states that copies of the filing have been mailed to Inter-City's all of its customers and affected state regulatory commissions.

Any persons 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, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before February 9, 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. 89-2909 Filed 2-6-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP86-524-001]

Iroquois Gas Transmission System; Amendment to Application for a Presidential Permit for the Construction, Operation, Maintenance, and Connection at the U.S./Canada International Boundary, of Facilities for the Importation of Natural Gas

February 1, 1989

Take notice that on January 17, 1989, Iroquois Gas Transmission System (Iroquois), 2 Enterprise Drive, Shelton, Connecticut 06484, filed pursuant to section 153.11 of the Commission's Regulations an amendment to its application for a Presidential Permit for the construction, operation, maintenance and connection at the international boundary between the United States and Canada of facilities for the importation of natural gas, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

Iroquois states that the amendment is occasioned principally by the concurrent filing of its application for a certificate of public convenience and necessity (Certificate Application) in Docket No. CP89-634-000, which in turn is filed in conjunction with a Joint Offer of Settlement filed in the Commission's "open season" proceeding by Iroquois and Tennessee Gas Pipeline Company ("Tennessee").

Iroquois' Certificate Application seeks authority for Iroquois (1) to construct and operate a new pipeline system with a capacity of 534,000 Mfc of natural gas per day from a point on the international border near Iroquois, Ontario through the States of New York and Connecticut across Long Island Sound to a point near South Commack, Long Island, New York and (2) to transport natural gas through the new pipeline for local distribution companies and power generators in New York, New Jersey and New England. It is proposed that the 30-inch diameter pipeline to be owned by Iroquois interconnect at the border with the 30-inch diameter pipeline to be owned by TransCanada Pipelines, Limited (TransCanada).

It is stated that Iroquois has been established as a general partnership under the laws of New York. The partners in Iroquois are or will be affiliates of TransCanada. AEC Oil and Gas Company, The Brooklyn Union Gas Company, the Northeast Utilities system, Southern Connecticut Gas Company, Connecticut Natural Gas Corporation, New Jersey Resources Company, J. Makowski Company, Inc., Tennessee, Texas Eastern Transmission Corporation, ANR Pipeline Company, and CNG Transmission Corporation.

Iroquois states that all of its partners are United States corporations. Iroquois will be managed by a Management Committee, which will be comprised of a representative and alternate representative of each partner. When the representatives and alternate representatives have been designated, Iroquois will supplement its amended application with a list of the members of the Management Committee and their nationalities.

Iroquois further states that: neither Iroquois nor its pipeline will be owned in any part by any foreign government or directly or indirectly subventioned by any foreign government; Iroquois has no understanding with any foreign government for such ownership or subvention; Iroquois has no existing contracts with any foreign government or private concern which relate to the control or fixing of rates for the purchase, sale or transportation of natural gas and which may serve in any way to restrict or prevent competing American companies from extending their own activities; and no foreign government or agency has granted Iroquois any landing license or permit in connection with the exportation or importation of natural gas.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before February 22, 1989, file with the Federal Energy Regulatory Commission, 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 384.214 or 385.211). 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.

Lois D. Cashell,

Secretary.

[FR Doc. 89-2898 Filed 2-6-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-1-53-000]

K N Energy, Inc.; Proposed Changes in FERC Gas Tariff

February 2, 1989.

Take notice that K N Energy, inc. ("K N") on January 27, 1989 tendered for filing a quarterly PGA proposing changes in its FERC Gas Tariff to adjust the rates charged to its jurisdictional customers pursuant to the Purchased Gas Adjustment provision (section 19) of the General Terms and Conditions of K N's FERC Gas Tariff, Third Revised Volume No. 1 to reflect changes in the Current Adjustment. The proposed changes would increase the commodity rate under each of K N Energy's jurisdictional rate schedules, exclusive of IOR-1 and IOR-2, by 2.94¢ per Mcf. Rates under Rate Schedules IOR-1 and IOR-2 are proposed to increase by 2.19¢ per Mcf and 2.22¢ per Mcf, respectively. K N has also revised the rates of its various rate schedules to reflect purchased gas costs on an as-billed basis. The result is an increase in D1 demand costs and decreases in D2 demand costs as set forth in K N's transmittal letter and tariff sheets. K N states that the filing reflects revision to its base tariff rates to reflect projected weighted average gas costs for the quarter ending May 31, 1989. The proposed effective date for the rate changes is March 1, 1989.

Copies of the filing were served upon K N's jurisdictional customers, and interested public bodies.

Any person desiring to be heard or to make any protest with reference to this filing should, on or before February 9, 1989, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a petition to intervene or a protest in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). 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. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-2904 Filed 2-6-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-225-003]

Inter-City Minnesota Pipelines Ltd., Inc.; Tariff Filing

January 31, 1989

Take notice that on January 25, 1989, Inter-City Minnesota Pipelines Ltd., Inc. ("Inter-City"), 245 Yorkland Boulevard, North York, Ontario, Canada M2J 1R1, submitted revised tariff sheets:

Original Volume No. 1

Substitute Fourth Revised Sheet No. 56
Second Substitute Second Revised Sheet No. 56-A
Second Substitute Original Revised Sheet No. 56-B
Second Substitute Third Revised Sheet No. 57
Second Substitute Third Revised Sheet No. 58
Second Substitute Fifth Revised Sheet No. 60
Second Substitute Sixth Revised Sheet No. 61
Second Substitute Second Revised Sheet No. 61-A
Second Substitute Second Revised Sheet No. 61-B
Second Substitute Second Revised Sheet No. 61-C
Second Substitute Second Revised Sheet No. 61-D
Second Substitute Third Revised Sheet No. 62
Second Substitute Fourth Revised Sheet No. 63
Second Substitute Sheet No. 64-B

Inter-City states that the revised tariff sheets reflect changes in its PGA tariff language to bring it into compliance with Order Nos. 483 and 483-A.

Copies of the filing were served on Inter-City's jurisdictional customers and interested state commissions.

Any persons 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, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before February 8, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-2827 Filed 2-6-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP89-35-001, CP87-106-005, CP88-266-003.]

Midwestern Gas Transmission Co.; Tariff Filing

February 1, 1989.

Take notice that on January 17, 1989, Midwestern Gas Transmission Company (Midwestern) tendered for filing the following tariff sheets to Volume II of its FERC Gas Tariff to be effective on January 1, 1989 (November 1, 1988 for Sheet No. 68B and Sheet No. 68F1).

Substitute Ninth Revised Sheet No. 62K
Substitute Fourth Revised Sheet No. 68B
Sixth Revised Sheet No. 68D
Fifth Revised Sheet No. 68E
Substitute First Revised Sheet No. 68F1
Substitute Original Sheet No. 74
Substitute Original Sheet No. 75

Midwestern states that these revisions are being filed to reflect rate changes made effective in Docket Nos. RP89-35 and RP89-36 and to correct typographical errors in earlier filings.

Midwestern states that copies of the filing have been mailed to all of its customers and affected state regulatory commissions.

Any persons 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, Washington, DC 20425, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before February 8, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene; provided, however, that any person who had previously filed a motion to intervene in this proceeding is not required to file a further motion. Copies of this filing are on file with the

Commission and are available for public inspection.

Lois Cashell,

Secretary.

[FR Doc. 89-2815 Filed 2-6-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TQ89-4-25-000 and TM89-2-25-000]

Mississippi River Transmission Corp. Rate Change Filing

February 2, 1989.

Take notice that on January 27, 1989, Mississippi River Transmission Corporation (MRT) tendered for filing, to be effective March 1, 1989, Thirty-First Revised Sheet No. 4, Eleventh Revised Sheet No. 4A, Second Revised Sheet No. 4A.1 and Second Revised Sheet No. 4A.2 to its FERC Gas Tariff, Second Revised Volume No. 1. MRT states that this filing is being submitted to reflect its third quarterly purchased gas cost adjustment (PGA) pursuant to § 154.308 of the Commission's Regulations and the PGA provisions of MRT's tariff, and is designed to track various pipeline and producer cost changes.

MRT notes that its filing is predicated upon the settlement rates made effective by United Gas Pipeline Line Company (United) in its pending rate proceedings at Docket Nos. RP88-92-000, *et al.;* and, thus, MRT expressly reserves it rights to increase the rates reflected in this filing in the event of modification of United's settlement rates to MRT. The quarterly impact of MRT's PGA filing on its jurisdictional customers is stated to be a decrease of $.1 million.

MRT further states that the enclosed Revised Sheet Nos. 4A reflect the most recent revised fixed take-or-pay charges applicable to MRT as a result of filings of United, Natural Gas Pipeline Company of America and Trunkline Gas Company. MRT states that the quarterly jurisdictional impact of this take-or-pay flowthrough filing is an increase of approximately $.1 million.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before February 9, 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. 89-2905 Filed 2-6-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP88-708-000]

Natural Gas Pipeline Co. of America; Technical Conference on Engineering Issues

February 1, 1989.

Take notice that on February 21 and 22, 1989, members of the engineering staff of the Federal Energy Regulatory Commission will conduct a technical consultation concerning engineering issues relating to Natural Gas Pipeline Company of America's (Natural) response to data requests concerning CP88-708-000. Natural has agreed to provide the technical assistance necessary to interpret Natural's engineering data response. A professional engineer employed by Natural will spend two full days working with a FERC design engineer. Natural's legal staff will not attend. The FERC staff requires technical assistance in interpreting the response and seeks assistance in building a computer simulation of Natural's transmission system. The technical consultation will commence at 8:30 a.m. at 825 North Capitol Street, NE., Washington, DC 20426. The engineering conference and computer rooms will be used for this consultation.

All parties to this proceeding, Commission staff, and interested members of the public are invited to attend; however, mere attendance at the consultation will not confer party status. Any person wishing to become a party to this proceeding must file a Motion to Intervene in accordance with Rule 214(d) of the Commission's Rules of Practice and Procedure (18 CFR 385.214(d)).

Further information concerning the technical conference may be obtained from Mr. William L. Zoller, Pipeline Certificates and Projects Branch (202-357-8203), or John F. Korzeniowski, Division of Engineering, Market and Environmental Analysis (202-357-8843) Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 89-2899 Filed 2-6-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-94-015]

Natural Gas Pipeline Co. of America; Changes in FERC Gas Tariff

February 2, 1989.

Take notice that on January 27, 1989, Natural Gas Pipeline Company of America (Natural) submitted for filing Substitute First Revised Sheet Nos. 165 and 166 and Third Revised Sheet Nos. 169 and 170 to be a part of its FERC Gas Tariff, Third Revised Volume No. 1, to be effective as proposed.

Natural states that the purposes of the filing are to (1) recover additional take-or-pay buyout and buydown and contract reformation costs (transition costs) incurred since the previous filing made on December 30, 1988 under Docket No. RP88-94-014; (2) recover accrued interest for the month of February, 1989 on transition costs previously included for recovery in prior filings; and (3) comply with ordering paragraph (E) of the order issued April 29, 1988 under Docket Nos. RP88-94-000 and -001 which required that Natural revise, as necessary, "the balance allocated to each customer to reflect only those costs that actually have been paid as of December 31, 1988 or for which there has been incurred a written obligation to pay."

Finally, Natural requests that the Commission grant any waivers it deems necessary to allow the tariff sheets to become effective March 1, 1989. A copy of the filing was mailed to Natural's jurisdictional customers, interested state regulatory agencies, and all parties set out on the official service list in Docket No. RP88-94-000.

Any person desiring to be heard or to protest the subject 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 18 CFR 385.214 and 385.211. All such motions or protests must be filed on or before February 9, 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. 89-2894 Filed 2-6-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2438, New York]

New York State Electric & Gas Corp.; Intent to File an Application for a New License

February 2, 1989.

Take notice that on December 19, 1988, New York State Electric & Gas Corporation, the existing licensee for the Seneca Falls and Waterloo Stations Hydroelectric Project No. 2438, filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Pub. L. 99-495. The original license for Project No. 2438 was issued effective March 1, 1965, and expires December 31, 1993.

The project is located on the Seneca River in Seneca County, New York. The principal works of Seneca Falls Station include a concrete dam owned by the State of New York; a powerhouse with an installed capacity of 8,000 kW; and a short 34.5-kV line to Seneca Falls switchyard. The Waterloo Station includes a concrete dam; a powerhouse with an installed capacity of 1,920 kW; and a short 34.5-kV line to Waterloo switchyard. Each station has appurtenant electrical and mechanical facilities.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM87-7-000, Order No. 496 (Final Rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street NE., Washington, DC 20426. The above information as described in the rule is now available from the licensee at Kent Building, Chenango Street, Binghamton, NY 13902, Attn: Ms. Melanie K. Chapel, telephone (607) 729-2551, ext. 4750.

Pursuant to section 15(c)(1) of the Act, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 89-2821 Filed 2-6-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP87-451-016 et al.]

Northeast U.S. Pipeline Projects; Offers of Settlement

February 1, 1989.

Take notice that on January 17, 1989, Offers of Settlement were filed by ANR Pipeline Company (ANR), Champlain Pipeline Company (Champlain), and jointly by Iroquois Gas Transmission System (Iroquois) and Tennessee Gas Pipeline Company (Tennessee), pursuant to Rule 602 of the Commission's Rules of Practice and Procedure, the Principles of Settlement incorporated in the "Final Report of the Chief Judge and Certification of Settlement", issued November 30, 1988 (*Northeast U.S. Pipeline Projects, et al.*, Docket Nos. CP87-451-008, *et al.*, 45 FERC ¶ 63,019), and the Commission's order issued January 12, 1989 in Docket No. CP87-451-016 (46 FERC ¶ 61,012). Pursuant to the provisions of Rule 602 and the Commission's order, comments on these offers of settlement are due 20 days after the date of filing, or on February 6, 1989. As stated in the Commission's January 12 order, the ANR, Champlain, and Iroquois/Tennessee projects were severed from the open-season proceeding conditioned upon the sponsors of those projects filing comprehensive offers of settlement setting forth discrete projects. Therefore, as further stated in the January 12 order, and notwithstanding any contrary or conflicting intent on the part of the project sponsors, comments filed on the offers of settlement should address issues of mutual exclusivity (discreteness).

The Commission's January 12 order also required the sponsors of the ANR, Champlain, and Iroquois/Tennessee projects to file new and/or amended applications to implement the proposed projects. Take notice that separate notice is today being issued of applications filed in Dockets Nos. CP86-524-001, Iroquois Gas Transmission System; CP89-629-000, Tennessee Gas Pipeline Company; CP89-634-000, Iroquois Gas Transmission System; CP89-635-000, Columbia Gas Transmission Corporation; CP89-637-000, ANR Pipeline Company; CP89-638-000, CNG Transmission Corporation; CP89-661-000, Algonquin Gas Transmission Company; CP89-646-000, Champlain Pipeline Company; and CP89-654-000, Champlain Pipeline Company, with regard to those projects. Any person desiring to be heard or to protest regarding the merits of these or subsequent applications filed pursuant to the Commission's January 12 order should file motions to intervene or protests with the Federal Energy Regulatory Commission as set forth in the relevant notices.

Lois D. Cashell,

Secretary.

[FR Doc. 89-2900 Filed 2-6-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EL87-37-000]

Oroville-Wyandotte Irrigation District, CA; Withdrawal of Complaint

January 31, 1989.

On April 10, 1987, the California Sportfishing Protection Alliance (CSPA) filed with the Commission a complaint against the Oroville-Wyandotte Irrigation District (OWID), licensee for the South Fork Project No. 2088, located in Butte, Plumas, Sierra, and Yuba Counties, California. CSPA alleged that OWID violated the terms of its license in that it failed to maintain the continuous minimum flow mandated by Article 58 of the license at the Lost Creek feature of the project. CSPA filed further comments on April 27, 1987, and OWID filed an answer to the complaint on May 5, 1987.

Commission staff conducted an investigation of CSPA's complaint in conjunction with an ongoing review of OWID's compliance with its license for the South Fork Project. Due to inadequate measuring devices, it was not possible to establish that the alleged violations had occurred. However, in response to staff's investigation, OWID installed new measuring devices, new concrete weirs, and a telemetry system at the Slate Creek feature of the project. These new devices will accurately measure the minimum flows and should prevent future violations.

Based on these remedial actions, on October 27, 1988, CSPA withdrew its complaint. The withdrawal of any pleading is effective at the end of fifteen days from the date of filing if no motion in opposition to the withdrawal is filed.[1] No motion in opposition to the withdrawal has been filed. Accordingly,

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[1] *See* 18 CFR 385.216(b) (1988).

CSPA's complaint is deemed withdrawn, effective November 11, 1988.[2]

Lois D. Cashell,

Secretary.

[FR Doc. 89-2828 Filed 2-6-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-2-55-000]

Questar Pipeline Co.; Rate Change

February 1, 1989.

Take notice that on January 30, 1989, Questar Pipeline Company tendered for filing and acceptance Nineteenth Revised Sheet No. 12 to its FERC Gas Tariff, First Revised Volume No. 1, to be effective March 1, 1989.

Questar Pipeline states that the purpose of this filing is to adjust the purchased gas costs under Questar Pipeline's sale-for-resale Rate Schedule CD-1 effective March 1, 1989.

Questar Pipeline further states that Nineteenth Revised Sheet No. 12 shows a commodity base cost of purchased gas as adjusted of $2.03537/Dth which is $0.12477/Dth lower than the currently effective rate of $2.16014/Dth. The demand base cost of purchased gas as adjusted remained unchanged at $0.01357/Mcf.

Questar Pipeline has requested any necessary waivers of the Commission's Rules and Regulations to allow the tendered tariff sheet to become effective as proposed, and states that it has provided a copy of the filing to its sales customer and state public service commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before February 9, 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. 89-2818 Filed 2-6-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP85-177-059, CP87-28-006, RP88-221-004, CP88-136-004, CP87-169-002]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

February 1, 1989.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on January 26, 1989 tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1 and Original Volume No. 2, six copies of the tariff sheets listed on Appendix A.

Texas Eastern states that the purpose of this filing is to file substitute tariff sheets reflecting the Commission's rejection of Texas Eastern's October 26 Compliance Filing (October 26 Filing) in Docket No. RP85-177 *et al., in lieu of previously filed tariff sheets when assumed that the Commission would approve Texas Eastern's October 26 Filing. The October 26 Filing was rejected by the Commission in an order dated January 13, 1989 in Docket Nos. RP85-177-056, CP88-136-001, and RP88-67-11. Texas Eastern is also concurrently with this instant filing making an additional filing of tariff sheets in Docket Nos. TM89-2-17 and TA89-1-17 to reflect inter alia,*

the removal of the effects of the October 26 Filing.

Proposed Substitute Tariff Sheets

In order to remove the effects of the October 26 Filing from tariff filings made subsequent to October 26, 1988, Texas Eastern files the following tariff sheets:

Texas Eastern Docket No. CP87-28-004

Substitute Ninth Revised Sheet No. 50 to replace Ninth Revised Sheet No. 50.

Texas Eastern Docket No. RP88-221-003

Substitute Fifth Revised Sheet No. 489 and Second Substitute First Revised Sheet No. 489A to replace Fifth Revised Sheet No. 489 and Substitute First Revised Sheet No. 489A which were filed on December 16, 1988 in Docket No. RP88-221-003. The replacement tariff sheets are proposed to be effective December 1, 1988 and exclude references to Rate Schedules CD-1 and CD-2.

Texas Eastern withdraws Second Revised Sheet Nos. 112 and 126 contained in the Company's December 16, 1988 filing.

Texas Eastern Docket Nos. RP85-177-058 and CP88-136-002

Substitute Third Revised Sheet No. 1, Substitute Third Revised Sheet No. 461, Substitute Fifth Revised Sheet No. 463, Substitute Sixth Revised Sheet No. 464, Substitute Third Revised Sheet No. 474 and Substitute Third Revised Sheet No. 600.

Texas Eastern Docket No. CP87-169

Substitute First Revised Sheet No. 1284 of Original Volume No. 2.

The tariff sheets are proposed to become effective as of the dates proposed on Appendix A.

Copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions. In addition, copies have also been mailed to all parties in Texas Eastern's Docket Nos. CP87-28, CP87-169, RP85-177 and CP88-136, and RP88-221.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before February 8, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-2816 Filed 2-6-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TM89-2-17-001 and TA89-1-17-002]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

February 1, 1989.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on January 26, 1989 tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1 and Original Volume No. 2, certain revised tariff sheets.

Texas Eastern states these tariff sheets are filed in compliance with the Commission's December 20, 1988 order in Docket No. TM89-2-17-000 and to reflect the rejection by the Commission on January 13, 1989 of Texas Eastern's

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[2] On June 19, 1987, Pacific Gas and Electric Company (PG&E) filed a petition to intervene in this proceeding. CSPA filed a response in opposition to that intervention on July 6, 1987. No action was taken on the petition to intervene, which is made moot by this withdrawal of the underlying complaint.

October 36, 1988 Compliance filing in Docket Nos. RP85–177–056, CP88–136–001, and RP88–67–011.

Texas Eastern Docket No. TM89–2–17–000

On December 2, 1988, Texas Eastern filed in Docket No. TM89–2–17–000 tariff sheets to reflect revised Rate Schedule SS–2 and SS–3 rates which tracked CNG Transmission Corporation's increased Rate Schedule GSS rates in Docket No. RP88–211 as of January 1, 1989.

Substitute Tenth Revised Sheet No. 50 is filed to replace Tenth Revised Sheet No. 50 which was approved to be effective January 1, 1989 by Commission order issued December 20, 1988 in Docket No. TM89–2–17–000. Substitute Tenth Revised Sheet No. 50 reflects the revised Rate Schedule GSS rates contained in CHG's December 30, 1988 filing and the deletion of the effects of Texas Eastern's October 26, 1988 filing in Docket No. RP85–177–056, RP88–67–011 and CP88–136–001 which was rejected by the Commission in an order dated January 13, 1989. The proposed tariff sheet also reflects lower revised Rate Schedule SS–3 withdrawal rates for Zone D which are based on an average shrinkage factor of 1.5% instead of 2.0% which was inadvertently used in Texas Eastern's December 2, 1988 filing in Docket No. TM89–2–17–000. Schedule A of the filing reflects the calculations involved in tracking the GSS rate changes through Texas Eastern's Rate Schedules SS–2 and SS–3.

Substitute Ninth Revised Sheet No. 51 replaces Ninth Revised Sheet No. 51 which was filed on December 2, 1988 in Docket No. TM89–2–17–000 and which was approved to be effective January 1, 1989 by Commission order dated December 20, 1988, subject to any action taken in Docket Nos. RP85–177–056, RP88–67–011, and CP88–136–001. Substitute Ninth Revised Sheet No. 51 is being filed solely to reflect the deletion of the effects of Texas Eastern's October 26, 1988 filing.

Texas Eastern Docket No. TA89–1–17–001

Texas Eastern filed on December 30, 1988 a revision to its December 2, 1988 Annual PGA Filing in Docket No. TA89–1–17–000 which is proposed to be effective February 1, 1989. The December 30, 1988 revised PGA filing contains an alternate set of tariff sheets which exclude the effects of Texas Eastern's October 26, 1988 filing in Docket Nos. RP85–177–056, RP88–67–011 and CP88–136–001. Texas Eastern requests that the Commission accept the alternate tariff sheets to be effective February 1, 1989. Texas Eastern states that Third Substitute Eleventh Revised Sheet No. 50 and is filed to replace Alternate Second Substitute Eleventh Revised Sheet No. 50 and is filed to reflect the revised Rate Schedule GSS rates contained in CNG's December 30, 1988 filing and to reflect Rate Schedule SS–3 withdrawal rates for Zone D that are based on an average shrinkage factor of 1.5 percent.

Texas Eastern requests that the Commission waive any of its rules and regulations necessary to permit Substitute Tenth Revised Sheet No. 50 and Substitute Ninth Revised Sheet No. 51 to become effective on January 1, 1989 and that Texas Eastern's December 30, 1988 revised PGA filing be amended to permit the remaining tariff sheets proposed for filing above to become effective February 1, 1989 in accordance with the proposed effective date as originally requested in Texas Eastern's December 30, 1988 revised PGA filing.

Copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intevene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before February 8, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89–2817 Filed 2–6–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP88–80–012, RP88–192–002, RP88–223–005 and RP88–251–005]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

February 2, 1989.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on January 27, 1989 tendered for filing, in compliance with the Commission's orders on January 13, 1989 in Docket Nos. RP88–80–008, RP88–192–001, and RP88–223–003 and in Docket Nos. RP88–80–011 and RP88–251–002, as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, six copies of the following tariff sheets:

Proposed To Be Effective April 1, 1988

Third Substitute First Revised Sheet No. 483

Proposed To Be Effective July 1, 1988

Second Substitute Second Revised Sheet No. 483

Proposed To Be Effective September 1, 1988

Second Substitute Third Revised Sheet No. 483

Proposed To Be Effective November 1, 1988

Substitute Fourth Revised Sheet No. 483

Proposed To Be Effective September 9, 1988

Second Substitute Original Sheet No. 483D

Texas Eastern states if filed tariff sheets on September 30, 1988 in Docket Nos. RP88–80–008, RP88–192–001, and RP88–223–003 and on October 24, 1988 in Docket Nos. RP88–80–011 and RP88–251–002 to flowthrough the take-or-pay costs of United and Southern. The Commission issued orders on January 13, 1989 accepting the filings, but requiring Texas Eastern to file, within 15 days of the date of the orders, revisions to Sheet Nos. 483 and 483D.

Texas Eastern states that, as originally filed, Sheet No. 483 provided that a customer would continue to be liable for the take-or-pay costs if prior to March 22, 1988 (the date Texas Eastern initially filed to flowthrough costs directly billed by United in Docket No. RP88–27) both the applicable service agreement had not expired and any necessary abandonment authorization for the subject service had not been received. The orders required revisions to Sheet No. 483 to reflect that March 22, 1988 was applicable only for the costs directly billed by United to Texas Eastern. The Commission determined that June 16, 1988 and August 17, 1988 were the applicable dates for the flowthrough of United's costs billed by Texas Gas and Southern respectively. The January 13 orders also require tariff language on Sheet No. 483 be revised to provide departing customers the option of paying a lump sum or continuing over the amortization period. Finally, the Commission required the correction of a reference to the date September 9, 1988 on Sheet No. 483D which was stated as September 9, 1983. Texas Eastern submits that the aforementioned

revisions comply with the Commission's orders of January 13, 1989.

The effective dates of the above tariff sheets are as proposed above, the same dates as the tariff sheets approved in the January 13, 1989 orders.

Copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions. In addition, Texas Eastern is mailing a copy of this filing to all parties or record in Docket No. RP88–80.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before February 9, 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. 89–2895 Filed 2–6–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP88–239–008]

Trunkline Gas Co.; Proposed Changes in FERC Gas Tariff

February 2, 1989.

Take notice that on January 26, 1989, Trunkline Gas Company (Trunkline) tendered for filing the following tariff sheets to its FERC Gas Tariff Original Volume No. 1:

Second Substitute Original Revised Sheet No. 3–A.5

Second Substitute Original Revised Sheet No. 3–A.6

The proposed effective date of these revised sheets is September 29, 1988.

Trunkline states that the proposed tariff sheets are being filed in compliance with the Commission's September 28, 1988 Order, as further clarified in the Commission's Order Denying Rehearing, dated December 16, 1988, in the above-captioned proceeding accepting Trunkline's proposed recovery of take-or-pay settlement costs under Order No. 500. Specifically, these revised tariff sheets eliminate carrying charges Trunkline paid its customers on amounts collected from them through Trunkline's rates in Docket Nos. RP87–15–000 and RP87–67–000.

Trunkline states that copies of the filing were sent to all of Trunkline's jurisdictional customers and interested state commissions, as well as the parties to the above-captioned proceeding.

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 the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions or protests should be filed on or before February 9, 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. 89–2896 Filed 2–6–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ89–2–30–000]

Trunkline Gas Co.; Proposed Changes in FERC Gas Tariff

February 2, 1989.

Take notice that Trunkline Gas Company (Trunkline) on January 27, 1989, tendered for filing the following revised tariff sheet to its FERC Gas Tariff, Original Volume No. 1:

Sixty-Seventh Revised Sheet No. 3–A

The proposed effective date of this revised tariff sheet is March 1, 1989.

Trunkline states that this revised tariff sheet filed herewith reflects a commodity rate decrease of (0.70¢) per Dt in the projected purchased gas cost component.

Trunkline states that the above-referenced tariff sheet is being filed in accordance with Section 154.308 (quarterly PGA filing) of the Commission's Regulations and pursuant to Section 18 (Purchased Gas Adjustment Clause) of Trunkline's FERC Gas Tariff, Original Volume No. 1 to reflect the changes in Trunkline's jurisdictional rates effective March 1, 1989.

Trunkline states that copies of its filing have been served on all jurisdictional customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before February 9, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89–2897 Filed 2–6–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ89–2–56–000]

Valero Interstate Transmission Co.; Proposed Changes in FERC Gas Tariff

February 2, 1989.

Take notice that Valero Interstate Transmission Company ("Vitco"), on January 27, 1989 tendered for filing the following tariff sheets as required by Orders 483 and 483–A containing changes in Purchased Gas Cost Rates pursuant to such provisions:

FERC Gas Tariff, Original Volume No. 1

11th Revised Sheet No. 14.2

FERC Gas Tariff, Original Volume No. 2

16th Revised Sheet No. 6

Vitco states that this filing reflects changes in its purchased gas cost rates pursuant to the requirements of Orders 483 and 483–A.

Vitco states that the change in rates to Rate Schedule S–1, FERC Gas Tariff, Original Volume No. 2 includes an increase in purchased gas costs of $.5394 per MMBtu. The change in rates to Rate Schedule S–3 includes an increase in purchased gas cost of $.2759 per MMBtu.

The proposed effective date for the above filing is March 1, 1989. Vitco requests a waiver of any Commission order or regulations which would prohibit implementation by March 1, 1989.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214

and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before February 9, 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 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 in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-2906 Filed 2-6-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2459, West Virginia]

West Penn Power Co.; Intent To File an Application for a New License

February 2, 1989.

Take notice that on December 20, 1988, West Penn Power Company, the existing licensee for the Lake Lynn Hydroelectric Project No. 2459, filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Pub. L. 99-495. The original license for Project No. 2459 was issued effective July 3, 1962, and expires December 31, 1993.

The project is located on the Cheat River in Monongalia County, West Virginia, and Fayette County, Pennsylvania. The principal works on the Lake Lynn Project include a 125-foot-high, 1,000-foot-long concrete dam; a reservoir of 1,729 acres at elevation 870 feet m.s.l.; eight penstocks of reinforced concrete, 12 feet by 18 feet; a powerhouse with an installed capacity of 51,200 kW; a transmission line connection; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM87-7-000, Order No. 496 (Final Rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426. The above information as described in the rule is now available from the licensee at 800 Cabin Hill Drive, Greensburg, PA 15601.

Pursuant to section 15(c)(1) of the Act, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 89-2822 Filed 2-6-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2431, Wisconsin and Michigan]

Wisconsin Electric Power Co.; Intent To File an Application for a New License

February 2, 1989.

Take notice that on December 19, 1988, Wisconsin Electric Power Company, the existing licensee for the Brule Hydroelectric Project No. 2431, filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Pub. L. 99-495. The original license for Project No. 2431 was issued effective April 1, 1962, and will expire December 31, 1993.

The project is located on the Brule River in Florence County, Wisconsin, and Iron County, Michigan. The principal works of the Brule Project include a remote earth dike, 880 feet long; two earth dikes, 150 and 270 feet long, flanking a 212-foot-long concrete gravity dam and spillway section; a reservoir of 774 acres; a powerhouse, at the dam, with an installed capacity of 5,335 kW; a transmission line connection; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM87-7-000, Order No. 496 (Final Rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426. The above information as described in the rule is now available from the licensee at Room 452, Public Service Building, 231 West Michigan Street, Milwaukee, WI 53201.

Pursuant to section 15(c)(1) of the Act, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 89-2823 Filed 2-6-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2357, Wisconsin and Michigan]

Wisconsin Electric Power Co.; Intent To File an Application for a New License

February 2, 1989.

Take notice that on December 19, 1988, Wisconsin Electric Power Company, the existing licensee for the White Rapids Hydroelectric Project No. 2357, filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Pub. L. 99-495. The original license for Project No. 2357 was issued effective January 1, 1965, and expires December 31, 1993.

The project is located on the Menominee River in Marinette County, Wisconsin, and Menominee County, Michigan. The principal works of the White Rapids Project include a composite concrete and earthfill dam, 50 feet high and 1,236 feet long; a reservoir of 465 acres; a powerhouse with an installed capacity of 8,000 kW; a substation and 0.28-mile-long, 138-kV transmission line; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM87-7-000, Order No. 496 (Final Rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street NE., Washington, DC 20426. The above information as described in the rule is now available from the licensee at Room 452, Public Service Building, 231 West Michigan Street, Milwaukee, WI 53201.

Pursuant to section 15(c)(1) of the Act, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 89-2826 Filed 2-6-89; 8:45 am]

BILLING CODE 6717-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-820-DR]

Major Disaster and Related Determinations; Utah

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Utah (FEMA-820-DR), dated January 31, 1989, and related determinations.

DATE: January 31, 1989.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3614.

Notice

Notice is hereby given that, in a letter dated January 31, 1989, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*, Pub. L. 93-288, as amended by Pub. L. 100-707), as follows:

I have determined that the damage in certain areas of the State of Utah, resulting from flash flooding caused by the failure of the Quail Creek Reservoir dike on January 1, 1989, is of sufficient severity and magnitude to warrant a major disaster declaration under Pub. L. 93-288, as amended by Pub. L. 100-707. I, therefore, declare that such a major disaster exists in the State of Utah.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

Individual Assistance is not provided at this time. You are authorized to provide Public Assistance in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under Pub. L. 93-288, as amended by Pub. L. 100-707, for Public Assistance will be limited to 75 percent of total eligible costs.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint John D. Swanson of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Utah to have been affected adversely by this declared major disaster:

Washington County for Public Assistance for eligible public facilities located downstream from the failed dike which were damaged as a result of the flooding. Work associated with the repair, restoration and upgrade of the failed Quail Creek Reservoir Dike, and construction of a temporary water bypass pipeline are not eligible for Federal disaster assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Julius W. Becton, Jr.,

Director, Federal Emergency Management Agency.

[FR Doc. 89-2798 Filed 2-6-89; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION

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 section 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.: 224-200129-001

Title: L.A. Cruise Ship Terminals, Inc.

Parties: L.A. Cruise Ship Terminals, Inc., Metropolitan Stevedore Company

Synopsis: The Agreement extends the term of the basic agreement to April 10, 1990, to coincide with the termination of Permit No. 506 between L.A. Cruise Ship Terminals, Inc. and the City of Los Angeles.

By Order of the Federal Maritime Commission.

Dated: February 2, 1988.

Joseph C. Polking,

Secretary.

[FR Doc. 89-2833 Filed 2-6-89; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

PNC Financial Corp.; Proposal To Underwrite and Deal in Certain Securities to a Limited Exent

PNC Financial Corp, Pittsburgh, Pennsylvania ("Applicant"), has applied, pursuant to the section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.23(a), of the Board's Regulation Y (12 CFR 225.23(a)), for permission to engage through PNC Securities Corp, Pittsburgh, Pennsylvania ("Company"), in the activities of underwriting and dealing in, to a limited degree, 1-4 family mortgage-related securities and consumer-receivable-related securities ("ineligible securities"). These securities are eligible for purchase by banks for their own account but not eligible for banks to underwrite and deal in.

Company would conduct the proposed activities on a nationwide basis. Company is currently authorized under section 4(c)(8) of the BHC Act to underwrite and deal in commercial paper and municipal revenue bonds under certain conditions and to a limited extent. *See PNC Financial Corp*, 73 Federal Reserve Bulletin 742 (1987). In addition, Company is authorized under section 4(c)(8) of the BHC Act to engage in underwriting and dealing in securities that state member banks are permitted to underwrite and deal in under the Glass-Steagall Act, and to provide discount securities brokerage services. 12 CFR 225.25(b) (16) and (15). Applicant has pending with the Board an application to provide investment advice in conjunction with brokerage services to institutional and retail customers.

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity "which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto." Applicant has applied to underwrite and deal in ineligible securities in accordance with the limitations set forth in the Board's Orders approving those activities for a number of bank holding companies. *See, e.g., Citicorp, J.P. Morgan & Co. Incorporated and Bankers Trust New York Corporation*, 73 Federal Reserve Bulletin 473 (1987); and *Chemical New York Corporation, The Chase Manhattan Corporation, Bankers Trust New York Corporation, Citicorp, Manufacturers Hanover Corporation and Security Pacific Corporation*, 73 Federal Reserve Bulletin 731 (1987).

Applicant contends that approval of the application would not be barred by section 20 of the Glass-Steagall Act (12 U.S.C. 377). Section 20 of the Glass-Steagall Act prohibits the affiliation of a member bank, such as Pittsburgh National Bank, Pittsburgh, Pennsylvania, with a firm that is "engaged principally" in the "underwriting, public sale or

distribution" of securities. Applicant states that it would not be "engaged principally" in such activities on the basis of the restriction on the amount of the proposed activity relative to the total business conducted by the underwriting subsidiary previously approved by the Board.

Any request for a hearing on this application must comply with § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)).

The application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Cleveland.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than February 28, 1989.

Board of Governors of the Federal Reserve System, February 1, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-2760 Filed 2-6-89; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 87F-0408]

Environmental Assessment; Finding of No Significant Impact; Selenium; Availability

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Center for Veterinary Medicine (CVM) of the Food and Drug Administration (FDA) is announcing the availability for comment of documents assessing and determining the potential environmental impact of a new dosage form for delivering a previously approved quantity of selenium as a nutritional supplement for cattle.

DATE: Comments by March 10, 1989.

ADDRESS: Submit written comments to the Dockets Management Branch (address below) identified with the docket number found in brackets in the heading of this document. Copies of the environmental assessment and the finding of no significant impact are available for public examination at the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Woodrow M. Knight, Center for Veterinary Medicine (HFV-226), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3390.

SUPPLEMENTARY INFORMATION: On January 6, 1988 (53 FR 289), CVM filed a food additive petition (FAP 2210) from Schering Animal Health, Schering Corp., 200 Galloping Hill Rd., Kenilworth, NJ 07033, that would provide for the use of a sustained release bolus to provide selenium at 3 milligrams (mg) per head per day in beef and dairy cattle. In the notice of filing of the food additive petition, CVM invited comments on the environmental assessment submitted by the petitioner. No comments were received.

CVM reviewed the environmental assessment and found deficiencies that were later addressed in a revised environmental assessment now being made available for comment with CVM's finding of no significant impact. The finding of no significant impact and the revised environmental assessment are simultaneously being filed with the Environmental Protection Agency and with State and area-wide clearinghouses for review. The comment period for this notice is 30 days.

In the **Federal Register** of April 6, 1987 (52 FR 10887), FDA published a food additive regulation amending 21 CFR 573.920, permitting an increase in the level of selenium in complete feeds for cattle, sheep, chickens, swine, turkeys, and ducks, and also in mineral mixes and feed blocks for beef cattle and sheep. The permitted level of supplemental selenium that could be provided was increased from 0.1 part per million (ppm) to 0.3 ppm in complete feed and from 1 mg per head per day to 3 mg per head per day in supplemental feeds for beef cattle.

The Schering Animal Health Food additive petition provides for a different dosage form, a sustained release bolus, that is covered by 21 CFR 573.920. The new product is a substitute method of providing selenium that could offer improved control of the dose of selenium delivered to cattle. The Schering Animal Health petition contains a revised environmental assessment that is adequate to determine that the new dosage form will be manufactured in a manner that is safe for the environment. Additionally, the firm has described certain mitigations to reduce the potential for adverse environmental impact due to use of the product, including labeling to warn against the use of the bolus in areas where there is already sufficient selenium in the soil, and that the bolus may not be used in conjunction with any other form of selenium supplementation. The firm has also provided instructions for the return of damaged or out-of-date products to the manufacturer for proper disposal. CVM has concluded that no adverse environmental impacts are anticipated as a result of the manufacture and distribution of the product and that impacts due to the use of the product are equal to or less than the already marketed selenium dosage forms.

Intersted persons may, on or before March 10, 1989, submit to the Dockets Management Branch (address above) written comments regarding the revised environmental assessment and the finding of no significant impact. Two copies of any comments should be submitted, except that individuals may submit one copy. Comments and other information on this topic have been placed on file and may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated February 3, 1989

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-2918 Filed 2-3-89; 10:27 am]

BILLING CODE 4160-01-M

[Docket No. 88E-0430]

Determination of Regulatory Review Period for Purposes of Patent Extension; Photoplex™

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Photoplex™ and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

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

FOR FURTHER INFORMATION CONTACT: Philip L. Chao, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100-670) generally provide that a patent may be extended for a period of up to 5 years so

long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissoner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Photoplex ™ (butyl methoxydibenzoylmethane and Padimate O). Photoplex ™ provides protection from the acute and long-term risks associated with UVA and UVB light exposures. Photoplex ™ screens out the sun's burning rays to prevent sunburn. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Photoplex ™, U.S. Patent No. 4,387,089, from Givaudan Corp., and requested FDA's assistance in determining the patent's eligibility for patent term restoration. FDA, in a letter dated December 22, 1988, advised the Patent and Trademark Office that the human drug product had undergone a regulatory review period and that the active ingredients, butyl methoxydibenzoylmethane and Padimate O, represented the first permitted commercial marketing or use of those active ingredients. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Photoplex ™ is 1,701 days. Of this time, 429 days occurred during the testing phase of the regulatory review period, while 1,272 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective:* February 5, 1984. FDA has verified the applicant's claim that the investigational new drug application (IND) for Photoplex ™ became effective on February 5, 1984.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act:* April 8, 1985. FDA has verified the applicant's claim that the new drug application for the drug (NDA 19–459) was initially submitted on April 8, 1985.

3. *The date the application was approved:* September 30, 1988. FDA has verified the applicant's claim that NDA 19–459 was approved on September 30, 1988.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 730 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before April 10, 1989, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before August 7, 1989, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, Part 1, 98th Cong., 2d Sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 30, 1989.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 89–2804 Filed 2–6–89; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 88M–0383]

Cordis Corp.; Premarket Approval of the Cordis Percutaneous Transluminal Coronary Angioplasty Dilatation Catheter

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Cordis Corp., Miami, FL, for premarket approval, under the Medical Device Amendments of 1976, of the Cordis Percutaneous Transluminal Coronary Angioplasty Dilatation Catheter. After reviewing the recommendation of the Circulatory System Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant by letter of October 28, 1988, of the approval of the application.

DATE: Petitions for administrative review by March 9, 1989.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Tara A. Ryan, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7371.

SUPPLEMENTARY INFORMATION: On May 11, 1988, Cordis Corp., Miami, FL 33102, submitted to CDRH an application for premarket approval of the Cordis Percutaneous Transluminal Coronary Angioplasty Dilatation Catheter. The device is indicated for balloon dilatation of the atheromatous, stenotic portion of a coronary artery in patients who are suitable candidates for coronary artery bypass graft surgery and who meet one or more of the following selection criteria:

1. Single-vessel atherosclerotic coronary artery disease that is concentric, discrete, subtotal, noncalcified, and accessible to a dilatation catheter.

2. Multiple-vessel coronary artery disease under certain circumstances.

3. Coronary artery disease of the native coronary arteries and/or coronary artery bypass grafts of some patients who have previously undergone coronary artery bypass graft surgery, have recurrence of symptoms, and (a) progression of disease, or (b) stenosis and closure of the grafts.

On September 16, 1988, the Circulatory System Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On October 28, 1988, CDRH approved the application by a letter to the applicant from the Acting Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Tara A. Ryan (HFZ–450), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of the review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before March 9, 1989, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: January 27, 1989.

Walter E. Gundaker,

Acting Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 89–2800 Filed 2–6–89; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 88M–0400]

Abbott Laboratories; Premarket Approval of Murine® Contact Lense Cleaner

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Abbott laboratories, Columbus, OH, for premarket approval, under the Medical Device Amendments of 1976, of Murine® Contact Lens Cleaner. The device is to be manufactured under an agreement with Paco Pharmaceutical Services, Inc., Lakewood, NJ, which has authorized Abbott Laboratories to incorporate information contained in its approved premarket approval application for the Charter Labs Cleaning Solution for Sensitive Eyes. FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of November 8, 1988, of the approval of the application.

DATE: Petitions for administrative review by March 9, 1989.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: David M. Whipple, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7940.

SUPPLEMENTARY INFORMATION: On July 11, 1988, Abbott Laboratories, Columbus, OH 43216, submitted to CDRH an application for premarket approval of Murine® Contact Lens Cleaner. The device is indicated for use to clean soft (hydrophilic) contact lenses before rinsing and disinfection. The application includes authorization from Paco Pharmaceutical Services, Inc., Lakewood, NJ 08701, to incorporate information contained in its approved premarket approval application for the Charter Labs Cleaning Solution for Sensitive Eyes.

On November 8, 1988, CDRH approved the application by a letter to the applicant from the Acting Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact David M. Whipple (HFZ–460), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before March 9, 1989, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this

document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: January 24, 1989.

Walter E. Gundaker,

Acting Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 89–2801 Filed 2–6–89; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 88N–0401]

Emerging Food Safety and Quality Issues for the Next Decade; Announcement of Rescheduled Closed Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announced in the Federal Register of December 19, 1988 (53 FR 51008), that the Life Sciences Research Office of the Federation of American Societies for Experimental Biology (FASEB), under its contract with FDA (No. 223–88–2124), was undertaking a review and evaluation of topics and issues in food safety and quality that FDA should consider as important scientific concerns emerging in the next decade. (For complete information see 53 FR 51008.) The notice also announced that closed meetings of the ad hoc expert panel, established by FASEB, were scheduled for Wednesday, Thursday, and Friday, March 29 through 31, 1989. Because of conflicting schedules of the panel members, those closed meetings have been rescheduled.

DATES: The closed meetings of the ad hoc expert panel will be held on Monday and Tuesday, April 3 and 4, 1989, at 9 a.m.

ADDRESS: The closed meetings will be held at FASEB, 9650 Rockville Pike, Bethesda, MD 20814.

FOR FURTHER INFORMATION CONTACT: Kenneth D. Fisher, Life Sciences Research Office, Federation of American Societies for Experimental Biology, 9650 Rockville Pike, Bethesda, MD 20814, 301–530–7030, or C. William Cooper, Center for Food Safety and Applied Nutrition (HFF–3), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–485–0265.

Dated: January 31, 1989.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 89–2802 Filed 2–6–89; 8:45 am]

BILLING CODE 4160–01–M

Health Care Financing Administration

[HSQ–168–N]

Meeting of the Advisory Panel on the Development of Uniform Needs Assessment Instrument(s)

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice announces the fifth meeting of the Advisory Panel on the Development of Uniform Needs Assessment Instrument(s). The Panel is responsible for the development of a standard method to be used to evaluate the post-hospitalization needs of patients. The meeting is open to the public.

DATE: February 22–23, 1989.

TIME: February 22, 10:00 a.m. to 5:00 p.m. c.s.t. February 23, 8:00 a.m. to 5:00 p.m. c.s.t.

ADDRESS: Hotel Inter-Continental New Orleans, 444 St. Charles Avenue, New Orleans, Louisiana 70130.

FOR FURTHER INFORMATION CONTACT: Sue Nonemaker, (301)966–6825.

SUPPLEMENTARY INFORMATION: Section 9305(c) of the Omnibus Budget Reconciliation Act of 1986 (OBRA '86), in amending section 1861(e) of the Social Security Act, requires that hospitals, as a condition to participate in the Medicare program, provide discharge planning. Discharge planning activities vary and we currently lack a standardized method for evaluating a patient's need for health care after hospitalization. The development of a standardized method would allow more uniformity among those responsible for discharge planning and improve determination of a patient's need for post-hospital services.

Section 9305(h) of OBRA '86 requires the Secretary to develop a uniform needs assessment instrument in consultation with an advisory panel made up of experts in the delivery of post-hospital extended care services, home health services, and long term care services. The panel is made up of experts in the delivery of post-hospital extended care services, home health services, long term care services and representatives of physicians, Medicare beneficiaries, hospitals, skilled nursing facilities, home health agencies, long term care providers, and fiscal intermediaries.

Mr. Jay Rudman, Director of the Clinical Social Work Department at the University of California at Los Angeles Medical Center is chairman of the panel.

At the previous panel meetings, the activities have focused on the following:

- Developing a standard method to evaluate an individual's ability to function or engage in activities of daily living, the nursing and other care requirements necessary to meet health care needs, and the social and familial resources available to the individual;
- Constructing the standard method so that it could be used by discharge planners, hospitals, nursing facilities, other health care providers and fiscal intermediaries in evaluating an individual's needs for post-hospital extended care; and
- Evaluating the advantages and disadvantages of using the tool as a basis for determining whether payment should be made for post-hospital extended care services and home health services which are provided to Medicare beneficiaries.

At this meeting, the Advisory Panel will continue its deliberations regarding the content and use of the uniform needs assessment instrument. Also, as required by the Panel's Charter, we will include a discussion of the advantages and disadvantages of using the instrument(s) as the basis for determining whether payment should be made for post-hospital extended care services provided to Medicare beneficiaries. The items of discussion are subject to change as priorities dictate. An Executive session will be held at 8:00 a.m. on February 22, 1989; the remainder of the meeting is open to the public.

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program No. 13.773, Medicare-Hospital Insurance Program No. 13.774, Medicare-Supplementary Medical Insurance.)

Dated: February 1, 1989.

William L. Roper,

Administrator, Health Care Financing Administration.

[FR Doc. 89–2854 Filed 2–6–89; 8:45 am]

BILLING CODE 4120–01–M

Public Health Service

National Toxicology Program (NTP) Board of Scientific Counselors' Meeting—Review of Draft NTP Technical Reports

Pursuant to Pub. L. 92–463, notice is given of the next meeting of the NTP

Board of Scientific Counselors Technical Reports Review Subcommittee and associated *ad hoc* Panel of Experts (*Peer Review Panel*) on March 13, 1989, in the Conference Center, Building 101, South Campus, National Institute of Environmental Health Sciences, 111 Alexander Drive, Research Triangle Park, North Carolina. The meeting will begin at 8:30 a.m. and is open to the public. The primary agenda topics are the peer review of Technical Reports of long-term toxicology and carcinogenesis studies from the National Toxicology Program, and for the first time peer review of draft Technical Reports of toxicity studies.

Tentatively scheduled to be peer reviewed are draft Technical Reports of long-term studies on the seven chemicals, listed alphabetically, along with supporting information including tentative levels of evidence of carcinogenic activity in Table 1. All studies were done using Fischer 344 rats and $B6C3F_1$ mice.

Also, scheduled to be peer reviewed are draft Technical Reports of toxicity studies on three chemicals, listed alphabetically, along with supporting information in Table 2. Order of presentation is given in the far right column of each table.

Persons wanting to make a *formal* presentation regarding a particular Technical Report must notify the Executive Secretary by telephone or by mail no later than March 7, 1989, and provide a written copy in advance of the meeting so copies can be made and distributed to all Panel members and staff and made available at the meeting for attendees. Oral presentation should supplement and not repeat the written statement. Presentations should be about 5 minutes, and must be limited to no more than 10 minutes.

Those interested in having more information about any of the studies listed in this announcement, or wanting to provide input, should contact the particular NTP staff scientist as early as possible by telephone or by mail to: NIEHS, P.O. Box 12233, Research Triangle Park (RTP), North Carolina 27709. The staff scientists would welcome receiving toxicology and carcinogenesis data from completed, ongoing or planned studies by others as well as current production data, human exposure information, and use and use patterns.

The Executive Secretary, Dr. Larry G. Hart, NTP, P.O. Box 12233, RTP, North Carolina 27709, telephone (919–541–3971), FTS (629–3971), will furnish final agendas, a roster of subcommittee and panel meetings, and other program information prior to the meeting, and summary minutes subsequent to the meeting.

Attachment

Dated: January 27, 1989.

David P. Rall,

Director, National Toxicology Program.

TABLE 1.—SUMMARY DATA AND PROPOSED LEVELS OF EVIDENCE FOR NTP TECHNICAL REPORTS PROJECTED FOR PEER REVIEW AT THE BOARD OF SCIENTIFIC COUNSELORS' PEER REVIEW PANEL MEETING ON MARCH 13, 1989

Chemical CAS No.	Staff scientist/ technical report No.	Use	Route/exposure levels	Laboratory	Proposed levels of evidence of carcinogenicity [1] organ/ tissue (neoplasm) [2]	Order of review
Benzofuran, 271–89–6.	Dr. R. Irwin, TR–370 03/13/89.	Manufacture of coumarone-indene resins.	Oral, Gavage (corn oil): FR&MM: 0, 60, 120, MR: 0, 30, 60, FM: 0, 120, 240 MG/KG, Rats: Fischer 344, Mice: B6C3F1.	Springborn Inst. for Bioresearch, Inc.	MR: No evidence. FR: Some evidence kidney (tubular cell adenocarcinoma). MM: Clear evidence liver (adenoma, hepatoblastoma, adenoma or carcinoma or hepatoblastoma) forestomach (squamous cell papilloma, squamous cell papilloma or carcinoma) lung (alveolar/ bronchiolar adenoma, alveolar/bronchiolar adenoma or carcinoma) FM: Clear evidence liver (adenoma, adenoma or carcinoma) lung (alveolar/bronchiolar adenoma, alveolar/bronchiolar adenoma or carcinoma) forestomach (squamous cell papilloma, or carcinoma).	6
N,N-Dimethylaniline, 121–69–7.	Dr. K. Abdo, TR–360 03/13/89.	Reagent, catalyst, activator, solvent, vulcanizer, chemical intermediate.	Oral, Gavage (corn oil): R: 0, 3, 30, M: 0, 15, 30 MG/KG, Rats: Fischer 344, Mice: B6C3F1.	Springborn Inst. for Bioresearch, Inc.	MR: Some evidence spleen (sarcoma). FR: No evidence. MM: No evidence. FM: Equivocal evidence forestomach (squamous cell papilloma).	7
α-Methylbenzyl alcohol, 98–85–1.	Dr. M. Dieter, TR–369 03/13/89.	Flavoring agent. Fragrances. Lab reagent. Intermediate in styrene production. Dyes.	Oral, Gavage (corn oil): R&M: 0, 375, 750 MG/KG, Rats: Fischer 344, Mice: B6C3F1.	Microbiological Associates.	MR: Some evidence kidney (tubular cell adenoma or adenocarcinoma). FR: No evidence. MM: No evidence. FM: No evidence.	4
Nalidixic acid, 389–08–2.	Dr. R. Morrissey, TR–368 03/13/89.	Antibacterial agent for urinary infections.	Oral in Feed: R&M: 0, 2000, 4000 PPM, Rats: Fischer 344, Mice: B6C3F1.	Physiological Research Laboratory.	MR: Clear evidence preputial gland (adenoma or papilloma or carcinoma). FR: Clear evidence clitoral gland (adenoma or papilloma or carcinoma). MM: Equivocal evidence subcutaneous tissue (Fibroma or fibrosarcoma). FM: No evidence.	3

TABLE 1.—SUMMARY DATA AND PROPOSED LEVELS OF EVIDENCE FOR NTP TECHNICAL REPORTS PROJECTED FOR PEER REVIEW AT THE BOARD OF SCIENTIFIC COUNSELORS' PEER REVIEW PANEL MEETING ON MARCH 13, 1989—Continued

Chemical CAS No.	Staff scientist/ technical report No.	Use	Route/exposure levels	Laboratory	Proposed levels of evidence of carcinogenicity [1] organ/ tissue (neoplasm) [2]	Order of review
Phenylbutazone, 50-33-9.	Dr. F. Kari, TR-367 03/13/89.	Anti-inflamatory agent and analgesic in vet medicine.	Oral Gavage (Corn oil): R: 0, 50, 100, M: 0, 150, 300 MG/KG, Rats: Fischer 344, Mice: B6C3F1.	EG&G Mason Research Institute.	MR: Some evidence kidney (tubular cell adenoma). FR: Some evidence kidney (tubular cell adenoma). MM: Some evidence liver (adenoma, carcinoma). FM: No evidence.	2
Toluene, 108-88-3.....	Dr. J. Huff, TR-371 03/13/89.	Chemical intermediate. Solvent. Denaturant.	Inhalation: R: 0, 600, 1200, M: 0, 120, 600, 1200 PPM, Rats: Fischer 344, Mice: B6C3F1.	International Research & Development Corp.	MR: No evidence. FR: No evidence. MM: No evidence. FM: No evidence.	1
4-Vinyl-1-cyclohexene diepoxide, 106-87-6.	Dr. R. Chhabra, TR-362 03/13/89.	Polymers, organic synthesis, reactive diluent, chemical intermediate.	Skin Paint (Acetone): R: 0, 50, 100, M: 0, 25, 50, 100 MG/ML, Rats: Fischer 344, Mice: B6C3F1.	Battelle Columbus Laboratory.	MR: Clear evidence skin (basal cell carcinoma, squamous cell carcinoma). FR: Clear evidence skin (basal cell carcinoma, squamous cell carcinoma). MM: Clear evidence skin (squamous cell carcinoma). FM: Clear evidence skin (squamous cell carcinoma) ovary (benign mixed tumors or granulosa cell tumors or luteoma).	5

[1] Levels of Evidence Summary: (28 individual experiments): clear evidence, 8; some evidence, 6; equivocal evidence, 2; no evidence, 12, inadequate study, none.
[2] Regarding tumor types, the format used is explained by the following example: liver (adenoma, carcinoma) means that both benign and malignant types of neoplasms were increased and influenced the level of evidence; liver (adenoma *or* carcinoma) indicates that both types of neoplasia were combined to make the evaluation and to assign a level of evidence.

NOTE:—The results indicated are to be considered tentative until reviewed, discussed, and approved at the Board of Scientific Counselors' Peer Review Panel Public Meeting March 13, 1989.
MR=Male Rats; FR=Female Rats; MM=Male Mice; FM=Female Mice.

TABLE 2.—SUMMARY DATA FOR NTP TECHNICAL REPORTS OF TOXICITY STUDIES PROJECTED FOR PEER REVIEW AT THE BOARD OF SCIENTIFIC COUNSELORS PEER REVIEW PANEL MEETING ON MARCH 13, 1989

Chemical name/CAS No.	Use	Staff scientist/technical report number	Route/exposure levels	Laboratory	Order of review
Acetone, 67-64-1	Solvent	Dr. D. Dietz, 919-541-2272 02.	Water MM: 0, .125, .25, .5, 1.0, 2.0 percent.	Microbiological Associates	10
Hexachloro-1,3-Butadiene, 87-68-3	Solvent	Dr. R. Yang, 919-541-2947 03.	Feed Mice only 0, 1, 3, 10, 30, 100 PPM.	Microbiological Associates	8
N-Hexane, 110-54-3	Solvent	Dr. J. Dunnick, 919-541-4811.	Inhal 0, 500, 1000, 4000, 10000 PPM.	Brookhaven National Laboratory.	9

[FR Doc. 89-2915 Filed 2-6-89; 8:45 am]
BILLING CODE 4140-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

[Docket No. N-89-1917; FR-2606]

Unutilized and Underutilized Federal Buildings and Real Property Determined by HUD To Be Suitable for Use for Facilities To Assist the Homeless

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

ACTION: Notice.

SUMMARY: This Notice identifies unutilized and underutilized Federal property determined by HUD to be suitable for possible use for facilities to assist the homeless.

DATE: February 7, 1989.

ADDRESS: For further information, contact Morris Bourne, Director, Transitional Housing Development Staff, Room 9140, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 755-9075; TDD number for the hearing- and speech-impaired (202) 426-0015. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: In accordance with the December 2, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, D.C.D.C. No. 88-2503-OG, HUD is publishing this Notice to identify Federal buildings and real property that HUD has determined are suitable for use for facilities to assist the homeless. The properties were identified from information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies.

The court order requires HUD to take certain steps to implement section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), which sets out a process by which unutilized or underutilized Federal properties may be made available to the homeless. Under section 501(a), HUD is to collect information from Federal landholding

agencies about such properties and then to determine, under criteria developed in consultation with the Department of Health and Human Services (HHS) and the Administration of General Services (GSA), which of those properties are suitable for facilities to assist the homeless. The court order requires HUD to publish, on a weekly basis, a Notice in the Federal Register identifying property determined suitable. HUD published the first Notice on January 9, 1989 (54 FR 667.)

The properties identified in this Notice may ultimately be available for use by the homeless, but they are first subject to review by the controlling agencies, pursuant to the court's Memorandum opinion of December 14, 1988 and section 501(b) of the McKinney Act. Section 501(b) requires HUD to notify each Federal agency with respect to any property of such agency that has been identified as suitable. Within 30 days from receipt of such notice from HUD, the agency must transmit to HUD its intention to: (1) Declare the property excess to the agency's need, or to make the property available on an interim basis for use as facilities to assist the homeless; or (2) state the reasons that the property cannot be declared excess or made available on an interim basis for use as facilities to assist the homeless.

First, if the controlling agency decides that the property cannot be declared excess or made available to the homeless for use on an interim basis, the property will no longer be available.

Second, if the controlling agency declares the property excess to the agency's need, that property may be made available for use by the homeless in accordance with applicable law and the court's order of December 12, 1988 and Memorandum of December 14, 1988, subject to screening by other Federal agencies that may wish to make use of the property. In accordance with its normal procedures, GSA will notify the public when properties that HUD has determined suitable are declared excess to the controlling agency's needs. The properties identified by GSA shall be held available for expressions of interest for 30 days following GSA's notification to the public. Thus, applicants will have 30 days after the notification by GSA that the properties have been declared excess to submit an application or written expression of interest in a property to Judy Brietman, Division of Health Facilities Planning, Public Health Services, HHS, Room 17A-10 Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857 (301) 443-2265. (This is not a toll-free number.)

Finally, in lieu of declaring any particular property as excess, the controlling agency may decide to make the property available to homeless for use on an interim basis. Public bodies and private nonprofit organizations wishing more information about a particular property identified with this Notice or wishing to make application for use of a particular property on an interim basis should contact the appropriate landholding agency at the following addresses: U.S. Navy: Andrea Wohlfeld, Code 20YAW, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332 (202) 325-7342; U.S. Army military facilities: HQ-DA, Attn: DAEN-ZCI-P-Robert Conte, Room 1E671, Pentagon, Washington, DC 20360-2600 (202) 693-4583; U.S. Army civil works projects: Bob Swieconek, HQ-US Army Corps of Engineers, Attn: CERE-MM, 20 Massachusetts Avenue, NW., Washington, DC 20314-1000 (202) 272-1750; U.S. Air Force: Bill Kimball, HQ-USAF/LEER, Washington, DC 20332-0500 (202) 767-4384; Veterans Administration: Linda Tribby, 084A, Real Property Program Management, Veterans Administration, 810 Vermont Ave. NW., Washington, DC 20420 (202) 233-5026. (These are not toll-free telephone numbers.)

Dated: January 31, 1989.

James E. Schoenberger,

General Deputy, Assistant Secretary for Housing—Federal Housing Commissioner.

Suitable Buildings

Rodo Gun Club, Building 63-325, Elmendorf AFB, AK, Land Holding Agency: USAF
Underground Hospital, Building 63-320, Elmendorf AFB, AK, Land Holding Agency: USAF
Naval Reserve Center, Huntsville, AL, Land Holding Agency: NAVY
Anderson Family Housing, Annex No. 4 (AJKP), Guam, Land Holding Agency: USAF
Vandenberg Air Force Base, Building #1021, Vandenberg AFB, CA 93437, Land Holding Agency: USAF
VA Medical Center (Building 91), 16111 Plummer Street, Sepulveda, CA 91343, Land Holding Agency: VA
VA Medical Center (Building 85), 16111 Plummer Street, Sepulveda, CA 91343, Land Holding Agency: VA
VA Medical Center (Building 88), 16111 Plummer Street, Sepulveda, CA 91343, Land Holding Agency: VA
VA Medical Center (Building 63), 16111 Plummer Street, Sepulveda, CA 91343, Land Holding Agency: VA
VA Medical Center (Building 60), 16111 Plummer Street, Sepulveda, CA 91343, Land Holding Agency: VA
Tract 155 Falcon Buffer (Trailer), 15230 Thornton Lane, Colorado Springs, CO 80909, Land Holding Agency: ARMY
Tract 116 Falcon Buffer, 15475 Blue Road, Colorado Springs, CO 80909, Land Holding Agency: USAF
Tract 137 Falcon Buffer, 1935 Curtis Road, Colorado Springs, CO, Land Holding Agency: USAF
Tract 153 Falcon Buffer (Trailer), 15155 Thorton Lane, Colorado Springs, CO 80909, Land Holding Agency: ARMY
Tract 147 Falcon Buffer (Trailer), Colorado Springs, CO 80909, Land Holding Agency: USAF
Tract 138 Falcon Buffer (Trailer), Colorado Springs, CO 80909, Land Holding Agency: USAF
Tract 134 Falcon Buffer (2 Buildings), 1615 S. Curtis Road, Colorado Springs, CO 80909, Land Holding Agency: USAF
Family Housing, Eagle Drive, Shelton, CT, Land Holding Agency: ARMY
Naval Reserve Center, 2610 Tigertown Rd., Miami, FL, Land Holding Agency: NAVY
VA Medical Center (Building 11), 1900 E. Main Street, Danville, IL 61832, Land Holding Agency: VA
Chanute AFB (Building 1220), 3345 Civil Engineering Squadron, Chanute AFB, IL 61868-5046, Land Holding Agency: USAF
Brandou Road Lock and Dam, 1100 Brandou Road, Joliet, IL 60436, Land Holding Agency: ARMY
Ohio River Locks & Dam, Building 53, Grand Chain, IL 62941-9801, Land Holding Agency: ARMY
Chanute AFB (Building 552), 3345 Civil Engineering Squadron, Chanute AFB, IL 61868-5046, Land Holding Agency: USAF
Chanute AFB (Building 1380), 3345 Civil Engineering Squadron, Chanute AFB, IL 61868-5046, Land Holding Agency: USAF
Chanute AFB (Building 1221), 3345 Civil Engineering Squadron, Chanute AFB, IL 61868-5046, Land Holding Agency: USAF
Chanute AFB (Building 556), 3345 Civil Engineering Squadron, Chanute AFB, IL 61868-5046, Land Holding Agency: USAF
Chanute AFB (Building 383), 3345 Civil Engineering Squadron, Chanute AFB, IL 61868-5046, Land Holding Agency: USAF
Chanute AFB (Building 964), 3345 Civil Engineering Squadron, Chanute AFB, IL 61868-5046, Land Holding Agency: USAF
Chanute AFB (Building 551), 3345 Civil Engineering Squadron, Chanute AFB, IL 61868-5046, Land Holding Agency: USAF
Chanute AFB (Building 550), 3345 Civil Engineering Squadron, Chanute AFB, IL 61868-5046, Land Holding Agency: USAF
Cecil M. Hardin Lake, RR No. 1, Box 129, Rockville, IN, Land Holding Agency: ARMY
McConnell AFB, Building 1, McConnell AFB, KS 67221-5000, Land Holding Agency: USAF
Holmes Band Campground, Green River Lake, KY, Land Holding Agency: ARMY
Dale Hollow Lake (Tract No. A-1), Dale Hollow Lake, KY, Land Holding Agency: ARMY
Harlan Flood Protection Project, Tract No. 602, Harlan County, KY, Land Holding Agency: ARMY
Harlan Flood Protection Project, Tract No. 403, Harlan County, KY, Land Holding Agency: ARMY

Harlan Flood Protection Project, Tract No. 603, Harlan County, KY, Land Holding Agency: ARMY
Harlan Flood Protection Project, Tract No. 608, Harlan County, KY, Land Holding Agency: ARMY

Suitable Land

Beale Air Force Base, Marysville, CA, Land Holding Agency: USAF
March AFB, Hawes Site (KHGM), Hinckley, CA 92518-5000, Land Holding Agency: USAF
Pt. of the Lewes Rehoboth Canal, 1100 South and South Rt. Bridge 9, Lewes, DE, Land Holding Agency: ARMY
Assawoman Canal, Sussex County, DE, Land Holding Agency: ARMY
VA Medical Center, North Chicago, IL, Land Holding Agency: VA
Pomona Lake (Dragoon), Ottawa, KS, Land Holding Agency: ARMY
Pomona Lake (110 mile), Ottawa, KS, Land Holding Agency: ARMY
Perry Lake (Grasshopper Point), Perry, KS, Land Holding Agency: ARMY
Perry Lake (Sunset Ridge), Perry, KS, Land Holding Agency: ARMY
Perry Lake (Paradise Point), Perry, KS, Land Holding Agency: ARMY
VA Medical Center, 2501 Shreveport Hwy., Alexandria, LA 71301, Land Holding Agency: VA

[FR Doc. 89-2812 Filed 2-6-89; 8:45 am]
BILLING CODE 4210-27-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-940-09-4214-10; CACA-18152]

Order Providing for Opening of Land; California

January 27, 1989.

AGENCY: Bureau of Land Management, Interior.

ACTION: Opening order.

SUMMARY: The Federal Energy Regulatory Commission has determined that the land withdrawals for Projects Nos. 1302 and 3247 are no longer essential and has vacated the projects in their entirety. The lands were closed to entry, location or other disposal under the laws of the United States. This action will open the land to surface entry and mining. All of the lands have been and will remain open to mineral leasing.

FOR FURTHER INFORMATION CONTACT: Viola Andrade, BLM California State Office, 2800 Cottage Way, Sacramento, California 95825, 916-978-4815.

By virtue of 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, and pursuant to the determination of the Federal Energy Regulatory Commission, it is ordered as follows:

1. By order dated September 30, 1985, the Federal Energy Regulatory Commission declared that Power Projects Nos. 1302 and 3247 are no longer essential and vacated the projected in their entirety. The lands are described as follows:

Mount Diablo Meridian
Plumas National Forest

All portions of the following described tracts lying within 100 feet of the centerline of the wood flume, the wood stave pipeline and the steel penstock locations, and within the project boundaries enclosing the diversion dam; all as shown on a map designated Exhibit "F" (FPC 1302-1) and entitled "Hydroelectric Power Development on Grayeagle Creek for California Fruit Exchange" and filed in the office of the Federal Power Commission on February 8, 1935; and as shown on amended Exhibit "F" (FPC 1302-3) entitled "Hydroelectric Power Development of Gray Eagle Creek for Grayeagle Lumber Co., Plumas County, California," also filed in the office of the Federal Commission on November 19, 1945:

T. 22 N., R. 12 E.,
Sec. 21, SE¼NW¼, N½SW¼, and SW¼,SW¼.

The area described contains 19.50 acres in Plumas County.

2. At 10 a.m. on March 8, 1989, the lands included in Projects Nos. 1302 and 3247 shall be opened to such forms of disposition as may by law be made of National Forest System lands, including location and entry under the United States mining laws. Appropriation of lands described in this order under the general mining laws prior to lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. sec. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Ed. Hastey,
State Director.

[FR Doc. 89-2759 Filed 2-6-89; 8:45 am]
BILLING CODE 4310-40-M

Fish and Wildlife Service

Endangered and Threatened Wildlife and Plants; Republication and Availability of Species Lists

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The Service announces the republication and availability of the current Lists of Endangered and Threatened Wildlife and Plants found at 50 CFR 17.11 and 17.12.

DATES: The republished lists contain all changes through January 1, 1989.

ADDRESSES: Requests for copies should be addressed to the Publications Unit, U.S. Fish and Wildlife Service, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Mr. William E. Knapp, Chief, Division of Endangered Species and Habitat Conservation, U.S. Fish and Wildlife Service, Washington, DC 20240 (703/235-2771).

SUPPLEMENTARY INFORMATION: The Service has incorporated into a separate reprint all changes through January 1, 1989, to the lists at 50 CFR 17.11 and 17.12 published since the October 1, 1987, compilation of that title. (The October 1, 1988, compilation is not expected to be available to the public before early March 1989.) In addition, minor changes or corrections to the spellings of names, historic ranges, and special rules applicable to a particular entry in the table and found elsewhere in this title have been incorporated in this special reprinting of these lists. Otherwise, no entry in these lists has been significantly affected. The document also contains a list of the species that have been entirely removed from §§ 17.11 or 17.12 since 1973. The 35-page document is available from the Publications Unit (address above).

Dated: December 13, 1988.

Frank Dunkle,
Director.

[FR Doc. 89-2860 Filed 2-6-89; 8:45 am]
BILLING CODE 4310-55-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before January 28, 1989. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these

properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by February 22, 1989.

Carol D. Shull,

Chief of Registration, National Register.

ALABAMA

Jefferson County

Pratt City Carline Historic District, Ave. U. from Ave. A to Carline and Carline from Ave. W to 6th Ave., Birmingham, 89000118

Thomas Historic District, Roughly area between 1st and 8th Sts., N of Village Creek and W of St. Louis and San Francisco Railroad tracks, Birmingham, 89000119

CONNECTICUT

Hartford County

Royal Typewriter Company Building, 150 New Park Ave., Hartford, 84003898

DISTRICT OF COLUMBIA

District of Columbia

Gallinger Municipal Hospital Psychopathic Ward, Reservation 13, 19th St. and Massachusetts Ave., SE, Washington, 89000074

MINNESOTA

Hennepin County

Minnesota Soldiers' Home Historic District, Roughly bounded by Minehaha Ave., Mississippi River, and Godfrey Pkwy., Minneapolis, 89000076

Mahnomen County

Mahnomen County Fairgrounds Historic District, Jct. MN 200 and Co. Hwy. 137, Mahnomen vicinity, 89000077

MISSOURI

St. Louis Independent City

Beethoven Conservatory, 2301 Locust St., St. Louis, 89000075

NEVADA

Douglas County

Jensen, Arendt, House, 1431 Ezell St., Gardnerville, 89000126

OREGON

Hood River County

Slade, J.E., House, 1209 State St., Hood River, 89000065

Thompson, Clark, House, 22 NW Cragmont, Cascade Locks, 89000124

Jackson County

Buckhorn Mineral Springs Resort, 2200 Buckhorn Springs Rd., Ashland, 89000064

Lane County

McMorran and Washburne Department Store Building, 795 Willamette St., Eugene, 89000125

Multnomah County

Bagdad Theatre (Portland Eastside MPS), 3708—26 SE Hawthorne, Portland, 89000099

Bartman, Gustave, House, (Portland Eastside MPS), 1817 SE 12th, Portland, 89000098

Bedell Building, 520—538 SW 6th Ave., Portland, 89000066

Clarke—Woodward Drug Company Building, 911 NW Hoyt, Portland, 89000121

Deere, John, Plow Company Building (Portland Eastside MPS), 215 SE Morrison, Portland, 89000097

Douglas Building (Portland Eastside MPS), 3525—41 SE Hawthorne, Portland, 89000096

Dupont, Edward D., House (Portland Eastside MPS), 3326 SE Main, Portland, 89000095

Electric Building, 621 SW Alder St., Portland, 89000059

Eugenia Apartments (Portland Eastside MPS), 1314 SE Salmon, Portland, 89000094

Farrer, Franklin W., House (Portland Eastside MPS), 2706 SE Yamhill, Portland, 89000093

Fisher, Thaddeus, House (Portland Eastside MPS), 913—15 SE 33rd, Portland, 89000092

Frigidaire Building (Portland Eastside MPS), 230 E Burnside, Portland, 89000091

Gilliland, Lewis T., House, 2229 NE Brazee, Portland, 89000063

Gowanlock, Elizabeth B., House (Portland Eastside MPS), 808 SE 28th, Portland, 89000089

Groat—Gates House, 35 NE Twenty-second Ave., Portland, 89000062

Hawthorne, Rachel Louise, House (Portland Eastside MPS), 1007 SE 12th, Portland, 89000090

International Harvester Company Warehouse (Portland Eastside MPS), 79 SE Taylor, Portland, 89000088

Italian Gardeners and Ranchers Association Market Building (Portland Eastside MPS), 1305—37 SE Union, Portland, 89000087

Jones, Clarence H., House (Portland Eastside MPS), 1834 SE Ankeny, Portland, 89000085

Knight, F.M., Building (Portland Eastside MPS), 3300 SE Belmont, Portland, 89000086

Krouse, Nettie, Fourplex (Portland Eastside MPS), 2106—12 SE Main, Portland, 89000084

Kuehle, Henry, Investment Property (Portland Eastside MPS), 210—13 SE 12th, Portland, 89000083

Lent, George P., Investment Properties (Portland Eastside MPS), 1921—1927 SE 7th and 621—637 SE Harrison, Portland, 89000082

Marshall—Wells Company, Warehouse No. 2, 1420 NW Lovejoy St., Portland, 89000061

Mohle, Wilhelmina, House (Portland Eastside MPS), 734 SE 34th, Portland, 89000081

Munsell, William O., House (Portland Eastside MPS), 1507 SE Alder, Portland, 89000080

Olympic Cereal Mill (Portland Eastside MPS), 107 SE Washington, Portland, 89000115

Oregon Portland Cement Building (Portland Eastside MPS), 111 SE Madison, Portland, 89000114

Page and Son Apartments (Portland Eastside MPS), 723—37 E Burnside, Portland, 89000113

Parelius, Martin, Fourplex (Portland Eastside MPS), 423—29 and 433—39 SE 28th, Portland, 89000112

Piper, Charles, Building (Portland Eastside MPS), 3610—24 SE Hawthorne, Portland, 89000111

Polhemus, James S., House(Portland Eastside MPS), 135 SE 16th, Portland, 89000110

Portland Fire Station No. 23 (Portland Eastside MPS), 1917 SE 7th, Portland, 89000108

Portland Fire Station No. 7 (Portland Eastside MPS), 1036 SE Stark, Portland, 89000109

Raabe, Capt. George, House (Portland Eastside MPS), 1506—08 SE Taylor, Portland, 89000107

Raymond, Jessie M., House (Portland Eastside MPS), 2944 SE Taylor, Portland, 89000106

Rosenfeld, Dr. James, House, 2125 SW Twenty-first Ave., Portland, 89000060

Santa Barbara Apartments (Portland Eastside MPS), 2052 SE Hawthorne, Portland, 89000105

Scott, Leslie M., House (Portland Eastside MPS), 2936 SE Taylor, Portland, 89000104

Sensel, Henry, Building (Portland Eastside MPS), 3556—62 SE Hawthorne, Portland, 89000103

Troy Laundry Building (Portland Eastside MPS), 1025 SE Pine, Portland, 89000102

Wallace, John M., Fourplex (Portland Eastside MPS), 3645—55 SE Yamhill, Portland, 89000101

Webb, Alfred, Investment Properties (Portland Eastside MPS), 1503—17 Belmont and 822 SE 15th Portland, 89000100

Wilcox Building, 506 SW 6th Ave., Portland, 89000058

Washington County

Blanton, M.E., House, 3980 SW 170th Ave., Aloha, 89000123

Yamhill County

Kershaw, Dr. Andrew, House, 472 E Main St., Willamina, 89000102

RHODE ISLAND

Providence County

Edgewood Yacht Club, 3 Shaw Ave., Cranston, 89000072

TENNESSEE

Lincoln County

South Elk Street Historic District, Roughly bounded by E. Campbell St., Franklin St., Louisville and Nashville Railroad tracks, and S Elk St., Fayetteville, 89000127

Robert County

O'Bryan, George, House, O'Bryan and Highland Aves., Ridgetop, 89000073

Wisconsin

Dane County

Mt. Horeb Opera Block, 109—117 E Main St., Mt. Horeb, 89000068

Dodge County

Hotel Rogers, 103 E Maple Ave., Beaver Dam, 89000120

Kenosha County

Civic Center Historic District, Roughly bounded by 55th St., 6th Ave., 58th St., and 10th Ave., Kenosha, 89000069

Milwaukee County

First Church of Christ, Scientist, 1443—1451 M. Prospect Ave., Milwaukee, 89000070

Sauk County

Sauk City High School, 713 Madison St., Sauk City, 89000071

[FR Doc. 89–2834 Filed 2–6–89; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31356]

The Kansas City Southern Railway Co.; Control Exemption—Joplin Union Depot Co.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Pursuant to 49 U.S.C. 10505, the Interstate Commerce Commission exempts the Kansas City Southern Railway Company (KCS) from the requirements of 49 U.S.C. 11343, *et seq.*, to acquire sole control of Joplin Union Depot Company (JUD). KCS is now performing all of JUD's switching and related transportation services with KCS crews and equipment. The exemption is subject to employee protective conditions.

DATES: This exemption will be effective on March 9, 1989. Petitions to stay must be filed by February 17, 1989 and petitions for reconsideration must be filed by February 27, 1989.

ADDRESSES: Send pleadings referring to Finance Docket No. 31356 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Robert K. Dreiling, 301 West 11th Street, Kansas City, MO 64105.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245. [TDD for hearing impaired: (202) 275–1721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decisions, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289–4357/4359 (DC Metropolitan Area), (assistance for the hearing impaired is available through TDD services (202) 275–1721 or by pickup from Dynamic Concepts, Inc., in Room 2229 at Commission headquarters.)

Decided: January 30, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips.

Noreta R. McGee,

Secretary.

[FR Doc. 89–2653 Filed 2–3–89; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree; Inland Steel Co. et al.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on December 29,1988, a proposed Consent Decree in *United States* v. *Inland Steel Company, et al.*, Civil Nos. H79–75 and H81–216, was lodged with the United States District Court for the Northern District of Indiana. The proposed Consent Decree arises from a civil action filed under the Clean Air Act, 42 U.S.C. 7401 *et seq.*, seeking to control air pollution at Inland Steel's iron and steel mill in East Chicago, Indiana.

The Department of Justice will receive for a period of thirty (30) days from the date of publication comments relating to the proposed Amendment to Judgment Order. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Inland Steel Company, et al.*, DJ Ref. 90–5–2–1–445A.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Northern District of Indiana, Federal Building (4th Floor), 507 State Street, Hammond, Indiana 46320. Copies of the Amendment to Judgment Order may be examined at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1748, 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 $2.30 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Donald A. Carr,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89–2768 Filed 2–6–89; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Amended Consent Decree; Raymark Industries et al.

In accordance with section 122(d) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9622(d), notice is hereby given that on January 25, 1989, a proposed Consent Decree was filed in *United States of America* v *Raymark Industries, et al.*, Civil Action No. 85–3073. The proposed Amended Consent Decree will resolve claims brought by the United States against five defendants, pursuant to sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, and section 7003 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6973, for a mandatory injunction requiring defendants to intercept and contain a plume of groundwater contamination which allegedly threatens a drinking water source for the Borough of Hatboro, Pennsylvania, and to reimburse the United States for response costs it has incurred in the case.

The proposed Consent Decree requires that a sum of $1,125,000 be distributed to the Borough of Hatboro and the United States. That sum of money has been held in an escrow fund pending the preparation and execution of the Decree. Of this, $612,500 will be distributed to Hatboro, which will use the funds to erect pumping and treating systems at two of its municipal water supply wells. The pumping and treating system at one well (H–2) will be used primarily to contain a plume of groundwater contaminated with trichloroethylene ("TCE") so that it will not flow toward an uncontaminated well (H–15). Water drawn into well H–2 will be treated to remove TCE so that the water may, at Hatboro's discretion, be used in Hatboro's water supply system. The pumping and treating system at the other well (H–16), will be used primarily to remove TCE from water being drawn into that well so that the water can be used in Hatboro's water supply system. The remaining sum, $512,500, will partially reimburse the Hazardous Substances Superfund for the United States' expenditures in connection with the site from which the TCE allegedly originated, and for expected expenditures from the Superfund for a Remedial Investigation/Feasibility Study at the site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Amended Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources

Division, Department of Justice, Washington, DC 20530, (Attention: David E. Street) and should refer to *United States, et al.* v. *Raymark Industries, et al.*, C.A. No. 85-3073 (E.D. Pa.), D.J. Ref. No. 90-11-2-12.

Copies of the proposed Amended Consent Decree may be examined: at the Office of the United States Attorney, Eastern District of Pennsylvania, Room 3310 United States Courthouse, Philadelphia, Pennsylvania 19106; at the Region III office of the Environmental Potection Agency, 841 Chestnut Building, 9th and Chestnut Streets, Philadelphia, Pennsylvania 19107; and 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 Amended 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 $4.60 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Donald A. Carr,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-2765 Filed 2-6-89; 8:45am]

BILLING CODE 4410-01-M

Lodging of Consent Decree; Stauffer Chemical Co. et al.

In accordance with Departmental policy, 28 CFR 50.7, and 42 U.S.C. 9622(i), notice is hereby given that on January 30, 1989, a proposed consent decree in *United States of America* v. *Stauffer Chemical Company, et al.*, Civil Action No. 89-0195-MC, was lodged with the United States District Court for the District of Massachusetts. The United States' complaint, filed at the same time as the consent decree, sought recovery of response costs and injunctive relief under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and the Resource Conservation and Recovery Act against Stauffer Chemical Company, Monsanto Company, ICI American Holdings Inc., and twenty-three other corporations, trusts, and individuals responsible for hazardous wastes found at the Industri-Plex Site in Woburn, Massachusetts, a National Priority List facility. The consent decree resolves these claims and similar claims brought by the Commonwealth of Massachusetts against the same defendants under CERCLA and state law.

The consent decree provides that the defendants will perform work to remedy contamination at the site, in accordance with a remedial action plan developed by the U.S. Environmental Protection Agency (EPA), and reimburse EPA and Massachusetts for all of their costs of overseeing the remedial action. The remedial work will include capping of all areas of contamination above action levels specified by EPA, pumping and treating two plumes of solvents in groundwater, capturing and treating gaseous emissions from one area of the site, designing and implementing institutional controls to preserve the effectiveness of the remedial action, long-term operation and maintenance activities, and monitoring of groundwater and surface water. The defendants also agree to reimburse EPA and Massachusetts for certain past governmental response costs.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Stauffer Chemical Company*, D.J. Ref. 90-11-2-228.

The proposed consent decree may be examined at the office of the United States Attorney, 1107 J.W. McCormack Post Office/Courthouse, Boston, Massachusetts 02109 and at the Region I office of the Environmental Protection Agency, 2203 JFK Federal Building, Boston, Massachusetts 02203. Copies of the consent decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. Copies 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, at the above address. In requesting a copy, please enclose a check in the amount of $15.10 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Donald A. Carr,

Acting Assistant Attorney General, Land & Natural Resources Division.

[FR Doc. 89-2764 Filed 2-6-89; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

Proposed Termination of Final Judgment; Crown Oil Corp. et al.

Notice is hereby given that Crown Oil Corporation and Granex Corporation have filed with the United States District Court for the Central District of California a motion to terminate the Final Judgment in *United States* v. *Crown Oil Corp.*, Civil No. 81-0787-TJH; and the Department of Justice ("Department"), in a stipulation filed with the court, has consented to termination of the judgment, but has reserved the right to withdraw its consent pending receipt of public comments. The complaint in this case (filed on February 17, 1981) alleged that the defendants had participated in a conspiracy to fix the price and create a shortage of crude coconut oil solid in the United States.

The Final Judgment (entered on June 21, 1982) enjoined the defendants from fixing prices, refusing to sell to any persons within the United States, discriminating in prices or terms of sale among customers, storing crude or refined coconut oil except pursuant to a legitimate shortage contract, and communicating with any other seller of coconut oil about prices or terms of sale, except in the course of a legitimate sales transaction.

The Department has filed with the court a memorandum setting forth the reasons why the Department believes that termination of the judgment would serve the public interest. Copies of the complaint and Final Judgment, defendant's motion papers, the stipulation containing the Government's consent, the Department's memorandum, and all further papers filed with the court in connection with this motion will be available for inspection in Room 3233, Antitrust Division, Department of Justice, 10th Street and Pennsylvania Avenue NW., Washington, DC 20530 (telephone: 202-633-2481), and at the Office of the Clerk of the United States District Court for the Central District of California, 312 North Spring Street, Los Angeles, California 90012. Copies of any of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by the Department of Justice regulations.

Interested persons may submit comments regarding the proposed termination of the decree to the Department. Such comments must be received within the sixty-day period established by court order, and will be filed with the court. Comments should

be addressed to Gary R. Spratling, Chief, San Francisco Office, Antitrust Division, Department of Justice, 450 Golden Gate Avenue, Box 36046, San Francisco, CA 94102 (telephone: 415–556–6300).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 89–2767 Filed 2–6–89; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

Controlled Substances; Proposed 1989 Aggregate Production Quota for Methaqualone

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of a Proposed 1989 Aggregate Production Quota.

SUMMARY: This notice proposes a 1989 aggregate production quota for methaqualone, a Schedule I controlled substance.

DATE: Comments or objections must be received on or before March 9, 1989.

ADDRESS: Send comments or objections to the Administrator, Drug Enforcement Administration, 1405 I Street NW., Washington, DC 20537, Attn: DEA Federal Register Representatives.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug Control Section, Drug Enforcement Administration, 1405 I Street, NW, Washington, DC 20537, Telephone: (202) 633–1366.

SUPPLEMENTARY INFORMATION: Section 306 of the Controlled Substances Act (21 U.S.C. 826) requires that the Attorney General establish on an annual basis aggregate production quotas for all controlled substances listed in Schedules I and II. This responsibility has been delegated to the Administrator of the Drug Enforcement Administration pursuant to § 0.100 of Title 28 of the Code of Federal Regulations.

Recently, the Drug Enforcement Administration received an application for a manufacturing quota for methaqualone, a Schedule I controlled substance. The methaqualone is to be used to prepare analytical standards.

The Administrator of the Drug Enforcement Administration, under the authority vested in the Attorney General by section 306 of the Controlled Substances Act of 1970 (21 U.S.C. C. 826) and delegated to the Administrator by § 0.100 of Title 28 of the Code of Federal Regulations, hereby proposes the 1989 aggregate production quota for methaqualone expressed in grams of anhydrous base.

Basic class	Proposed 1988 aggregate production Quota (grams)
Methaqualone	2

All interested persons are invited to submit comments or objections in writing regarding this proposal. Comments or objections should be submitted to the Administrator, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Representative, and must be received by March 9, 1989. If a person raises one or more issues which that person believes would warrant a hearing, that individual should so state and summarize the reason for this belief.

In the event that comments or objections to this proposal raise one or more issues which the Administratior finds warrant a hearing, the Administrator shall order a public hearing by a notice in the **Federal Register**, summarizing the issues to be heard and setting the time for the hearing.

Pursuant to sections (3)(c)(3) and 3(e)(2)(C) of Executive Order 12291, the Director of the Office of Management and Budget has been consulted with respect to these proceedings.

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

The Administrator hereby certifies that this matter will have no significant impact upon small entities within the meaning and intent of the Regulatory Flexibility Act, 5 U.S.C 601, et seq. The establishment of annual production quotas for Schedule I and II controlled substances is mandated by law and by international commitments of the United States. Such quotas impact predominantly upon major manufacturers of the affected controlled substances.

Dated: December 8, 1988.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 89–2762 Filed 2–6–89; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Registration; Eli Lilly Industries, Inc.

By Notice dated September 26, 1988, and published in the **Federal Register** on September 30, 1988, (53 FR 38366), Eli Lilly Industries, Inc., Chemical Plant, Kilometer 146.7, State Road 2, Mayaguez, Puerto Rico 00708, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of bulk dextropropoxyphene (non-dosage forms) (9273), a basic class of controlled substance listed in Schedule II.

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: January 25, 1989.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 89–2846 Filed 2–6–89; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Application; Janssen Inc.

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on December 29, 1988, Janssen Inc., HC–02, Box 19250, Gurabo, Puerto Rico 00658–9629, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basis classes of controlled substances listed below:

Drug	Schedule
Alfentanil (9737)	II
Sufentanil (9740)	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice,

1405 I Street NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than March 9, 1989.

Dated: January 25, 1989.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 89-2847 Filed 2-6-89; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 88-53]

Jopat Drugs, Inc., Revocation of Registration

On April 21, 1988, the Administrator of the Drug Enforcement Administration (DEA), issued an Order to Show Cause to Jopat Drugs, Inc. (Respondent), of 1655 Grand Avenue, Baldwin, New York, proposing to revoke its DEA Certificate of Registration, AJ3425938, and to deny any pending applications for renewal of such registration. The Order to Show Cause alleged that the continued registration of Respondent would be inconsistent with the public interest, as set forth in 21 U.S.C. 823(f) and 824(a)(4). Additionally, citing his preliminary finding that Respondent's continued registration posed an imminent danger to the public health and safety, the Administrator ordered the immediate suspension of Respondent's registration pending the outcome of these proceedings. 21 U.S.C. 824(d).

Respondent, through counsel, requested a hearing in a letter dated May 6, 1988. The matter was docketed before Administrative Law Judge Francis L. Young. Following prehearing procedures, a hearing was held in Washington, DC on September 1, 1988. On October 25, 1988, the Administrative Law Judge issued his opinion and recommended ruling. On November 7, 1988, counsel for Respondent filed exceptions to the recommended ruling. On November 17, 1988, Government counsel filed its response to Respondent's exceptions to the recommended ruling. On November 28, 1988, Judge Young transmitted the record of these proceedings, including the aforementioned exceptions, to the Administrator. The Administrator has considered the record in its entirety and, pursuant to 21 CFR 1316.67, hereby issues his final order in this matter based upon findings of fact and conclusions of law as hereinafter set forth.

The Administrative Law Judge found that Alan Engerson has been a licensed pharmacist and the sole owner of Respondent pharmacy since May 9, 1984. Evidence presented at the hearing revealed that DEA initiated an investigation of Respondent pharmacy's controlled substance handling practices after records submitted to DEA revealed that Respondent purchased approximately 37,000 dosage units of oxycodone products in 1986, making Respondent the largest purchaser of such products during that time period in Nassau and Suffolk Counties, New York. On March 9, 1988, DEA Investigators conducted an audit of selected Schedule II controlled substances at Respondent pharmacy. The audit period covered May 11, 1987 to March 9, 1988, and revealed shortages of 2,083 dosage units of Percodan; 17,803 dosage units of Percocet; 6,021 dosage units of oxycodone with APAP; and 1,029 dosage units of Levo-Dromoran. These shortages represented 34%, 75%, 80% and 3%, respectively, of the quantities of the items audited for which Respondent was accountable.

DEA Investigators discussed the results of the audit with Mr. Engerson. Mr. Engerson stated that he was unaware of any shortages at the pharmacy and did not know the cause of such shortages. Following the discussion with Mr. Engerson, DEA Investigators conducted another accountability audit of various Schedule II controlled substances at Respondent pharmacy on March 9, 1988. This audit covered the period of January 1, 1987 to March 9, 1988, and revealed shortages of 1,631 dosage units of Percodan; 23,773 dosage units of Percocet; 7,061 dosage units of oxycodone; 4,998 dosage units of Dexedrine (5 mg.); 3,994 dosage units of Dexedrine (10 mg.); and 935 dosage units of Dilaudid. These shortages represented 27%, 76%, 79%, 93%, 80% and 30%, respectively, of the quantities of items audited for which Respondent pharmacy was accountable. In reality, the shortages of the second group of audited substances were most likely greater than the figures arrived at by the Investigators since a zero initial inventory was used. A zero initial inventory assumes that none of the audited substances were in stock at the beginning of the audit period and therefore, Respondent was thus not held accountable for any of the drugs that were actually in stock on January 1, 1987.

DEA Investigators discussed the results of the second audit with Mr. Engerson. Once again, Mr. Engerson stated he was unaware of any shortages at the pharmacy and did not know the cause of such shortages. Subsequent to the audits conducted at Respondent pharmacy on March 9, 1988, DEA received information from a local drug distributor that Respondent had placed an order for Schedule II controlled substances. On March 29, 1988, DEA monitored the delivery of the ordered substances to Respondent pharmacy. On April 1, 1988, DEA Investigators returned to Respondent pharmacy to conduct a follow-up accountability audit to the March 9, 1988, audits. The same Schedule II substances were audited as were audited during the second accountability audit. This audit covered the period March 9, 1988 to April 1, 1988, and revealed shortages of 70 dosage units of Dexedrine (5 mg.); 95 dosage units of Dexedrine (10 mg.); 374 dosage units of oxycodone with APAP; and 1,624 dosage units of Percocet. These shortages represented 62% of the Dexedrine (5 mg.), 31% of the Dexedrine (10 mg.), 24% of the oxycodone with APAP, and 70% of the Percocet for which Respondent had been accountable during the less than thirty day period covered by the audit.

DEA Investigators interviewed Mr. Engerson on April 5, 1988. During the course of the interview, Mr. Engerson stated that he was in the pharmacy on a daily basis and was responsible for ordering controlled substances at the pharmacy. During the audit periods, January 1, 1987 to April 1, 1988, Mr. Engerson and one other pharmacist were the only two pharmacists employed at Respondent pharmacy. Additionally, almost all of the DEA order forms used to order Schedule II controlled substances for the pharmacy during the audit periods were signed by Mr. Engerson. Mr. Engerson advised DEA Investigators that he was unaware of any controlled substance shortages until the Investigators brought the shortages to his attention. However, in light of Mr. Engerson's ownership and control over Respondent pharmacy, Mr. Engerson should have known that the pharmacy was ordering an inordinate number of potentially dangerous controlled substances which seemed to be "disappearing."

At the hearing, Respondent seemed to suggest that Lewis Lazarus, the other pharmacist working at Respondent pharmacy during the audit periods, was responsible for the shortages of controlled substances and therefore, Mr. Engerson should not be held accountable. This argument is flawed for two reasons. First, no evidence was introduced at the hearing to support a finding that Mr. Lazarus was responsible for such shortages. Second, regardless of whether or not Mr. Lazarus did in fact divert the missing drugs, Respondent pharmacy, along with its

owner, is responsible for guarding against the diversion of controlled substances into the illicit market. The Drug Enforcement Administration registers pharmacies to handle controlled substances, not pharmacists. 21 U.S.C. 823(f).

The Administrator may revoke a DEA Certificate of Registration if he determines that the continued registration of the registrant would be inconsistent with the public interest. 21 U.S.C. 824(a)(4). Pursuant to 21 U.S.C. 823(f), in determining the public interest, the following factors, among others, shall be considered: the registrant's experience in dispensing controlled substances, his compliance with applicable state, Federal or local laws relating to controlled substances and such other conduct as may threaten the public health and safety. In weighing these factors, the Administrative Law Judge found that the continued registration of Respondent pharmacy is not in the public interest. Mr. Engerson permitted thousands of dosage units of Schedule II controlled substances to disappear from his pharmacy without a trace. As evidenced by the shortages revealed by the audits, there were no prescriptions or other records to show that thousands of dosage units of Schedule II controlled substances being ordered by Respondent were being dispensed ligitimately. Respondent obviously failed to keep complete and accurate records of them, and thus, through his negligence, if not his culpability, may well have permitted a flood of dangerous drugs to flow into the hands of abusers. Respondent's failure to account for these drugs establishes the pharmacy as a potent danger to the public health. Registrants with DEA must protect against the diversion of controlled substances into the illicit market. Respondent has miserably failed to so protect the public health and safety.

In addition, the Administrative Law Judge found that during the course of the investigation, DEA Investigators noted a number of instances where emergency oral prescriptions for Schedule II controlled substances were not followed up within 72 hours by written prescriptions signed by the prescribing physician. DEA regulations at 21 CFR 1306.11(d) provide that, in an emergency situation, a pharmacist may dispense a Schedule II controlled substance upon receiving oral authorization from the prescribing practitioner. However, 21 CFR 1306.11(d)(4) provides that within 72 hours after such oral authorization, the prescribing practitioner will forward a written prescription to the pharmacy for the emergency quantity prescribed. The evidence presented at the hearing clearly establishes that Respondent pharmacy failed to comply with these regulations on a number of occasions.

The Administrative Law Judge found that Mr. Engerson's utter lack of a sense of responsibility is further attested by his failure to disclose to the Government agents the whereabouts of all of the drugs he knew they had come to seize on April 22, 1988. Mr. Engerson exhibited a cavalier attitude at the hearing toward the fact that Respondent pharmacy was still in possession of controlled substances even though it was known by Mr. Engerson that the pharmacy could not lawfully possess such drugs. The Administrative Law Judge found that there is ample justification to conclude that the continued registration of Respondent pharmacy, owned and controlled by Alan Engerson, is inconsistent with the public interest. The Administrative Law Judge recommended that the Administrator revoke Respondent's DEA Certificate of Registration.

The Administrator adopts the recommended ruling, findings of fact, conclusions of law and decision of the Administrative Law Judge in its entirety. In view of the foregoing facts, it is quite evident that Respondent has ignored his duties as a professional to guard against the diversion of controlled substances, and has thereby disregarded his responsibility to protect the public health and safety. Respondent's registration is clearly inconsistent with the public interest. Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824, and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration AJ3425938, previously issued to Jopat Drugs, Inc., be, and it hereby is, revoked. It is further ordered that any pending applications for renewal of said registration be, and they hereby are, denied.

At the time the Order to Show Cause and Immediate Suspension of Registration was served on Respondent, the majority of the controlled substances possessed by the pharmacy under the authority of its then-suspended registration were placed under seal and removed for safekeeping. Subsequently, the remaining controlled substances were turned over to the Drug Enforcement Administration to be placed under seal. 21 U.S.C. 824(f) provides that no disposition may be made of such controlled substances under seal until the time for taking appeals has elapsed. Accordingly, these controlled substances shall remain under seal until March 9, 1989, or until any appeal of this order has been concluded. At that time, all such controlled substances shall be forfeited to the United States and shall be disposed of pursuant to 21 U.S.C. 881(e).

This order is effective immediately.

John C. Lawn,

Administrator.

Dated: February 1, 1989.

[FR Doc. 89-2849 Filed 2-6-89; 8:45 am]

BILLING CODE 4410-09-M

Importation of Controlled Substances; Application; Kalipharma, Inc.

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(h)), the Attorney General shall, prior to issuing a registration under this section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on November 28, 1988, Kalipharma, Inc., 200 Elmora Avenue, Elizabeth, New Jersey 07207, made application to the Drug Enforcement Administration to be registered as an importer of bulk dextropropoxyphene (non-dosage forms) (9273), a basic controlled substance in Schedule II.

Any manufacturer holding, or applying for, registration as a bulk manufactuer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street NW., Washington, DC 20537, Attention: DEA Federal Register Respresentative (Room 1112), and must be filed no later than March 9, 1989.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745-46 (September 23, 1975), all applicants for registration to import a basic class of

any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator of the Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e), and (f) are satisfied.

Dated: January 31, 1989.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 89-2843 Filed 2-6-89; 8:45 amn]

BILLING CODE 4410-09-M

Importation of Controlled Substances; Application; McNeilab, Inc.

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(h)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on December 19, 1988, McNeilab, Inc., Welsh and McKean Roads, Spring House, Pennsylvania 19477, made application to the Drug Enforcement Administration to be registered as an importer of difenoxin (9168), a basic controlled substance in Schedule I.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than March 9, 1989.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745-46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator of the Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e), and (f) are satisfied.

Dated: January 25, 1989.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 89-2844 Filed 2-6-89; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Registration; MD Pharmaceutical, Inc.

By Notice dated January 6, 1988, and published in the **Federal Register** on January 15, 1988, (53 FR 1060), MD Pharmaceutical, Inc., 3501 West Garry Avenue, Santa Ana, California 92704, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Methylphenidate (1724)	II
Diphenoxylate (9170)	II

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: January 25, 1989.

Gene R. Haislip,

Deputy Assistance Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 89-2848 Filed 2-6-89; 8:45 am]

BILLING CODE 4410-09-M

Importation of Controlled Substances Registration; Wildlife Laboratories, Inc.

By Notice dated December 15, 1988, and published in the **Federal Register** on December 22, 1988, (53 FR 51600), Wildlife Laboratories, Inc., 1401 Duff Drive, Suite 600, Fort Collins, Colorado 80524, made application to the Drug Enforcement Administration to be registered as an importer of carfentanil (9743), a basic class of controlled substance listed in Schedule II.

No comments or objections have been received. Therefore, pursuant to section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21 Code of Federal Regulations § 1311.42, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 89-2845 Filed 2-6-89; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review

As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency or the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523–6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3208, Washington, DC 20503 (Telephone (202) 395–6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Revision

Employment and Training Administration Guidelines for the State Employment Security Agency Program Budget Plan for the Unemployment Insurance Program 1205–0132; ET Handbook No. 336; ETA 8623A, 8632, 2208, 2208A, 8701 State or local governments.

Form No.	Affected public	Respondents	Frequency	Average time per response (hours)
ETA 8623A	State/local Govt.	53	1	3
ETA 2208	do	53	1	3
ETA 2208A	do	53	4	1
ETA 2208A (SAVE)	do	53	4	1
ETA 8701	do	53	1	1
Transmittal Memo, Checklist, Sig. Pg	do	53	1	1
Narrative Description (ETA 8632)	do	53	1	27
2,279 total hours				

The Program Budget Plan provides the basis for an application for funds for State Unemployment Insurance operations for the coming year. In the PBP, States certify intent to comply with assurances. The affected public are the 53 State Employment Security Agencies.

Revision

Employment Standards Administration

Notice of Termination, Suspension, Reduction or Increase in Benefit Payments

1215–0064; CM–908

On occasion.

Businesses or other for-profit; small businesses or organizations 325 respondents; 2,600 total hours; 12 min. per response; 1 form Coal mine operators who pay monthly benefits must notify DCMWC of any change in benefits and the reason for that change. DCMWC uses this notification to monitor payments to beneficiaries.

Signed at Washington, DC this 2nd day of February, 1989.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 89–2887 Filed 2–6–89; 8:45 am]

BILLING CODE 4510–30–M

Employment and Training Administration

[TA–W–20,893]

Caterpillar Industrial, Inc., Dallas, OR; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on October 26, 1988 applicable to all workers of the Caterpillar Industrial, Inc., Dallas, Oregon. The certification was published in the **Federal Register** on November 17, 1988 (53 FR 46509).

Based on additional information from the company, a few workers were laid off in August 1987 prior to the July 15, 1988 impact date set in the certification. Their layoffs were the result of the closing out of production of certain models of lift trucks. The intent of the certification is to cover all such workers.

The amended notice applicable to TA–W–20,893 is hereby issued as follows:

All workers of Caterpillar Industrial, Incorporated, Dallas, Oregon who became totally or partially separated from employment on or after August 12, 1987 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 25th day of January 1989.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 89–2889 Filed 2–6–89; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–21,723]

H.C. Price Construction Co., Anchorage, AK; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on November 18, 1988, in response to a worker petition which was filed by Laborers' Local 942 on behalf of workers at H.C. Price Construction Company, Anchorage, Alaska.

A negative determination applicable to the petitioning group of workers is currently being issued (TA–W–21,856). No new information is evident which would result in a reversal of the Department's previous determination. Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC, this 25th day of January 1989.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 89-2880 Filed 2-6-89; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-21,864]

Hoffman Construction Co. of Alaska, Portland, OR; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on November 18, 1988, in response to a worker petition which was filed by Teamsters Local 959 on behalf of workers and former workers at Hoffman Construction Company of Alaska, Portland, Oregon.

All workers were separated from the subject firm before October 1, 1985. In accordance with section 223(b) of the Act, as amended by Pub. L. 100-418, no certification may apply to any worker whose last total or partial separation from the subject firm occurred before October 1, 1985. Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC, this 24th day of January 1989.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 89-2884 Filed 2-6-89; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-21,641]

M.I. Drilling Fluids Co., Houston, TX; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated in response to a worker petition received on November 14, 1988 which was filed on behalf of workers at M.I. Drilling Fluids Company, Houston, Texas.

An active certification covering the petitioning group of workers remains in effect (TA-W-21,288). Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC, this 24th day of January 1989.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 89-2885 Filed 2-6-89; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-21,528]

Parallel Petroleum Corp., Midland, TX; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on October 31, 1988 in response to a worker petition which was filed on behalf of workers at Parallel Petroleum Corporation, Midland, Texas.

The retroactive provision of section 1421 (a)(1)(B) of the Omnibus Trade and Competitiveness Act of 1988 do not apply to workers who are engaged in the production of crude oil or refined petroleum products if such workers were eligible to be certified for benefits under the Trade Act prior to the implementation of the retroactive provisions.

A negative determination applicable to the petitioning group of workers was recently issued to workers at Parallel Petroleum Corporation, Midland, Texas on April 20, 1988 (TA-W-20,528). No new information is evident which would result in a reversal of the Department's previous determination. Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC this 24th day of January 1989.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 89-2886 Filed 2-6-89; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-21,530]

Reed Oil Co., Chanute, KS; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on November 4, 1988, in response to a worker petition which was filed on behalf of workers at Reed Oil Company, Chanute, Kansas.

An active certification covering the petitioning group of workers remains in effect (TA-W-21,529). Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC, this 25th day of January 1989.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 89-2883 Filed 2-6-89; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-21,086]

Trident Oilfield Service and Construction Co., Olney, IL; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on November 18, 1988, in response to a worker petition which was filed on November 18, 1988, on behalf of workers at Trident Oilfield Service and Construction Company, Olney, Illinois.

An active certification covering the petitioning group of workers remains in effect (TA-W-21,488). Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC, this 25th day of January 1989.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 89-2881 Filed 2-6-89; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-22,087]

Triple B Oil Producers, Inc.; Olney, IL; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated in response to a petition received on November 18, 1988, and filed on behalf of workers at Triple B Oil Producers, Incorporated, Olney, Illinois. The workers produced crude oil.

The retroactive provisions of section 1421(a)(1)(B) of the Omnibus Trade and Competitiveness Act of 1988 do not apply to workers who are engaged in the production of crude oil or refined petroleum products if such workers were eligible to be certified for benefits under the Trade Act prior to the implementation of the retroactive provisions. Consequently, layoffs occurring at Triple B Oil Producers before November 9, 1987, cannot be covered by the subject investigation.

All workers were separated from the subject firm more than one year prior to the date of the petition. Section 223 of the Act specifies that no certification may apply to any worker whose last separation occurred more than one year before the date of the petition. Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC, this 25th day of January 1989.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 89-2882 Filed 2-6-89; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-21,036]

Town & Country Shoes, Inc.; Sedalia, MO; Negative Determination Regarding Application for Reconsideration

By an application dated January 2, 1989, Teamster Local #534 requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on December 5, 1988 and is scheduled to be published in the **Federal Register** soon.

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) It it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The union claims that company imports adversely affected employment and production at the Sedalia plant. The union indicated that serveral styles of women's shoes will be made offshore for Town & Country Shoes for the Fall 1988 season. It is also claimed that uppers for two styles are currently being produced in Mexico. The union states that workers at the Sedalia plant have been hurt by shoe imports since 1981.

Investigation findings show that the workers at Town & Country Shoes, Sedalia produce women's shoes and finished shoes with uppers made in Mexico. Production at the plant ceased on November 4, 1988.

Investigation findings show that the uppers imported from Mexico were never produced at Sedalia. The Mexican uppers were incorporated into the production including the finishing operations on the uppers from Mexico was transferred to other domestic company plants in Arkansas. A domestic transfer of production would not form a basis for certification.

The findings also show that the sandals and moccasins produced in Brazil were never produced at Sedalia. Also, the Sheri style woman's shoe produced in Taiwan for Town & Country's Fall 1988 season was never produced at Sedalia. Investigation findings show that the imports of the Sheri style shoe accounted for an unimportant portion of Sedalia's 1988 production.

The Department's denial was based on the fact that the "contributed importantly" test of the Group Eligibility Requirements of the Trade Act of 1974 was not met. This test is generally demonstrated by a survey of the company's customers. The Department's survey of major customers of Town & Country Shoes shows that the respondents' import purchases of women's shoes in the 1986–1987 comparison period and the January-August 1987–1988 comparison period were not important and did not contribute importantly to any employment declines at the subject firm.

Lastly, shoe imports back to 1981 are beyond the scope of the subject investigation. Section 223(b)(1) of the Act does not permit the certification of workers separted more than one year prior to the date of the petition which in this case is September 6, 1988. Accordingly, there would be no purpose in collecting data not relevant to the petiton.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 25th day of January 1989.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 89-2888 Filed 2-6-89; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 U.S.C. 3303a(a).

DATE: Requests for copies must be received in writing on or before March 24, 1989. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESS: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights and interests of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions

requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending

1. Department of the Air Force, Directorate of Information Management and Administration, Records Management Branch (N1–AFU–87–19). A comprehensive schedule of all Air Force Operational Test and Evaluation Records. (Final reports and other substantive documents are permanent as well as case files pertaining to significant projects.)

2. Department of the Air Force (N1–AFU–89–4, –5, and –6). Routine commissary records.

3. Department of the Air Force (N1–AFU–89–9). Temporary leave transfer program records.

4. Department of the Air Force (N1–AFU–89–10). Records relating to applicants to Air Force research programs.

5. Department of State, Office of Management Operations (N1–59–88–12). Post Profile System (system contains information on personnel, vehicles, and similar matters).

6. Tennessee Valley Authority, Office of Natural Resources and Economic Development (N1–142–88–10). Comprehensive schedule for the office's Engineering Laboratory Branch.

Dated: February 1, 1989.

Don W. Wilson,

Archivist of the United States.

[FR Doc. 89–2879 Filed 2–6–89; 8:45 am]

BILLING CODE 7515–01–M

NUCLEAR REGULATORY COMMISSION

Baltimore Gas and Electric Co.; Calvert Cliffs Nuclear Power Plant Unit Nos. 1 and 2; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment Nos. 134 and 115 to Facility Operating License Nos. DPR–53 and DPR–69, respectively, to the Baltimore Gas and Electric Company which revised the Technical Specifications (TS) for operation of the Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2 located in Calvert County, Maryland.

The amendments are effective as of the date of issuance.

The amendments modified TS 5.6.2, "Criticality—New Fuel," by (1) increasing the U–235 enrichment limit for fuel stored in the new fuel storage racks from 4.1 to 5.0 weight percent and (2) reducing the maximum allowed value for the effective multiplication factor (k_{eff}) for the fuel stored in the new fuel storage racks from 0.98 to 0.95 with the addition of the full flood condition to the various densities of unborated water conditions that are assumed in determing k_{eff}.

The application for the amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on August 8, 1988 (53 FR 29791) modified on December 8, 1988 (53 FR 49618). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment.

For further details with respect to the action see (1) the application for amendment dated June 9, 1988, as supplemented on October 25, 1988, (2) Amendment Nos. 134 and 115 to License Nos. DPR–53 and DPR–69, respectively, and (3) the Commission's related Safety Evaluation and Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., and at the Calvert County Library, Prince Frederick, Maryland. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects I/II.

Dated at Rockville, Maryland, this 30th day of January 1989.

For the Nuclear Regulatory Commission.

David E. LaBarge,

Project Manager, Project Directorate I–1, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89–2839 Filed 2–6–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–317 and 50–318]

Baltimore Gas and Electric Co.; Calvert Cliffs Nuclear Power Plant Unit Nos. 1 and 2; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment Nos. 135 and 116 to Facility Operating License Nos. DPR–53 and DPR–69, respectively, to the Baltimore Gas and Electric Company which revised the Technical Specifications (TS) for operation of the Calvert Cliffs Nuclear Power Plant, Units Nos. 1 and 2 located in Calvert County, Maryland.

The amendments are effective as of the date of issuance.

The amendments changed the Units 1 and 2 TS 6.2.2, "Unit Staff," by (1) modifying the requirement of TS 6.2.2.g that the General Supervisor-Nuclear Operations (GS–NO) hold a senior reactor operator (SRO) license to a new requirement that the CS–NO shall hold or shall have held an SRO license at Calvert Cliffs, and (2) add a new requirement to TS 6.2.2.g to require that the Assistant General Supervisor-Nuclear Operations hold an SRO license.

The application for the amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on December 8, 1988 (53 FR 49617). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment.

For further details with respect to the action see (1) the application for amendment dated March 15, 1988, as modified by letter dated December 2, 1988 and supplemented by letters dated June 3, 1988 and January 13, 1989, (2) Amendment Nos. 135 and 116 to License Nos. DPR–53 and DPR–69, respectively, and (3) the Commission's related Safety Evaluation and Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC and at the Calvert County Library, Prince Frederick, Maryland. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects I/II.

Dated at Rockville, Maryland, this 30th day of January 1989.

For the Nuclear Regulatory Commission.

David E. LaBarge,

Project Manager, Project Directorate I–1, Division of Reactor Projects I/II.

[FR Doc. 89–2840 Filed 2–6–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–416]

Systems Energy Resources, Inc., et al.; Consideration of Issuance of Amendment To Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity For Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–29, issued to Systems Energy Resources, Inc., *et al.* (the licensee), for operation of the Grand Gulf Nuclear Station, Unit 1, located in Claiborne County, Mississippi.

The amendment would revise the Technical Specifications (TS) by adding requirements to maintain secondary containment when handling loads over irradiated fuel assemblies in the primary containment during Operational Condition 5 and over irradiated fuel assemblies in the spent fuel pool at all times. In addition, action statements which require suspension of handling irradiated fuel assemblies would be revised to also require suspension of handling loads over spent fuel.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination is provided below.

The proposed changes would ensure that when certain loads are handled over spent fuel assemblies there is secondary containment, so that should the load be dropped, the offsite radiation dose consequences would be acceptable. The present TS prohibit the handling of loads greater than 1140 pounds over spent fuel assemblies and require secondary containment when irradiated fuel assemblies are handled. The change in TS would add the requirement to maintain secondary containment when loads lighter than 1140 pounds with a potential energy greater than 17,000 foot-pounds are handled over spent fuel assemblies. The change makes the consequences of a dropped load on the spent fuel assemblies the same as the consequences of the design basis fuel handling accident as previously analyzed in the Final Safety Analysis Report Section 15.7.4 and Section 15.7.6. The handling of loads would not be changed from that used in previous refueling outages and over the spent fuel pool; but an added requirement for secondary containment will reduce the potential consequences of a dropped load.

Therefore, operation in accordance with the proposed amendment involves no significant hazards consideration. The changes will not (1) involve a significant increase in the probability or consequences of an accident previously evaluated because load handling practices and procedures would not be changed and offsite dose consequences of a dropped load would be decreased; (2) create the possibility of a new or different kind of accident from any accident previously evaluated because load handling practices and procedures would not be changed; or (3) involve a significant reduction in the margin of safety because the margin of safety for a dropped load would be the same as the present margin of safety for a dropped irradiated fuel assembly.

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 determinations. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Informatin and Publications Services, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555 and should cite the publication date and page number of the Federal Register notice. Written comments may also be delivered to 7920 Norfolk Avenue, Room P–216, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m.

Copies of written comments received may be examined at the Nuclear Regulatory Commission Public Document Room, 2120 L Street NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By March 9, 1989, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene if filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's

property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitionerr 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.

In the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, 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 1 (800) 325–6000 (in Missouri 1 (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Edward A. Reeves; petitioner's name and telephone number; date petition was mailed; plant name; and the publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Nicholas S. Reynolds, Esquire; Bishop, Liberman, Cook, Purcell and Reynolds, 1200 17th 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 Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated January 26, 1989, which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555, and at the Hinds Junior College, McLendon Library, Raymond, Mississippi 39154.

Dated at Rockville, Maryland this 1st day of February 1989.

For the Nuclear Regulatory Commission.

Edward A. Reeves,

Acting Project Director, Project Directorate II–1, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89–2841 Filed 2–6–89; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34–26509; File Nos. 4–218 and S7–433]

Joint Industry Plan; Notice of Filing and Summary Effectiveness of Amendments to the Consolidated Quotation Plan and Consolidated Transaction Plan Fee Schedules

On December 23, 1988, the participants in the Consolidated Tape Association ("CTA") and Consolidated Quotation Plan ("CQ Plan") submitted amendments [1] to the Plan governing the operation of the consolidated quotation reporting system ("CQS") and the Plan governing the operation of the consolidated transaction reporting plan ("CTA Plan").[2]

I. Description of the Amendments

The purpose of the Amendments is to increase the Network B [3] non-member [4] bid/ask and last sale interrogation unit subscriber fees by one dollar each, as follows: the CQ Plan amendment raises the non-member fee for bid/ask information from $13.60 to $14.60; the CTA Plan amendment raises the non-member fee for last-sale information from $12.60 to $13.60.

[1] The amendments to the CQ and CTA Plans were submitted pursuant to Rule 11Aa3–2 under the Securities Exchange Act of 1934 ("Act"). The CTA Plan amendments also were submitted pursuant to Rule 11Aa3–1 under the Act.

[2] The Participants requested that the proposed amendments be put into effect summarily pursuant to Rule 11Aa3–2(c)(4). That section empowers the Commission to summarily put into effect on a temporary basis a Plan amendment "if the Commission finds that such action is necessary or appropriate in the public interest, for the protection of investors or the maintenance of fair and orderly markets, to remove impediments so, and perfect mechanisms of, a national market system or otherwise in furtherance of the purposes of the Act.

[3] "Network B" refers to the consolidated data stream representing transaction and quotation data on eligible securities that are listed on the American Stock Exchange ("Amex") or that are traded on another exhange but substantially meet the Amex listing standards.

[4] Members that subscribe to the Network B services belong to the participant exchanges in the CTA and CQ Plans; non-members are professional subscribers who are not members of the participant exchanges.

The participants stated that Network B is increasing its non-member bid/ask and last sale subscriber fees to ensure that Network B participants are able to meet the increasing costs of administering the dissemination of Network B equity market data. The increase in the non-member fees will more accurately reflect the higher costs of approving, billing and collecting monies owed Network B by non-member subscribers.

II. Summary Effectiveness of the Amendments

Rule 11Aa3–2 provides that the Commission may, upon publication of notice of the amendment, summarily put into effect for 120 days an amendment to a national market system plan. The Commission first must determine, however, that it is necessary or appropriate in the public interest, for the protection of investors or the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of, a national market system or otherwise in furtherance of the purposes of the Act. The Commission believes the amendments meet these standards.

Both the CQ and CTA Plans provide for different fees for members and non-members. The participants stated in their filing that the number of growth rate of non-member subscribers currently far exceeds the number and growth rate of members subscribers. Thus, with higher administrative costs attributable to an increasing number of non-member subscribers, the participants believe that it is appropriate for non-member subscribers to bear an increase in subscriber fees to cover these costs. Under the standard set forth in sction 11A(c)(1) of the Exchange Act, persons are entitled to receive trading data disseminated by the markets on terms which are not unreasonably discriminatory. The Commission believes that if the increase in the number of non-member subscribers is resulting in increasing administrative costs for Network B, then it may be appropriate to apply these fee increases to non-members.

III. Request for Comment

To assist the Commission in determining whether to approve permanently the amendments, interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by February 28, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz

Secretary.

Dated: February 1, 1989.

[FR Doc. 89–2878 Filed 2–6–89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34–26507; File No. SR–CBOE–89–03]

Self-Regulatory Organizations; Chicago Board Options Exchange; Filing and Order Granting Temporary Accelerated Approval; Extension of Trading Crowd Evaluation Program

Pursutant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice hereby is given that on January 23, 1989, the Chicago Board Options Exchange, Inc. "CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange's Trading Crowd Evaluation Program has been in operation since Feburary 1, 1987.[1] By this rule change, the program would be extended from February 2, 1989 until and including February 1, 1990. The program would continue as described in File No. SR–CBOE–85–44.[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Trading Crowd Evaluation Program has been highly successful. It has been administered in an efficient and fair manner. The Program has been operational for two years and there have been virtually no complaints regarding its operation.

The Exchange believes that the unparalleled success of the program justifies its extension. Thus, this rule change seeks continuation of the program for one year.

The Exchange believes that the rule change is consistent with the purposes and provisions of the Act, and in particular Section 6(b)(5) thereof, in that the proposed rule change promotes just and equitable principles of trade as well as protects investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

This proposed rule change will not impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The CBOE Has requested that the proposed rule change be granted accelerated effectiveness pursuant to section 19(b)(2) of the Act. This rule filing simply extends the current pilot

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[1] The Trading Crowd Evaluation Program was approved by the Commission on a two-year pilot basis in Securities Exchange Act Release No. 24008 (January 16, 1987), 52 FR 3072 ("Adopting Release").

[2] As described more fully in the Adopting Release, the Trading Crowd Evaluation Program involved adoption of new CBOE Rule 8.12, which establishes a Market Performance Committee to conduct periodic evaluations of members, individually and/or collectively as participants in a trading crowd, to determine whether they have fulfilled performance standards relating to quality of markets, competition among market-makers, ethics, compliance with Exchange rules and other administrative factors.

program for an additonal one-year period. In addition, the public was afforded ample opportunity to comment on the Trading Crowd Evaluation Program prior to the Commission's original approval of the two-year pilot.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6 [3] and the rules and regulations thereunder. The CBOE's Trading Crowd Evaluation Program appears to have functioned efficiently and fairly during the initial two-year period. Extension of the Program will permit the Exchange to continue to ensure liquid and continous markets for options traded on its floor by permitting it to more effectively enforce the affirmative and negative obligations imposed on CBOW market-makers.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof. The proposed rule change will enable the Exchange to maintain the Trading Crowd Evaluation Program on a continuous basis. In addition, the public was afforded an opportunity to comment on the Program prior to its initial implementation in February 1987.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Stret, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will als be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by Feburary 28, 1989.

[3] 15 U.S.C. 78f (1982).

It therefore is ordered, pursuant to section 19(b)(2) of the Act,[4] that the proposed rule change is approved through February 1, 1990.

For the Commission, by the Divison of Market Regulation, pursuant to delegated authority.

Dated: Janury 31, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-2877 Filed 2-6-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 26506; File Nos. SR-MCC-87-05 and SR-MCC-88-07]

Self-Regualatory Organizations; Order Approving Proposed Rule Changes By the Midwest Clearing Corporation to Establish Fund/Serv

On October 21, 1987, the Midwest Clearing Corporation ("MCC") filed a proposed rule change (File No. SR-MCC-87-05), described below, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("the Act")[1] to establish facilities for MCC member use of the Mutual Fund Settlement, Entry, and Registration Verification Service or ("Fund/Serv"). On March 28, 1988, the Commission published notice of this proposed rule change in the **Federal Register** to solicit comments from interested persons.[2] On June 14, 1988, MCC filed a second proposed rule change (File No. SR-MCC-88-07), also described below, pursuant to section 19(b)(1) of the Act to establish participants' fund requirements for Fund/Serv users, to establish Fund/Serv procedures, and to clarify that MCC participants may exchange Fund/Serv data directly with MCC's Fund/Serv facilities manager, the National Securities Clearing Corporation ("NSCC"). On September 15, 1988, the Commission published notice of the second proposed rule change in the **Federal Register** to solicit comments from interested persons.[3] No comments were received on either filing. On October 25, 1988, the Commission approved both proposals on a pilot basis until January 31, 1989.[4] As discussed below, this Order approves both proposals.

[4] 15 U.S.C. 78s(b)(2) (1982).

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 25497 (March 21, 1988), 53 FR 10027.

[3] Securities Exchange Act Release No. 26067 (September 8, 1988), 53 FR 35944.

[4] Securities Exchange Act Release No. 26216 (October 25, 1988), 53 FR 43945 (October 31, 1988).

I. Description

The proposal amends MCC's rules to establish Fund/Serv and to authorize MCC to promulgate procedures to implement that service. Fund/Serv enables MCC participants to transmit mutual fund purchase and sale transactions, confirmations, settlement and registration data to mutual fund participants.[5] NSCC is MCC's facilities manager for Fund/Serv; [6] NSCC receives Fund/Serv data directly from MCC participants and retransmits that data to the appropriate mutual fund.[7] MCC participants, however, settle Fund/Serv transactions at MCC.

An MCC participant who wishes to use Fund/Serv must notify MCC of its intention and provide its Fund/Serv clearing fund contribution to MCC.[8] MCC will obtain from NSCC a Fund/Serv account number for the participant and a date when the participant may access the service. After the MCC participant meets these requirements, it will be able to transmit trade information directly to NSCC for retransmission to any mutual fund that is a Fund/Serv participant.[9]

The proposal requires Fund/Serv broker-dealers to submit trade information to MCC's facilities manager, NSCC, by 7:00 p.m. on the day of the trade ("T").[10] NSCC forwards all acceptable trades to the mutual fund. Mutual funds submit confirmations and rejections of orders to NSCC by 11:00 a.m. on T+1. NSCC acknowledges receipt of this information to the mutual fund and forwards such information to MCC's participants. NSCC also notifies

[5] At this time, MCC will not offer Fund/Serv services to mutual fund processing agents. Thus, all mutual fund participants in Fund/Serv are NSCC Fund members.

[6] For a description of Fund/Serv, *see generally*, Securities Exchange Act Release No. 25146 (November 20, 1987), 52 FR 45418.

[7] NSCC has agreed to provide MCC members access to Fund/Serv on substantially the same terms and conditions as NSCC members.

[8] Although MCC's proposal creates a new category of membership, Fund/Serv-only participants, MCC has no immediate plans to admit any Fund/Serv-only members. It is the Commission's understanding, however, that MCC will submit appropriate membership standards to the Commission as a proposed rule change prior to admitting any Fund/Serv-only members.

[9] MCC participants transmit data directly to NSCC through a computer to computer linkage. NSCC works directly with each participant, or each participant's service bureau, to ensure that transmissions are submitted to NSCC's required format and in accordance with NSCC's procedures.

[10] Broker-dealers may submit trades, on an exception basis, until 11:00 p.m. if operational or communication difficulties prevent timely data entry. According to NSCC, however, no Fund/Serv participant has ever submitted information this late because broker-dealers want to submit their orders before the end of the mutual funds' processing day.

the mutual funds and the broker-dealers of orders which are neither confirmed nor rejected. Broker-dealers may submit corrections concerning the money values of trades or concerning the number of shares on either T+1 or T+2. Mutual funds will have until T+2 to confirm orders not previously confirmed and may make price changes in orders confirmed on T+1. Purchases and redemptions not involving physical shares will settle on T+5. For redemptions involving physical shares, the mutual fund, once it has received the physical share certificates, will submit a release to NSCC authorizing settlement of those redemptions on the day following the receipt of the release.[11]

On the evening of T+4, NSCC provides mutual funds, broker-dealers, and MCC with a settlement summary listing transactions that are due to settle the following day. MCC uses this settlement summary to prepare an adjustment report which lists each participant's Fund/Serv debits and credits and to determine whether a Fund/Serv member is in a net pay or collect position. MCC combines each participant's Fund/Serv net pay or collect figure with its other MCC obligations to obtain each participant's total net pay or collect figure. Participants pay MCC in next-day funds approximately one hour after MCC notifies them of a "pay" settlement figure, at about 3:00 p.m. on settlement day. MCC pays its participants at approximately 3:00–3:30 p.m. on settlement day in next-day funds.[12] NSCC and MCC settle their obligations with each other on T+6 in same-day funds.

As with NSCC's Fund/Serv, MCC's Fund/Serv is not a guaranteed service. If an MCC participant defaults on its Fund/Serv payment obligations before NSCC has paid its participants, MCC will notify NSCC of the default so NSCC can stop payments to affected mutual funds and reverse transactions settled on behalf of the defaulting MCC participant. If NSCC receives notification of the default after it has paid its participants, NSCC could stop payment on those funds (NSCC pays its participants in next-day funds) or, if NSCC is unable to stop payment, it could charge the affected participants the next day. If NSCC is unable to collect the funds it paid on behalf of the defaulting MCC participant, NSCC may declare those mutual fund participants to be in default or liquidate any open contractual commitments on their behalf. If MCC fails to notify NSCC by 10:00 a.m. on settlement day[13] and NSCC suffers a loss or liability as a result of the MCC participant default, MCC will indemnify NSCC. MCC will fund its obligation to NSCC first from the defaulting participant's MCC Fund/Serv clearing fund contribution, and then from that participant's contribution to the general MCC clearing fund. If MCC still has not satisfied the loss, then MCC will allocate that loss, *pro-rata*, among MCC participants using Fund/Serv. If the loss remains unsatisfied, then MCC would follow its loss recovery rules and procedures.

If a mutual fund participant defaults on payment obligations arising from transactions with MCC participants, NSCC would inform MCC so that MCC can reverse any settlement credits to MCC participants because of transactions due to settle with the defaulting mutual fund.[14] If MCC receives notice of the default after it has paid its participants, it could stop payment of those checks (like NSCC, MCC pays its participants in next-day funds) or it could charge its participants for the amount of the transactions the next day. If MCC cannot collect the funds recharged to its participants, MCC may declare those participants to be in default and may use their clearing fund deposits or liquidate their open positions.

MCC has established a Fund/Serv clearing fund contribution requirement to cover potential Fund/Serv risks. The amount of a participant's clearing fund contribution is based on the settlement debits that a participant may have with any one eligible mutual fund. If the participant's Fund/Serv debits with each mutual fund are less than $100,000, then the participant must contribute $5,000 to the Fund/Serv clearing fund; if the participant's Fund/Serv debits with each mutual fund are less than $500,000, then the participant must contribute $10,000 to the Fund/Serv clearing fund; and if the participant's Fund/Serv debits with any one mutual fund are greater than $500,000, then the participant must contribute $20,000 to the Fund/Serv clearing fund. If on any given day a MCC participant's Fund/Serv debits for any one mutual fund exceed the point at which a higher clearing fund contribution is required, that participant must increase his contribution level accordingly.

II. MCC's Rationale

MCC believes the proposal is consistent with section 17A of the Act because it promotes the prompt and accurate clearance and settlement of mutual fund transactions by providing its members with a standardized method of communicating trade information to mutual funds. MCC believes that Fund/Serv's automated processing system is more efficient than the current methods used by its participants. MCC also believes that it has established appropriate risk management procedures, such as monitoring participants' activity, requiring additional clearing fund contributions when necessary, and limiting participants' activity, to protect itself from the potential risks associated with Fund/Serv activity.

III. Discussion

The Commission believes that the proposal is consistent with section 17A of the Act because it will facilitate the prompt and accurate clearance and settlement of mutual fund transactions. MCC's Fund/Serv is designed to extend to MCC participants the benefits of a centralized automated processing system for mutual fund purchases and redemptions. This service facilitates the prompt and accurate clearance and settlement of mutal fund transactions by allowing mutual fund purchase and redemption information to be submitted in one standardized format to one central location, instead of submitting such information in different formats to each mutual fund.

MCC's proposed clearing fund requirement for Fund/Serv is based upon an individual member's activity level in Fund/Serv and upon the fact that Fund/Serv is not a guaranteed service. MCC's clearing fund requirements are the same as NSCC's clearing fund requirements for Fund/

[11] A mutual fund can not complete redemptions involving physical shares until it receives the share certificates related to the transactions submitted with proper endorsements and guarantees. Therefore the transaction information is retained in the system, but settlement is delayed until the mutual fund receives those physical share certificates.

[12] NSCC pays its mutual fund participants by 1:30 p.m. NSCC pays its broker-dealer participants located in New York between 4:00 and 7:00 p.m. and pays its broker-dealer participants located outside New York between 3:00 and 5:00 p.m.

[13] Under the MCC–NSCC Fund/Serv Linkage Agreement, if MCC notifies NSCC by 10:00 a.m. (E.S.T.) on settlement day that it has ceased to act for an MCC participant, MCC's liability shall be limited to the portion of the defaulting Fund member's clearing fund contribution attributable to Fund/Serv. If MCC notifies NSCC later than 10:00 a.m. (E.S.T.) on settlement day, and NSCC can not reverse the transaction, MCC shall pay NSCC all amounts due resulting from the defaulting participant's use of Fund/Serv.

[14] As noted above, Fund/Serv payment obligations are not guaranteed by MCC or NSCC. According, if a mutual fund defaulted on payment obligations to NSCC, MCC can refuse to pay its affected members.

Serv participants.[15] Specifically, the clearing fund deposits are designed to protect MCC from risk associated with Fund/Serv, including the risk of simultaneous defaults by a MCC participant and a NSCC mutual fund participant. NSCC can withhold payment and reverse any transactions to its mutual funds made by the defaulting MCC participant if it receives notice of a default from MCC by 3:00 p.m., the time NSCC pays its Fund/Serv participants. From 3:00 p.m. until approximately 8:00 a.m. the next day, NSCC could place a stop payment on any funds paid to any mutual fund as a result of transactions by a MCC defaulting participant. Once NSCC participants have received their funds, NSCC could charge those mutual funds that received payment on transaction by defaulting MCC participants and, absent a default of a NSCC mutual fund participant, should be able to recover such funds. MCC must notify NSCC as early as possible of a MCC participant's default in order for NSCC and MCC to avoid or minimize their potential financial exposure.

MCC has informed the Commission that it has not experienced any problems with late payments or unpaid settlements by its members, and accordingly, MCC has not suffered any losses that would require its members to make additional clearing fund contributions. MCC has not had to take any disciplinary actions against any of its members for not making timely payments, or use the clearing fund during the pilot program. In addition, MCC has not experienced any problems with mutual fund contra parties fulfilling their responsibilities to transmit and receive information and pay their Fund/Serv obligations.

NSCC has developed and operated Fund/Serv since the pilot program began in February 1986, with no significant operational problems.[16] Extending the benefits of Fund/Serv to MCC participants will help achieve the Act's goal of facilitating the establishment of a safe, efficient, and equitable national clearance and settlement system for mutual fund transactions.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule changes (File Nos. SR-MCC-87-05 and SR-MCC-87-07) be, and hereby are, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: January 31, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-2829 Filed 2-6-89; 8:45 am]

BILLING CODE 8010-01-M

[15] NSCC's Fund/Serv clearing fund requirements were approved in Securities Exchange Act Release No. 26377 (December 20, 1988) 53 FR 52546.

[16] Securities Exchange Act Release No. 22928 (February 20, 1986), 51 FR 6954.

[Rel. No. 34-26512; File No. SR-NSCC-89-1]

Self Regulatory Organizations; National Securities Clearing Corp.; Filing and Immediate Effectiveness of Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s (b)(1), notice is hereby given that on January 27, 1989, NSCC filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would amend the following fees. NSCC's fee for keypunching Transfer Initiation Form information ("TIF") related to the Automated Customer Account Transfer Service ("ACATS") shall be $1.00 per item, its Inter-City Deliveries ("IESS") fee shall be $2.75 per envelope, its National Transfer Service ("NTS") fee shall be $1.25 per envelope, its Dividend Settlement Service fee shall be $0.25 per envelope, and its Correspondent Delivery and Collection Service ("CDCS") fee for deliveries other than those through the International Securities Clearing Corporation shall be $18.00 per envelope plus pass-through costs to reach locations outside of immediate local delivery areas.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change.

(a) The proposed rule change consists of modifications to NSCC's fees relative to two of its services. The proposed rule change, set forth in Exhibit A, increases the fee for keypunching Transfer Initiation Form Information ("TIF") related to the Automated Customer Account Transfer Service ("ACATS"). The increase is necessary because TIF information is more voluminous and complex than other ACATS items and thus, requires a greater period of time for the keypunching of data. The proposed rule change set forth in Exhbit B increases the fee for certain NSCC Delivery Services. The fee change is necessary because the volume of physical deliveries has decreased, while fixed costs for providing the service (including rent, manpower and insurance) have increased substantially. The fee changes will be effective January 1, 1989.

(b) Because the proposed rule change relates to the equitable allocation of fees among NSCC participants, it is consistent with the requirements of the 1934 Act, as amended (the "Act") and the rules and regulations thereunder applicable to a self-regulatory organization.

B. Self-Regulatory Organization's Statement on Burden on Competition

NSCC does believe that the proposed rule will have an impact or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No comments have been solicited or received. NSCC will notify the Commission of any written comments received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective, pursuant to section 19(b)(3)(A) of the Securities Exchange Act of 1934. At anytime within sixty days of the filing of such a proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the

purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change that are filed with Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to SR–NSCC–89–1 and should be submitted by February 28, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: February 2, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–2876 Filed 2–6–89; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[CM–8 1257]

Shipping Coordinating Committee; Subcommittee on Safety of Life at Sea, Working Group on Ship Design and Equipment; Meeting

The Working Group on Ship Design and Equipment of the Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting on March 2, 1989 at 9:30 a.m. in Room 6332 at the United States Department of Transportation, Nassif Building, 400 7th Street, SW., Washington, DC.

The purpose of the meeting will be to discuss the results of the 32nd Session of the International Maritime Organization (IMO), Subcommittee on Ship Design and Equipment (DE), held December 5 to 9, 1988, and to prepare for the 33rd Session of IMO DE, tentatively scheduled for the Spring of 1990. Items of discussion will include the following: Review of the Mobile Offshore Drilling Unit (MODU) Code; materials other than steel for pipes; maneuverability of ships; helicopter facilities offshore; below deck openings into cargo tanks; requirements for purpose and non-purpose-built ships dedicated to the carriage of irradiated nuclear fuel; harmonization of alarm provisions; amendments of regulations II–1/41 and 45 of SOLAS 1974, as amended; ventilation of vehicle decks during loading and unloading; review of reporting requirements on Codes and Assembly resolutions related to the work of the Subcommittee; underpressure in cargo tanks due to the application of vacuum systems to minimize the effect of pollution of oil after damage; maximum stowage height of survival craft; and, carriage of dangerous goods on vehicle decks of cargo ships.

Members of the public may attend up to the seating capacity of the room.

For further information contact Captain J.C. Maxham at (202) 267–2967, U.S. Coast Guard Headquarters (G–MTH), 2100 Second Street, SW., Washington, DC 20593–0001.

Date: January 25, 1989.

Thomas J. Wajda,

Chairman, Shipping Coordinating Committee.

[FR Doc. 89–2763 Filed 2–6–89; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Order 89–2–2; Dockets 45942 and 45943]

Applications of Louisiana-Pacific Corp. For Certificate Authority Under Subpart Q

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue orders finding Louisiana-Pacific Corporation fit and awarding it certificates of public convenience and necessity to engage in domestic and foreign charter air transportation of persons and property.

DATES: Persons wishing to file objections should do so no later than February 17, 1989.

ADDRESSES: Objections and answers to objections should be filed in Dockets 45942 and 45943 and addressed to the Documentary Services Division (C–55, Room 4107), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Ms. Carol A. Woods, Air Carrier Fitness Division (P–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–2340.

Dated: February 1, 1989.

Gregory S. Dole,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 89–2867 Filed 2–6–89; 8:45 am]

BILLING CODE 4910–62–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

February 1, 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: 1545–0746
Form Number: None
Type of Review: Extension
Title: Creditability of Foreign Taxes
Description: The information needed is a statement by the taxpayer that it has elected to apply the safe harbor formula of section 1.901–2A(e) of the foreign tax credit regulations. This statement is necessary in order that the IRS may properly determine the taxpayer's tax liability.
Respondents: Individuals or households, Farms, Businesses or other for-profit
Estimated Number of Respondents: 110
Estimated Burden Hours Per Response: 20 minutes
Frequency of Response: Nonrecurring
Estimated Total Reporting Burden: 37 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. 89–2803 Filed 2–6–89; 8:45 am]

BILLING CODE 4810–25–M

UNITED STATES INSTITUTE OF PEACE

Procedures And Deadlines for Grant Applications

Contact: Dr. Hrach Gregorian

This announcement succeeds the **Federal Register** announcements of July 16, 1986 (*Interim Procedures for Grant Applications*), December 10, 1986 (*Notice of Changes in Grant Application Review and Voting*), and December 23, 1987 (*Procedures for Grant Applications*). It is effective upon publication in the **Federal Register.** The United States Institute of Peace invites public comment and emphasizes that this announcement provides procedures that are subject to modification from time to time as experience and further consideration warrant. Significant changes will be published in the **Federal Register.**

The announcement identifies eligible recipients for grants; the subject-matter scope for which grants may be issued, including areas of special interest to the United States Institute of Peace; and the procedures the Institute will follow to receive, evaluate, and act upon grant applications. It also provides deadlines for the submission of applications (with accompanying decision dates), and explains how grant application forms may be obtained.

Introduction

The United States Institute of Peace is an independent, nonprofit corporation established by Act of Congress (Pub. L. 98–525) in October 1984. It was created to . . .

> serve the people and the Government through the widest possible range of education and training, basic and applied research opportunities, and peace information services on the means to promote international peace and the resolution of conflicts among the nations and peoples of the world without recourse to violence.
> [United States Institute of Peace Act, section 1702(b)]

The United States Institute of Peace is funded entirely by federal appropppriations. The Institute is prohibited from receiving gifts, contributions, and grants from foreign governments or agencies and from private individuals or organizations. The Institute is governed by a fifteen-member Board of Directors, including four *ex officio* members from federal service, and eleven individuals appointed from outside federal service by the President of the United States and confirmed by the United States Senate.

The Grants Program Eligibility, Subject-Matter and Deadlines

Eligible Grant Recipients

Through its two principal grantmaking components—Unsolicited Grants and Solicited Grants—the Institute promotes scholarship, education, training, and the dissemination of information on international peace and conflict management by providing financial support to nonprofit organizations, official public institutions, and individuals. Grantees may be foreign nationals or foreign nonprofit institutions and official public institutions. The Institute is required to pay in grants or contracts at least one-fourth of its annual appropriations to nonprofit or official public institutions, which include:

> Institutions of postsecondary, community, secondary, and elementary education (including combinations of such institutions) . . .
>
> Public and private educational, training, or research institutions (including the American Federation of Labor—the Congress of Industrial Organizations) and libraries, and . . .
>
> Public departments and agencies (including State and territorial departments of education and commerce).
>
> [United States Institute of Peace Act, section 1705(c)]

The Institute may obligate through grants and contracts more than twenty-five percent of its annual appropriations to nonprofits or official public institutions. The twenty-five percent requirement also applies to appropriated funds from any prior fiscal year that have been transferred to the Endowment of the United States Institute of Peace.

Indirect Costs

The Institute does not favor applying the public monies entrusted to it to costs not directly related to any project being funded. Applicants are advised to explain both the necessity for such indirect costs in their proposal and to describe efforts made to reduce or eliminate them.

Subject-Matter Scope of Grants

The Institute does not take positions on policy issues pending before Congress or other domestic or international bodies and does not mediate particular international disputes. Therefore, the Institute will not fund grant proposals of a partisan political nature or proposals that would inject the grantee or the Institute into the policy processes of the United States government or any foreign government or international organization. In addition, in accord with the United States Institute of Peace Act, section 1709(b), the Institute will not use political tests or political qualifications in selecting or monitoring any grantee.

In implementing its research, education and training, and public information mandates, the broad purposes for which the Institute invites and will consider grants are:

(1) To carry out basic and applied research, particularly of an interdisciplinary or multidisciplinary nature, on the causes of war and other international conflicts, on the ways in which conflicts have been or can be prevented, contained, or terminated, and on the condition and character of peace where it obtains among nations and peoples;

(2) To educate students, including graduate and post-graduate students, and the general public on questions of international peace and conflict resolution, including peace and conflict resolution theories, methods, techniques, programs, and systems and the experience of the United States and other nations in resolving conflicts with justice and dignity and without violence;

(3) To conduct training, symposia, and continuing education programs for practitioners, policymakers, policy implementers, and citizens and noncitizens that will develop their skills in international peace and conflict resolution;

(4) To make international peace and conflict resolution research, education, and training more available and useful to persons in government, private enterprise, and voluntary associations, including the creation of handbooks and other practical materials;

(5) To examine the resolution of conflict between free trade unions and Communist-dominated organizations in the context of the global struggle for the protection of human rights; and

(6) To assist the Institute in its publication, clearinghouse, library, and other information services programs.

Priority Subject Areas for Grants

Mindful of its obligation to expend taxpayer funds with great care, the Institute is conducting a review of past and ongoing research in international peace and conflict management, and related fields, in order to identify gaps and subjects that warrant additional consideration.

The Institute seeks to obtain the maximum benefits from its grantmaking program for research, education and training, and public information activities. The Board of Directors has

determined that encouraging a concerted focus on specific identified subjects—which will be changed from time to time to reflect new priorities—will increase the Institute's effectiveness. It has identified several areas for priority consideration in the immediate future. The Board emphasizes, however, that applicants should feel free to submit proposals dealing with other aspects of the Institute's mandate. They, too, will receive careful attention.

The subjects of special interest to the Institute at the present time are:

- Research on the relationship between adherence to international human rights standards and international peace.
- Research on perceptions of peace across political systems and ideologies, including the comparative status of peace movements and their impact under different political systems, and a comparative assessment and survey of the teaching of peace.
- Research on negotiations, including lessons from negotiations between the United States and the Soviet Union, lessons from negotiations between democratic and nondemocratic systems, and general lessons in the art of negotiation.
- Research on the relationship between domestic political systems and the aggressive use of force.
- Research on strengthening the non-use-of-force provisions of the United Nations Charter, including the effectiveness of the United Nations and other international institutions in dealing with low intensity and covert forms of aggression.
- Research on the mediation of political change.
- Developing curricula and materials for the study of international peace and conflict resolution from high school through post-graduate programs.
- Developing curricula and materials for negotiation, mediation, and conciliation theory, teaching, and training.
- Assisting media programming, including research and the development of materials particularly for television and radio, that will bring information about issues of international peace and conflict resolution to the broader public.
- Developing library programs, databases and bibliographies and implementing collection development.

Unsolicited Grants Application Deadlines

There are three cycles of competition for unsolicited grants:

Cycle	Deadline for application	Notification date
I	June 1	Late September
II	October 1	Late January
III	February 1	Late May

Solicited Grants

In addition to its established practice of providing support for unsolicited grant proposals, the Institute solicits proposals that focus attention on certain themes and topics of special interest. Solicited grant topics are announced annually and are published separately in the **Federal Register**.

Solicited Grants Application Deadline

Solicited grant topics are normally announced in *late December*. The annual deadline for applications in the solicited grants competition is *April 1*. The notification date for applications in this category is *late July*.

Grants Program Procedures

Grant Proposals

Every proposal for a grant from the Institute must be made on an official Application Form and may include attachments as needed. It is particularly important that all pages of the Application Form be filled out completely and with care. Some members of the Institute's Board of Directors may see no more of the application than the Application Form. Applicants must, therefore, report the basic elements of their proposals clearly and succinctly therein.

Every proposal must be submitted in four typed copies. The Application Form may be obtained from the Institute at the address given below. In addition to the information required in the Application Form, a proposal may be as detailed as the applicant desires.

Project directors from colleges, universities, official public institutions, and nonprofit organizations should be sure to consult with grants officials of their institutions in preparing project budgets. Budget categories included in the official Application Form are intended for general use. Although the terminology may not correspond well with usages employed at any given institution, applicants should make every effort to use USIP forms and to provide a detailed budget description.

Review Process

The Institute's staff will examine every proposal for eligibility and completeness. Questions on either will be referred to the applicant. Staff responses on eligibility and completeness will not be considered part of the formal review process, but the Institute's President will inform the Board of Directors of any applicant determined by the Institute's staff not to qualify on grounds of ineligibility and of any proposal that is incomplete and has not within a reasonable period of time been made complete. After staff examination, the President will send all eligible and complete applications to the Board of Directors for review.

Normally, each member of the Board of Directors will receive a copy of the official Application Form. In addition, each application will be assigned to a committee of the Board for initial review, and each member of that committee will receive copies of the Application Form and all attachments submitted by the applicant. Any Board member not on the committee to which the application has been assigned may request to receive a full application (i.e., the official form and all attachments) at any time.

Upon receipt of applications for review at designated meetings of the Board of Directors, each member will notify the Institute's Ethics Officer of his recusal from review and action on any application involving a conflict of interest or the appearance of a conflict of interest. (For additional information on recusal, see the last paragraph of this announcement.)

In reviewing applications, members of the Board committee to which those applications have been assigned will divide them into two categories: *P* (applications for possible award) and *N* (noncompetitive applications). The ratings will be communicated to the Institute's Director of Grant Programs.

All applications receiving a *P*-rating from any committee member will be reviewed and acted upon in committee. Applications falling fully into the *N* category (i.e., not receiving a *P*-rating from any committee member and not requested for discussion by a Board member not on the committee) will not be discussed in committee and will be regarded as recommended for rejection by the full Board. In the course of committee discussion or at any time prior to making recommendations to the full Board, the committee may decide to review and act upon an application originally receiving a full *N*-rating.

All applications not falling fully into the *N* category will be discussed by the full Board in plenary session. *N*-rated applications will be reported to the full Board as rejected, but may be reviewed if a Board member so requests. All applications, irrespective of their initial ratings or committee recommendation, will be voted on by the full Board of Directors.

Outside review of applications may be sought during any part of the review and action process. Any Board member, whether on the initial review committee or otherwise, may request outside review of an application. In each

instance of outside review, the Institute staff will seek at least one specialist in the field relevant to the particular project proposed in the application (or as close to it as possible) and one from an outside field.

In evaluating grant applications, central concerns will include: (1) The significance of the project to the Institute's mandate and the subject areas of special interest identified by the Board of Directors and listed above; (2) evidence that the project will not simply duplicate existing knowledge or programs; (3) the likelihood that the project will make a significant contribution to the field in scholarship and knowledge; and (4) the usefulness of the proposed product in fulfilling the Institute's mandate. The Institute is particularly interested in proposals that envision a specific product of enduring value.

Conflict of Interest and Recusal

Institute Directors, officers, and employees will recuse themselves from the consideration process with respect to any application for a grant with which they have a conflict of interest or which might reasonably present the appearance of a conflict of interest. All recusals will be reported to the Institute's Ethics Officer. Directors, officers, or employees of the Institute who have reason to believe they may have a potential conflict of interest regarding any proposal upon which they are called to act shall bring the situation to the attention of the Ethics Officer for guidance. Nothing in this paragraph shall be read as diminishing in any way the conflict of interest provisions contained in the United States Institute of Peace Act, including section 1706(g).

Application Forms are available from United States Institute of Peace, 1550 M Street, NW., Suite 700, Washington, DC 20005–1708 (202) 457–1700, FAX# (202) 429–6063.

January 27, 1989.

February 2, 1989.

Charles Duryea Smith,

General Counsel.

[FR Doc. 89–2917 Filed 2–6–89; 8:45 am]

BILLING CODE 3155–01–M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 24
Tuesday, Feburary 7, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Friday, February 10, 1989.

PLACE: Marriners S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda

Because of its routine nature, no substantive discussion of the following item is anticipated. This matter will be voted on without discussion unless a member of the Board requests that the item be moved to the discussion agenda.

1. Proposed interpretation of Regulation H (Membership of State Banking Institutions in the Federal Reserve System) regarding investment in mutual funds.

Discussion Agenda

2. Proposed revision of the Board's 1980 Community Reinvestment Act Information Statement.

3. Any items carried forward from a previously announced meeting.

Note.—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452-3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202)452-3204.

Date: February 3, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-2925 Filed 2-3-89; 10:36 am]

BILLING CODE 6210-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS.

TIME AND DATE: Approximately 11:00 a.m., Friday, February 10, 1989, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Issues regarding eligibility criteria for Federal Reserve Bank and Branch directors.

2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: February 3, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-2926 Filed 2-3-89; 10:38 am]

BILLING CODE 6210-01-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

February 2, 1989.

TIME AND DATE: 10:00 a.m., Thursday, February 9, 1989.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. Possible revisions to present Commission Procedural Rules 59-65, 29 CDR 2700.59-65.

Any person intending to attend this meeting who requries special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653-5629 (202) 566-2673 for TDD Relay.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 89-2959 Filed 2-3-89; 3:50 pm]

BILLING CODE 6735-01-M

NATIONAL LABOR RELATIONS BOARD

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: January 31, 1989, Volume 54 FR 4939.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: February 7, 1989, 9:30 a.m.

CHANGE IN THE MEETING: The open part of the meeting, casehandling procedures is canceled. The date and time of the closed meeting remain unchanged.

CONTACT PERSON FOR MORE INFORMATION: John C. Truesdale, Executive Secretary, Washington, DC 20570, Telephone: (202) 254-9430.

Dated, Washington, DC, February 3, 1989.

By direction of the Board.

John C. Truesdale,

Executive Secretary, National Labor Relations Board.

[FR Doc. 89-2951 Filed 2-3-89; 11:48 am]

BILLING CODE 7545-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of February 6, 13, 20, and 27, 1989.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of February 6

Monday, February 6

2:00 p.m.
Briefing on Status of Peach Bottom (Public Meeting)

Tuesday, February 7

2:00 p.m.
Briefing on Final Rule Regarding the High Level Waste Management Licensing Support System (Public Meeting)

Wednesday, February 8

10:00 a.m.
Briefing on Final Rule on Fitness for Duty (Public Meeting)

Thursday, February 9

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting):
a. Policy Statement on the Cooperation with States at Commercial Nuclear Power Plants and Other Nuclear Production and Utilization Facilities (Tentative)

Friday, February 10

2:00 p.m.
Oral Argument on Sanction Issue in Shoreham Proceedings (Public Meeting)

Week of February 13 (Tentative)

Friday, February 17

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of February 20 (Tentative)

Tuesday, February 21

10:00 a.m.
Briefing on Staff Proposal on Continuity of Government Program (Closed—Ex. 1)
2:00 p.m.
Briefing on Final Rule on Early Site Permits; Standard Design Certification; and Combined Licenses for Nuclear Power Reactors (Public Meeting)

Wednesday, February 22

10:00 a.m.
Briefing on Status of West Valley Project (Public Meeting)

Thursday, February 23

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of February 27 (Tentative)

Monday, February 27

10:00 a.m.
Briefing on the Status of NUREG–1150 (Public Meeting)
2:00 p.m.
Briefing on Final Report on BWR Mark I Containment Issues (Public Meeting)

Wednesday, March 1

9:30 a.m.
Briefing on Report on Maintenance Performance Indicator Development (Public Meeting)

Thursday, March 2

10:00 a.m.
Briefing on Importing and Exporting of Radioactive Waste (Public Meeting)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note.—Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To Verify the Status of Meetings Call (Recording)—(301) 492–0292.

CONTACT PERSON FOR MORE INFORMATION: William Hill, (301) 492–1661.

William M. Hill, Jr.,

Office of the Secretary.

February 2, 1989.

[FR Doc. 89–2971 Filed 2–3–89; 3:06 pm]

BILLING CODE 7590–01–M

Corrections

Federal Register
Vol. 54, No. 24
Tuesday, February 7, 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

[OPTS-41030; FRL-3476-6]

Twenty-Third Report of the Interagency Testing Committee to the Administrator; Receipt of Report and Request for Comments Regarding Priority List of Chemicals

Correction

In notice document 88-26306 beginning on page 46262 in the issue of Wednesday, November 16, 1988, make the following corrections:

1. On page 46265, in the second column, in the table, in item 9, at the end of the third line, insert "hydroxy-,".

2. On the same page, in the same column, in the table, in item 12, in the fourth line, insert a hyphen before "hydroxy-".

3. On the same page, in the same column, in the table, in item 13, in the fourth line, insert a hyphen before "hydroxy"; and at the end of the fifth line, remove "D".

4. On page 46266, in the second column of the table, the second entry (corresponding to "Empirical Formula") should read "$C_6H_{12}C1_3O_4P$".

5. On the same page, in the first column, in the last line, before "and" insert "automobiles, buildings, etc. are scrapped and disposed of in dumps".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 50 and 56

[Docket No. 87N-0032]

Protection of Human Subjects; Informed Consent; Standards for Institutional Review Boards for Clinical Investigations

Correction

In proposed rule document 88-25553 beginning on page 45678 in the issue of Thursday, November 10, 1988, make the following corrections:

1. On page 45680, in the second column, in the last line, "§ 2.110(b)" should read "§ ———.110(b)".

2. On page 45681, in the 3rd column, under **PART 56—INSTITUTIONAL REVIEW BOARDS**, in the authority citation, in the 12th line, after "381)" insert a comma; and in the 15th line, "263-263n" should read "263b-263n".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 53 and 56

[EE-154-78]

Lobbying by Public Charities; Lobbying by Private Foundations

Correction

In proposed rule document 88-29304 beginning on page 51826 in the issue of Friday, December 23, 1988, make the following corrections:

§ 53.4945-2 [Corrected]

1. On page 51834, in the second column, in § 53.4945-2(d)(1)(vii), in *Example (4)*, the first line should read "*Example (4)*. P publishes a bi-monthly".

2. In § 53.4945-2(d)(1)(vii), in *Example 10*, on page 51835, in the 1st column, in the 10th line, "§ 53.4945-2(d)(v)" should read "§ 53.4945-2(d)(1)(v)".

3. On page 51835, in the first column, in § 53.4945-2(d)(4), in the 12th line, after "lobbying" insert "and are thus taxable expenditures under section 4945".

§ 56.4911-2 [Corrected]

4. On page 51836, in the first column, § 56.4911-2(b)(2)(ii)(C) and the closing text of paragraph (b) should read as follows:

(C) Encourages the recipient of the communication to take action with respect to such legislation.

(For special rules regarding certain mass media communications, see § 56.4911-2(b)(5)).

5. On page 51838, in the 2nd column, in § 56.4911-2(b)(4)(ii)(C), in *Example (5)*, in the 15th line, "in" should read "is".

6. On page 51840, in the 3rd column, in § 56.4911-2(c)(1)(vii), in *Example (5)*, in the 25th line, "written" should read "within".

7. On page 51841, in the first column, in § 56.4911-2(c)(1)(vii), in *Example (10)*, in the second line, "conduct to" should read "conduct a".

8. On the same page, in the second column, in § 56.4911-2(c)(2), in the fourth line, "board" should read "broad".

§ 56.4911-3 [Corrected]

9. On page 51843, in the second column, in § 56.4911-3(b), in *Example (6)*, in the last line, "§ 56.491-3(a)(2)(ii)" should read "§ 56.4911-3(a)(2)(ii)".

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Federal Register

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Part II

Department of Energy

Office of Conservation and Renewable Energy

10 CFR Part 430

Energy Conservation Program for Consumer Products: Final Rulemaking Regarding Regulations Related to Energy Conservation Standards for Consumer Products; Final Rule

DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

10 CFR Part 430

[Docket No. CAS-RM-78-110]

Energy Conservation Program for Consumer Products: Final Rulemaking Regarding Regulations Related to Energy Conservation Standards for Consumer Products

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Energy Policy and Conservation Act, as amended by the National Energy Conservation Policy Act, the National Appliance Energy Conservation Act of 1987, and the National Appliance Energy Conservation Amendments of 1988, prescribes energy conservation standards for certain types of consumer products. As a general matter, these Federal standards preempt State and local standards and any other State and local requirements with respect to energy efficiency or energy use of these products.

The Department of Energy today is issuing a final rule amending Title 10, Part 430 of the Code of Federal Regulations to include procedures for petitions that may be made by States and manufacturers with regard to Federal preemption of State and local energy conservation standards.

The rule also adds procedures by which certain small businesses may obtain exemptions from the standards and sets forth procedures for certification and enforcement of the standards. Today's action also includes the following: Clarification of the basis for calculating the heating seasonal performance factor energy conservation standard prescribed by the Energy Policy and Conservation Act, as amended, for central air conditioners and heat pumps; an annual energy use measure for refrigerators, refrigerator-freezers and freezers; and test procedure and sampling requirements for pool heaters.

EFFECTIVE DATE: March 9, 1989.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

I. Introduction

a. Authority

Part B of Title III of the Energy Policy and Conservation Act (EPCA), Pub. L. 94-163, as amended by the National Energy Conservation Policy Act (NECPA), Pub. L. 96-619, by the National Appliance Energy Conservation Act of 1987 (NAECA), Pub. L. 100-12, and by the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Pub. L. 100-357,[1] created the Energy Conservation Program for Consumer Products other than Automobiles. The consumer products subject to this program (often referred to hereafter as "covered products") are: Refrigerators, refrigerator-freezers and freezers; dishwashers; clothes dryers; water heaters; central air conditioners and central air conditioning heat pumps; furnaces; direct heating equipment; television sets; kitchen ranges and ovens; clothes washers; room air conditioners; pool heaters; and fluorescent lamp ballasts; as well as any other consumer product classified by the Secretary of Energy. See section 322. To date, the Secretary has not so classified any additional products.

Under the Act, the program consists essentially of three parts: testing, labeling, and mandatory minimum energy conservation standards. The Department of Energy (DOE or Department), in consultation with the National Bureau of Standards, is required to amend or establish new test procedures, as appropriate, for each of the covered products. Section 323. The purpose of the test procedures is to provide for test results that reflect the energy efficiency, energy use, or estimated annual operating costs of each of the covered products. Section 323(b)(3). A test procedure is not required if DOE determines by rule that one cannot be developed. Section 323(d)(1). One hundred and eighty days after a test procedure for a product is adopted, no manufacturer may represent the energy consumption of, or the cost of energy consumed by the product except as reflected in a test conducted according to the DOE procedure. Section 323(c)(2).

The Federal Trade Commission (FTC) is required by the Act to prescribe rules governing the labeling of covered products for which test procedures have been prescribed by DOE. Section 324(a). These rules are to require that each particular model of a covered product bear a label that indicates its annual operating cost and the range of estimated annual operating costs for other models of that product. Section 324(c)(1). Disclosure of estimated operating cost is not required under section 324 if the FTC determines that such disclosure is not likely to assist consumers in making purchasing decisions or is not economically feasible. In such a case, FTC must require a different useful measure of energy consumption. Section 324(c). At the present time there is an FTC rule requiring labels under the Act for the following products: Room air conditioners, furnaces, clothes washers, dishwashers, water heaters, freezers, and refrigerators and refrigerator-freezers. 44 FR 66475, November 19, 1979. On December 10, 1987, FTC published a rule requiring labels for central air conditioners. 52 FR 46888.

For twelve of the covered products, the Act prescribes Federal energy conservation standards. Section 325 (a)(1) and (b) through (h). The Act establishes initial effective dates for the standards in 1988, 1990, 1992 or 1993, depending on the product and specifies that the standards are to be reviewed by the Department within three to ten years, also depending on the product. Section 325 (b) through (h). After the specified three- to ten-year period, DOE may promulgate new standards for each product, but such standards may not be less stringent than those initially established by the Act. Section 325 (l)(1).

The Act also directs DOE to prescribe an energy conservation standard no later than January 1, 1989, for small gas furnaces, i.e., gas furnaces having an input of less than 45,000 Btu per hour

[1] Part B of Title III of EPCA as amended by NECPA, NAECA, and NAECA 1988 is referred to in this notice as the "Act." Part B of Title III is codified at 42 U.S.C. 6291 *et seq.* Part B of Title III of EPCA as amended by NECPA only, is referred to in this notice as NECPA.

and manufactured on or after January 1, 1992. Section 325(f)(1)(B).

With regard to another covered product, television sets, the Act allows the Department to prescribe an applicable standard; however, such standard may not become effective before January 1, 1992. Section 325(i)(3).

The Act also permits the Department to prescribe standards for any other type of consumer product, that using certain criteria, DOE may classify as a covered product. Section 325(i); (1) and (m). Any new or amended standard is required to be designed so as to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. Section 325(1)(2)(A).

Section 325(1)(2)(B)(i) provides that before DOE determines whether a standard is economically justified, it must first solicit views and comments on a proposed standard. After reviewing comments on the proposal, DOE must then determine that the benefits of the standard exceed its burdens, based, to the greatest extent practicable, by considering:

(1) The economic impact of the standard on the manufacturers and on the consumers of the products subject to such standard;

(2) The savings in operating costs throughout the estimated average life of the covered products in the type (or class) compared to any increase in the price of, or in the initial charges for, or maintenance expenses of, the covered products which are likely to result from the imposition of the standard;

(3) The total projected amount of energy savings likely to result directly from the imposition of the standard;

(4) Any lessening of the utility or the performance of the covered products likely to result from the imposition of the standard;

(5) The impact of any lessening of competition, determined in writing by the Attorney General, that is likely to result from the imposition of the standard;

(6) The Nation's need to conserve energy; and

(7) Other factors the Secretary considers relevant. In addition, the Act specifies criteria for petitions to DOE in regard to amendments to standards. Section 325(k). Under the Act, any person may petition the Department to conduct a rulemaking to amend a Federal energy conservation standard for any covered product. Section 325(k)(1). The Department must grant such a petition if it determines that an amended standard will result in significant conservation of energy, is technologically feasible and is cost-effective. Section 325(k)(2). Section 325(k)(3) (A) and (B) stipulates that in no case may an amended standard apply to products manufactured within three years or five years, depending on the product, after publication of the final rule establishing a standard. Today's final rule does not include procedures and criteria for petitions for an amended standard. Since 1990 is the earliest date by which an amended standard could apply, DOE will address this issue in a future rulemaking proceeding.

Section 325(q) provides that manufacturers having annual gross revenues not exceeding $8 million may apply to DOE for an exemption from all or part of the requirements of an energy conservation standard. This exemption may not extend beyond two years from the effective date of any standard's requirement. This authority will not be exercised by DOE unless, after written consultation with the Attorney General, the Secretary finds that failure to allow the exemption would likely result in a lessening of competition.

Section 326 of the Act authorizes the Secretary to impose requirements upon manufacturers to submit information or reports to assure that each covered product to which a standard applies meets the required energy efficiency level. Today's rule establishes certification provisions that include testing by the manufacturer and submission of compliance and certification data to DOE. The Act also specifies that in determining information requirements, DOE consider existing sources of information, including nationally recognized trade association certification programs. Section 326(d).

Enforcement-related provisions of the Act provide for: (1) DOE to prescribe rules requiring manufacturers to allow the Department to observe testing and inspect results of testing conducted by the manufacturer (section 326(b)(5)); (2) manufacturers to supply to DOE a reasonable number of products for testing purposes (section 326(b)(3)); (3) manufacturers to submit information or reports necessary to ensure compliance (section 326(d)); and (4) injunctive relief against any prohibited act, including distribution of noncomplying products (section 334).

Section 327 of the Act addresses the effect of Federal rules concerning testing, labeling, and standards on State laws or regulations concerning such matters. Generally, all such State laws or regulations are superseded by the Act. Section 327 (a) through (c). Exceptions to this general rule include: (1) State standards prescribed or enacted before January 3, 1987, and applicable to products before January 3, 1988, may remain in effect until the applicable standard begins (section 327(b)(1)); (2) state procurement standards which are more stringent than the applicable Federal standard may remain in effect (section 327(b)(2) and (e)); and certain building code requirements for new construction may remain in effect until the applicable standards begin, and, if certain criteria are met, the codes are exempt from Federal preemption (section 327(b)(3) and (f)(1) through (f)(4)); state regulations banning constant burning pilot lights in pool heaters are exempt from Federal preemption (section 372(b)(4)); and State standards for television sets effective on or after January 1, 1992, may remain in effect in the absence of a Federal standard for such product (section 327(b)(6)).

Another exception to Federal preemption concerns standards for refrigerators, refrigerator-freezers and freezers. The Act specifies that if DOE does not publish a final rule before January 1, 1990, relating to the revision of Federal standards for this product category, the standards for these products that have been promulgated by the State of California, and are to be effective January 1, 1992, may become effective beginning January 1, 1993, and may not be preempted by any Federal standard prescribed on or after January 1, 1990. Section 325(b)(3)(A)(ii)(I) and section 327(c).

In addition, if DOE does not publish a final rule before January 1, 1992, relating to the revision of standards for refrigerators, refrigerator-freezers and freezers, any State regulation which applies to such products manufactured on or after January 1, 1995, is exempt from Federal preemption until the effective date of a Federal standard. Section 325(b)(A)(ii)(II).

A State whose energy conservation standard is preempted may petition the Department for a rule that it not be preempted on the basis that the State regulation is needed to meet unusual and compelling State or local energy interests. Section 327(d). However, DOE cannot issue the requested rule if it is established that such State regulation will significantly burden marketing, manufacturing, distribution, sale or servicing of the covered products, or is likely to result in the unavailability in the State of any covered product with performance characteristics that are substantially the same as those generally available in the State at the time of DOE's determination. Section 327(d)(4).

The Act further provides that, except under certain energy emergency

conditions, any State regulation for which exemption is granted shall apply to products manufactured three years after DOE publishes such a rule in the **Federal Register**, or five years after publication, if DOE finds that additional time is necessary for retooling and redesign. Section 327(d)(5).

b. Background

NECPA required DOE to establish mandatory energy efficiency standards for each of 13 coverage products.[2] These standards were to be designed to achieve the maximum improvement in energy efficiency that was technologically feasible and economically justified.

NECPA provided, however, that no standard for a product be estasblished if there were no test procedure for the product, or if DOE determined by rule either that a standard would not result in significant conservation of energy, or that a standard was not technologically feasible or economically justified. In determining whether a standard was economically justified, the Department was directed to determine whether the benefits of the standard exceeded its burdens by weighing the seven factors discussed above.

NECPA specified the priorities and procedures to be followed in adopting efficiency standards. Nine of the 13 covered products were given priority. These nine products were: Refrigerators and refrigerator-freezers, freezers, clothes dryers, water heaters, room air conditioners, home heating equipment not including furnaces, kitchen ranges and ovens, central air conditioners, and furnaces.

On June 30, 1980, DOE set forth its first proposed rulemaking for the nine products. 45 FR 43976. (Hereafter referred to as the June 1980 proposal). It also proposed comprehensive requirements for certification and enforcement of the standards as well as criteria and procedures for petitions from small businesses seeking temporary exemption from standards and by States seeking exemption for regulations subject to the general preemption requirements of NECPA.

On April 2, 1982, DOE published a further notice of proposed rulemaking with respect to the nine priority products. 47 FR 14424. (Hereafter referred to as the April 1982 proposal). Among other things, the April 1982 proposal included rules governing petitions to DOE both by States to obtain exemption from preemption of State or local energy efficiency standards, as well as by manufacturers to obtain preemption of State or local standards.

On December 22, 1982, DOE published a final rule that efficiency standards were not warranted for two covered products (clothes dryers and kitchen ranges and ovens) and that also prescribed final procedures by which States might obtain exemption for State or local efficiency standards from Federal preemption, and by which manufacturers might obtain preemption of a State or local standard not otherwise preempted. 47 FR 57198. (Hereafter referred to as the December 1982 final rule).

On August 30, 1983, DOE published a final rule with respect to six additional covered products: Refrigerators and refrigerator-freezers, freezers, water heaters, furnaces, room air conditioners and central air conditioners. 48 FR 39376. (Hereafter referred to as the August 1983 final rule). For each of the six products covered by the August 1983 final rule, except central air conditioners, DOE determined that an energy efficiency standard would not result in significant conservation of energy and would not be economically justified. With respect to central air conditioners, DOE found that an energy efficiency standard would result in significant conservation of energy, but would not be economically justified.

On April 1, 1985, DOE published a proposed rule with respect to four covered products: Dishwashers, television sets, clothes washers and humidifiers and dehumidifiers. 50 FR 12966. (Hereafter referred to as the 1985 proposal.) For each of the four products covered by the 1985 proposal, DOE proposed that an energy efficiency standard would not be economically justified and would not result in a significant conservation of energy.

During 1983, DOE's December 1982 and August 1983 final rules were challenged in a lawsuit brought by the Natural Resources Defense Council (NRDC) and others against the Department. On July 16, 1985, the U.S. Court of Appeals for the District of Columbia Circuit set aside DOE's December 1982 and August 1983 final rules. *NRDC* v. *Herrington*, 768 F.2d 1355 (DC Cir. 1985).

Consequently, on March 5, 1986, DOE published notices in the **Federal Register** removing the December 1982 and August 1983 final rules and withdrawing the 1985 proposal. 51 FR 7549 and 51 FR 7582.

As required by NAECA, which was enacted on March 17, 1987, and which established energy conservation standards for certain appliances, DOE published an advance notice of proposed relemaking regarding amended standards for refrigerators, refrigerator-freezers, and freezers and regarding establishing standards for small gas furnaces and television sets. 52 FR 46367, December 7, 1987. (Hereafter referred to as the December 1987 advance notice.) The December 1987 advance notice presented the product classes and analytical methodology for DOE's analysis in the rulemaking for these three products. The Department published a notice of proposed rulemaking on December 2, 1988, proposing to increase the standard level for refrigerators, refrigerator-freezers, and freezers; to establish a standard of 78 percent AFUE for small gas furnaces and to determine that no standard be established at this time for television sets. 53 FR 48798.

On March 4, 1988, the Department published a notice of proposed rulemaking concerning regulations implementing certain provisions of NAECA. 53 FR 7110. (Hereafter referred to as the March 1988 proposal.) In response to the March 1988 proposal, four trade associations representing appliance manufacturers testified at the public hearing held on April 12, 1988, and during the comment period ending May 3, 1988, DOE received nine written comments from manufacturers, trade associations and State governments. The issues raised in the Testimony and written comments are addressed in section II of this notice. Today's final rule responds to the comments received on the March 1988 proposal.

On March 15, 1988, the President signed Executive Order 12630 (53 FR 8859, March 18, 1988) directing that agencies review proposed regulations to avoid unnecessary taking of private property and to assist agencies in accounting for taking private property necessitated by statutory mandate.

The Executive Order states:

"Policies that have takings implications" refer to Federal regulations, proposed Federal legislation, comments on proposed Federal legislation or other Federal policy statements, that, if implemented or enacted, could effect a taking, such as rules and regulations that propose or implement licensing, permitting or other condition requirements or limitations on private property use, or that require dedications or exactions from owners of private property.

[2] The consumer products covered by NECPA included: Refrigerators and refrigerator-freezers; freezers; dishwashers; clothes dryers; water heaters; room air conditioners; home heating equipment not including furnaces; television sets; kitchen ranges and ovens; clothes waters; humidifiers and dehumidifiers; central air conditioners; and furnaces.

Since the Executive Order was issued after the March 1988 proposal, the proposal did not include a section on this requirement. The Department has conducted such an assessment of today's rule and has concluded that these regulations do not constitute a taking of private property. A discussion of this assessment appears in section III of this notice.

Today's notice also addresses Executive Order 12612, "Federalism". Executive Order 12612 requires that regulations or rules be reviewed for any substantial direct effects on States, on the relationship between the National government and the States, or on the distribution of power and responsibilities among various levels of government. If there are sufficient substantial direct effects, then Executive Order 12612 requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a regulation or a rule.

II. Discussion of Comments

There was general agreement among the comments that DOE's March 1988 proposal was clear, workable and equitable. Comments recommending changes and requests for clarification focused primarily on certification and enforcement and preemption of State regulations. The comments also included questions and suggestions concerning certain definitions in the March 1988 proposal. The following discussion addresses these comments.[3]

a. General Provisions

The 1987 NAECA amendments NECPA included several definitions of terms which also are defined in 10 CFR Part 430. However, some of the definitions contained in the Act are inconsistent with those previously adopted by DOE regulation. Therefore, DOE is amending 10 CFR Part 430 by adopting the definitions contained in the Act. Since these definitions were established by law and are not subject to revision, they were not included in the March 1988 proposal. However, the preamble to the March 1988 proposal did include a list of these terms and definitions. The terms included in today's final rule are "energy conservation standard," "furnace," and "water heater."

The American Gas Association (AGA) commented that it sees no need for DOE to adopt the term "energy conservation standard" in place of "energy efficiency standard." (AGA, No. 2200, at 3). As stated in the preamble to the March 1988 proposal and above in today's notice, DOE is adopting this and other definitions established by the Act.

Similarly, the NAECA amendments included terms which are not found currently in § 430.2 of 10 CFR Part 430. DOE today is adopting the legislated definitions. The terms are: "Annual fuel utilization efficiency," "pool heater," and "weatherized warm air furnace or boiler." Likewise the NAECA 1988 Amendments included terms which are not found in § 430.2 of 10 CFR Part 430. DOE today is also adopting those legislated definitions. The terms are: "Fluorescent lamp ballast" and "ballast efficacy factor." Also, in regard to test procedures, DOE is adopting the following legislated terms in a new Appendix (Q) to Subpart B of Part 430: "F40T12 lamp," "F96T12 lamp," "F96T12HO lamp," "input current," "luminaire," "ballast input voltage," "nominal lamp watts," "power factor," "power input," "relative light output," and "residential building."

As noted in the March 1988 proposal, annual fuel utilization efficiency (AFUE) is determined in accordance with § 4.6 of Appendix N to Subpart B of Part 430. Because the current provisions for determining AFUE are not consistent with the legislated definition, DOE proposed and, today, is adopting amendments to § 4.6 of Appendix N which conform to the NAECA amendments.

The Hydronics Institute commented that the expression (1 + 0.7), in the denominator of the equation should be (1 + α, stating that modulating units, being rated at each design heating requirement, will have varying values of α (Alpha). (Hydronics Institute, Testimony). The Hydronics Institute's suggested change may be a technical improvement to the test procedure, but it is not pertinent to the substance of this rulemaking. It is not DOE's intent to address test procedure issues in today's notice.

The March 1988 proposal stated that the measure of AFUE is based on the assumption that weatherized furnaces and boilers are located out-of-doors; that non-weatherized furnaces are located indoors and all combustion and ventilation air is admitted through grills or ducts from the outdoors and does not communicate with the air in the conditioned space; and that non-weatherized boilers are located indoors. These amendments will likely result in many non-weatherized (indoor) furnaces being rerated to reflect isolated combustion system values. The Hydronics Institute also questioned whether the weatherized furnaces and boilers have to meet 78 and 80 percent AFUE, respectively, when calculated as outdoor units in accordance with the DOE test procedures, or must the weatherized units meet 78 and 80 percent AFUE when calculated as indoor units. (Hydronics Institute, Testimony). The Department believes the language in the Act and the March 1988 proposal is clear, specifying an outdoor unit.

Two comments addressed the proposed definition for packaged terminal heat pump. The Air Conditioning and Refrigeration Institute (ARI) suggested that DOE adopt ARI's definition, which states that the unit "should" have other supplementary heat sources, rather than "may" have supplementary heating available as proposed by DOE. (ARI, No. 2197, at 2). The AGA stressed that the existing definition for packaged terminal air conditioner restricts the use of gas as a heating energy source, even though units utilizing gas are available commercially. AGA stated that to adopt this definition as the basis for the definition of packaged terminal heat pump would further restrict the use of gas as an acceptable source of heating energy. (AGA, No. 2200, at 3).

The Department accepts ARI's point that the suggested word change implies a preference or good practice. Likewise, DOE agrees with AGA that the current definition for packaged terminal air conditioner and the proposed definition for packaged terminal heat pump exclude the use of gas as an available energy source. Today's notice reflects these recommendations.

The International Environmental Corporation (IEC), a manufacturer of hydronic and direct expansion fan coil units, requested clarification on the number of units comprising a "collection" since the definition of "batch" in the March 1988 proposal states that it is a collection of production units of a basic model from which a batch sample is selected. (IEC, No. 2195, at 1). A "collection" means all units in a manufacturer's possession of a single production run of a basic model.

The Department also received comments concerning test procedures and units to be tested. The Association of Home Appliance Manufacturers (AHAM) and Whirlpool Corporation (Whirlpool) were concerned that DOE has not stated clearly that compliance with any standard established by the Act is based on the mean energy value for a basic model rather than on each

[3] Comments on the March 1988 proposal were assigned docket numbers and are numbered consecutively, beginning with No. 2194. Comments presented at the April 12, 1988, public hearing are identified as Testimony.

individual unit. (AHAM, No. 2198, at 2–3, and Whirlpool, No. 2194, at 1).

The Department sees no reason to address this issue in today's rule since the test procedures already establish the requirement as being basic model-specific. As such, each test procedure already includes the method for determining the applicable energy descriptor. Therefore, in order for a manufacturer to certify compliance with a standard, the energy value calculated in accordance with the sampling provisions in § 430.23 must meet or exceed the standard. These provisions are based on mean and adjusted mean values.

AHAM also suggested that DOE amend § 430.23 so that it applies clearly to the energy conservation standards in section 325 of the Act. (AHAM, No. 2198, at 3).

In response to AHAM's suggestion, the Department today is amending the language in the first paragraph of § 430.23.

The National Electrical Manufacturers Association (NEMA) commented on the March 1988 proposal in anticipation of fluorescent lighting fixtures becoming a covered product.[4] NEMA urged DOE to determine that test procedures for fluorescent lamp ballasts are not required under section 323(d)(1) of the Act. (NEMA, No. 2202, at 2–3).

The Department rejects NEMA's reasoning. DOE can make a finding under section 323(d)(1) of the Act only if test procedures cannot be developed which meet the requirements of section 323(b)(3). That subsection states that "Any test procedure * * * shall be reasonably designed to produce test results which measure energy efficiency, energy use, or estimated annual operating cost of a product * * * and shall not be unduly burdensome to conduct." Congress recognized and the legislation specifies a test procedure which meets the requirements of section 323(b)(3) of the Act. That test procedure is ANSI C82.2–1984, The American National Standard for Fluorescent Lamp Ballasts Methods of Measurement.

NEMA also requested that DOE include in today's rule several definitions contained in the 1988 Amendments. These terms include, *inter alia*, "fluorescent lamp ballast," "ballast efficacy factor," "fluorescent lamp," "luminaire." NEMA also urged DOE to conduct a new rulemaking to ensure that fluorescent lighting fixtures are addressed adequately in the regulations. (NEMA, No. 2202, at 10).

[4] The 1988 Amendments were pending before Congress during the comment period for this rulemaking.

The 1988 Amendments were not included in the Act until after the March 1988 proposal, so DOE did not address fluorescent lighting fixtures in the March 1988 proposal. However, the Department considers it appropriate to include this covered product in today's final rule, since it was discussed in comments received on the March 1988 proposal. Therefore, DOE is adopting the legislated definitions, and standards contained in the NAECA 1988 amendments. The Department will address additional regulations, as needed, in a separate rulemaking dealing with fluorescent lamp ballasts.

As stated above, and in the March 1988 proposal, the Act establishes standards for 12 types of appliances. Since these standards are established by law, they are being adopted today without comment.

The California Energy Commission (CEC) commented on the classes established for the covered products, in particular for refrigerators. The CEC pointed out that there is no class assigned for refrigerators with automatic defrost or for refrigerator-freezers with automatic defrost and internally mounted freezers. (CEC, No. 2201, at A–1). Since this relates and was the subject of comment to the December 1987 advance notice, DOE's review and determination of these options will be included in the refrigerator rulemaking mentioned above.

CEC also suggested that DOE revise the standard for water heaters so that the formulas used to determine the energy factor are based on actual measured volume instead of rated volume. CEC also requested DOE to include a definition of the term "rated storage volume." (CEC, No. 2201, at A–2).

Today's final rule addresses the implementation of major provisions of the Act. Since CEC's comment actually relates to test procedure issues, DOE will include this in a pending rulemaking concerning amendments to the test procedures for water heaters.

b. Petitions To Exempt State Regulation From Preemption

The Department received several comments concerning the criteria and procedures by which States may petition DOE for exemption from preemption.

NEMA opposed DOE's proposed amendments altogether, stating that the Department's action will allow States to petition for exemption from Federal preemption. NEMA added that it cannot envision any unusual or compelling interest to justify DOE granting a State's petition. (NEMA, No. 2202, at 10).

NEMA is incorrect in its understanding of the Act and of DOE's March 1988 proposal. It is the statute, not the Department's regulations, that permits States to petition DOE for such exemptions. Section 327(d)(1)(A) of the Act provides that:

> Any State with a State regulation which provides for any energy conservation standard * * * with respect to energy use or energy efficiency for any * * * covered product for which there is a Federal * * * standard * * * may file a petition with the Secretary requesting a rule that such State regulation become effective. * * *

Section 327 of the Act also establishes DOE's responsibilities for considering such petitions and requires that a State petition established by a preponderance of evidence that such regulation is needed to meet unusual and compelling State and local interests.

Whirlpool and AHAM urged DOE to emphasize that the Department may not grant a State petition if evidence shows that the rule will result in the unavailability in the State of any covered product (or class) of performance characteristics * * * that are substantially the same as those generally available in the State at the time of the Secretary's finding." (Whirlpool, No. 2194, at 3, and AHAM, No. 2198, at 14).

This criterion is prescribed in section 327(d)(4) of the Act with regard to State petitions. A similar provision, regarding new or amended standards, is contained in section 325(l)(4) of the Act. Whirlpool and AHAM believe that both these provisions should be included in today's rule. The provision established in section 327(d)(4) of the Act pertaining to State petitions appeared in § 430.41 of the March 1988 proposal and, likewise, is included in today's final rule. Today's action, however, is not a standards' rulemaking, therefore, section 325(l)(4) of the Act does not apply to the regulations contained in this notice.

The Gas Appliance Manufacturers Association (GAMA) argued that the Department misinterpreted section 327(d)(5) of the Act. GAMA contends that no rule granting a State's petition may permit a State regulation to become effective earlier than three years from the date such a rule is published in the Federal Register. GAMA's understanding of the Act is that there are no exceptions to this provision. Therefore, in the case of an energy emergency condition, DOE may allow a State to implement its regulation before the earliest possible effective date for the revision of the applicable standard, but in no case may a State regulation become effective before three years

from the date DOE grants the petition. (GAMA, No. 2196, at 6.)

The Department rejects GAMA's argument. There is nothing in the Act prescribing or suggesting that the requirements of section 327(d)(5)(A) dictate the terms of a finding that an energy emergency condition exists within a State. If a State has established that such a condition exists, GAMA's interpretation would negate the remedy provided by section 327(d)(5)(B) of the Act. The March 1988 proposal and today's final rule recognize this remedy. Therefore, a rule exempting a State standard from Federal preemption will be effective upon publication in the Federal Register if DOE determines and publishes such determination in the Federal Register that such rule is needed to meet an energy emergency condition existing within the State.

Several comments maintained that DOE did not provide adequate guidance and criteria concerning the content of State petitions.

AHAM stated that the Department should emphasize that the Act does not favor exemptions and that DOE intends to scrutinize petitions to ensure that the intent of the waiver criteria is met. (AHAM, No. 2198, at 2 and 11.) In addition, Whirlpool and AHAM urged DOE to emphasize that the criteria under NAECA are significantly more difficult to satisfy than those prescribed by NECPA. (Whirlpool, No. 2194, at 2–3 and AHAM, No. 2198, at 2.)

These comments suggest, if not assert, that the Act discourages states from seeking a rule to exempt a State standard. The Act establishes general rules of preemption and allows for the waiver of Federal preemption, prescribing the conditions under which DOE may or may not grant a petition. While the grounds for the waiver may be argued to be more stringent than formerly, they need be established by the State only by a "preponderance of the evidence." DOE will examine each petition for adherence to the actual requirements of the Act and DOE's regulations.

Pursuant to NECPA, the Department, in considering a State petition, was required to determine that there was a significant State or local interest to justify a State standard and that such a standard was more stringent than the applicable Federal standard. NECPA prohibited DOE from granting a petition, however, if it determined that a State standard would unduly burden interstate commerce. NECPA did not require a State to prove a negative prediction, i.e., that its standard would not impose an undue burden on interstate commerce. The Department's regulations required a petitioner to describe the significant State or local interest justifying the State standard and any other information the State considered relevant or the Department required.

The Act, as amended by NAECA, requires DOE to grant a State petition if certain criteria are satisfied, though, these criteria are different. DOE must grant a State's petition if it finds that the State has established, by a preponderance of the evidence, that such a standard is needed to meet unusual and compelling State or local energy interests. This term, as defined by the Act, includes factors to establish the difference, in nature and magnitude, between the State's interests and those prevailing in the U.S. generally, and the costs and benefits resulting from the State regulation that would make it preferable or necessary when compared to the costs and benefits of alternative approaches to energy savings or production. The Act also requires DOE to evaluate the State's claim of unusual and compelling State or local interests within the context of the State's energy plan and forecast.

The Act prohibits the Department from granting a petition if it finds that interested persons have established, by a preponderance of the evidence, that the State standard will significantly burden manufacturing, marketing, distribution, sales, or servicing of the covered product on a national basis. The Department must evaluate all factors, including the impact on manufacturing and distribution costs and on small businesses; the extent to which the standard would cause a burden to manufacturers; and the extent to which the State regulation is likely to contribute significantly to a proliferation of State standards. The Department also may not grant a petition if interested persons have established by a preponderance of the evidence, that the State standard is likely to result in the unavailability in the State of any covered product type (or class) of performance characteristics (including reliability), features, sizes, capacities and volumes that are substantially the same as those generally available at the time of DOE's finding.

It is important to note that pursuant to the Act, as amended by NAECA, again, a State is not required to prove a negative prediction, i.e., that a State standard will not significantly burden manufacturing, marketing, etc., or that a standard will not likely result in the unavailability in the State of any covered product type, etc.

The Department's regulations, as contained in today's notice, require a petition to include a copy of the State's energy plan and forecast, and any other information the petitioner believes is pertinent or the Department may require.

In addition to comparing the requirements for State petitions under NECPA and NAECA, DOE believes the above discussion responds to the New York State Energy Office (NYSEO) request that DOE clarify "burden of proof" requirements for petitioners and interested persons (those submitting comments on petitions). (NYSEO, No. 2199, at 2).

On a related issue, GAMA urged DOE to be explicit, through examples or requirements, that the burden of proof on States to justify exemption is very high. (GAMA, No. 2196, at 5–6). The California Energy Commission (CEC) also encouraged DOE to specify, through regulation, what type of information DOE expects in petitions. (CEC, No. 2201, at 10).

In addition, AHAM and Whirlpool stated that among other things, DOE should require each petition to provide the basis for differentiating its State energy problems from supply and consumption issues facing other States. (AHAM, No. 2198, at 11 and Whirlpool, No. 2194, at 2–3). AHAM also suggested that States must show that less restrictive alternatives, such as voluntary standards, consumer education or rebates, cannot accomplish substantially the same objectives as standards. (AHAM, No. 2198, at 12).

The Act is clear as to the criteria DOE must consider and evaluate in determining whether or not to grant a State petition. In light of such clarity, the Department disagrees with the comments that petitioners will not know what information to include in their petitions.

The March 1988 proposal provided examples of information and data that would be helpful to DOE in its consideration of a petition. The Department believes those examples are adequate guidance. Moreover, in view of the criteria described above, DOE will reject, with explanation, any petition which does not contain sufficient information. In such a case, the petition may be resubmitted.

The CEC stated that, since time will be of the essence in the petition process, DOE should establish regulations for a discovery process allowing for written interrogatories and requiring that all data and quantitative statements in petitions and comments be fully documented. (CEC, No. 2201, at 11.)

Section 336(a)(1) of the Act includes the petition process in a provision

requiring opportunity for public comment during the rulemaking processing. However, under section 336(a)(2), the "opportunity to question" applies only to rulemakings conducted under section 325 (standards) of the Act. It appears that the CEC contemplates other types of evidentary procedures which are appropriate for adjudicatory types of hearings. DOE does not believe the petition process should be so expanded.

In regard to documentation of data and quantitative statements contained in petitions and comments, section 327 of the Act already requires that States and interested parties provide "evidence" on which DOE must base its determination. The Department believes that those who will file petitions and submit comments are aware that their ability to succeed in such rulemaking proceedings will be based on the information contained in these documents. As such, DOE expects that data and other quantitative material will be documented fully. As mentioned previously, DOE will review thoroughly each petition and comment for content and completeness.

AHAM, GAMA and ARI commented that in no case should DOE grant a petition without holding a public hearing. (AHAM, No. 2197, at 12; GAMA, No. 2196, at 6; and ARI, No. 2197, at 2.) AHAM stressed that at least one mandatory public hearing should be held on each petition unless DOE determined that "a petition is insufficient on its face to warrant further consideration." (AHAM, No. 2198, at 12.)

As discussed above, section 336(a)(1) of the Act requires DOE to hold a hearing and provide a comment period for rulemakings pertaining to (section 327 of the Act) state petitions, as well as for rulemakings conducted under sections 323, 324, 325 and 328 of the Act. Therefore, DOE has concluded that it is unnecessary to include this as a requirement in today's rule.

ARI questioned whether the **Federal Register** notice of a final rule granting or denying a petition will contain the actual text of DOE's determination. ARI believes such text should be included and available for public review. ARI also stated that § 430.48 (request for reconsideration) of the March 1988 proposal was inadequate. ARI suggested that this section require petitioners requesting DOE reconsideration of a denial to serve copies of such request on interested persons, at least those who commented on the petition. ARI also urged DOE to publish a **Federal Register** notice upon receipt of a request for reconsideration, soliciting comments, data and information. (ARI, No. 2197, at 3–4.)

Section 430.46 of the March 1988 proposal and today's rule state that the **Federal Register** notice will include the reasons and basis for a final rule granting or denying a petition. As such, the **Federal Register** notice is the actual text of DOE's determination. Also, since denial of a petition will be reconsidered only if it demonstrated the denial was based on an error in law or fact, and that evidence of the error is found in the record of the proceeding, this process is not subject to the public notification and request for comment requirements of a rulemaking proceeding. The Department does have the flexibility, however, to order a petitioner to serve copies of the request for reconsideration, in a timely manner, on interested persons.

Finally, the NYSEO requested clarification on the applicability of the preemption provisions concerning products manufactured prior to the effective date of Federal standards. The NYSEO interprets the Act to provide that such products remain subject to pre-existing state standards. (NYSEO, No. 2199, at 2–3.)

The Department agrees with the NYSEO's understanding of the Act. A State standard would be preempted upon the effective date of the applicable Federal standard. However, the pre-existing State standard would apply to products manufactured prior to the effective date of the Federal standard.

c. Small Business Exemptions

Pursuant to section 325(q) of the Act, DOE proposed, and today is adopting, a new Subpart E that establishes procedures by which manufacturers, whose annual gross revenues for the preceding 12-month period do not exceed $8,000,000, may petition DOE for temporary exemption from all or part of an energy conservation standard for up to 24 months from the date such standard is effective.

In reference to this provision, ARI urged DOE to make it clear that an exemption may not exceed 24 months. ARI also commented that the March 1988 proposal did not provide adequate opportunity for public review and comment on applications for exemption. ARI recommended that all materials submitted by an applicant be available for public review, that DOE publish a **Federal Register** notice upon receipt of each application, and that DOE be explicit in providing opportunity for public comment on such applications. (ARI, No. 2197, at 4).

The Department believes that the language in both the discussion and rule sections of the March 1988 proposal was quite clear. On page 7115 of the **Federal Register** notice, DOE stated that such exemptions are temporary and may be granted for up to 24 months from the date the applicable standard is effective. On page 7124 of the same notice, under § 430.57 "Duration of Temporary Exemption," DOE proposed: "A temporary exemption terminates according to its own terms but not later than twenty-four months after the effective date for which the exemption is allowed." Furthermore, DOE has determined that no additional provisions are necessary for public review of and comment on applications for exemption. ARI seeks a rule requiring all materials submitted to DOE be publicly available. Section 430.53 provides that all applications and supporting documents "may" be made available for public review. Some documents, however, might not be made available. For example, should DOE determine that an entire support document is exempt from public disclosure pursuant to 10 CFR 1004.11, the Department would not make such document available for public review. Likewise, DOE would not make publicly available an application that was determined to be incomplete and was being returned, without further review, to the applicant. DOE agrees with ARI on the potential competitive effects of a small business exemption. The Department also is aware of and must be concerned with the potential competitive effects of information contained in such applications. For this reason, DOE will determine, on a case-by-case basis, which materials will be made available for public review.

The Department agrees with ARI that DOE should publish a **Federal Register** notice with regard to any application for exemption that DOE has received and accepted for filing and that such notice should solicit comments from interested persons. Today's rule reflects ARI's recommendation.

d. Certification and Enforcement

The certification procedures in the March 1988 proposal were patterned after the reporting requirements for FTC's appliance labeling program and trade association certification programs. Generally, the comments DOE received concerning certification and enforcement characterized these provisions of the March 1988 proposal as equitable and minimally burdensome. The comments included requests for clarification on issues such as data submission, records maintenance, definitions, sampling and compliance testing; and also included suggested

revisions primarily to the proposed enforcement provisions.

GAMA, Whirlpool, ARI, IEC, CEC and AHAM commented on DOE's proposed reporting requirements under § 430.62. Regarding third party reporting, IEC questioned whether a trade association, such as ARI, may submit a report on behalf of a manufacturer. (IEC, No. 2129, at 2). ARI commented that it believes that its statement on behalf of any participant should satisfy the requirements of the compliance statement (ARI, No. 2197, at 5). The CEC maintained that while a third party may perform the reporting function, responsibility for accuracy and completeness remains with the manufacturer. (CEC, No. 2201 at 5).

Section 430.62(e) of today's final rule remains unchanged—it permits a manufacturer to use a third party, such as a trade association, to submit the information required under § 430.62. However, ARI is incorrect in assuming that this satisfies the requirements of the compliance statement. A third party may not make any statements on behalf of a participating manufacturer to substitute for the compliance statement. The regulation merely permits the third party to transmit the compliance statement to DOE. Therefore, the CEC is correct that the manufacturer, alone, is responsible for all of the information submitted by a third party. If a manufacturer elects to use a third party, the compliance statement must include this, and therefore, serves as notification to DOE that the manufacturer has authorized a third party to submit such information.

The Department emphasizes that the compliance statement need not be resubmitted with future certification reports for new models unless the information contained in the original compliance statement no longer is accurate.

The CEC stated that a meaningful certification and enforcement program should include a provision for DOE to "spot check" wholesale and retail outlets and for DOE to publish directories to assist consumers in determining the efficiency of a model and whether it meets the applicable standard. The CEC also stressed that DOE should accept certification data only from programs that conduct routine testing for a significant percentage of basic appliance models available for sale each year and include procedures for challenging data open to all participants in the program. (CEC, No. 2201, at 4).

The Department rejects this point of view on the basis of CEC's earlier statement that testing is the manufacturer's responsibility. A third party may submit the information only if the manufacturer certifies compliance. The Department also does not agree with the CEC on the necessity to publish directories, particularly in light of the availability and use of trade association directories, and the FTC labeling program. In regard to a need for the "threat of periodic spot checks," nothing in the Act or in DOE's regulations prevents the Department from conducting such random checks.

In commenting on the reporting requirements of § 403.62(b), ARI urged DOE to revise the reporting dates, bringing them more in line with the effective dates of standards. In particular, ARI pointed out that while the reporting date for all central air conditioners and heat pumps is on or before July 1, 1991 (six months before standards are in effect for split system central air conditioners and heat pumps), that date is 18 months before the effective date of standards for single package central air conditioners. ARI suggested that reporting dates be changed to 30 days prior to the effective date of any standard. (ARI, No. 2197, at 4).

The Department agrees with ARI that the 18-month difference is excessive. Moreover, DOE wants to clarify that this is not an annual reporting requirement. The dates specified in the March 1988 proposal represent initial, one-time only, reporting requirements. In addition, to reduce the reporting burden on manufacturers and third parties, DOE selected dates that coincide with FTC reporting deadlines. To simplify DOE's reporting requirements, § 430.62(b) of today's final rule specifies that the initial (one-time only) reporting requirement for all existing covered products must be submitted no later than the effective date of the standard for each product.

For new models, introduced after a standard becomes effective, the certification report must be submitted to DOE prior to or concurrent with any distribution of such model. This change, as reflected in today's rule, also addresses an issue raised by GAMA concerning its certification directory publication cycle.

In submitting certification reports on behalf of program participants, AHAM stated that it plans to submit its certification directory yearly, with monthly supplements, as needed, to reflect new models. (AHAM, No. 2198, at 5). GAMA explained that it, too, will use its certification directory, which is published twice a year. However, GAMA argued that its publication schedule conflicts with DOE's proposal that information on new models be submitted prior to the distribution of such models. GAMA requested that DOE allow manufacturers 30 days after a new model is introduced before requiring the submission of a certification report, at which time GAMA would submit to DOE a monthly supplement to the GAMA directory. (GAMA, No. 2196, at 3).

The Department believes that its clarification and simplification of the reporting requirements will reduce the reporting burden on manufacturers and third parties. In light of the lead-time necessary to introduce a new model, DOE believes there is ample time for a manufacturer or third party to submit the necessary information prior to or at the time a new model is introduced. Therefore, DOE rejects GAMA's suggestion for a 30-day waiting period.

IEC questioned the meaning of the statement under § 430.62(c) that "any change to a basic model which affects energy consumption may constitute the addition of a new basic model subject to the requirements of § 430.61." (IEC, No. 2195, at 2). If a manufacturer makes any adjustments or changes to a basic model that result in a different rating, the Department will consider that to be a new basic model.

IEC also inquired as to how an indoor coil manufacturer's basic model would qualify as an "other than tested model" pursuant to § 430.63(b) of the March 1988 proposal. (IEC, No. 2195, at 2). In prescribing test procedures for central air conditioners, including heat pumps, DOE recognized the extreme burden and cost associated with testing these products. Therefore, the test procedure requires testing only of the outdoor unit and indoor coil that represent a manufacturer's highest sales combination. As provided by § 430.23(m) of DOE regulations, all other combinations marketed by a manufacturer, or coil only manufacturers, may be rated on the basis of computer model.

AHAM, Whirlpool and GAMA also commented on the March 1988 proposal's requirement under § 430.62(c) that discontinued models shall be reported in the next annual report. GAMA viewed this requirement as unnecessary since in GAMA's certification program discontinued models "simply don't appear in the next directory." (GAMA, No. 2196, at 4). AHAM and Whirlpool also recommended that DOE delete this requirement since a model may be discontinued in production, but remain in distribution for several years afterward. Therefore, since there is no

way to determine when a model is discontinued in distribution, AHAM and Whirlpool stressed that it is important that once a model is certified, it remains certified so as to avoid the perception of a noncompliant product. (AHAM, No. 2198, at 4–5 and Whirlpool, No. 2194, at 2). AHAM recommended that it could conduct an annual review and provide DOE a list of models no longer in its directory. (AHAM, No. 2198, at 5).

The Department accepts the reasoning offered by these comments. Therefore, today's final rule requires a manufacturer or third party to notify DOE, in writing, of any model no longer being manufactured. Such notification may be a letter or copy of a previous directory, highlighted to indicate the discontinued model(s).

Finally, ARI interpreted and DOE agrees that computer records are acceptable for meeting the requirement under § 430.62(d) that records be maintained for two years from the date production of a particular model has ceased. (ARI, No. 2197, at 5).

The majority of the comments submitted to DOE addressed enforcement-related issues, and are discussed below.

The Hydronics Institute offered comments on enforcement testing in which it described anomalous results of applying the proposed sampling provisions. The Hydronics Institute illustrated an application of the proposed provisions for two groups, each with four test results. It argued that the first phase of enforcement testing should have a five percent tolerance as does the second phase and asserts that absent such a tolerance a sample of boilers with a mean 79.1 AFUE would pass, while a sample with a mean of 79.75 AFUE would not. (Hydronics Institute, Testimony).

The first group in the Hydronics Institute's example consists of four boiler test results, all of which are below the standard level of 80 percent AFUE and demonstrate a small standard deviation. The second group of four test results also are below the standard level of 80 percent AFUE but demonstrate a relatively large standard deviation compared to the first group. Since all the test results are below the standard level, the sample means are below the standard level, i.e., 79.75 AFUE for the first group and 79.1 for the second group. The Hydronics Institute shows that the group with a mean of 79.75 AFUE and a small standard deviation would be determined in noncompliance in step 6 of the proposed provisions, whereas the group with the lower AFUE rating (79.1), but larger standard deviation group would be judged in compliance in step 7. The Hydronics Institute concluded that "the procedure favors divergent test results on the first test samples." Accordingly, Hydronics Institute asks that the procedure be checked for possible error.

The Department has reviewed the Hydronic Institute's comments and concludes that the proposed provisions are appropriate. The perceived inconsistency is a result of the nature of statistical inferences, rather than an error in the equations. In the example provided, the procedure does, in fact, favor divergent test results at that particular point in the process, i.e., steps 6 and 7. In other words, the population represented by the second group, with its larger degree of uncertainty, i.e., larger standard deviation, is given a better probability of having a true mean at or above the standard level than that of the population represented by the first group. In the examples, the two probabilities happen to be above and below the level chosen as the "reasonable risk" threshold, thus explaining the opposing determinations of compliance and non-compliance. Since the issue raised by the Hydronics Institute is complex, DOE believes it is appropriate to discuss the concept of "reasonable risk" in today's notice. In general terms, the two types of risk are: "Manufacturer risk," which is the probability, based on sample data, of being, in fact, in compliance when the sample data indicate a determination of noncompliance; and "government risk," which is the probability, based on sample data, of being, in fact, in noncompliance when the sample data indicate a determination of compliance. As with all statistical matters, the absolute is never known. (A "reversal" is a useful way to express the adverse impacts of these risks. For example, at steps 6 and 7, the proposed procedures assign a 2.5 percent probability of reversal as the maximum allowed.)

Applying these terms to the Hydronics Institute example, the population represented by the first group has less than a 2.5 percent chance of a reversal, i.e., being, in fact, in compliance when the sample data indicates noncompliance. Similarly, the population represented by the second group has less than a 2.5 percent chance of a reversal, i.e., being in noncompliance when the sample data indicates compliance.

The Hydronics Institute attributes the problem to the five percent tolerance "given" in these procedures. Rather, the tolerance allowed is in the form of upper and lower confidence limits. In step 11, the five percent tolerance mentioned is the limit of tolerance allowed by the confidence limits, and the term "0.05 (EPS)" in step 7 is not a tolerance, but the mathematical expression of the difference between a standard and 95 percent of the standard.

Whirlpool, GAMA, AHAM and ARI pointed out that while the preamble to the March 1988 proposal stated that DOE's receipt of "credible and substantiated" information triggers DOE's actions to determine compliance of a certified product, the rule itself is vague. (Whirlpool, No. 2194, at 2; GAMA, No. 2196, at 4; AHAM, No. 2198, at 6; and ARI, No. 2197, at 5). Whirlpool also suggested that DOE discourage "nuisance" challenges by requiring test data to support any challenge of energy performance. (Whirlpool, No. 2194, at 6). The CEC also commented that DOE should establish a petition process for such challenges and complaints from manufacturers and consumers. (CEC, No. 2201, at 7).

The Department believes that § 430.70(a)(1), as stated in the March 1988 proposal and in today's final rule, is clear—the Department "may" conduct testing of a particular product upon receipt of information concerning the energy performance of that product. The Department will evaluate thoroughly any complaint received, and will issue a test notice if DOE determines that such action is warranted. DOE is not requiring submission of test data since, in several instances, such data would be unnecessary. For example, in the case of prescriptive standards, test data would be inappropriate in cases concerning pilot lights in certain appliances. Furthermore, compliance with certain performance standards can be determined by reviewing design information. Determination of noncompliance will be made in accordance with the enforcement provisions found in Appendix B to Subpart F. Therefore, the Department will determine what information is appropriate on a case-by-case basis. Furthermore, nothing in the Act or in DOE's regulations prohibits DOE from requiring the submission of additional information, including test data.

In reference to CEC's suggestion, the Department believes that establishing procedures and criteria for a separate petition process would be restrictive and inappropriate. Since DOE has the flexibility to require the submission of additional or supporting information, DOE sees no purpose in requiring a prescribed format or specific procedures for submitting such information. Furthermore, since such a submittal does not serve as a request for rulemaking or similar action, e.g.,

request for waiver, DOE sees no justification for requiring a petition process. Section 430.70(a)(1) of today's rule does include the requirement that information submitted to DOE be in writing.

GAMA and ARI urged DOE to adopt the term "basic model" instead of "model or basic model" as included in §§ 430.70(a)(1)(iii) and 430.71(a) of the March 1988 proposal. (GAMA, No. 2196, at 4 and ARI, No. 2197, at 6). In addition, IEC stated that the proposal did not define the term "basic model."

The Department agrees with GAMA and ARI that use of both terms could cause confusion. Therefore, today's final rule specifies only "basic model." In response to IEC's comment, since DOE is not revising the definition of "basic model" as it appears in § 430.2 Title 10 of the Code of Federal Regulations, the term is not included in today's final rule.

GAMA and ARI also questioned the rationale, in § 430.70(a)(1)(iii), that provides for testing alternative basic models when a selected basic model is unavailable for testing. These comments maintained that there is no justification for testing any model other than the basic model alleged to be in noncompliance. (ARI, No. 2197, at 6 and GAMA, No. 2196, at 4).

The Department believes there may, indeed, be occasions when testing an alternative basic model is necessary. For example, if a particular condensing unit is combined with several different evaporation coils, each combination could be a different basic model. If one combination is not available, i.e., a particular coil is not available, an alternative coil could be selected for testing, representing an alternative basic model.

Finally, IEC requested clarification of "the method of selecting the test sample" under § 430.70(a)(1)(iii). (IEC, No. 2195, at 2). Section 430.70(a)(i) states that DOE will offer a manufacturer the opportunity to verify compliance, and today's rule specifies that the manufacturer may meet with DOE. As appropriate, in correspondence and/or meetings, DOE will discuss the method of selecting test units on a case-by-case basis.

Several comments sought clarification concerning the payment of testing costs. (GAMA, No. 2196, at 5; ARI, No. 2197, at 5; IEC, No. 2195, at 2–3; and CEC, at 7).

The Department is to pay for all enforcement testing performed under steps 1–11 of Appendix B to Subpart F of Part 430. The manufacturer bears the cost of additional testing, steps A–C of Appendix B—manufacturer-option testing. Such costs are to be paid directly to the testing facility. In the case of option testing, the manufacturer is responsible for contracting with the testing facility.

GAMA suggested that DOE require an initial shipment of four units out of the test sample of 20 units. (GAMA, No. 2196, at 5). To protect against any modification or substitution of units, GAMA and ARI recommended that DOE identify, mark and package each unit selected with a tamper-proof seal. ARI also suggested that the independent lab conducting the testing could also inspect each unit for tampering. (GAMA, No. 2196, at 5 and ARI, No. 2197, at 6).

The Department believes that such a requirement would be an unnecessary burden in a process DOE had made every effort to be simple and expeditious. Therefore, all units, up to 20, specified in a test notice, are to be shipped according to instructions contained in the notice. DOE will determine the number of units required after review of information described in § 430.70(a)(1)(i). A "reasonable" number of units, no less than four and no more than 20, will be the amount DOE determines, upon review of the pertinent information, is appropriate for compliance testing.

NEMA stated that the sampling method required under § 430.70 is inappropriate for fluorescent lamp ballasts since the practice in that industry is to design and produce every ballast to meet performance standards. Therefore, NEMA proposed that all ballasts be designed to meet the ballast efficiency factor prescribed in the 1988 Amendments and be exempt from the sampling procedures in the March 1988 proposal. (NEMA, No. 2202, at 4).

The Department is not persuaded by NEMA's argument and believes that NEMA has misunderstood the testing requirements. Section 430.70(a)(3) of the March 1988 proposal states that DOE's determination of a basic model's compliance will be based on testing conducted according to the statistical sampling procedures in Appendix B of the proposal and in the testing procedures in § 430.23 of Title 10 Code of Federal Regulations. Since these procedures minimize testing and associated costs, e.g., § 430.23 permits testing of as few as two units for each basic model, today's final rule provides no exemptions or exceptions to the sampling requirements. The Department emphasizes that the sampling procedures minimize the burden on manufacturers since there is no requirement to test each unit of a basic model to demonstrate that the basic model is in compliance. The regulations take into account the product variability that occurs in the manufacturing process and do not penalize the manufacturer for the anomalous unit.

Finally, while today's final rule does not include sampling provisions under § 430.23 for fluorescent lamp ballasts, DOE will propose such provisions in an upcoming test procedure rulemaking.

ARI also commented on enforcement sampling, and contended that if, for example, a central air conditioner or heat pump basic model is found to be noncompliant, such noncompliance determination applies only to the condensor-evaporator combination found in that unit, and not to other basic models using the same condensing unit. (ARI, No. 2197, at 7).

While ARI's assertion may be valid in some instances, it may not be so in others. The Department will make such determinations on a case-by-case basis.

The March 1988 proposal specified that DOE may subdivide a batch utilizing such criteria as date of manufacture, component supplier, location of manufacturing facility, or other criteria to differentiate one unit from another. Section 430.70(a)(4)(1). ARI maintained that date and location are adequate for identifying units and therefore, DOE should delete the language "or other criteria." (ARI, No. 2197, at 7).

The Department does not view that identification criteria as restrictive or burdensome. Each manufacturer must identify each unit using criteria set forth in the test notice, such as date and location of manufacture. A category for "other criteria" may indeed be helpful to a manufacturer and DOE in differentiating units. As discussed above, in correspondence and/or meetings, DOE and the manufacturer will determine if other criteria would be helpful in differentiating units.

In a separate reference to date of manufacture, the CEC argued that the current FTC labels will be insufficient for consumers to determine whether an appliance complies with the applicable Federal standard. The CEC maintained that without a label requiring date of manufacture, it will be impossible to know whether the unit is even required to meet a particular standard. DOE should require manufacturers to display prominently a label on every certified model giving the month and year of manufacture and stating that the unit has been certified to be in compliance with the applicable Federal standard. (CEC, No. 2201, at 5–6).

The Department recognizes the situation described by CEC and agrees that for a period of time following the effective date of any standard, consumers will make purchase decisions

without the certainty a model complies with the standard. However, while agreeing that such information might be helpful, DOE believes that such benefit does not provide an adequate basis for requiring manufacturers to display an additional label on each unit. This is true because, as discussed above, upon notification by DOE, a manufacturer is required to submit such identifying information to DOE as part of establishing compliance prior to entry of the model into distribution.

ARI and IEC recommended that DOE provide for units that fail compliance testing due to defective components or component failure. (ARI, Testimony and IEC, No. 2195, at 2).

The Department agrees that if a unit is inoperative, it cannot be tested. Therefore, today's final rule provides for the replacement or repair of defective components or units. For the purposes of today's rule, DOE considers a defect as that which prevents the product from being operated according to the manufacturer's intent, design and directions.

AHAM maintained that DOE should delete § 430.70(a)(6)(iv), requiring a manufacturer to cease distribution of a model being tested at the manufacturer's option. (AHAM, No. 2198, at 7–9). AHAM argued that DOE has no authority for such a regulation other than seeking a court injunction. AHAM would accept such a provision if it served simply to suggest cessation of distribution based on indications of noncompliance and to notify the manufacturer that civil penalties or an injunction may be sought. (AHAM, No. 2198, at 7–10).

In addition, GAMA stressed that cessation of distribution should be required only if non-compliance is determined upon completion of all tests conducted at the manufacturer's option. To require cessation of distribution before such time would effectively preclude the additional testing provided under § 430.70(a)(6) and the requirement of § 430.71(a)(2) would likely halt sales and damage a model's reputation. (GAMA, No. 2196, at 5).

ARI emphasized that, upon receipt of a manufacturer's request for optional testing, DOE should conduct prompt testing according to prescribed deadlines. (ARI, No. 2197, at 7–8).

First, DOE rejects AHAM's argument concerning DOE's authority to require cessation of distribution. Section 325(o) of the Act states that "any new or amended * * * standard * * * may include any requirement which the Secretary determines is necessary to assure that each covered product * * * meets the required minimum level of energy efficiency * * * specified in such standard." Furthermore, section 328 of the Act authorizes the Department to issue such rules as it deems necessary to carry out the provisions of the Act.

In addition, while DOE accepts GAMA's observations concerning the potential impacts of cessation of distribution, neither GAMA nor AHAM have been persuasive in arguing why distribution of a model, determined noncompliant in accordance with § 430.70, should be allowed to continue.

Finally, DOE agrees that a manufacturer's optional testing should be conducted with great haste since a determination of compliance will result in DOE's issuance of a notice allowing resumption of distribution. However, as discussed earlier, such manufacturer's optional testing is done at an independent testing laboratory contracted for by the manufacturer, not DOE. Therefore, DOE is not prescribing deadlines for work performed under such contracts.

There was some confusion about the requirement, under § 430.71(a)(2), to give written notice of a determination of compliance.

AHAM stated that this requirement is unclear and inquired about the meaning of "notifying all persons whom the manufacturer has distributed units of the basic model manufactured since the date of the last determination of compliance." AHAM asked if DOE is referring to initial compliance with the standard, the effective date of the standard, or does the requirement presume that a manufacturer was, at some time, in compliance? AHAM also suggested that DOE revise the requirement so that notification is limited to those persons who received noncomplying products. (AHAM, No. 2198, at 7).

The CEC argued that manufacturers should be required to notify dealers, distributors and consumers and that consumers should be entitled to receive, at manufacturer expense, replacement units that comply with the standard. (CEC, No. 2201, at 7–8).

ARI stressed that cessation of distribution applies only to unsold units and future production and that unless it can be shown that a manufacturer deliberately misrepresented the rating, manufacturers should not be required to replace or retrofit units already purchased since a noncompliant model would not pose a health or safety risk.

Finally, IEC requested clarification of the term "distributed to" as used in § 430.71(a)(2) since § 430.71(a)(4) permits a manufacturer to modify a noncompliant model and bring it into compliance as long as records prove that the modifications were made to all units prior to distribution in commerce. (IEC, No. 2195, at 3).

With respect to AHAM's request for clarity to § 430.71(a)(2), DOE finds that the notification requirement could apply in any of the instances AHAM cited; that is, the requirement applies to any determination of noncompliance, whether it involves a new basic model or a basic model that previously was found to be in compliance. In addition, while the Department rejects AHAM's suggestion to limit the recipients of notification to those who received noncomplying units, the test notice will specify how the batch sample will be selected. If DOE has reason to believe that there are factors causing noncompliance, e.g., use of compressors from a new supplier, DOE will consider such information in making a selection for a batch sample. If DOE determines that such a factor exists and its affects the model's efficiency, those units will be determined to be a new basic model and notice is to be limited to those persons to whom the applicable basic model was distributed.

As to whom should receive written notification, a manufacturer is required to notify all parties to whom the manufacturer has distributed the basic model for resale. The extent of such notification may vary from manufacturer to manufacturer, depending on each firm's marketing and distribution methods. The Department disagrees with the CEC that manufacturers should be required to notify consumers. Such a task would be an enormous, at best, incomplete, effort. Manufacturers do not, as a rule, have records identifying individual purchasers and the extent and accuracy of such recordkeeping varies greatly among department stores, discount stores and catalog businesses. Furthermore, the Department believes it is inappropriate to prescribe, through regulation, that manufacturers provide replacement units for consumers. Section 335(a)(1) of the Act provides that "any person may commence a civil action against any manufacturer or private labeler who is alleged to be in violation * * *." Since the Act includes such a provision for citizen suits and does not specify or suggest that the Department prescribe other remedies for citizens, DOE believes such relief may be addressed in the courts.

The Department's clarification, above, of the term "distributed to" is responsive to IEC's inquiry concerning notification requirements. However, it appears that IEC has misinterpreted the provisions of § 430.71(a)(4). While the regulation permits a manufacturer to modify a

basic model so that it complies with the standard, such modification results in a new basic model which must be certified pursuant to § 430.62 of today's rule. Also, a manufacturer's records must show that the modifications were made to all units of the new basic model prior to distributing these units, i.e., prior to distributing these units to resellers of that product. Therefore, § 430.71(a)(4) does not address distribution of the noncompliant basic model.

The CEC urged DOE to specify in today's rule that the term "each violation," as included in section 333(a) of the Act, means each separate unit of a noncomplying basic model. The Department concurs with CEC's interpretation. However, DOE believes the language of the Act is clear and requires no further explanation.

The CEC also recommended that DOE strengthen § 430.65 (Exports) to require prominent display of the prescribed stamp or label identifying a product as intended for export. Also, DOE should specify who is liable for penalties should an export unit be marketed in the U.S. (CEC, No. 2201, at 8–9).

The Department believes that the export labeling requirement of the Act (section 330) is sufficient. Upon finding that a product manufactured for export has been marketed in the U.S., the Department will determine at which point in the marketing chain the transaction occurred and will take appropriate action.

Finally, AHAM submitted a list of technical revisions including spelling and terminology corrections, to Appendix B of the March 1988 proposal. (AHAM, No. 2198, at 6). DOE has included most of these revisions in today's notice. However, it appears that AHAM has misunderstood steps 10a through 11b. Steps 10a and 11a address energy consumption standards; steps 10b and 11b address energy efficiency standards. AHAM's suggested revisions would, in fact, result in computations only for energy consumption standards, i.e., steps 10a and 10b would be identical, as would steps 11a and 11b.

III. Environmental, Regulatory Impact, Regulatory Flexibility, Paperwork Reduction Act, Takings Assessment, and Federalism Assessment Reviews

a. Environmental Review

Pursuant to section 7(c)(2) of the Federal Energy Administration Act of 1974, a copy of the March 1988 proposal was submitted to the Administrator of the Environmental Protection Agency (EPA) on April 22, 1988, for his comments concerning the impact of this proposal on the quality of the environment. The EPA had no comments on the Department's proposal.

The Department is adopting procedures implementing the Act's provisions for (1) certification and enforcement; (2) small business exemptions; and (3) petitions concerning exemption of State standards.

The Department believes the first element clearly is not environmentally significant since it will not result in any environmental impacts.

For applications seeking a temporary small business exemption, as well as for all petitions seeking exemption from Federal standards or supersession of State standards, DOE will conduct an appropriate National Environmental Policy Act (NEPA) review on a case-by-case basis.

The Department believes that today's action is not a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, and that neither an Environmental Impact Statement nor an Environmental Assessment is required.

b. Regulatory Impact Review

DOE has concluded that the rule is not a "major rule" for purposes of Executive Order 12291 because it will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. This conclusion is based on several factors. First, while the imposition of conservation standards will result in an increase in the cost of certain appliances, this increase will be offset by a reduction in energy costs. Second, the costs of complying with the testing requirements of the rule are not significant. For example, there will be no additional testing costs for labeled products, i.e., refrigerators, refrigerator-freezers, freezers, water heaters, furnaces, central air conditioners and room air conditioners, since DOE is accepting the applicable testing requirements of the Federal Trade Commission. Likewise, there will be no testing costs for those products that have design standards, i.e., clothes washers, dishwashers, and clothes dryers. With regard to pool heaters while not a labeled product or covered by a trade association certification program, it is likely that testing already has been accomplished because of California's standards for this product. Finally, any impacts resulting from a conservation standard for television sets will be addressed in a future rulemaking for this product. Therefore, in accordance with section 3(c)(3) of the Executive Order, which applies to rules other than major rules, today's final rule was approved by OMB without a regulatory impact analysis.

c. Small Entity Impact Review

In light of the foregoing, the Department has determined and hereby certifies pursuant to section 605(b) of the Regulatory Flexibility Act that today's action will not have a "significant economic impact on a substantial number of small entities." To minimize potential impacts on small businesses which are appliance manufacturers, DOE is, in fact, adopting rules that provide relief, in the form of temporary exemptions, from the applicable conservation standards.

In addition, as mentioned above, the Department will consider, as appropriate, any significant economic impact on small entities in deciding petitions to preserve or supersede State standards under section 327(d) of the Act.

d. Paperwork Reduction Act Review

This final rulemaking includes information collections that were previously cleared by the Department under OMB Control Number 1910–1400, expiring June 30, 1989.

e. Takings Assessment Review

Executive Order 12630 (53 FR 8859, March 18, 1988) directs that, in proposing a regulation, an agency conducts a "takings" review. Such a review is intended to assist agencies in avoiding unnecessary takings and help such agencies account for those takings that are necessitated by statutory mandate.

For purposes of the Order:

"Policies that have takings implications" refers to Federal regulations, proposed Federal regulations, proposed Federal legislation, comments on proposed Federal legislation, or other Federal policy statements that, if implemented or enacted, could effect a taking, such as rules and regulations that propose or implement licensing, permitting, or other condition requirements or limitations on private property use, or that require dedications or exactions from owners of private property.

It appears that there are three parts of the appliance standards regulatory

program that should be reviewed for "takings implications." These are testing and certification requirements, the impacts of standard levels, and possible DOE testing of products for validation.

With regard to the first part, namely, testing and certification, the Department believes that such a requirement, implementing a long-established statutory mandate in a manner calculated to minimize adverse economic impacts does not constitute a "taking" of private property. Executive Order 12630 applies to those regulatory actions which are a substitute for the exercise of governmental eminent domain power. This applies to situations where regulations exact a transfer of title, possession, or beneficial use of private property without compensation. The regulations under consideration are simply an exercise of police power and do not exact such a transfer of private property.

Similarly, the Department's possible validation testing does not constitute a "taking," within the limitation described above.

The Department believes that the fact that while an energy conservation standard may limit some manufacturers in the range of appliance efficiencies that they can produce, such narrowing of the energy efficiency range does not constitute a "taking" in the sense described above. Furthermore, this rulemaking simply recites the standards explicitly mandated by the Act.

In short, in none of the three parts of the appliance standards program does the Department believe that the provisions of E.O. 12630 pertain.

f. Federalism Assessment Review

Executive Order 12612 (52 FR 41685, October 30, 1987) requires that regulations or rules be reviewed for any substantial direct effects on States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among various levels of government. If there are sufficient substantial direct effects, then Executive Order 12612 requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a regulation or a rule.

DOE has identified a substantial direct effect that standards have on State governments. It initially preempts inconsistent State regulations. However, DOE has concluded that the initially preemptive effect is not sufficient to warrant preparation of a federalism assessment for two reasons. First, DOE does not have discretion under the Act to avoid promulgating a preemptive regulation because of a policy preference for State regulation as a general matter. Second, the Act provides for subsequent State petitions for exemption which necessarily means that the determination as to whether a State law prevails must be made on a case-by-case basis using criteria set forth in the Act. When DOE receives such a petition, it will be appropriate to consider preparing a federalism assessment consistent with the criteria in the Act.

g. Regulatory Flexibility Review

The Regulatory Flexibility Act of 1980 (Pub. L. 96-354) requires an assessment of the impact of proposed regulations on small businesses. Small businesses are defined as those firms within an industry that are privately owned and less dominant in the market.

In light of the foregoing, the Department has determined and hereby certifies pursuant to section 605(b) of the Regulatory Flexibility Act that today's action will not have a "significant economic impact on a substantial number of small entities." To minimize potential impacts on small businesses which are appliance manufacturers, DOE is, in fact, adopting rules that prove relief, in the form of temporary exemptions, from the appliance conservation standards.

In addition, the Department will consider, as appropriate, any economic impact on small entities in deciding petitions to preserve or supersede State standards under section 327(d) of the Act.

In consideration of the foregoing, Part 430 of Chapter II of Title 10, Code of Federal Regulations is amended, as set forth below.

Issued in Washington, DC, January 24, 1989.

Dr. John R. Berg,

Assistant Secretary, Conservation and Renewable Energy.

Lists of Subjects in 10 CFR Part 430

Administrative practice and procedure, Energy conservation, Household appliances.

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

1. The authority citation for Part 430 is revised to read as follows:

Authority: Energy Policy and Conservation Act, Title III, Part B, as amended by National Energy Conservation Policy Act, Title IV, Part 2, by the National Appliance Energy Conservation Act, and by the National Appliance Energy Conservation Amendments of 1988 (42 U.S.C. 6291-6309).

2. Section 430.1 is revised to read as follows:

§ 430.1 Purpose and scope.

This part establishes the regulations for the implementation of Part B of Title III (42 U.S.C. 6291-6309) of the Energy Policy and Conservation Act (Pub. L. 94-163), as amended by Pub. L. 94-385, Pub. L. 100-12, and Pub. L. 100-357, which establishes an energy conservation program for consumer products other than automobiles.

3. Section 430.2 is amended by revising the definition of "Act", removing the definitions of "Administrator" and "Energy efficiency standard", inserting the word "energy" in place of the last five words in the definition for "packaged terminal air conditioner," and adding the following definitions in alphabetical order:

§ 430.2 Definitions.

* * * * *

"Act" means the Energy Policy and Conservation Act (Pub. L. 94-163), as amended by the National Energy Conservation Policy Act (Pub. L. 95-619) and by the National Appliance Energy Conservation Act (Pub. L. 100-12).

* * * * *

"Annual fuel utilization efficiency" means the efficiency descriptor for furnaces and boilers, determined using test procedures prescribed under section 323 and based on the assumption that all—

(a) Weatherized warm air furnaces or boilers are located out-of-doors;

(b) Warm air furnaces which are not weatherized are located indoors and all combustion and ventilation air is admitted through grill or ducts from the outdoors and does not communicate with air in the conditioned space;

(c) Boilers which are not weatherized are located within the heated space.

* * * * *

"Ballast efficacy factor" means the relative light output divided by the power imput of a fluorescent lamp ballast, as measured under test conditions specified in ANSI Standard C82.2-1984.

* * * * *

"Batch" means a collection of production units of a basic model from which a batch sample is selected.

"Batch sample" means the collection of units of the same basic model from which test units are selected.

"Batch sample size" means the number of units in a batch sample.

"Batch size" means the number of units in a batch.

* * * * *

"Energy conservation standard" means:

(a) A performance standard which prescribes a minimum level of level of energy efficiency or a maximum quantity of energy use for a covered product, determined in accordance with test procedures prescribed under section 323; or

(b) A design requirement for the products specified in paragraphs (6), (7), (8), (10), and (13) of section 322(a) of the Act; and includes any other requirements which the Secretary may prescribe under section 325(o) of the Act.

* * * * *

"Fluorescent lamp ballast" means a device which is used to start and operate fluorescent lamps by providing a starting voltage and current and limiting the current during normal operation.

"Furnace" means a product which utilizes only single-phase electric current, or single-phase electric current or DC current in conjunction with natural gas, propane, or home heating oil, and which—

(a) Is designed to be the principal heating sources for the living space of a residence;

(b) Is not contained within the same cabinet with a central air conditioner whose rated cooling capacity is above 65,000 Btu per hour;

(c) Is an electric central furnace, electric boiler, forced-air central furnace, gravity central furnace, or low pressure steam or hot water boiler; and

(d) Has a heat imput rate of less than 300,000 Btu per hour for electric boilers and low pressure steam or hot water boilers and less than 225,000 Btu per hour for forced-air central furnaces, gravity central furnaces, and electric central furnaces, gravity central furnaces, and electric central furnaces.

* * * * *

"Packaged terminal air conditioner" means * * * by builder's choice of energy.

"Packaged terminal heat pump" means a packaged terminal air conditioner that utilizes reverse cycle refrigeration as its prime heat source and should have supplementary heating availability by builder's choice of energy.

* * * * *

"Pool heater" means an appliance designed for heating nonpotable water contained at atmospheric pressure, including heating water in swimming pools, spas, hot tubs and similar applications.

* * * * *

"Secretary" means the Secretary of the Department of Energy.

* * * * *

"Water heater" means a product which utilizes oil, gas, or electricity to heat potable water for use outside the heater upon demand, including—

(a) Storage type units which heat and store water at a thermostatically controlled temperature, including gas storage water heaters with an input of 75,000 Btu per hour or less, oil storage water heaters with an input of 105,000 Btu per hour or less, and electric storage water heaters with an input of 12 kilowatts or less;

(b) Instantaneous type units which heat water but contain no more than one gallon of water per 4,000 Btu per hour of input, including gas instantaneous water heaters with an input of 200,000 Btu per hour or less, oil instantaneous water heaters with an input of 210,000 Btu per hour or less, and electric instantaneous water heaters with an input of 12 kilowatts or less; and

(c) Heat pump type units, with a maximum current rating of 24 amperes at a voltage no greater than 250 volts, which are products designed to transfer thermal energy from one temperature level to a higher temperature level for the purpose of heating water, including all ancillary equipment such as fans, storage tanks, pumps, or controls necessary for the device to perform its function.

* * * * *

"Weatherized warm air furnace or boiler" means a furnace or boiler designed for installation outdoors, approved for resistance to wind, rain, and snow, and supplied with its own venting system.

* * * * *

Subpart B—[Amended]

4. Subpart B of Part 430 is amended by removing Appendices A and B.

4a. Section 430.22 is amended by removing paragraphs (a)(6) and (b)(6); redesignating and revising paragraphs (a)(5) and (b)(5) as paragraphs (a)(6) and (b)(6) respectively; and adding new paragraphs (a)(5) and (b)(5) as follows:

§ 430.22 [Amended]

(a) * * *

(5) The annual energy use of electric refrigerators and electric refrigerator-freezers equals the representative average use cycle of 365 cycles per year times the average per-cycle energy consumption for the standard cycle in kilowatt-hours per cycle, determined according to 6.2 of Appendix A1 of this subpart.

(6) Other useful measures of energy consumption for electric refrigerators and electric refrigerator-freezers shall be those measures of energy consumption for electric refrigerators and electric refrigerator-freezers which the Secretary determines are likely to assist consumers in making purchasing decisions which are derived from the application of Appendix A1 of this subpart.

(b) * * *

(5) The annual energy use of all freezers equals the representative average-use cycle of 365 cycles per year times the average per-cycle energy consumption for the standard cycle in kilowatt-hours per cycle, determined according to 6.2 of Appendix B1 of this subpart.

(6) Other useful measures of energy consumption for freezers shall be those measures of energy consumption for freezers which the Secretary determines are likely to assist consumers in making purchasing decisions and which are derived from the application of Appendix B1 of this subpart.

* * * * *

5. Subpart B of Part 430 is amended by removing the word "(ALTERNATIVE)" in the headings to Appendices A1 and B1 and by removing the following references to Appendices A and B in § 430.22: "4.1 of Appendix A or" from paragraphs (a)(1)(ii), (a)(2)(ii), (a)(3)(ii), (a)(4)(i), (a)(4)(ii); "4.2 of Appendix A or" from (a)(4)(i), (a)(4)(ii); "4.1 of Appendix B or" from (b)(1)(ii), (b)(2)(ii), (b)(3)(ii), (b)(4)(i), (b)(4)(ii); and "4.2 of Appendix B or" from (b)(4)(i), (b)(4)(ii).

* * * * *

§ 430.22 [Amended]

6. Section 430.22 is amended by adding new paragraphs (p) and (q) as follows:

* * * * *

(p) *Pool heaters.* (1) The estimated annual operating cost (space reserved).

(2) The thermal efficiency of pool heaters, expressed as a percent, shall be determined in accordance with section 4 of Appendix P to this subpart.

(q) *Fluorescent lamp ballasts.* [Reserved]

* * * * *

7. Section 430.23 is amended by revising the first sentence of the introductory paragraph and by adding new paragraphs (p) and (q) to read as follows:

§ 430.23 Units to be tested.

When testing of a covered product is required to comply with section 323(c) of the Act, or to comply with rule-

prescribed under sections 324 or 325 of the Act, * * *

(p)(1) For each basic model[1] of pool heater a sample of sufficient size shall be tested to insure that—

(i) [Reserved]

(ii) Any represented value of the fuel utilization efficiency or other measure of energy consumption of a basic model for which consumers would favor higher values shall be no greater than the lower of (A) the mean of the sample or (B) the lower 97½ percent confidence limit of the true mean divided by .95.

(q) [Reserved]

8. Subpart B of Part 430 is amended by adding a sentence to the end of section 1.5 of Appendix M as follows:

Appendix M to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Central Air Conditioners.

* * * * *

1.15 * * * The single number HSPF energy conservation standard for central air conditioning heat pumps specified in section 325(d)(2) (A) and (B) is based on Region IV and the standardized DHR found in section 6 of this appendix, nearest the capacity measured in the 47 °F test.

* * * * *

9. Subpart B of Part 430 is amended by adding new Appendices P and Q as follows:

Appendix P to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Pool Heaters

1. *Test method.* The test method for testing gas- and oil-fired pool heaters shall be as specified in American National Standards Institute Standard for Gas-Fired Pool Heaters, Z21.56–1986.

2. *Test conditions.* Establish the test conditions specified in section 2.8 of ANSI Z21.56–1986.

3. *Measurements.* Measure the quantities delineated in section 2.8 of ANSI Z21.56–1986, except in the case of oil-fired heaters the measurement of energy consumption in Btu's is to be carried out in appropriate units, e.g., gallons.

4. *Calculations.* Calculate the thermal efficiency (expressed as a percent) as specified in section 2.8 of ANSI Z21.56–1986, except in the case of oil-fired heaters the expression of fuel consumption shall be in Btu's.

[1] Components of similar design may be substituted without requiring additional testing if the represented measures of energy consumption continue to satisfy the applicable sampling provision.

Appendix Q to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Fluorescent Lamp Ballasts

1. Definitions

1.1 "ANSI Standard" means a standard developed by a committee accredited by the American National Standards Institute.

1.2 "Ballast input voltage" means the rated input voltage of a fluorescent lamp ballast.

1.3 "F4OT12 lamp" means a nominal 40 watt tubular fluorescent lamp which is 48 inches in length and one and a half inches in diameter, and conforms to ANSI standard C78.1–1978(R1984).

1.4 "F96T12 lamp" means a nominal 75 watt tubular fluorescent lamp which is 48 inches in length and one and a half inches in diameter, and conforms to ANSI standard C78.1–1978(R1984).

1.5 "F96T12HO lamp" means a nominal 110 watt tubular fluorescent lamp which is 96 inches in length and one and a half inches in diameter, and conforms to ANSI Standard C78.1–1978(R1984).

1.6 "Input current" means the root-mean-square (RMS) current in amperes delivered to a fluorescent lamp ballast.

1.7 "Luminaire" means a complete lighting unit consisting of a fluorescent lamp or lamps, together with parts designed to distribute the light, to position and protect such lamps, and to correct such lamps to the power supply through the ballast.

1.8 "Nominal lamp watts means the wattage at which a fluorescent lamp is designed to operate.

1.9 "Power factor" means the power input divided by the product of ballast input voltage and input current of a fluorescent lamp ballast, as measured under test conditions specified in ANSI Standard C–82.2–1984.

1.10 "Power input" means the power consumption in watts of a ballast and fluorescent lamp or lamps, as determined in accordance with the test procedures specified in ANSI Standard C82.2–1984.

1.11 "Relative light output" means the light output delivered through the use of a ballast divided by the light output delivered through the use of a reference ballast, expressed as a percent, as determined in accordance with the test procedures specified in ANSI Standard C82.2–1984.

1.12 "Residential building" means a structure or portion of a structure which provides facilities or shelter for human residency, except that such term does not include any multifamily residential structure of more than three stores above grade.

10. Section 4.6 of Appendix N to Subpart B of Part 430 is revised as follows:

Appendix N to Subpart B of Part 430—Uniform Tests Method for Measuring the Energy Consumption of Furnaces

* * * * *

4.6 *Annual fuel utilization efficiency.* The annual fuel utilization efficiency (AFUE) shall be expressed as a percent and defined as:

$$AFUE = \frac{5200 N_{ss} N_u Q_{IN}}{5200 N_{ss} Q_{IN} + 2.5(1+0.7)(4600) N_u Q_p}$$

where:

5200 = average annual heating degree-days

N_{ss} = as defined in 4.3 of this appendix for condensing furnaces and boilers measured by the optional direct condensate measurement method; as $N_{ss,wt}$ as defined in 4.5.14 of this appendix at each design heating requirement for modulating furnaces and boilers; or as $Effy_{ss}$ as defined in 11.2.5 of ANSI/ASHRAE 103–82 for all other furnaces and boilers.

N_u = part load efficiency and is based on the assumption that all weatherized warm air furnaces or boilers are located out-of-doors; warm air furnaces which are not weatherized are installed as isolated combustion systems; and boilers which are not weatherized are installed in doors. Part load efficiency as defined in 4.3 of this appendix for condensing furnaces and boilers measured by the optional direct condensate measurement method; as $N_{u,wt}$ as defined in 4.5.1 of this appendix at each design heating requirement for modulating furnaces and boilers; or as $Effy_{hs}$ as defined in 11.2.34 of ANSI/ASHRAE 103–82 and in 4.2 of this appendix for all other furnaces and boilers except that C_j and L_j are defined as:

0 for boilers which are not weatherized
3.3 for furnaces which are weatherized

C_j 1.7 for furnaces which are not weatherized
4.7 for boilers which are weatherized

L_j jacket loss and is either assigned the value of 1 percent or determined in accordance with 8.6 of ANSI/ASHRAE 103–82 in percent

Q_{in} = steady-state heat input as defined in 11.2.34 of NSI/ASHRAE 103–82

0.7 = average oversizing factor for furnaces and boilers

4600 = average non-heating season hours per year

Q_p = pilot flame fuel input rate as defined in 9.2 of of ANSI/ASHRAE 103–82

Appendix N—[Amended]

11. Section 4.7 of Appendix N to Subpart B of Part 430 is amended by changing the following references "0 for furnaces or boilers intended to be installed indoors." to "0 for boilers which are not weatherized."; "1.7 for furnaces or boilers intended to be installed as isolated combustion systems." to "1.7 for furnaces which are not weatherized."; "3.3. for furnaces or boilers intended to be installed outdoors." to "3.3 for furnaces or boilers which are weatherized."; and "1.0 for finned tubed boilers intended for installation outdoors." to "1.0 for finned tubed boilers which are weatherized."

12. Subpart C of Part 430 is revised to read as follows:

Subpart C—Energy Conservation Standards

Sec.
430.31 Purpose and scope.
430.32 Energy conservation standards and effective dates.
430.33 Preemption of State regulations.

Subpart C—[Amended]

§ 430.31 Purpose and scope.

This subpart contains any energy conservation standards for classes of covered products that are required to be administered by the Department of Energy pursuant to the Energy Conservation Program for Consumer Products Other Than Automobiles under the Energy Policy and Conservation Act, as amended [42 U.S.C. 6291 *et seq.*].

§ 430.32 Energy conservation standards and effective dates.

The energy conservation standards for the covered product classes are:

(a) *Refrigerators/refrigerator-freezers/freezers.*

Product class	Energy standards equations, Jan. 1, 1990
1. Refrigerators and refrigerator-freezers with manual defrost	16.3 AV + 316
2. Refrigerator-freezers—partial automatic defrost	21.8 AV + 429
3. Refrigerator-freezers-automatic defrost with top-mounted freezer without ice	23.5 AV + 471
4. Refrigerator-freezers—automatic defrost with side-mounted freezer without ice	27.7 AV + 488
5. Refrigerator-freezers—automatic defrost with bottom-mounted freezer without ice	27.7 AV + 488
6. Refrigerator-freezers-automatic defrost with top-mounted freezer with through the door ice service	26.4 AV + 535
7. Refrigerator-freezers—automatic defrost with side-mounted freezer with through the door ice	30.9 AV + 547
8. Upright freezers with manual defrost	10.9 AV + 422
9. Upright freezers with automatic defrost	16.0 AV + 623
10. Chest freezers and all other freezers	14.8 AV + 223

AV = Total adjusted volume, expressed in ft.³

(b) *Room air conditioners.*

Product class	Energy efficiency ratio Jan. 1, 1990
1. Without reverse cycle and with louvered sides less than 6,000 Btu	8.0
2. Without reverse cycle and with louvered sides 6,000 to 7,999 Btu	8.5
3. Without reverse cycle and with louvered sides 8,000 to 13,999 Btu	9.0
4. Without reverse cycle and with louvered sides 14,000 to 19,999 Btu	8.8
5. Without reverse cycle and with louvered sides 20,000 and more Btu	8.2
6. Without reverse cycle and without louvered sides Less than 6,000 Btu	8.0
7. Without reverse cycle and without louvered sides 6,000 to 7,999 Btu	8.5
8. Without reverse cycle and without louvered sides 8,000 to 13,999 Btu	8.5
9. Without reverse cycle and without louvered sides 14,000 to 19,999 Btu	8.5
10. Without reverse cycle and without louvered sides 20,000 and more Btu	8.2
11. With reverse cycle, and with louvered sides	8.5
12. With reverse cycle, without louvered sides	8.0

(c) *Central air conditioners and central air conditioning heat pumps.*

Product class	Seasonal energy efficiency ratio	Heating seasonal performance factor	Effective date
1. Split systems	10.0	6.8	01/01/92
2. Single package systems	9.7	6.6	01/01/93

(d) *Water heaters*

Product class	Energy factor, Jan. 1, 1990
1. Gas Water Heater	0.62—(.0019 x Rated Storage Volume in gallons).
2. Oil Water Heater	0.59—(.0019 x Rated Storage Volume in gallons).
3. Electric Water Heater.	0.95—(.00132 x Rated Storage Volume in gallons).

(e) *Furnaces*

Product class	Annual fuel utilization efficiency	Effective date
1. Furnaces (excluding classes noted below) (percent)	78	01/01/92
2. Mobile Home Furnaces (percent)	75	01/01/90
3. "Small" furnaces (input rate less than 45,000 Btu/hour	(1)	01/01/92
4. Boilers (excluding gas steam) (percent)	80	01/01/92
5. Gas steam boilers (percent)	75	01/01/92

[1] Reserved.

(f) *Dishwashers.* Dishwashers must be equipped with an option to dry without heat. The standard was effective on January 1, 1988.

(g) *Clothes washers.* Clothes washers must have an unheated water rinse option. The standard was effective on January 1, 1988.

(h) *Clothes dryers.* Constant burning pilot lights in gas clothes dryers are prohibited. The standard was effective on January 1, 1988.

(i) *Direct heating equipment.*

Product class	Annual fuel utilization efficiency, Jan. 1, 1990 (percent)
1. Gas wall fan type up to 42,000 Btu/hour	73
2. Gas wall fan type over 42,000 Btu/hour	74
3. Gas wall gravity type up to 10,000 Btu/hour	59
4. Gas wall gravity type over 10,000 Btu/hour up to 12,000 Btu/hour	60
5. Gas wall gravity type over 12,000 Btu/hour up to 15,000 Btu/hour	61
6. Gas wall gravity type over 15,000 Btu/hour up to 19,000 Btu/hour	62
7. Gas wall gravity type over 19,000 Btu/hour up to 27,000 Btu/hour	63
8. Gas wall gravity type over 27,000 Btu/hour up to 46,000 Btu/hour	64
9. Gas wall gravity type over 46,000 Btu/hour	65
10. Gas floor up to 37,000 Btu/hour	56
11. Gas floor over 37,000 Btu/hour	57
12. Gas room up to 18,000 Btu/hour	57
13. Gas room over 18,000 Btu/hour up to 20,000 Btu/hour	58
14. Gas room over 20,000 Btu/hour up to 27,000 Btu/hour	63
15. Gas room over 27,000 Btu/hour up to 46,000 Btu/hour	64
16. Gas room over 46,000 Btu/hour	65

(j) *Kitchen ranges and ovens.* Gas kitchen ranges and ovens with an electrical supply cord shall not be equipped with a constant burning pilot. The standard is effective on January 1, 1990.

(k) *Pool heaters.* The thermal efficiency of pool heaters must be no less than 78%. The standard is effective on January 1, 1990.

(l) *Television sets.* [Reserved]

(m) *Fluorescent lamp ballasts.* (1) Except as provided in paragraph (m)(2) of this section, each fluorescent lamp ballast—

(i)(A) Manufactured on or after January 1, 1990;

(B) Sold by the manufacturer on or after April 1, 1990; or

(C) Incorporated into a luminarie by a luminarie manufacturer on or after April 1, 1991; and

(ii) Designed—

(A) To operate at nominal input voltages of 120 or 277 volts;

(B) To operate with an input current frequency of 60 Hertz; and

(C) For use in connection with F40T12, F96T12, or F96T12HO lamps; shall have a power factor of 0.90 or greater and

shall have a ballast efficacy factor not less than the following:

Application for operation of	Ballast input voltage	Total nominal lamp watts	Ballast efficacy factor
One F40T12 lamp	120	40	1.805
	277	40	1.805
Two F40T12 lamps	120	80	1.060
	277	80	1.050
Two F9T12 lamps	120	150	0.570
	277	150	0.570
Two F96T12HO lamps	120	220	0.390
	277	220	0.390

(2) The standards described in paragraph (m)(1) of this section do not apply to (i) a ballast which is designed for dimming or for use in ambient temperatures of 0°F or less, or (ii) a ballast which has a power factor of less than 0.90 and is designed for use only in residential building applications.

§ 430.33 Preemption of state regulations.

Any state regulation providing for any energy conservation standard, or other requirement with respect to the energy efficiency or energy use, of a covered product that is not identical to a Federal standard in effect under this subpart is preempted by that standard, except as provided for in section 327 (b) and (c) of the Act.

13. Subpart D of Part 430 is revised to read as follows:

Subpart D—Petitions To Exempt State Regulation From Preemption; Petitions to Withdraw Exemption of State Regulation

Sec.

Subpart D—[Amended]

§ 430.40 Purpose and scope.

(a) The regulations in this subpart prescribe the procedures to be followed in connection with petitions requesting a rule that a State regulation prescribing an energy conservation standard or other requirement respecting energy use or energy efficiency of a type (or class) of covered product not be preempted.

(b) The regulations in this subpart also prescribe the procedures to be followed in connection with petitions to withdraw a rule exempting a State regulation prescribing an energy conservation standard or other requirement respecting energy use or energy efficiency of a type (or class) of covered product.

§ 430.41 Prescriptions of a rule.

(a) *Criteria for exemption from preemption.* Upon petition by a State which has prescribed an energy conservation standard or other requirement for a type or class of a covered product for which a Federal energy conservation standard is applicable, the Secretary shall prescribe a rule that such standard not be preempted if he determines that the State has established by a preponderance of the evidence that such requirement is needed to meet unusual and compelling State or local energy interests. For the purposes of this regulation, the term "unusual and compelling State or local energy interests" means interests which are substantially different in nature or magnitude than those prevailing in the U.S. generally; and are such that when evaluated within the context of the State's energy plan and forecast, the costs, benefits, burdens, and reliability of energy savings resulting from the State regulation make such regulation preferable or necessary when measured against the costs, benefits, burdens, and reliability of alternative approaches to energy savings or production, including reliance on reasonably predictable market-induced improvements in efficiency of all products subject to the State regulation. The Secretary may not prescribe such a rule if he finds that interested persons have established, by a preponderance of the evidence, that the State's regulation will significantly burden manufacturing, marketing, distribution, sale or servicing of the covered product on a national basis. In determining whether to make such a finding, the Secretary shall evaluate all relevant factors including: The extent to which the State regulation will increase manufacturing or distribution costs of manufacturers, distributors, and others; the extent to which the State regulation will disadvantage smaller manufacturers, distributors, or dealers or lessen competition in the sale of the covered product in the State; the extent to which the State regulation would cause a burden to manufacturers to redesign and produce the covered product type (or class), taking into consideration the extent to which the regulation would result in a reduction in the current models, or in the projected availability of models, that could be shipped on the effective date of the regulation to the State and within the U.S., or in the current or projected sales volume of the covered product type (or class) in the State and the U.S.; and the extent to which the State regulation is likely to contribute significantly to a proliferation of State appliance efficiency requirements and the cumulative impact such requirements would have. The Secretary may not prescribe such a rule if he finds that such a rule will result in the unavailability in the State of any covered product (or class) of performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the State at the time of the Secretary's finding. The failure of some classes (or types) to meet this criterion shall not affect the Secretary's determination of whether to prescribe a rule for other classes (or types).

(1) Requirements of petition for exemption from preemption. A petition from a State for a rule for exemption from preemption shall include the information listed in paragraphs (a)(1)(i) through (a)(1)(viii) of this section. A petition for a rule and correspondence relating to such petition shall be available for public review except for confidential or proprietary information submitted in accordance with the Department of Energy's Freedom of Information Regulations set forth in 10 CFR Part 1004:

(i) The name, address and telephone number of the petitioner;

(ii) A copy of the State standard for which a rule exempting such standard is sought;

(iii) A copy of the State's energy plan and forecast;

(iv) Specification of each type or class of covered product for which a rule exempting a standard is sought;

(v) Other information, if any, believed to be pertinent by the petitioner; and

(vi) Such other information as the Secretary may require.

(b) *Criteria for exemption from preemption when energy emergency conditions exist within State.* Upon petition by a State which has prescribed an energy conservation standard or other requirement for a type or class of a covered product for which a Federal energy conservation standard is applicable, the Secretary may prescribe a rule, effective upon publication in the **Federal Register**, that such regulation not be preempted if he determines that in addition to meeting the requirements of paragraph (a) of this section the State has established that: an energy emergency condition exists within the State that imperils the health, safety and welfare of its residents because of the inability of the State or utilities within the State to provide adequate quantities

of gas or electric energy to its residents at less than prohibitive costs; and cannot be substantially alleviated by the importation of energy or the use of interconnection agreements; and the State regulation is necessary to alleviate substantially such condition.

(1) Requirements of petition for exemption from preemption when energy emergency conditions exist within a State. A petition from a State for a rule for exemption from preemption when energy emergency conditions exist within a State shall include the information listed in paragraphs (a)(1)(i) through (a)(1)(vi) of this section. A petition shall also include the information prescribed in paragraphs (b)(1)(i) through (b)(1)(iv) of this section, and shall be available for public review except for confidential or proprietary information submitted in accordance with the Department of Energy's Freedom of Information Regulations set forth in 10 CFR Part 1004:

(i) A description of the energy emergency condition which exists within the State, including causes and impacts.

(ii) A description of emergency response actions taken by the State and utilities within the State to alleviate the emergency condition;

(iii) An analysis of why the emergency condition cannot be alleviated substantially by importation of energy or the use of interconnection agreements;

(iv) An analysis of how the State standard can alleviate substantially such emergency condition.

(c) *Criteria for withdrawal of a rule exempting a State standard.* Any person subject to a State standard which, by rule, has been exempted from Federal preemption and which prescribes an energy conservation standard or other requirement for a type or class of a covered product, when the Federal energy conservation standard for such product subsequently is amended, may petition the Secretary requesting that the exemption rule be withdrawn. The Secretary shall consider such petition in accordance with the requirements of paragraph (a) of this section, except that the burden shall be on the petitioner to demonstrate that the exemption rule received by the State should be withdrawn as a result of the amendment to the Federal standard. The Secretary shall withdraw such rule if he determines that the petitioner has shown the rule should be withdrawn.

(1) Requirements of petition to withdraw a rule exempting a State standard. A petition for a rule to withdraw a rule exempting a State standard shall include the information prescribed in paragraphs (c)(1)(i) through (c)(1)(vii) of this section, and shall be available for public review, except for confidential or proprietary information submitted in accordance with the Department of Energy's Freedom of Information Regulations set forth in 10 CFR Part 1004:

(i) The name, address and telephone number of the petitioner;

(ii) A statement of the interest of the petitioner for which a rule withdrawing an exemption is sought;

(iii) A copy of the State standard for which a rule withdrawing an exemption is sought;

(iv) Specification of each type or class of covered product for which a rule withdrawing an exemption is sought;

(v) A discussion of the factors contained in paragraph (a) of this section;

(vi) Such other information, if any, believed to be pertinent by the petitioner; and

(vii) Such other information as the Secretary may require.

§ 430.42 Filing requirements.

(a) *Service.* All documents required to be served under this subpart shall, if mailed, be served by first class mail. Service upon a person's duly authorized representative shall constitute service upon that person.

(b) *Obligation to supply information.* A person or State submitting a petition is under a continuing obligation to provide any new or newly discovered information relevant to that petition. Such information includes, but is not limited to, information regarding any other petition or request for action subsequently submitted by that person or State.

(c) *The same or related matters.* A person or State submitting a petition or other request for action shall state whether to the best knowledge of that petitioner the same or related issue, act, or transaction has been or presently is being considered or investigated by any State agency, department, or instrumentality.

(d) *Computation of time.* (1) Computing any period of time prescribed by or allowed under this subpart, the day of the action from which the designated period of time begins to run is not to be included. If the last day of the period is Saturday, or Sunday, or Federal legal holiday, the period runs until the end of the next day that is neither a Saturday, or Sunday or Federal legal holiday.

(2) Saturdays, Sundays, and intervening Federal legal holidays shall be excluded from the computation of time when the period of time allowed or prescribed is 7 days or less.

(3) When a submission is required to be made within a prescribed time, DOE may grant an extension of time upon good cause shown.

(4) Documents received after regular business hours are deemed to have been submitted on the next regular business day. Regular business hours for the DOE's National Office, Washington, DC, are 8:30 a.m. to 4:30 p.m.

(5) DOE reserves the right to refuse to accept, and not to consider, untimely submissions.

(e) *Filing of petitions.* (1) A petition for a rule shall be submitted in triplicate to: The Assistant Secretary for Conservation and Renewable Energy, U.S. Department of Energy, Section 327 Petitions, Appliance Efficiency Standards, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

(2) A petition may be submitted on behalf of more than one person. A joint petition shall indicate each person participating in the submission. A joint petition shall provide the information required by § 430.41 for each person on whose behalf the petition is submitted.

(3) All petitions shall be signed by the person(s) submitting the petition or by a duly authorized representative. If submitted by a duly authorized representative, the petition shall certify this authorization.

(4) A petition for a rule to withdraw a rule exempting a State regulation, all supporting documents, and all future submissions shall be served on each State agency, department, or instrumentality whose regulation the petitioner seeks to supersede. The petition shall contain a certification of this service which states the name and mailing address of the served parties, and the date of service.

(f) *Acceptance for filing.* (1) Within fifteen (15) days of the receipt of a petition, the Secretary will either accept it for filing or reject it, and the petitioner will be so notified in writing. The Secretary will serve a copy of this notification on each other party served by the petitioner. Only such petitions which conform to the requirements of this subpart and which contain sufficient information for the purposes of a substantive decision will be accepted for filing. Petitions which do not so conform will be rejected and an explanation provided to petitioner in writing.

(2) For purposes of the Act and this subpart, a petition is deemed to be filed on the date it is accepted for filing.

(g) *Docket.* A petition accepted for filing will be assigned an appropriate docket designation. Petitioner shall use the docket designation in all subsequent submissions.

§ 430.43 Notice of petition.

(a) Promptly after receipt of a petition and its acceptance for filing, notice of such petition shall be published in the **Federal Register**. The notice shall set forth the availability for public review of all data and information available, and shall solicit comments, data and information with respect to the determination on the petition. Except as may otherwise be specified, the period for public comment shall be 60 days after the notice appears in the **Federal Register**.

(b) In addition to the material required under paragraph (a) of this section, each notice shall contain a summary of the State regulation at issue and the petitioner's reasons for the rule sought.

§ 430.44 Consolidation.

DOE may consolidate any or all matters at issue in two or more proceedings docketed where there exist common parties, common questions of fact and law, and where such consolidation would expedite or simplify consideration of the issues. Consolidation shall not affect the right of any party to raise issues that could have been raised if consolidation had not occurred.

§ 430.45 Hearing.

The Secretary may hold a public hearing, and publish notice in the **Federal Register** of the date and location of the hearing, when he determines that such a hearing is necessary and likely to result in a timely and effective resolution of the issues. A transcript shall be kept of any such hearing.

§ 430.46 Disposition of petitions.

(a) After the submission of public comments under § 430.42(a), the Secretary shall prescribe a final rule or deny the petition within 6 months after the date the petition is filed.

(b) The final rule issued by the Secretary or a determination by the Secretary to deny the petition shall include a written statement setting forth his findings and conclusions, and the reasons and basis therefor. A copy of the Secretary's decision shall be sent to the petitioner and the affected State agency. The Secretary shall publish in the **Federal Register** a notice of the final rule granting or denying the petition and the reasons and basis therefor.

(c) If the Secretary finds that he cannot issue a final rule within the 6-month period pursuant to paragraph (a) of this section, he shall publish a notice in the **Federal Register** extending such period to a date certain, but no longer than one year after the date on which the petition was filed. Such notice shall include the reasons for the delay.

§ 430.47 Effective dates of final rules.

(a) A final rule exempting a State standard from Federal preemption will be effective:

(1) Upon publication in the **Federal Register** if the Secretary determines that such rule is needed to meet an "energy emergency condition" within the State.

(2) Three years after such rule is published in the **Federal Register**; or

(3) Five years after such rule is published in the **Federal Register** if the Secretary determines that such additional time is necessary due to the burdens of retooling, redesign or distribution.

(b) A final rule withdrawing a rule exempting a State standard will be effective upon publication in the **Federal Register**.

§ 430.48 Request for reconsideration.

(a) Any petitioner whose petition for a rule has been denied may request reconsideration within 30 days of denial. The request shall contain a statement of facts and reasons supporting reconsideration and shall be submitted in writing to the Secretary.

(b) The denial of a petition will be reconsidered only where it is alleged and demonstrated that the denial was based on error in law or fact and that evidence of the error is found in the record of the proceedings.

(c) If the Secretary fails to take action on the request for reconsideration within 30 days, the request is deemed denied, and the petitioner may seek such judicial review as may be appropriate and available.

(d) A petitioner has not exhausted other administrative remedies until a request for reconsideration has been filed and acted upon or deemed denied.

§ 430.49 Finality of decision.

(a) A decision to prescribe a rule that a State energy conservation standard or other requirement not be preempted is final on the date the rule is issued, i.e., signed by the Secretary. A decision to prescribe such a rule has no effect on other regulations of a covered product of any other State.

(b) A decision to prescribe a rule withdrawing a rule exempting a State standard or other requirement is final on the date the rule is issued, i.e., signed by the Secretary. A decision to deny such a petition is final on the day a denial of a request for reconsideration is issued, i.e., signed by the Secretary.

14. Part 430 is amended by adding new Subpart E, to read as follows:

Subpart E—Small Business Exemptions

Sec.

Subpart E—(Amended)

§ 430.50 Purpose and scope.

(a) This subpart establishes procedures for the submission and disposition of applications filed by manufacturers of covered consumer products with annual gross revenues that do not exceed $8 million to exempt them temporarily from all or part of energy conservation standards established by this part.

(b) The purpose of this subpart is to provide content and format requirements for manufacturers of covered consumer products with low annual gross revenues who desire to apply for temporary exemptions from applicable energy conservation standards.

§430.51 Eligibility.

Any manufacturer of a covered product with annual gross revenues that do not exceed $8,000,000 from all its operations (including the manufacture and sale of covered products) for the 12-month period preceding the date of application may apply for an exemption. In determining the annual gross revenues of any manufacturer under this subpart, the annual gross revenue of any other person who controls, is controlled, by, or is under common control with, such manufacturer shall be taken into account.

§ 430.52 Requirements for applications.

(a) Each application filed under this subpart shall be submitted in triplicate to: U.S. Department of Energy, Small Business Exemptions, Appliance Efficiency Standards, Assistant Secretary for Conservation and Renewable Energy, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

(b) An application shall be in writing and shall include the following:

(1) Name and mailing address of applicant;

(2) Whether the applicant controls, is controlled by, or is under common control with another manufacturer, and

if so, the nature of that control relationship;

(3) The text or substance of the standard or portion thereof for which the exemption is sought and the length of time desired for the exemption;

(4) Information showing the annual gross revenue of the applicant for the preceding 12-month period from all of its operations (including the manufacture and sale of covered products);

(5) Information to show that failure to grant an exemption is likely to result in a lessening of competition;

(6) Such other information, if any, believed to be pertinent by the petitioner; and

(7) Such other information as the Secretary may require.

§ 430.53 Processing of applications.

(a) The applicant shall serve a copy of the application, all supporting documents and all subsequent submissions, or a copy from which confidential information has been deleted pursuant to 10 CFR 1004.11, to the Secretary, which may be made available for public review.

(b) Within fifteen (15) days of the receipt of an application, the Secretary will either accept it for filing or reject it, and the applicant will be so notified in writing. Only such applications which conform to the requirements of this subpart and which contain sufficient information for the purposes of a substantive decision will be accepted for filing. Applications which do not so conform will be rejected and an explanation provided to the applicant in writing.

(c) For the purpose of this subpart, an application is deemed to be filed on the date it is accepted for filing.

(d) Promptly after receipt of an application and its acceptance for filing, notice of such application shall be published in the Federal Register. The notice shall set forth the availability for public review of data and information available, and shall solicit comments, data and information with respect to the determination on the application. Except as may otherwise be specified, the period for public comment shall be 60 days after the notice appears in the Federal Register.

(e) The Secretary on his own initiative may convene a hearing if, in his discretion, he considers such hearing will advance his evaluation of the application.

§ 430.54 Referral to the Attorney General.

Notice of the application for exemption under this subpart shall be transmitted to the Attorney General by the Secretary and shall contain (a) a statement of the facts and of the reasons for the exemption, and (b) copies of all documents submitted.

§ 430.55 Evaluation of application.

The Secretary shall grant an application for exemption submitted under this subpart if the Secretary finds, after obtaining the written views of the Attorney General, that a failure to allow an exemption would likely result in a lessening of competition.

§ 430.56 Decision and order.

(a) Upon consideration of the application and other relevant information received or obtained, the Secretary shall issue an order granting or denying the application.

(b) The order shall include a written statement setting forth the relevant facts and the legal basis of the order.

(c) The Secretary shall serve a copy of the order upon the applicant and upon any other person readily identifiable by the Secretary as one who is interested in or aggrieved by such order. The Secretary also shall publish in the Federal Register a notice of the grant or denial of the order and the reason therefor.

§ 430.57 Duration of temporary exemption.

A temporary exemption terminates according to its terms but not later than twenty-four months after the affective date of the rule for which the exemption is allowed.

15. Part 430 is amended by adding a new Subpart F to read as follows:

Subpart F—Certification and Enforcement

Sec.

Subpart F—[Amended]

§ 430.60 Purpose and scope.

The regulations in this subpart set forth the procedures to be followed for certification and enforcement testing to determine whether a basic model of a covered product complies with the applicable energy conservation standard set forth in Subpart C of this Part. Energy conservation standards include minimum levels of efficiency and maximum levels of consumption (also referred to as performance standards) and prescriptive energy design requirements (also referred to as design standards).

§ 430.61 Prohibited acts.

(a) Each of the following is a prohibited act pursuant to section 332 of the Act:

(1) Failure to permit access to, or copying of records required to be supplied under the Act and this rule or failure to make reports or provide other information required to be supplied under this Act and this rule;

(2) Failure of a manufacturer to supply at his expense a reasonable number of covered products to a test laboratory designated by the Secretary;

(3) Failure of a manufacturer to permit a representative designated by the Secretary to observe any testing required by the Act and this rule and inspect the results of such testing; and

(4) Distribution in commerce by a manufacturer or private labeler of any new covered product which is not in compliance with an applicable energy efficiency standard prescribed under the Act and this rule.

(b) In accordance with section 333 of the Act, any person who knowingly violates any provision of paragraph (a) of this section may be subject to assessment of a civil penalty of no more than $100 for each violation. Each violation of paragraph (a) of this section shall constitute a separate violation with respect to each covered product, and each day of noncompliance with paragraphs (a) (1) through (3) of this section shall constitute a separate violation.

§ 430.62 Submission of data.

(a) Compliance statement and certification report. Each manufacturer or private labeler before distributing in commerce any basic model of a covered product subject to the applicable energy conservation standard set forth in Subpart C of this Part shall certify by means of a statement of compliance and certification report, that each basic model meets the requirements of that standard.

(1) The compliance statement shall certify that:

(i) The basic model(s) comply with the applicable energy conservation standards;

(ii) All required testing on which the compliance statement is based was conducted in conformance with the

applicable test requirements prescribed in 10 CFR Part 430 Subpart B and this subpart and all test data are reported in accordance with this subpart;

(iii) All information reported in the compliance statement is true, accurate, and complete; and

(iv) The manufacturer (private labeler) is aware of the penalties associated with violations of the Act and the regulations thereunder, and 18 U.S.C. 1001 which prohibits knowingly making false statements to the Federal Government. The format for a compliance statement is set forth in Appendix A of this subpart.

(2) For each basic model the certification report shall include the annual energy use and adjusted volume (for refrigerators, refrigerator-freezers and freezers), energy factor and rated storage volume (for water heaters), the energy efficiency ratio (for room air conditioners), seasonal energy efficiency ratio and heating seasonal performance factor (for central air conditioners and central air conditioning heat pumps), thermal efficiency (for pool heaters), and annual fuel utilization efficiency (for furnaces and direct heating equipment) the model numbers for each basic model; and its capacity.

(3) Copies of reports to the Federal Trade Commission which include the information in paragraph (a)(2) of this section meet the requirements of this paragraph.

(b) Initial reporting requirements. All data required by paragraph (a) of this section shall be submitted on or before the effective date of the applicable energy conservation standard as prescribed in section 325 of the Act. For each basic model of a covered product to be distributed in commerce, each manufacturer and private labeler or his representative shall file a compliance statement and certification report, by certified mail, to Department of Energy, Appliance Efficiency Standards, Assistant Secretary for Conservation and Renewable Energy, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

(c) *New models.* All information required by paragraph (a)(2) of this section must be submitted for new models prior to or concurrent with any distribution of such model. Any change to a basic model which affects energy consumption may constitute the addition of a new basic model subject to the requirements of § 430.61 of this part. If such change does not alter compliance with the applicable energy conservation standard for the basic model, the new model shall be considered certified. Models which are discontinued shall be reported, in writing, to the Department of Energy.

(d) *Maintenance of records.* (1) The manufacturer of any covered product subject to any of the energy performance standards or procedures prescribed in this part, shall establish, maintain, and retain the records of the underlying test data for all certification testing. Such records shall be organized and indexed in a fashion which makes them readily accessible for review. The records should include the supporting test data associated with tests performed on any test units to satisfy the requirements of this subpart (except tests performed by DOE directly).

(2) All such records shall be retained by the manufacturer for a period of two years from the date that production of the applicable model has ceased. Records shall be retained in a form allowing ready access to DOE upon request.

(e) *Third party representation.* If a manufacturer or private labeler elects to use a third party, e.g., trade association or other authorized representative, to submit the certification report, the certification report shall include all the information identified in paragraph (a) of this section, including the compliance statement.

§ 430.63 Sampling.

(a) For purposes of a certification of compliance, the determination that a basic model complies with the applicable energy performance standard shall be based upon the sampling procedures set forth in § 430.23 of this Part. For purposes of a certification of compliance, the determination that a basic model complies with the applicable design standard shall be based upon the incorporation of specific design requirements for clothes dryers, dishwashers, clothes washers and kitchen ranges and ovens specified in section 325 of the Act.

(b) A basic model which meets the following requirements may qualify as an "other than tested model" for purposes of the certification testing and sampling requirements:

(1) Central air conditioners: The condenser-evaporator coil combinations manufactured by the condensing unit manufacturer other than the combination likely to have the largest volume of retail sales or the condenser-coil combinations manufactured in part by a component manufacturer using the same condensing unit.

(2) For purposes of certification of "other than tested models," as defined in paragraph (b)(1) of this section, a manufacturer may certify the basic model on the basis of computer simulation or engineering analysis as set forth in § 430.23(m) of this Part.

§ 430.64 Imported products.

(a) Pursuant to section 331 of the Act, any person importing any covered product into the United States shall comply with the provisions of the Act and of this Part, and is subject to the remedies of this Part.

(b) Any covered product offered for importation in violation of the Act and of this Part shall be refused admission into the customs territory of the United States under rules issued by the Secretary of the Treasury, except that the Secretary of the Treasury may, by such rules, authorize the importation of such covered product upon such terms and conditions (including the furnishing of a bond) as may appear to the Secretary of Treasury appropriate to ensure that such covered product will not violate the Act and this Part, or will be exported or abandoned to the United States.

§ 430.65 Exported products.

Pursuant to section 330 of the Act, this part shall not apply to any covered product if (a) such covered product is manufactured, sold, or held for sale for export from the United States (or such product was imported for export), unless such product is, in fact, distributed in commerce for use in the United States, and (b) such covered product, when distributed in commerce, or any container in which it is enclosed when so distributed, bears a stamp or label stating that such covered product is intended for export.

§ 430.70 Enforcement.

(a) *Performance standard*—(1) *Test notice.* Upon receiving information in writing, concerning the energy performance of a particular covered product sold by a particular manufacturer or private labeler which indicates that the covered product may not be in compliance with the applicable energy performance standard, the Secretary may conduct testing of that covered product under this subpart by means of a test notice addressed to the manufacturer in accordance with the following requirements:

(i) Such a procedure will only be followed after the Secretary or his designated representative has examined the underlying test data provided by the manufacturer and after the manufacturer has been offered the opportunity to meet with DOE to verify compliance with the applicable performance standard. A representative designated by the Secretary shall be

permitted to observe any reverification procedures by this subpart, and to inspect the results of such reverification.

(ii) The test notice will be signed by the Secretary or his designee. The test notice will be mailed or delivered by DOE to the plant manager or other responsible official, as designated by the manufacturer.

(iii) The test notice will specify the model or basic model to be selected for testing, the method of selecting the test sample, the time at which testing shall be initiated, the date by which testing is scheduled to be completed and the facility at which testing will be conducted. The test notice may also provide for situations in which the selected basic model is unavailable for testing, and may include alternative basic models.

(iv) The Secretary may require in the test notice that the manufacturer of a covered product shall ship at his expense a reasonable number of units of a basic model specified in such test notice to a testing laboratory designated by the Secretary. The number of units of a basic model specified in a test notice shall not exceed twenty (20).

(v) Within 5 working days of the time units are selected, the manufacturer shall ship the specified test units of a basic model to the testing laboratory.

(2) *Testing Laboratory.* Whenever DOE conducts enforcement testing at a designated laboratory in accordance with a test notice under this section, the resulting test data shall constitute official test data for that basic model. Such test data will be used by DOE to make a determination of compliance or noncompliance if a sufficient number of tests have been conducted to satisfy the requirements of Appendix B of this subpart.

(3) *Sampling.* The determination that a manufacturer's basic model complies with the applicable energy performance standard shall be based on the testing conducted in accordance with the statistical sampling procedures set forth in Appendix B of this subpart and the test procedures set forth in Subpart B of this Part.

(4) *Test unit selection.* A DOE inspector shall select a batch, a batch sample, and test units from the batch sample in accordance with the provisions of this paragraph and the conditions specified in the test notice.

(i) The batch may be subdivided by DOE utilizing criteria specified in the test notice, e.g., date of manufacture, component-supplier, location of manufacturing facility, or other criteria which may differentiate one unit from another within a basic model.

(ii) A batch sample of up to 20 units will then be randomly selected from one or more subdivided groups within the batch. The manufacturer shall keep on hand all units in the batch sample until such time as the basic model is determined to be in compliance or noncompliance.

(iii) Individual test units comprising the test sample shall be randomly selected from the batch sample.

(iv) All random selection shall be achieved by sequentially numbering all of the units in a batch sample and then using a table of random numbers to select the units to be tested.

(5) *Test unit preparation.* (i) Prior to and during testing, a test unit selected in accordance with paragraph (a)(4) of this section shall not be prepared, modified, or adjusted in any manner unless such preparation, modification, or adjustment is allowed by the applicable DOE test procedure. One test shall be conducted for each test unit in accordance with the applicable test procedures prescribed in Subpart B.

(ii) No quality control, testing or assembly procedures shall be performed on a test unit, or any parts and subassemblies thereof, that is not performed during the production and assembly of all other units included in the basic model.

(iii) A test unit shall be considered defective if such unit is inoperative or is found to be in noncompliance due to failure of the unit to operate according to the manufacturer's design and operating instructions. Defective units, including those damaged due to shipping or handling, shall be reported immediately to DOE. DOE shall authorize testing of an additional unit on a case-by-case basis.

(6) *Testing at manufacturer's option.* (i) If a manufacturer's basic model is determined to be in noncompliance with the applicable energy performance standard at the conclusion of DOE testing in accordance with the double sampling plan specified in Appendix B of this subpart, the manufacturer may request that DOE conduct additional testing of the model according to procedures set forth in Appendix B of this subpart.

(ii) All units tested under paragraph (a)(6) of this section shall be selected and tested in accordance with the provisions given in paragraphs (a) (1) through (5) of this section.

(iii) The manufacturer shall bear the cost of all testing conducted under paragraph (a)(6) of this section.

(iv) The manufacturer shall cease distribution of the basic model being tested under the provisions of paragraph (a)(6) of this section from the time the manufacturer elects to exercise the option provided in this paragraph until the basic model is determined to be in compliance. DOE may seek civil penalties for all units distributed during such period.

(v) If the additional testing results in a determination of compliance, a notice of allowance to resume distribution shall be issued by the Department.

(b) *Design standard.* In the case of a design standard, a model is determined noncompliant by DOE after the Secretary or his designated representative has examined the underlying design information provided by the manufacturer and after the manufacturer has been offered the opportunity to verify compliance with the applicable design standard.

§ 430.71 Cessation of distribution of a basic model.

(a) In the event that a model is determined noncompliant by DOE in accordance with § 430.70 of this Part or if a manufacturer or private labeler determines a model to be in noncompliance, then the manufacturer or private labeler shall:

(1) Immediately cease distribution in commerce of the basic model;

(2) Give immediate written notification of the determination of noncompliance, to all persons to whom the manufacturer has distributed units of the basic model manufactured since the date of the last determination of compliance.

(3) Pursuant to a request made by the Secretary, provide DOE within 30 days of the request, records, reports and other documentation pertaining to the acquisition, ordering, storage, shipment, or sale of a basic model determined to be in noncompliance.

4. The manufacturer may modify the noncompliant basic model in such manner as to make it comply with the applicable performance standard. Such modified basic model shall then be treated as a new basic model and must be certified in accordance with the provisions of this subpart; except that in addition satisfying all requirements of this subpart, the manufacturer shall also maintain records that demonstrate that modifications have been made to all units of the new basic model prior to distribution in commerce.

(b) If a basic model is not properly certified in accordance with the requirements of this subpart, the Secretary may seek, among other remedies, injunctive action to prohibit distribution in commerce of such basic model.

§ 430.72 Subpoena.

Pursuant to section 329(a) of the Act, for purposes of carrying out this part, the Secretary or the Secretary's designee, may sign and issue subpoenas for the attendance and testimony of witnesses and the production of relevant books, records, papers, and other documents, and administer the oaths. Witnesses summoned under the provisions of th is section shall be paid the same fees and mileage as are paid to witnesses in the courts of the United States. In case of contumacy by, or refusal to obey a subpoena served, upon any persons subject to this Part, the Secretary may seek an order from the District Court of the United States for any District in which such person is found or resides or transacts business requiring such person to appear and give testimony, or to appear and produce documents. Failure to obey such order is punishable by such court as a contempt thereof.

§ 430.73 Remedies.

If DOE determines that a basic model of a covered product does not comply with an applicable energy conservation standard:

(a) DOE will notify the manufacturer, private labeler or any other person as required, of this finding and of the Secretary's intent to seek a judicial order restraining further distribution in commerce of such basic model unless the manufacturer, private labeler or any other person as required, delivers to DOE within 15 calendar days a statement, satisfactory to DOE, of the steps he will take to insure that the noncompliant model will no longer be distributed in commerce. DOE will monitor the implementation of such statement.

(b) If the manufacturer, private labeler or any other person as required, fails to stop distribution of the noncompliant model, the Secretary may seek to restrain such violation in accordance with section 334 of the Act.

(c) The Secretary shall determine whether the facts of the case warrant the assessment of civil penalties for knowing violations in accordance with section 333 of the Act.

§ 430.74 Hearings and appeals.

(a) Pursuant to section 333(d) of the Act, before issuing an order assessing a civil penalty against any person under this section, the Secretary shall provide to such person notice of the proposed penalty. Such notice shall inform such person of that person's opportunity to elect in writing within 30 days after the date of receipt of such notice to have the procedures of paragraph (c) of this section (in lieu of those in paragraph (b) of this section) apply with respect to such assessment.

(b)(1) Unless an election is made within 30 calendar days after receipt of notice under paragraph (a) of this section to have paragraph (c) of this section apply with respect to such penalty, the Secretary shall assess the penalty, by order, after a determination of violation has been made on the record after an opportunity for an agency hearing pursuant to section 554 of Title 5, United States Code, before an administrative law judge appointed under section 3105 of such Title 5. Such assessment order shall include the administrative law judge's findings and the basis for such assessment.

(2) Any person against whom a penalty is assessed under this section may, within 60 calendar days after the date of the order of the Secretary assessing such penalty, institute an action in the United States Court of Appeals for the appropriate judicial circuit for judicial review of such order in accordance with Chapter 7 of Title 5, United States Code. The court shall have jurisdiction to enter a judgment affirming, modifying, or setting aside in whole or in part, the order of the Secretary, or the court may remand the proceeding to the Secretary for such further action as the court may direct.

(c)(1) In the case of any civil penalty with respect to which the procedures of this section have been elected, the Secretary shall promptly assess such penalty, by order, after the date of the receipt of the notice under paragraph (a) of this section of the proposed penalty.

(2) If the civil penalty has not been paid within 60 calendar days after the assessment has been made under paragraph (c)(1) of this section, the Secretary shall institute an action in the appropriate District Court of the United States for an order affirming the assessment of the civil penalty. The court shall have authority to review de novo the law and the facts involved and shall have jurisdiction to enter a judgment enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part, such assessment.

(3) Any election to have this paragraph apply may not be revoked except with the consent of the Secretary.

(d) If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order under paragraph (b) of this section, or after the appropriate District Court has entered final judgment in favor of the Secretary under paragraph (c) of this section, the Secretary shall institute an action to recover the amount of such penalty in any appropriate District Court of the United States. In such action, the validity and appropriateness of such final assessment order or judgment shall not be subject to review.

(e)(1) In accordance with the provisions of section 333(d)(5)(A) of the Act and notwithstanding the provisions of title 28, United States Code, or section 502(c) of the Department of Energy Organization Act, the Secretary shall be represented by the General Counsel of the Department of Energy (or any attorney or attorneys within DOE designated by the Secretary) who shall supervise, conduct, and argue any civil litigation to which paragraph (c) of this section applies including any related collection action under paragraph (d) of this section in a court of the United States or in any other court, except the Supreme Court of the United States. However, the Secretary or the General Counsel shall consult with the Attorney General concerning such litigation and the Attorney General shall provide, on request, such assistance in the conduct of such litigation as may be appropriate.

(2) In accordance with the provisions of section 333(d)(5)(B) of the Act, and subject to the provisions of section 502(c) of the Department of Energy Organization Act, the Secretary shall be represented by the Attorney General, or the Solicitor General, as appropriate, in actions under this section, except to the extent provided in paragraph (e)(1) of this section.

(3) In accordance with the provisions of section 333(d)(5)(C) of the Act, section 402(d) of the Department of Energy Organization Act shall not apply with respect to the function of the Secretary under this section.

§ 430.75 Confidentiality.

Pursuant to the provisions of 10 CFR 1004.11, any person submitting information or data which the person believes to be confidential and exempt law from public disclosure should submit one complete copy, and fifteen copies from which the information believed to be confidential has been deleted. In accordance with the procedures established at 10 CFR 1004.11, DOE shall make its own determination with regard to any claim that information submitted be exempt from public disclosure.

OMB Control No. 1910–1400

Appendix A to Subpart F Compliance Statement

Statement of Compliance With Energy Conservation Standards for Appliances

Product: _____

Manufacturer's Name and Address

Date: _____

Submit by Certified Mail to: Department of Energy, Appliance Efficiency Standards, Assistant Secretary for Conservation and Renewable Energy, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

This report is submitted pursuant to Part 430 (Energy Conservation Program for Consumer Products) of the Energy Policy and Conservation Act (Pub. L. 94–163), and amendments thereto. The basic model(s) included in this report complies (comply) with the applicable energy conservation standard. All testing where appropriate, on which this certification report is based, was conducted in conformance with the applicable test requirements prescribed in Subpart B of 10 CFR Part 430. All information reported in this certification report is true, accurate, and complete. I am aware of the penalties associated with violations of the Act and the regulations thereunder, and am also aware of the provisions contained in 18 U.S.C. 1001, which prohibits knowingly making false statements to the Federal Government.

Name of Person to Contact for Further Information:
Name: _____
Address: _____
Telephone No.: _____

If the model specific information accompanying this statement of compliance was prepared by a third party organization under the provisions of § 430.62 of 10 CFR Part 430, the individual (manufacturer) authorizing third party representations:
Signature: _____
Name: _____
Address: _____
Telephone No.: _____

Appendix B to Subpart F of Part 430—SAmpling Plan for Enforcement Testing

Double Sampling

Step 1. The first sample size (n_1) must be four or more units.

Step 2. Compute the mean ($\bar{x}_1$) of the measured energy performance of the n_1 units in the first sample as follows:

$$\bar{x}_1 = \frac{1}{n_1}\left(\sum_{i=1}^{n_1} x_i\right) \qquad (1)$$

where x_i is the measured energy efficiency or energy consumption of unit i.

Step 3. Compute the standard deviation (s_1) of the measured energy performance of the n_1 units in the first sample as follows:

$$s_1 = \sqrt{\frac{\sum_{i=1}^{n_1} (x_i - \bar{x}_1)^2}{n_1 - 1}} \qquad (2)$$

Step 4. Compute the standard error ($s_{\bar{x}_1}$) of the measured energy performance of the n_1 units in the first sample as follows:

$$s_{\bar{x}_1} = \frac{s_1}{\sqrt{n_1}} \qquad (3)$$

Step 5. Compute the upper control limit (UCL_1) and lower control limit (LCL_1) for the mean of the first sample using the applicable DOE energy performance standard (EPS) as the desired mean and a probability level of 95 percent (two-tailed test) as follows:

$$LCL_1 = EPS - ts_{\bar{x}_1} \quad (4)$$

$$UCL_1 = EPS + ts_{\bar{x}_1} \quad (5)$$

where t is a statistic based on a 95 percent two-tailed probability level and a sample size of n_1.

Step 6A. For an Energy Efficiency Standard, compare the mean of the first sample ($\bar{x}_1$) with the upper and lower control limits (UCL_1 and LCL_1) to determine one of the following:

(i) If the mean of the first sample is below the lower control limit, then the basic model is in noncompliance and testing is at an end. (Do not go on to any of the steps below.)

(ii) If the mean of the first sample is equal to or greater than the upper control limit, then the basic model is in compliance and testing is at an end. (Do not go on to any of the steps below.)

(iii) If the sample mean is equal to or greater than the lower control limit but less than the upper control limit, then no determination of compliance or noncompliance can be made and a second sample size is determined by Step 7a.

Step 6b. For an Energy Consumption Standard, compare the mean of the first sample ($\bar{x}_1$) with the upper and lower control limits (UCL_1 and LCL_1) to determine one of the following:

(i) If the mean of the first sample is above the upper control limit, then the basic model is in noncompliance and testing is at an end. (Do not go on to any of the steps below.)

(ii) If the mean of the first sample is equal to or less than the lower control limit, then the basic model is in compliance and testing is at an end. (Do not go on to any of the steps below.)

(iii) If the sample mean is equal to or less than the upper control limit but greater than the lower control limit, then no determination of compliance or noncompliance can be made and a second sample size is determined by Step 7b.

Step 7a. For an Energy Efficiency Standard, determine the second sample size (n_2) as follows:

$$n_2 = \left(\frac{t \; s_1}{0.05 \; EPA} \right)^2 - n_1 \quad (6a)$$

where s_1 and t have the values used in Steps 4 and 5, respectively. The term "0.05 EPS" is the difference between the applicable energy efficiency standard and 95 percent of the standard, where 95 percent of the standard is taken as the lower control limit. This procedure yields a sufficient combined sample size (n_1+n_2) to give an estimated 97.5 percent probability of obtaining a determination of compliance when the true mean efficiency is equal to the applicable standard.

Given the solution value of n_2, determine one of the following:

(1) If the value of n_2 is less than or equal to zero *and* if the mean energy efficiency of the first sample ($\bar{x}_1$) is either equal to or greater than the lower control limit (LCL_1) or equal to or greater than 95 percent of the applicable energy efficiency standard (EES), whichever is greater, i.e., if

$n_2 \leq 0$ *and* $\bar{x}_1 \geq \max\{LCL_1, 0.95\ EES\}$,

the basic model is in compliance and testing is at an end.

(2) If the value of n_2 is less than or equal to zero *and* the mean energy efficiency of the first sample ($\bar{x}_1$) is less than the lower control limit (LCL_1) or less than 95 percent of the applicable energy efficiency standard (EES), whichever is greater, i.e., if

$n_2 \leq 0$ *and* $\bar{x}_1 < \max\{LCL_1, 0.95\ EES\}$,

the basic model is in noncompliance and testing is at an end.

(3) If the value of n_2 is greater than zero, then value of the second sample size is determined to be the smallest integer equal to or greater than the solution value of n_2 for equation (6a). If the value of n_2 so calculated is greater than $20-n_1$, set n_2 equal to $20-n_1$.

Step 7b. For an Energy Consumption Standard, determine the second sample size (n_2) as follows:

$$n_2 = \left(\frac{t \; s_1}{0.05 \; EPA} \right)^2 - n_1 \quad (6b)$$

where s_1 and t have the values used in Steps 4 and 5, respectively. The term "0.05 EPS" is the difference between the applicable energy consumption standard and 105 percent of the standard, where 105 percent of the standard is taken as the upper control limit. This procedure yields a sufficient combined sample size ($n_1 + n_2$) to give an estimated 97.5 percent probability of obtaining a determination of compliance when the true mean consumption is equal to the applicable standard.

Given the solution value of n_2, determine one of the following:

(1) If the value of n_2 is less than or equal to zero *and* if the mean energy consumption of the first sample ($\bar{x}_1$) is either equal to or less than the upper control limit (UCL_1) or equal to or less than 105 percent of the applicable energy performance standard (EPS), whichever is less, i.e., if

$n_2 \leq 0$ *and* $\bar{x}_1 \leq \min\{UCL_1, 1.05\ EPS\}$,

the basic model is in compliance and testing is at an end.

(2) If the value of n_2 is less than or equal to zero *and* the mean energy consumption of the first sample ($\bar{x}_1$) is greater than the upper control limit (UCL_1) or more than 105 percent of the applicable energy performance standard (EPS), whichever is less, i.e., if

$n_2 \leq 0$ *and* $\bar{x}_1 > \lesseqgtr \min\{LCL_1, 1.05\ EPS\}$,

the basic model is in noncompliance and testing is at an end.

(3) If the value of n_2 is greater than zero, then the value of the second sample size is determined to be the smallest integer equal to or greater than the solution value of n_2 for equation (6b). If the value of n_2 so calculated is greater than $20-n_1$, set n_2 equal to $20-n_1$.

Step 8. Compute the combined mean ($\bar{x}_2$) of the measured energy performance of the n_1 and n_2 units of the combined first and second samples as follows:

$$\bar{x}_2 = \frac{1}{n_1 + n_2} \left(\sum_{i=1}^{n_1 + n_2} x_1 \right) \quad (7)$$

Step 9. Compute the standard error ($s_{\bar{x}2}$) of the measured energy performance of the n_1 and n_2 units in the combined first and second samples as follows:

$$s_{\bar{x}_2} = \frac{s_1}{\sqrt{n_1 + n_2}} \quad (8)$$

Note.—s_1 is the value obtained in Step 3.

Step 10a. For an Energy Efficiency Standard, compute the lower control limit (LCL_2) for the mean of the combined first and second samples using the DOE energy efficiency standard (EES) as the desired mean and a one-tailed probability level of 97.5 percent (equivalent to the two-tailed probability level of 95 percent used in Step 5, above) as follows:

$$LCL_2 = EES - t\, s_{\bar{x}_2} \quad (9a)$$

where the t-statistic has the value obtained in Step 5 above.

Step 10b. For an Energy Consumption Standard, compute the upper control limit (UCL_2) for the mean of the combined first and second samples using the DOE energy performance standard (EPS) as the desired mean and a one-tailed probability level of 102.5 percent (equivalent to the two-tailed probability level of 95 percent used in Step 5, above) as follows:

$$UCL_2 = EPS + t\, s_{\bar{x}_2} \quad (9b)$$

where the t-statistic has the value obtained in Step 5 above.

Step 11a. For an Energy Efficiency Standard, compare the combined sample mean ($\bar{x}_2$) to the lower control limit (LCL_2) to find one of the following:

(i) If the mean of the combined sample ($\bar{x}_2$) is less than the lower control limit (LCL_2) or 95 percent of the applicable energy efficiency standard (EES), whichever is greater, i.e., if

$\bar{x}_2 < \max(LCL_2, 0.95\ EES)$,

the basic model is in noncompliance and testing is at an end.

(ii) If the mean of the combined sample ($\bar{x}_2$) is equal to or greater than the lower control limit (LCL_2) or 95 percent of the applicable energy efficiency standard (EES), whichever is greater, i.e., if

$\bar{x}_2 \geqq \max(LCL_2, 0.95\ EES)$,

the basic model is in compliance and testing is at an end.

Step 11b. For an Energy Consumption Standard, compare the combined sample mean ($\bar{x}_2$) to the upper control limit (UCL_2) to find one of the following:

(i) If the mean of the combined sample ($\bar{x}_2$) is greater than the upper control limit (UCL_2) or 105 percent of the applicable energy performance standard (EPS), whichever is less, i.e., if

$\bar{x}_2 > \min(UCL_2, 1.05\ EPS)$,

the basic model is in noncompliance and testing is at an end.

(ii) If the mean of the combined sample ($\bar{x}_2$) is equal to or less than the upper control limit (UCL_2) or 105 percent of the applicable energy performance standard (EPS), whichever is less, i.e., if

$\bar{x}_2 \leqq \min(UCL_2, 1.05\ EPS)$,

the basic model is in compliance and testing is at an end.

Manufacturer-Option Testing

If a determination of non-compliance is made in Steps 6, 7 or 11, above, the manufacturer may request that additional testing be conducted, in accordance with the following procedures.

Step A. The manufacturer requests that an additional number, n_3, of units be tested, with n_3 chosen such that $n_1 + n_2 + n_3$ does not exceed 20.

Step B. Compute the mean energy performance, standard error, and lower or upper control limit of the new combined sample in accordance with the procedures prescribed in Steps 8, 9, and 10, above.

Step C. Compare the mean performance of the new combined sample to the revised lower or upper control limit to determine one of the following:

a.1. For an Energy Efficiency Standard, if the new combined sample mean is equal to or greater than the lower control limit or 95 percent of the applicable energy efficiency standard, whichever is greater, the basic model is in compliance and testing is at an end.

a.2. For an Energy Consumption Standard, if the new combined sample mean is equal to or less than the upper control limit or 105 percent of the applicable energy consumption standard, whichever is less, the basic model is in compliance and testing is at an end.

b.1. For an Energy Efficiency Standard, if the new combined sample mean is less than the lower control limit or 95 percent of the applicable energy efficiency standard, whichever, is greater, and the value of $n_1 + n_2 + n_3$ is less than 20, the manufacturer may request that additional units be tested. The total of all units tested may not exceed 20. Steps A, B, and C are then repeated.

b.2. For an Energy Consumption Standard, if the new combined sample mean is greater than the upper control limit or 105 percent of the applicable energy consumption standard, whichever is less, and the value of $n_1 + n_2 + n_3$ is less than 20, the manufacturer may request that additional units be tested. The total of all units tested may not exceed 20. Steps A, B, and C are then repeated.

c. Otherwise, the basic model is determined to be in noncompliance.

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Part III

Department of Health and Human Services

Public Health Service

Cooperative Agreements To Support National Health Promotion and Disease Prevention Initiatives; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Cooperative Agreements To Support National Health Promotion and Disease Prevention Initiatives

The Office of Disease Prevention and Health Promotion (ODPHP) announces the availability of funds for Fiscal Year 1989 for cooperative agreements to support national health promotion initiatives.

The Office of Disease Prevention and Health Promotion (ODPHP) was established by Pub. L. 94–317, the National Consumer Health Information and Health Promotion Act of 1976, and functions under the provisions of Title XVII of the Public Health Service Act, as amended. Located within the Office of the Assistant Secretary for Health, the mission of ODPHP is to provide leadership for disease prevention and health promotion among Americans. The Office undertakes this mandate through the formulation of national health goals and objectives; the coordination of DHHS activities in disease prevention, health promotion, preventive health services, and health information and education with respect to the appropriate use of health care; and the stimulation of public and private programs and strategies to enhance the health of the Nation. ODPHP is organized around four areas: Prevention policy, clinical preventive services, nutrition policy, and health communication.

Background

At the turn of the century, infectious diseases were the leading killers in the United States. Now, nearly half of all disease and premature death can be traced to lifestyle factors such as smoking, improper diet, and lack of exercise. Identifying which behaviors, practices and habits enhance or threaten health, and encouraging the adoption of healthy behaviors, carries great potential for preventing disease and disability.

Improvements in the health status of Americans over the past decade can be attributed, in part, to the national commitment to health promotion first described in "Healthy People: The Surgeon General's Report on Health Promotion and Disease Prevention", which presented health goals for five major life stages. These goals were used as a framework for developing 226 national measurable prevention objectives for achievement by 1990, published in the policy document "Promoting Health/Preventing Disease: Objectives for the Nation". The so-called 1990 objectives, addressing 15 priority areas, can be divided into the three broad categories of health promotion, health protection, and personal preventive services. For example, the five areas identified as targets for health promotion efforts are: Smoking and health; misuse of alcohol and drugs; nutrition; physical fitness and exercise; and control of stress and violent behavior. The sustained emphasis on health information and health promotion needed to meet the 1990 objectives is being achieved in a variety of ways—education, research, and public information dissemination—and involves a partnership of Federal, State, local, voluntary, and private sector participants. ODPHP has been working over the past decade to extend the reach of health promotion/disease prevention programs through cooperative agreements with national organizations with local chapters, affiliates, or members. Cooperative agreements are granted as part of the National Health Promotion Program, as described in the *Catalog of Federal Domestic Assistance*.

FY 1989 Priorities

In support of ODPHP's mandate to help promote health and prevent disease among Americans through the oversight and support of the Department of Health and Human Services' programs in prevention, ODPHP works to foster partnerships with the private sector that will further the reach of health promotion and disease prevention activities and programs. To this end, ODPHP intends to establish cooperative agreements in FY 1989 with national membership organizations whose concerns could be addressed through the following initiatives:

- Putting the Year 2000 National Health Objectives into Practice: Targeting Special Populations and Settings for Health Promotion and Disease Prevention.

The Public Health Service is now in the process of setting new national objectives for reducing preventable death and disability by the year 2000, to succeed the 1990 health objectives set in 1980. Many of the new objectives will aim specifically at improving the health status of special populations at high risk for morbidity, disability, or premature mortality. To help meet these year 2000 targets, six cooperative agreements will be awarded to national membership organizations, or consortiums of national organizations, representing special populations, for the purpose of stimulating the development of targeted health promotion/disease prevention programs and policies. The special populations are: Blacks, Hispanics, Asian/Pacific Islanders, adolescents, older people, and people with disabilities.

In addition, different sites within the community have been found to be efficient and effective settings for health promotion/disease prevention activities. How these sites can be used to meet the year 2000 objectives will also be addressed through three cooperative agreements to national organizations, or consortiums of organizations, representing worksites, schools, and clinical settings. A similar project will be addressed to American Indian/Alaska Native populations through a cooperative arrangement with the Indian Health Service.

- Develop a National Worksite Health Promotion Resource Center.

The purpose of this initiative is to create a state-of-the-art national resource center which will provide technical information and expertise to employers, employee groups, insurers, policy makers, and professionals in the field on how preventive services and health promotion programs at the worksite can be successfully integrated with other employee benefits to enhance the strength and productivity of the workforce. A special emphasis of the Center will be on assisting the development and expansion of health promotion/disease prevention programs and policies in small businesses and the public sector.

The Center will focus efforts on identifying approaches that: (1) Are able to transfer new information and state of the art technology; (2) have proven incentives for bringing about healthy behavior changes; (3) improve the value of resources spent on disease prevention and health promotion activities; and (4) bring the purchaser and provider communities together to enhance the health of employees with quality and efficiency.

- Promote Healthy School Lunch Programs.

The purpose of this initiative is to document and disseminate effective approaches to organizing and providing school lunch programs in public schools that reflect the current state of knowledge about the link between diet and health.

Eligibility Requirements

Cooperative Agreements awarded to address the ODPHP priorities outlined above are limited to national membership organizations, due to limitations on availability of funds and

as a function of the kind of public-private collaboration which the priorities entail. Requests to Congress for funds for the National Health Promotion Program have specified this limitation of applicant eligibility. ODPHP has a history of facilitating Public Health Service work with national membership organizations to implement national health promotion and disease prevention programs and policies. As representatives of special constituencies, membership organizations are in a unique position to be able to identify realistic, appropriate, and effective strategies for reaching their members, or the populations their members represent, with health information.

In order to be eligible to participate in these cooperative agreements, an organization must meet all of the following requirements:

- Be a national, private, nonprofit organization;
- Have a national membership, state/local chapters, and/or otherwise well-defined affiliate structure;
- Demonstrate an understanding of the current and potential role of the membership in health promotion and disease prevention efforts;
- Have in place a variety of communication channels that are appropriate for informing members and other constituencies about how to become involved in meeting the objectives of the cooperative agreement; and
- Demonstrate top level support within the organization for the project and, where appropriate, demonstrate similar support from the membership.

For purposes of this announcement, national membership organizations are defined as organizations with individual or institutional members in a majority of the States or in a sufficient number of States to reach a majority of the special population or site. "Members" must voluntarily and expressly associate themselves with the organization as through payment of a membership fee or other declaration of association (i.e., request and receipt of a membership card or certificate of membership).

Period of Performance

Contingent on the availability of funds and satisfactory performance, cooperative agreements will be awarded to national membership organizations for project periods of between 17 months (for the project to Promote Healthy School Lunch Programs) to three years (for the projects to Implement the Year 2000 Health Objectives, and Develop a National Worksite Health Promotion Resource Center). For projects over 17 months in length, awards will be made for 12-month budget periods. To obtain funding after the initial budget period, continuation applications and approvals will be required for each subsequent 12-month period. Continuation applications will not be subject to competitive review but will be subject to review for satisfactory progress and availability of funds.

Terms and Conditions

Federal funds should be viewed as seed money to assist organizations in the development of health promotion/disease prevention initiatives. Monies allocated for cooperative agreements are not intended to cover all of the costs that will be incurred in the process of completing the projects. Applicants should demonstrate a commitment of financial or in-kind resources to the support of proposed projects. Organizations participating in the cooperative agreement program may use awarded funds to support salaries of individuals assigned to the project. However, due to the modest support afforded through the cooperative agreements, applicants are urged to restrict funding of salaries to approximately 30 percent of the awarded funds in order to insure that sufficient resources remain to accomplish the purposes of the projects. Federal funds offered through this announcement may be used for the development or purchase of project materials, directly related project activities, and project-related travel. Award recipients will be encouraged to seek additional sources of funds to complement the activities of the proposed project.

Applicants should include in proposed budgets support for their project director to participate in up to two two-day meetings in Washington, D.C., in each project year. The purpose of the meetings will be to consult with ODPHP and coordinate with other cooperative organizations, as appropriate.

Special Considerations for Cooperative Agreements to Implement the Year 2000 Health Objectives

For those cooperative agreements addressing the implementation of the national health objectives for the year 2000, eligible applicants must be national membership organizations that are willing and have the capability to take the lead in developing and implementing long-range strategies for meeting the health promotion/disease prevention targets set for the populations or sites they represent.

In addition, organizations are encouraged to collaborate with other groups which share a common mission in support of the health of a special population or populations which can be reached through certain settings.

In these cooperative agreements, and possibly in others, collaboration may be preferable to expand the range of expertise, resources, and grassroots access available. If a consortium of organizations collaborates on a cooperative agreement, the majority of the group must meet all of the eligibility requirements. However, all organizations must be national, private, nonprofit, and membership organizations.

ODPHP Involvement

ODPHP will:

1. Provide a significant portion of the time of a professional staff person to work with the award recipient on the cooperative agreement and to coordinate activities.

2. Make available the resources of the ODPHP National Health Information Center for promoting and/or disseminating materials and information generated by the cooperative agreement which is of value beyond the organization's own membership and constituents.

3. Make available other information and technical assistance from government sources as appropriate.

4. Provide liaison with other government agencies as appropriate.

Application Process

1. All applications must be submitted with a signed copy of PHS Form 5161, with the required information filled in appropriately. The required application form with instructions will be mailed to potential applicants who make telephone requests to Ms. Patricia Jones at (202) 472-5660 or write to her at ODPHP/PHS, Department of Health and Human Services, Switzer 2132, Washington, DC 20201.

2. All applications must be either received or postmarked on or before 5:00 p.m. on April 18, 1989. Applications received or postmarked later than 5:00 p.m. (e.s.t.) on that day will be ineligible. Applications postmarked but not received by March 15, 1989, will be eligible only if they are received in time for orderly processing and review.

3. Application packages should be mailed or delivered to: Ms. Patricia Jones, Office of Disease Prevention and Health Promotion/PHS/DHHS, 2132 Switzer Building, 330 C Street SW., Washington, DC 20201.

4. Applications must be typed on one side of the page only.

5. The original and two copies of each application, with attachments and documentation, must be submitted.

6. Applications for projects which are national in scope are not required to carry out the provisions of Executive Order 12372.

Application Requirements

Applications must include the following information:

1. A description of the organization and its membership, and documentation that it meets all the eligibility requirements, with examples of the organization's prior efforts and activities as needed to substantiate its capability to undertake the proposed project.

2. Measurable goals and objectives for the full term of the cooperative agreement.

3. A description of how the project will contribute to the Public Health Service's efforts to promote health, prevent disease and improve the quality of life.

4. A detailed delineation of the tasks that will be undertaken in the first budget period and the outcomes expected at the end of that period.

5. A detailed budget for the first budget period.

6. A brief delineation of the tasks that will be undertaken in each of the remaining budget periods, as appropriate, and how they will contribute toward accomplishing the project's goals and objectives.

7. A timetable for each budget period of the project.

8. An evaluation plan which will show how the impact of the proposed project will be measured, if feasible, or the effectiveness of the process in meeting project goals and objectives.

9. The background and qualifications of the individual(s) who will manage and staff the project. If the individual(s) is not now known, provide a list of the qualifications that will be sought.

10. If it is anticipated that any individuals or other organizations will be subcontracted for year one, information about the role they will play and their qualifications. If the applicant expects to subcontract any portion of the project during the remaining years, a description of the role they will play and their qualifications should be included.

11. If organizations are collaborating on a proposal, information about the role each will play, along with complete eligibility information. Specify leadership responsibility and project management structure.

12. Further information given as "Special Application Requirements" in each of the initiative summaries below.

Review and Selection Process

The applications will be screened by ODPHP upon receipt to assure that all eligibility requirements have been met. Applications meeting these requirements will be reviewed by a Federal panel of reviewers using the criteria outlined below. The results of this review will be recommended to the Director of ODPHP for FY 1989 cooperative agreement awards. ODPHP intends to make awards in June 1989.

Evaluation Criteria

1. Understanding the Project—20

Understanding of the issues and the program priority that the project proposes to address. Clarity, feasibility, and practicality of the goals and objectives of the project and the plan to meet them.

2. Methodology and Approach—30

Soundness, practicality, and feasibility of the technical approach to the work, including how the tasks are to be carried out, anticipated problems and proposed solutions. The potential for the project to make an innovative, significant impact and contribution to health promotion and disease prevention. Feasibility and appropriateness of the proposed evaluation plan and mechanisms.

3. Organizational Capability—25

Commitment of management and members to the project, as demonstrated, in part, through commitment of financial or in-kind resources to support proposed project. Relevant experience of the organization in conducting similar projects. Adequacy of project management to keep project on track and on schedule. Demonstrated capacity for reaching key audiences to project.

4. Project Direction, Management, and Staffing—25

Management plan, advisory and supervisory structure, and qualifications and relevant experience of proposed staff both in the content and execution of proposed project. Relevant experience could include, but would not be limited to, communications and marketing of issues and programs to diverse constituents, health promotion and disease prevention program activities, and data collection and analysis.

I. Initiative to Put the Year 2000 National Health Objectives Into Practice: Targeting Special Populations and Settings for Health Promotion and Disease Prevention ($50,000 per Project Each Budget Period, 9 Projects Total)

The Public Health Service is now in the process of setting new national objectives for reducing preventable death and disability by the year 2000, to succeed the 1990 health objectives set in 1980. Many of the new objectives will aim specifically at improving the health status of special populations at high risk for morbidity, disability, or premature mortality. To help meet these year 2000 targets, six cooperative agreements will be awarded to national membership organizations, or consortiums of national organizations, for the purpose of stimulating the development of targeted health promotion/disease prevention programs and policies. The special populations to be represented are: Blacks, Hispanics, Asian/Pacific Islanders, adolescents, older people, and people with disabilities. A similar project addressing American Indian/Native Alaskan populations will be undertaken through a cooperative arrangement with the Indian Health Service.

In addition, three cooperative agreements will be available to national organizations, or consortiums of organizations, representing worksites, schools, and clinical settings. These agreements will address how these sites can be used to meet the Year 2000 objectives.

Background

The year 2000 health objectives will be published in July 1990, as the second "Surgeon General's Report on Disease Prevention and Health Promotion." ODPHP is responsible for managing the development of the new objectives, a process which has involved extensive input from professional associations, voluntary organizations, and other national membership groups, academicians, corporate leaders, and other concerned sectors of the public.

The year 2000 national health objectives will likely fall within the following 21 interim priority areas:

1. Reduce tobacco use
2. Reduce alcohol and other drug abuse
3. Improve nutrition
4. Increase physical activity and fitness
5. Improve mental health and prevent mental illness
6. Improve environmental public health

7. Improve occupational safety and health
8. Prevent and control unintentional injuries
9. Reduce violent and abusive behavior
10. Prevent and control HIV infection and AIDS
11. Prevent and control sexually transmitted diseases
12. Immunize against and control infectious diseases
13. Improve maternal and infant health
14. Improve oral health
15. Reduce adolescent pregnancy and improve reproductive health
16. Prevent, detect, and control high blood cholesterol and high blood pressure
17. Prevent, detect, and control cancer
18. Prevent, detect, and control other chronic diseases and disorders
19. Maintain the health and quality of life of older people
20. Improve health education and access to preventive health services
21. Improve surveillance and data systems

Each of the 21 priority areas will include specific objectives for special populations who, compared with the general population, experience significantly higher disease rates, higher levels of risk, or lower levels of awareness, services, or protection. For example, specific objectives might be set to address high blood pressure in Black and Hispanic Americans, or unintentional injuries among children and adolescents. Each priority area might also contain objectives that pertain only to activities in particular settings, for example, worksites, schools, or clinical settings.

ODPHP requests applications for cooperative agreements with national membership organizations, or consortiums of organizations, which want to help take the lead in putting the year 2000 health objectives into practice. Award recipients must represent and/or serve the six high risk populations—Blacks, Hispanics, Asian/Pacific Islanders, adolescents, older people, or people with disabilities—or the three sites—worksites, schools, and clinical settings.

Each award recipient will be expected to produce a national plan for a special population or in a particular setting, setting priorities and identifying short- and long-term strategies for meeting the year 2000 health objectives. The approaches taken to strategy development will differ but are expected to follow general guidelines agreed upon at a meeting of the nine awardees so that outcomes are consistent.

A public draft of the year 2000 health objectives will be made available to all organizations upon award, including the identification of those objectives pertinent to their population or setting. While the final set of objectives will not be available until spring of 1990, it is expected that the public draft will offer award recipients a reasonable starting point.

Specific activities undertaken by each organization, or consortium of organizations, to implement the plan are expected to depend on the programming and communication mechanisms of the organization, as well as organizational interests, priorities, and other factors. Additional activities may include, but are not limited to, some of the following.

1. Promote health promotion/disease prevention objectives—and strategies for meeting those objectives—to members, as well as to allied local, state and/or national organizations and policymakers who share common concern for a special population/setting.
2. Collect, analyze and disseminate exemplary community approaches to health promotion/disease prevention for a special population, or approaches for the three sites, which could be used to carry out the strategic plan and put the year 2000 health objectives into practice.
3. Evaluate the dissemination of the year 2000 health objectives to key audiences and how the objectives are being used to stimulate new programs and policies.

Special Application Requirements

The application should follow the process and requirements given above.

In addition:

- Describe the organization's experience in strategic and/or long range planning;
- Describe how the development of a national health promotion/disease prevention strategy would complement the organization's present agenda and how program initiatives could be integrated into future directions.
- Demonstrate authority and experience in representing the membership at the national, State, and local levels.

II. Initiative to Develop a National Worksite Health Promotion Resource Center ($250,000 for One Project)

Purpose

The purpose of this cooperative agreement is to create a state-of-the-art national resource center which will provide technical information and expertise to employers, employee groups, insurers, policy makers, and professionals in the field on how preventive services and health promotion programs at the worksite can be successfully integrated with other employee benefits to enhance the strength and productivity of the workforce. A special emphasis of the Center will be on assisting the development and expansion of health promotion/disease prevention programs and policies in small businesses and the public sector.

The Center will focus efforts on identifying approaches that: (1) Are able to transfer new information and state of the art technology; (2) have proven incentives for bringing about healthy behavior changes; (3) improve the value of resources spent on disease prevention and health promotion activities; and (4) bring the purchaser and provider communities together to enhance the health of employees with quality and efficiency.

The Worksite Health Promotion Resource Center will serve as a major project of ODPHP and its principal contribution to the expansion and improvement of health promotion efforts for the working population. Therefore, ODPHP intends to emphasize the partnership aspect of this cooperative agreement and to devote the majority of the time of one senior professional staff person to involvement with it.

Background

Increasingly, the worksite is seen as an ideal location for teaching individuals about positive health practices. The national trend toward promoting healthier lifestyles in the workplace has been fueled by employers' increased attention to health issues, the health community's focus on this opportune site for health interventions and education, and employees' desire to have a healthy work environment.

The employer, the employee, and the health community have strong incentives to implement worksite health promotion activities. Employers, in particular, are seeking new ways to better manage health benefits, as the cost of health care continues to spiral, while still insuring a healthy, productive, and competitive workforce. Health care providers view the worksite as an opportunity to affect the health practices of a significant portion of the workplace, and as a potential market for health related products and services.

A recent national survey of worksite health promotion activities conducted by ODPHP shows that there is an increasing acceptance of health promotion activities by major employers. However, employees working at smaller worksites were less likely to be offered health promotion activities. In addition, activities beyond health information and health promotion policies were less likely to be available;

and furthermore, employees at any single worksite were more likely to be offered a specific type of activity rather than a set of activities. In order to have a significant impact on overall health status, employers need better information on how the many and diverse approaches to employee benefits now undertaken can be integrated to improve the overall health status of the workforce.

In response to these concerns, in part, the 100th Congress called on ODPHP, in consultation with the Centers for Disease Control, to "develop model programs through which employers in the public sector, and employers that are small businesses * * * an provide for their employees a program to promote healthy behaviors and to discourage participation in unhealthy behaviors (and to) * * * provide technical assistance to public and private employers in implementing such programs * * *" (Title XVII of the Public Health Service Act, as amended, 1988, section 1701). It is expected that the Worksite Health Resource Center will work in partnership with ODPHP to address the objectives set in the 1988 Amendment of Title XVII.

Description

The Resource Center will be a national center that gathers and transfers new information and technology in the areas of health benefits system design, health data, preventive services, health promotion programs, and health science research.

The specific activities undertaken by the Center will depend on the unique capacities of the award recipient, but are expected to include the following.

1. Technical information for employers, employee organizations, insurers, and other professionals in the field to implement or expand health promotion and disease prevention education programs, services, and policies in the workplace, particularly in small businesses and the public sector.

2. Information dissemination initiatives that will result in effectively sharing the latest concepts, methods, and findings with employers, employee organizations, insurers, and other professionals in the field.

3. Training of employee benefits managers, and other professionals, related to the integration of employee health benefits with health promotion and disease prevention programs and policies through seminars, workshops, and conferences.

4. Appropriate applied research and development of a short term nature which can be generated and disseminated to the Center's key users. For example:

—An analysis of the barriers to a fully integrated employee health system, particularly in small businesses and the public sector;

—An assessment of what employers regard as the critical variables in the design of such a system;

—The development of worksite program models, with an emphasis on models for small businesses, which demonstrate how to integrate health promotion and disease prevention programs, health benefit plans and other employee protection programs into a comprehensive system.

Guidance of Center activities is expected to come from an Advisory Committee which includes representation from the employer, employee, insurer, and public health communities.

Special Application Requirements

Application should be made following the process and requirements given above. In addition:

- Describe past activities which demonstrate the organization's capability in reaching and influencing employers and employees on health policy and programmatic issues;
- Demonstrate knowledge of health economics, particularly on issues related to employee health benefits, disease prevention and health promotion services, the provider/supplier market, and other reimbursement issues;
- Demonstrate experience in providing training and technical information to employers, employee organizations, insurers;
- Demonstrate knowledge and track record with research and demonstration projects including research methodology, designs, and written publications; and
- Describe what access the organization has to data on employer health benefits and health promotion/disease prevention activities.

III. Initative to Promote Healthy Lunches in the Schools ($125,000 for One Project)

Purpose

The purpose of this initiative is to document and disseminate effective approaches to organizing and providing school lunch programs in public schools that reflect the current state of knowledge about the link between diet and health.

Background

The release of the "Surgeon General's Report on Nutrition and Health" in 1988 underscored the significant impact that diet has on health. For children, the impact is twofold. Nutritional meals are important for development. A healthy diet in childhood also can set the pattern for a healthy diet throughout life.

The recent findings of the National Adolescent Student Health Survey (1988) indicate that, while nearly 75 percent of respondents knew about nutrition and health relationships such as saturated fats and heart disease, nearly 40 percent continue to eat fried foods as a regular mainstay of their diets. Forty percent report eating breakfast on two or fewer days during the week preceding the survey. Seventy-two percent eat lunch in school cafeterias. And nearly half report eating three or more snacks a day, with over 60 percent of those snacks composed of sodas, candy, doughnuts or ice cream. It is estimated that nearly a quarter of our children and youth are obese. The National Children and Youth Fitness Studies I and II found that children and adolescents are 2 to 3 mm fatter than children and adolescents of the 1960s.

The traditional public health intervention aimed at improving the nutritional habits of youth has been school-based nutrition education offered in health or home economic classes in junior and senior high school. According to the National Adolescent School Health Survey, 74 percent of the respondents said they had had some nutrition education.

However, education alone does not appear to be an effective method for improving the eating habits of students, at least taken alone. Dietary intake at younger ages reflects the food choices provided by parents, other caregivers, and school food service workers. Eating patterns set by those choices may play an equally important role. At most, a child eats 180 school lunches each year, with approximately 900 meals consumed in other settings. But the school lunch can be used as an important medium for promoting healthy eating.

Description

This cooperative agreement is intended to help a national membership organization, whose representation includes the school food service community, provide State and local decisionmakers with information about how to implement healthy school lunch programs. While the specific activities undertaken by the award recipient will depend on the programming and communication mechanisms of the organization, they may include:

1. Identification and analysis of implementation processes within selected exemplary schools or school systems with respect to their school lunch programs, including constraints and opportunities;

2. Identification of key decisionmakers to target with information about model programs;

3. Development and dissemination of materials, such as a video or written guide about model programs, to state and local decisionmakers.

Special Application Requirements

Application should be made following the process and requirements given above. In addition:

- Demonstrate competence and experience with schools, food service workers, public school decisionmakers;
- Demonstrate competence and experience in developing public information materials, including any relevant experience in formative research, message testing, and dissemination.

Further Information

This **Federal Register** Notice contains information collections required from respondents for the subject cooperative agreements. The information collection is approved under OMB control number 0937–0189.

To request additional copies of this notice, or for further clarification, contact: Patricia Jones, (202)472–5307, Room 2132, Switzer Building, 330 C Street SW., Washington, DC 20201.

(National Health Promotion Program, Catalog of Domestic Assistance Number 13.990)

Dated: February 2, 1989.

J.M. McGinnis,

Deputy Assistant Secretary for Health (Disease Prevention and Health Promotion), Assistant Surgeon General.

Appendix A—Recommended Publications

The following publications may be useful in the preparation of applications for the cooperative agreements announced herein. All the publications may be ordered from: ODPHP National Health Information Center, P.O. Box 1133, Washington, DC 20013–1133, 800–336–4797, 01–565–4167 in Maryland.

"The 1990 Health Objectives for the Nation: A Midcourse Review" (1986), Order No. F0013, $3 handling fee.

"Promoting Health/Preventing Disease: Objectives for the Nation" (1980), Order No. F0009, $3 handling fee.

"Healthy People: The Surgeon General's Report on Health Promotion and Disease Prevention" (1979), Order No. F0005, $3 handling fee.

"A Review of State Activities Related to the Public Health Service's Health Promotion and Disease Prevention Objectives for the Nation" (1986), Order No. M0002, $2 handling fee.

"National Survey of Worksite Health Promotion Activities: A Summary" (1987), Order No. M0005, $2 handling fee.

Additional reports and papers are available in the areas of community health promotion programs, school health programs, worksite health promotion programs, nutrition, professional education and federal programs and policies. Contact the ODPHP National Health Information Center for a copy of the ODPHP Publications List.

[FR Doc. 89–2855 Filed 2–6–89; 8:45 am]

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federal register

Tuesday
February 7, 1989

Part IV

Department of Justice

Office of Juvenile Justice and Delinquency Prevention

28 CFR Part 34

Competition and Peer Review Procedures; Proposed Rule

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

28 CFR Part 34

Competition and Peer Review Procedures

AGENCY: Office of Juvenile Justice and Delinquency Prevention, Department of Justice.

ACTION: Proposed rule.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP) proposes to revise its competition and peer review regulation, originally published at 50 **Federal Register** 31361, August 2, 1985, and codified at 28 CFR Part 34, to implement the expanded competition and peer review requirements of section 262(d) of the Juvenile Justice and Delinquency Prevention Act of 1974, 42 U.S.C. 5601 *et seq.*, as amended by the Juvenile Justice and Delinquency Prevention Amendments of 1988, subtitle F of title VII of Pub. L. 100–690, November 18, 1988 (hereinafter "Act"). The regulation governs the award of categorical grant funds under Part C—National Programs, of the Act.

DATES: Comments must be submitted on or before March 9, 1989.

ADDRESS: Submit comments to: Roberta Dorn, Office of the Administrator, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue NW., Room 1102. Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: Roberta Dorn, Telephone: (202) 724–7655.

SUPPLEMENTARY INFORMATION:

Background Information

This regulation implements the competition and peer review requirements added to OJJDP's categorical assistance programs by the Juvenile Justice and Delinquency Prevention Amendments of 1988, Subtitle F of title VII of Pub. L. 100–690, November 18, 1988. These amendments consolidated OJJDP'S title II categorical programs in Part C of the Act. Previously, title II contained different, or had no, competition and peer review requirements for each of the three categorical programs established in Parts A, B and C of title II. Now, pursuant to section 262(d), competition and peer review requirements have been standardized for all categorical programs funded under Part C—National Programs. The technical assistance and training program authority, which had been in Part A, is now incorporated in Part C, Subpart I. Special Emphasis Prevention and Treatment Programs which had been under Part B, Subpart II, are now covered under Subpart II of Part C. The National Institute for Juvenile Justice and Delinquency Prevention programs remain in Part C under Subpart I. The retitled Part C consolidates all these categorical programs, and all Part C funds are governed by this revised regulation unless expressly excluded (See § 34.2).

The changes in this revision constitute technical and conforming amendments only. Therefore, OJJDP does not believe that renewed consultation with the National Science Foundation and the National Institute of Mental Health is required.

Executive Order 12291

This announcement does not constitute a "major" rule as defined by Executive Order 12291 because it does not result in: (a) An effect on the economy of $100 million or more, (b) a major increase in any costs or prices, or (c) adverse effects on competition, employment, investment, productivity, or innovation among American enterprises.

Regulatory Flexibility Act

This proposed rule does not have "significant" economic impact on substantial number of small "entities", as defined by the Regulatory Flexibility Act (Pub. L. 96–354).

Paperwork Reduction Act

There are no collection of information requirements contained in this regulation required to be submitted to the Office of Management and Budget for review under the Paperwork Reduction Act, 44 U.S.C. 3504(h).

List of Subjects in 28 CFR Part 34

Grant programs, Juvenile delinquency.

Accordingly, Title 28 Code of Federal Regulations, Part 34, is revised to read as follows:

PART 34—OJJDP COMPETITION AND PEER REVIEW PROCEDURES

Subpart A—Competition

Sec.

Subpart B—Peer Review

Subpart C—Emergency Expedited Review—[Reserved]

Authority: Juvenile Justice and Delinquency Prevention Act of 1974, as amended, (42 U.S.C. 5601 *et seq.*).

Subpart A—Competition

§ 34.1 Purpose and applicability.

(a) This Subpart of the regulation implements section 262(d)(1) (A) and (B) of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended (42 U.S.C. 5601 *et seq.*). This provision requires that project applications, selected for categorical assistance awards under Part C—National Programs shall be selected through a competitive process established by rule by the Administrator, OJJDP. The statute specifies that this process must include announcement in the **Federal Register** of the availability of funds for assistance programs, the general criteria applicable to the selection of applications for assistance, and a description of the procedures applicable to the submission and review of assistance applications.

(b) This Subpart of the regulation applies to all grant, cooperative agreement, and other assistance awards selected by the Administrator, OJJDP, or the Administrator's designee, under Part C—National Programs, of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, except as provided in the exceptions to applicability set forth below.

§ 34.2 Exceptions to applicability.

The following are assistance and procurement contract award situations that OJJDP considers to be outside the scope of the section 262(d)(1) competition requirement:

(a) Assistance awards to initially fund or continue projects if the Administrator has made a written determination that the proposed program is not within the scope of any program announcement expected to be issued, is otherwise eligible for an award, and the proposed project is of such outstanding merit, as determined through peer review under Subpart B, that an assistance award without competition is justified (section 262(d)(1)(B)(i));

(b) Assistance awards to initially fund or continue training services to be funded under Part C, section 244, if the Administrator has made a written

determination that the applicant is uniquely qualified to provide proposed training services and other qualified sources are not capable of providing such services (section 262(d)(1)(B)(ii));

(c) Assistance awards of funds transferred to OJJDP by another Federal agency to augment authorized juvenile justice programs, projects, or purposes;

(d) Funds transferred to other Federal agencies by OJJDP for program purposes as authorized by law;

(e) Procurement contract awards which are subject to applicable Federal laws and regulations governing the procurement of goods and services for the benefit and use of the government;

(f) Assistance awards from the 5% "set aside" of Special Emphasis funds under section 261(e); and

(g) Assistance awards under section 241(f).

§ 34.3 Selection criteria.

(a) All individual project applications will, at a minimum, be subject to review based on the extent to which they meet the following general selection criteria:

(1) The problem to be addressed by the project is clearly stated;

(2) The objectives of the proposed project are clearly defined;

(3) The project design is sound and contains program elements directly linked to the achievement of project objectives;

(4) The project management structure is adequate to the successful conduct of the project;

(5) Organizational capability is demonstrated at a level sufficient to successfully support the project; and

(6) Budgeted costs are reasonable, allowable and cost effective for the activities proposed to be undertaken.

(b) The general selection criteria set forth under § 34.3(a), above, may be supplemented for each announced competitive program by program-specific selection criteria for the particular Part C program. Such announcements may also modify the general selection criteria to provide greater specificity or otherwise improve their applicability to a given program. The relative weight (point value) for each selection criterion will be specified in the program announcement.

§ 34.4 Additional competitive application requirements and procedures.

(a) *Applications for grants.* Any applicant eligible for assistance may submit on or before such submission deadline date or dates as the Administrator may establish in program announcements, an application containing such pertinent information and in accordance with the forms and instructions as prescribed therein and any additional forms and instructions as may be specified by the Administrator. Such application shall be executed by the applicant or an official or representative of the applicant duly authorized to make such application and to assume on behalf of the applicant the obligations imposed by law, applicable regulations, and any additional terms and conditions of the assistance award. The Administrator may require any applicant eligible for assistance under this subpart to submit a preliminary proposal for review and approval prior to the acceptance of an application.

(b) *Cooperative arrangements.* (1) When specified in program announcements, eligible parties may enter into cooperative arrangements with other eligible parties, including those in another State, and submit joint applications for assistance.

(2) A joint application made by two or more applicants for assistance may have separate budgets corresponding to the programs, services and activities performed by each of the joint applicants or may have a combined budget. If joint applications present separate budgets, the Administrator may make separate awards, or may award a single assistance award authorizing separate amounts for each of the joint applicants.

(c) *Evaluation of applications submitted under Part C of the Act.* All applications filed in accordance with § 34.1 of this subpart for assistance with Part C—National Programs funds shall be reviewed by the Administrator through OJJDP and other DOJ personnel (internal review) and by such experts or consultants required for this purpose that the Administrator determines are specially qualified in the particular Part C program area covered by the announced program (peer review). Supplementary application review procedures, in addition to internal review and peer review, may be used for each competitive Part C program announcement. The program announcement shall clearly state the application review procedures (peer review) to be used for each competitive Part C program announcement.

(d) *Applicant's performance on prior award.* When the applicant has previously received an award from OJJDP or another Federal agency, the applicant's noncompliance with requirements applicable to such prior award as reflected in past written evaluation reports and memoranda on performance, and the completeness of required submissions, may be considered by the Administrator. In any case where the Administrator proposes to deny assistance based upon the applicant's noncompliance with requirements applicable to a prior award, the Administrator shall do so only after affording the applicant reasonable notice and an opportunity to rebut the proposed basis for denial of assistance.

(e) *Applicant's fiscal integrity.* Applicants must meet OJP standard of fiscal integrity (see OJP M 7100.1C, par. 24 and OJP HB 4500.2B, par. 48 a and b).

(f) *Disposition of applications.* On the basis of competition and applicable review procedures completed pursuant to this regulation, the Administrator will either:

(1) Approve the application for funding, in whole or in part, for such amount of funds, and subject to such conditions as the Administrator deems necessary or desirable for the completion of the approved project;

(2) Determine that the application meets minimum criteria, but that the application must be disapproved for funding because it did not rank sufficiently high in relation to other applications submitted in response to the same program announcement to qualify for an award based on the level of funding allocated to the program; or

(3) Reject the application for failure to meet the applicable selection criteria at a sufficiently high level to justify an award of funds or for any other reason which the Administrator determines adversely impacts upon the applicant's capability to successfully carry out the project.

(g) *Notification of disposition.* The Administrator will notify the applicant in writing of the disposition of the application. A signed Grant/Cooperative Agreement form will be issued to notify the applicant of an approved project application.

(h) *Effective date of approved grant.* Federal financial assistance is normally available only with respect to obligations incurred subsequent to the effective date of an approved assistance project. The effective date of the project will be set forth in the Grant/Cooperative Agreement form. Recipients may be reimbursed for costs resulting from obligations incurred before the effective date of the assistance award, if such costs are authorized by the Administrator in the notification of assistance award or subsequently in writing, and otherwise would be allowable as costs of the assistance award under applicable guidelines, regulations, and award terms and conditions.

Subpart B—Peer Review

§ 34.100 Purpose and applicability.

(a) This Subpart of the regulation implements section 262(d)(2) of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended. This provision requires that projects funded as new or continuation programs selected for categorical assistance awards under Part C—National Programs shall be reviewed before selection and thereafter as appropriate through a formal peer review process. Such process must utilize experts (other than officials and employees of the Department of Justice) in fields related to the technical and/or subject matter of the proposed program.

(b) This subpart of the regulation applies to all applications for grants, cooperative agreements, and other assistance awards selected by the Administrator, OJJDP, for funding under Part C—National Programs that are being considered for competitive and noncompetitive (including continuation awards) awards to begin new project periods, except as provided in the exceptions to applicability set forth below.

§ 34.101 Exceptions to applicability.

The assistance and procurement contract situations specified in § 34.2 (c), (d), (e), (f), and (g) of Subpart A are considered by OJJDP to be outside the scope of the section 262(d) peer review requirement as set forth in this Subpart.

§ 34.102 Peer review procedures.

The OJJDP peer review process is contained in an OJJDP *Peer Review Manual* developed in consultation with the Directors and other appropriate officials of the National Science Foundation and the National Institute of Mental Health. In addition to specifying substantive and procedural matters related to the peer review process, the *Manual*, addresses such issues as standards of conduct, conflict of interest, compensation of peer reviewers. The peer review process for all Part C—National Programs assistance awards subject to this regulation will be conducted in a manner consistent with this Subpart as implemented in the *Peer Review Manual.*

§ 34.103 Definition.

"Peer review" means the technical and programmatic evaluation by a group of experts (other than officials and employees of the Department of Justice) qualified by training and experience to give expert advice, based on selection criteria established under Subpart A of this part, in a program announcement, or as established by the Administrator, on the technical and programmatic merit on an application for assistance.

§ 34.104 Use of peer review.

(a) *Peer review for competitive and noncompetitive applications.* (1) For competitive applications, each program announcement will indicate the program specific peer review procedures and selection criteria to be followed in peer review for that program. In the case of competitive programs for which a large number of applications is expected, pre-applications (concept papers) may be required. Pre-applications will be reviewed by qualified OJJDP staff to eliminate those pre-applications which fail to meet minimum program requirements, as specified in a program announcement, or clearly lack sufficient merit to qualify as potential candidates for funding consideration. If appropriate the Administrator may subject both pre-applications and formal applications to the peer review process.

(2) For noncompetitive applications, the general selection criteria set forth under Subpart A of this Part may be supplemented by program-specific selection criteria for the particular Part C program. Applicants for noncompetitive continuation awards will be fully informed of any additional specific criteria in writing.

(b) When formal applications are required in response to a program announcement, an initial review will be conducted by qualified OJJDP staff, in order to eliminate from peer review consideration applications which do not meet minimum program requirements. Such minimum program requirements will be specified in the program announcement. Applications determined to be qualified and eligible for further consideration will then be considered under the peer review process.

(c) Ratings will be in the form of numerical scores assigned by individual peer reviewers as illustrated in the OJJDP *Peer Review Manual.* The results of peer review under a competitive program will be a ranking of applications based on the average of the total scores assigned to each application by each peer reviewer in the form of "Summary Ratings." The results of peer review for a noncompetitive new or continuation project will be in the form of numerical scores based on criteria established by the Administrator.

(d) Peer review recommendations, in conjunction with the results of internal review and any necessary supplementary review, will assist the Administrator's consideration of competitive and noncompetitive applications and selection of applications for funding.

(e) Peer review recommendations are advisory only and are binding on the Administrator only as provided by section 262(d)(B)(i) for noncompetitive assistance awards to programs determined through peer review not to be of such outstanding merit that an award without competition is justified. In such case, the determination of whether to issue a competitive program announcement will be subject to the exercise of the Administrator's discretion.

§ 34.105 Peer review methods.

(a) For both competitive and noncompetitive applications, peer review will normally consist of written comments provided in response to the general selection criteria established under Subpart A of this Part and any program-specific selection criteria identified in the program announcement or otherwise established by the Administrator, together with the assignment of numerical values. Peer review may be conducted at meetings with peer reviewers held under OJJDP oversight, through mail reviews, or a combination of both. When advisable, site visits may also be employed. The primary method of peer review anticipated for each announced competitive program, including the evaluation criteria to be used by peer reviewers, will be specified in each program announcement.

(b) When peer review is conducted through meetings, peer review panelists will be gathered together for instruction by OJJDP, including review of the OJJDP *Peer Review Manual.* OJJDP will oversee the conduct of individual and group review sessions, as appropriate. When time or other factors preclude the convening of a peer review panel, mail reviews will be used. For competitive programs, mail reviews will be used only where the Administrator makes a written determination of necessity.

§ 34.106 Number of peer reviewers.

The number of peer reviewers will vary by program (as affected by the volume of applications anticipated or received). OJJDP will select a minimum of three peer reviewers (qualified individuals who are not officials or employees of the Department of Justice) for each program or project review in order to ensure a diversity of backgrounds and perspectives. In no case will fewer than three reviews be made of each individual application.

§ 34.107 Use of Department of Justice staff.

OJJDP will use qualified OJJDP and other DOJ staff as internal reviewers. Internal reviewers determine applicant compliance with basic program and statutory requirements, review the results of peer review, and provide overall program evaluation and recommendations to the Administrator.

§ 34.108 Selection of reviewers.

The Director of the OJJDP program division with responsibility for a particular program or project will propose a selection of peer reviewers from an extensive and varied pool of juvenile justice and delinquency prevention experts for approval by the Administrator. The selection process for peer reviewers is described in the OJJDP *Peer Review Manual.*

§ 34.109 Qualifications of peer reviewers.

The general reviewer qualification criteria to be used in the selection of peer reviewers are:

(a) Generalized knowledge of juvenile justice; and

(b) Specialized knowledge in areas or disciplines addressed by the applications to be reviewed under a particular program.

(c) No conflict of interest (see OJP M7100.1C, par. 94).

Additional details concerning peer reviewer qualifications are provided in the OJJDP *Peer Review Manual.*

§ 34.110 Management of peer reviews.

A technical support contractor may assist in managing the peer review process.

§ 34.111 Compensation.

All peer reviewers will be eligible to be paid according to applicable regulations and policies concerning consulting fees and reimbursement for expenses. Detailed information is provided in the OJJDP *Peer Review Manual.*

Subpart C—Emergency Expedited Review—[Reserved]

Diane M. Munson,

Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.

January 30, 1989.

[FR Doc. 89–2835 Filed 2–6–89; 8:45 am]

BILLING CODE 4410–18–M

federal register

Tuesday
February 7, 1989

Part V

Department of Health and Human Services

Centers for Disease Control

Meeting: Vital and Health Statistics National Committee; Notice

Federal Register

Tuesday
February 7, 1989

Part V

Department of Health and Human Services

Centers for Disease Control

Meeting; Viral and Rickettsial Diseases
National Committee; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Meeting; Vital and Health Statistics National Committee

ACTION: Notice of meeting.

SUMMARY:

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that the National Committee on Vital and Health Statistics (NCVHS) Executive Subcommittee established pursuant to 42 U.S.C. 242k, section 306(k)(2) of the Public Health Service Act, as amended, announces the following Subcommittee meeting (working session).

Name: National Committee on Vital and Health Statistics Executive Subcommittee.

Time and Date: 9:00 a.m.–12:00 noon—February 8, 1989.

Place: Room 405A, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

Status: Open.

Purpose: The Subcommittee will discuss committee business including work plans and future activities.

Contact Person for More Information: Substantive program information as well as summaries of the meeting and roster of Committee members may be obtained from Gail F. Fisher, Ph.D., Executive Secretary, National Committee on Vital and Health Statistics, Room 2–12, Center Building, 3700 East West Highway, Hyattsville, Maryland 20782, telephone (301) 436–7050.

Notice of a meeting of the full Committee to be held on February 8, 9, and 10, 1989, was published in Vol. 53, No. 248, page 52237, of the **Federal Register** dated December 27, 1988. The need has just occurred for this meeting of the Executive Subcommittee. Therefore, the 15-day publication requirement could not be met.

Dated February 3, 1989.

Elvin Hilyer,

Associate Director for Policy Coordination Centers for Disease Control.

[FR Doc. 89–3053 Filed 2–6–89 11:29 am]

BILLING CODE 4160–18–M

Meeting; Vital and Health Statistics National Committee

ACTION: Notice of meeting.

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that the National Committee on Vital and Health Statistics (NCVHS) Subcommittee on Minority Health Statistics established pursuant to 42 U.S.C. 242k, section 306(k)(2) of the Public Health Service Act, as amended, announces the following Subcommittee meeting (working session).

Name: National Committee on Vital and Health Statistics Subcommittee on Minority Health Statistics.

Time and Date: 1:00 p.m.—3:00 p.m.—February 10, 1989.

Place: Room 703A, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

Status: Open.

Purpose: The Subcommittee will discuss plans for a public hearing on indigent health care data needs.

Contact Person for More Information: Substantive program information as well as summaries of the meeting and roster of Committee members may be obtained from Gail F. Fisher, Ph.D., Executive Secretary, National Committee on Vital and Health Statistics, Room 2–12, Center Building, 3700 East West Highway, Hyattsville, Maryland 20782, telephone (301) 436–7050.

Notice of a meeting of the full Committee to be held on February 8, 9, and 10, 1989, was published in Vol. 53, No. 248, page 52237, of the **Federal Register** dated December 27, 1988. The need has just occurred for this meeting of the Subcommittee on Minority Health Statistics. Therefore, the 15-day publication requirement could not be met.

Dated: February 3, 1989.

Elvin Hilyer,

Associate Director for Policy Coordination Centers for Disease Control.

[FR Doc. 89–3052 Filed 2–6–89; 11:29 am]

BILLING CODE 4160–18–M

federal register

Tuesday
February 7, 1989

Part VI

Federal Home Loan Bank Board

12 CFR Parts 525, 569c, and 578
Federal Savings and Loan Insurance Corporation Assignment or Pledge of Assets; Final Rules

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 578

[No. 89-108]

Assignment or Pledge of Assets Held by the FSLIC in Its Corporate Capacity

Date: February 6, 1989.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board ("Board"), as the operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC"), is adopting an interpretive rule which asserts the FSLIC's right to assign or pledge assets which it holds in its corporate capacity.

EFFECTIVE DATE: February 6, 1989.

FOR FURTHER INFORMATION, CONTACT: Lawrence W. Hayes, Deputy General Counsel, (202) 377-6428, or Richard B. Foley, Attorney, Office of General Counsel, (202) 377-7393, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: The Board is exercising its rulemaking authority as operating head of the FSLIC by adopting an interpretive regulation which states that the FSLIC may assign or pledge assets which it holds in its corporate capacity. The regulation also explains the manner by which assignments or pledges of FSLIC assets may be perfected. Authority to engage in rulemaking on this subject has been conferred upon the Board by section 402(a) of the NHA, 12 U.S.C. 1725(a) (1982). Section 402(a) provides that the FSLIC shall be operated by the Board "under such bylaws, rules, and regulations as it [the Board] may prescribe for carrying out the purposes of this title [title IV of the NHA, 12 U.S.C. 1724-1730g (1982)]." This broad rulemaking authority allows the Board to adopt regulations governing the operation of the FSLIC, including its financial operations. As explained below, the regulation simply makes explicit the statutory powers implied by section 402(d) of the NHA, 12 U.S.C. 1725(d) (1982), which delineates the FSLIC's authority with respect to its financial operations.

Section 402(d) of the NHA authorizes the FSLIC to borrow "for the purposes of this subchapter" (i.e., title IV of the NHA)[1] and directs that loans to the FSLIC from the Federal Home Loan Banks "shall be adequately secured, as determined by the Board."[2] Since there is no express authority for the FSLIC to provide security for loans anywhere in the NHA or in any other statute, section 402(d) must be viewed as implicitly authorizing the FSLIC to provide security—i.e., to assign or pledge its assets as collateral. Otherwise, the language in section 402(d) regarding adequate security is rendered meaningless or nugatory. Well-settled principles of statutory construction dictate that an interpretation which would leave a statute meaningless or nugatory should be avoided if possible: "[T]he courts start with the assumption that the legislature intended to enact an effective law."[3]

In addition to NHA section 402(d), separate and independent authority for the FSLIC to assign or pledge assets stems from its authority to provide financial assistance pursuant to NHA section 406(f), 12 U.S.C. 1729(f) (1982). Section 406(f) expressly authorizes the FSLIC, "in its sole discretion and upon such terms and conditions as [it] may prescribe," to make loans or contributions to, and to assume the liabilities of, persons or entities meeting the statutory prerequisites for such assistance, provided such assistance is not more expensive than liquidation. 12 U.S.C. 1729(f)(1), 1729(f)(2)(A), 1729(f)(4)(A) (1982). This authority is the basis for FSLIC guarantees of advances. Like a FSLIC guarantee, an assignment or pledge of FSLIC assets in essence constitutes a loan or contribution to, or a contingent assumption of the liabilities of, the person or entity involved.

The regulation, set forth below, states that the FSLIC may assign or pledge any asset which it holds in its corporate capacity, including, but not limited to, claims of the FSLIC against receiverships as subrogee of insured depositors. The regulation also provides that such assignments or pledges must be made and perfected in the following manner: (a) with respect to assignments or pledges of claims against receivers, in accordance with Part 569c; (b) with respect to assignments or pledges of interests in real property, in accordance with the laws of the jurisdiction where the real property is located; and (c) with respect to assignments or pledges of other assets in which the FSLIC has an interest, in accordance with the terms set forth in sections 28:9-101 through 28:9-507 of the District of Columbia Code, unless the Board provides otherwise.

This regulation, effective upon adoption by the Board, is being issued without the notice and comment procedures of the Administrative Procedure Act, as amended ("APA"). Pursuant to 5 U.S.C. 553(b)(3)(A), 553(d)(2) (1982), and in accordance with the Board's regulations published at 12 CFR 508.11 and 508.14 interpretive rules are not subject either to the notice and comment or delayed effective date requirements of the APA. Moreover, even if the notice and comment and delayed effective date requirements were applicable to this regulation, the Board finds good cause for not complying with these requirements, pursuant to 5 U.S.C. 553(b)(3)(B), 553(d)(3) (1982). Due to the instability of a significant number of insured institutions, immediate implementation of this regulation is necessary in order for the FSLIC to carry out its statutory responsibilities.

Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1164, 1165 (1980), the Board is providing the following regulatory flexibility analysis.

1. *Reasons, objectives, and legal basis underlying the rule.* These elements are incorporated above in the supplementary information regarding the rule.

2. *Small institutions to which the rule would apply.* The rule applies only to the FSLIC in its corporate capacity.

3. *Impact of the rule on small institutions.* The rule will affect equally all institutions and will not have a disproportionate impact on small institutions.

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

5. *Alternatives to the rule.* There are no alternatives to the rule that would have less impact on small institutions.

List of Subjects in 12 CFR Part 578

Administrative practice and procedure, Savings and loan associations.

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[1] Section 402(i) of the NHA, 12 U.S.C. 1725(i) (1982), allows the FSLIC to borrow from the Treasury an amount not exceeding an aggregate of $750,000,000 outstanding at any one time and prohibits the FSLIC from exercising its borrowing power under section 402(d) for the purpose of borrowing from any source other than the Federal Home Loan Banks.

[2] This clause was added to section 402(d) by section 125(a) of the Garn-St Germain Depository Institutions Act of 1982, Pub. L. No. 97-320, § 125(a), 96 Stat. 1469, 1485 (1982). The legislative history of this amendment, which is permanent legislation, does not shed light on the Congressional intent underlying the clause. However, the Board has issued a statement of policy concerning Federal Home Loan Bank loans to the FSLIC which provides that: "[s]uch loans may be secured or unsecured, as determined by the Board." 12 CFR 531.2(b)(1) (1987).

[3] 73 Am. Jur. 2d *Statutes* section 249 (1974).

Accordingly, the Board hereby adds Part 578, Subchapter D, Chapter V of Title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

1. Subchapter D is amended by adding new Part 578 to read as follows:

PART 578—FSLIC FINANCIAL OPERATIONS

Authority: Sections 402, 406, 48 Stat. 1256, 1259, as amended (12 U.S.C. 1725, 1729); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR 1943–1948 Comp., p. 1071.

§ 578.1 Assignment or pledge of Corporation's assets.

(a) The Corporation may assign or pledge its interest in any asset held in its corporate capacity, including, but not limited to, any claim against a receiver acquired by subrogation or otherwise.

(b) Assignments or pledges of claims against receivers of insured institutions shall be made, perfected and have priority as specified under Part 569c or by resolution of the Federal Home Loan Bank Board. Unless otherwise provided by the Federal Home Loan Bank Board, assignments or pledges of other assets in which the Corporation has an interest shall be made and perfected in accordance with the terms set forth in sections 28:9–101 through 28:9–507 of the District of Columbia Code, except for assignments or pledges of interests in real property, which assignments or pledges of interests in real property shall be made and perfected in accordance with the laws of the jurisdiction where the real property is located.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89–3060 Filed 2–6–89; 12:56 pm]

BILLING CODE 6720–01–M

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12 CFR Part 569c

[No. 89–109]

Recognition by Receivers of the FSLIC's Claims as Subrogee of Insured Depositors and Assignments or Pledges of Such Claims

Date: February 6, 1989.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board ("Board"), as operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC"), is adopting a regulation applicable to the FSLIC as receiver for federal and state institutions ("Receiver"). The regulation provides for recognition on the books of the Receiver of claims to which the FSLIC in its corporate capacity ("FSLIC") has been subrogated by payment of insurance and for recognition of transfers of such subrogated claims.

EFFECTIVE DATE: February 6, 1989.

FOR FURTHER INFORMATION CONTACT: Lawrence W. Hayes, Deputy General Counsel, (202) 377-6428, or Richard B. Foley, Attorney, Office of General Counsel, (202) 377-7393, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

A. Introduction

The Board is amending the regulations governing the conduct of receiverships to make it clear that: (1) When insurance is paid to a depositor, the Receiver shall note on its books the transfer of the depositor's claim and the FSLIC's subrogation thereto to the extent of the insurance paid; (2) in the event insurance is paid by making available to the depositor an insured account in another institution or by payment through an agent, the effective date of the transfer of the insured portion of the depositor's claim and the FSLIC's subrogation thereto which the Receiver shall note on its books shall be the effective date on which such accounts are transferred to such other insured institution or agent; (3) assignments, pledges, conveyances, or other transfers of any claim to which the FSLIC has been subrogated, by the FSLIC or a subsequent holder of record of an interest in such a claim, shall be noted on the books of the Receiver as of the date of such transfer immediately upon notification by such holder of record, shall be effective without further action or notice by the transferee, and shall not be subject to any competing claim or interest not recorded in the Receiver's books; and (4) the Receiver shall inform any purported holder of an interest in a claim to which the FSLIC has been subrogated, upon written request, whether such interest is recorded in the books of the Receiver and whether it is subject to any competing claims or interests recorded in the books of the Receiver.

Pursuant to section 5(d)(11) of the Home Owners' Loan Act of 1933, as amended ("HOLA"), 12 U.S.C. 1464(d)(11) (1982), the Board has plenary authority to make rules and regulations for federally chartered associations in conservatorship or receivership, for the conduct of conservatorships and receiverships, and for the liquidation and dissolution of such associations. Pursuant to section 406(c)(3)(A) of the National Housing Act, as amended ("NHA"), 12 U.S.C. 1729(c)(3)(A) (1982), the provisions of section 5(d)(11) of the HOLA are applicable to a state-chartered, FSLIC-insured institution for which the Board has appointed the FSLIC as receiver "in the same manner and to the same extent as if such [state-chartered] institution were a Federal association * * *."

Congress has twice amended section 5(d) of the HOLA to enlarge the Board's power to regulate conservatorships and receiverships. Originally, the 1933 version of section 5(d) provided that "[T]he Board shall have full power to provide in the rules and regulations * * * for the liquidation of such associations * * * including the power to appoint a conservator or receiver * * *." Home Owners' Loan Act of 1933, Pub. L. No. 73–74, section 5(d), 48 Stat. 132 (1933). The original powers were clarified in 1954. "The Board shall have power to make rules and regulations for the reorganization, merger, and liquidation of Federal associations and for such associations in conservatorship and receivership and for the conduct of conservatorships, and receiverships." Housing Act of 1954, Pub. L. No. 83-560, section 503(2), 68 Stat. 590 (1954).

In 1966, Congress recognized that "it is essential that the Federal supervisory agencies have the statutory and administrative facility to move quickly and effectively to require adherence to the law and cessation and corrections of unsafe or improper practices." S. Rep. No. 1482, 89th Cong., 2d Sess., *reprinted in* 1966 U.S. Code Cong. & Ad. News 3532, 3536. To this end, Congress altered provisions concerning the grounds of appointment and challenges to appointment and enacted section 5(d)(11) in its present form. Financial Institutions Supervisory Act of 1966, Pub. L. No. 87-695, section 101(a), 80 Stat. 1028 (1966). The broad powers restated and amplified in the 1966 amendment authorize the Board's present rulemaking authority under the HOLA.

In 1968, by the enactment of section 406(c)(3) of the NHA, Congress extended the Board's regulatory powers to include authority to issue similar regulations for the receivership and liquidation of state-chartered, FSLIC-insured institutions. Pub. L. No. 90-389, section 6, 82 Stat. 294 (1968). Congress based this extension of regulatory powers on the FSLIC's vital interest in seeing that the liquidation of the [state-chartered] association

proceeds in an orderly manner." S. Rep. No. 1263, 90th Cong., 2d Sess., *reprinted in* 1968 U.S. Code Cong. & Ad. News 2530, 2531.[1]

These grants of statutory authority are not less broad than those conferred upon the Board by section 5(a) of the HOLA, 12 U.S.C. 1464(a) (1982), which the United States Supreme Court regards as authorizing the Board to govern "the powers and operations of every federal savings and loan association from its cradle to its corporate grave." *Fidelity Federal Savings and Loan Association v. de la Cuesta*, 458 U.S. 141, 145 (1982), citing *People v. Coast Federal Savings and Loan Association*, 98 F. Supp. 311, 316 (S.D. Cal, 1951).[2]

For the last fifty years, then, Congress has consistently acted to protect the welfare of depositors, the credibility of the nation's financial institutions, and the soundness of the FSLIC reserves, by granting the Board increasing authority over associations in conservatorship or receivership, and the authority to engage in rulemaking concerning the receivership, liquidation, and dissolution of insured institutions. Accordingly, the Board has determined that this regulation is within the Board's statutory authority under section 5(d)(11) of the HOLA and section 406(c)(3) of the NHA. The regulation is applicable to the FSLIC as receiver for any insured institution.

B. FSLIC's Claims as Subrogee

Section 405(b) of the NHA, 12 U.S.C. 1728(b) (1982), directs the FSLIC, in the event of a default by any insured institution, to pay each insured account in such insured institution which is "surrendered and transferred" to the FSLIC. Payment is to be made "as soon as possible either (1) by cash or (2) by making available to each insured member a transferred account in a new insured institution in the same community or in another insured institution in an amount equal to the insured account of such member * * * ." Id. Pursuant to section 406(b)(2) of the NHA, 12 U.S.C. 1729(b)(2) (1982), the FSLIC is directed to pay insurance in accordance with section 405. Section 406(b)(2) also provides that the FSLIC, upon "surrender and transfer" of an insured account in any federal association which is in default, shall become subrogated with respect to such account. The provisions of section 406(b)(2) are made applicable to statechartered institutions by section 406(c)(1) of the NHA, 12 U.S.C. 1729(c)(1) (1982).

Under the foregoing statutory framework, the FSLIC's obligation to pay insured accounts or to make available transferred accounts in a new insured institution in the same community or in another insured institution, and its right to become subrogated with respect to insured accounts, are both contingent upon the "surrender and transfer" of insured accounts in the closed institution. Thus it is necessary to determine when the "surrender and transfer" occurs in order to determine the timing of the FSLIC's insurance payment obligation and subrogation.

The legislative history of the NHA does not specify what constitutes a "surrender and transfer". The second sentence of section 406(b)(2) of the NHA, containing the subrogation provision in its present form, was set forth in section 26 of the Additional Home Mortgage Relief Act, Pub. L. No. 74–76, section 26, 49 Stat. 293, 299 (1935). As originally enacted in 1934, the second sentence did not include a reference to subrogation but read as follows: "The net proceeds that may arise from the orderly liquidation of any such association, after reimbursement of the Corporation [FSLIC] of all amounts paid by it for such insurance, shall be distributed pro rata among the shareholders of the association." Although the legislative history of the 1935 amendment reveals that its purpose was to ensure that the FSLIC would not have a preferred position over that of general creditors or uninsured accountholder interests in the liquidation of an institution in receivership,[3] there is no indication in the legislative history of the intended meaning of "surrender and transfer". It is likely that the "surrender and transfer" language of section 406(b)(2) was included in the 1935 amendment in order to track the original (and current) version of section 405(b). However, the legislative history of section 405(b) does not provide specific guidance as to the meaning of this language either.

Given the absence of legislative history concerning what constitutes a "surrender and transfer" under sections 405(b) and 406(b)(2) of the NHA, the FSLIC has adopted measures to assure itself that a "surrender and transfer" and subrogation are accomplished. When cash payments of insured accounts are made, depositors are required to execute formal assignments of their insured accounts in order to receive payment. However, when transferred accounts are made available to depositors—by execution of an agreement between the FSLIC and an insured institution—such formal assignments generally are not executed; the transfer is effected as of the date of default.[4] In transfer of accounts transactions, the "surrender and transfer" and subrogation of the FSLIC are accomplished through application of the general common law doctrine of equitable subrogation.[5]

Pursuant to the doctrine of equitable subrogation, the FSLIC is entitled to exercise the rights of depositors with respect to their insured accounts after making available transferred accounts. Subrogation is a remedy which has been available in courts of equity at least since the seventeenth century.[6] The doctrine is explained as follows in the Restatement of the Law of Restitution:

> Where property of one person is used in discharging an obligation owed by another or a lien upon the property of another, under such circumstances that the other would be unjustly enriched by the retention of the benefit thus conferred, the former is entitled to be subrogated to the position of the obligee or lien-holder.

Restatement of the Law of Restitution section 162 (1937); *see id.*, comment (a).[7]

It is clear from the Restatement that the underlying justification and purpose for subrogation, as with most forms of

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[1] A further revision was made in 1982, which extended these powers to appointments under the Garn-St German Depository Institutions Act of 1982, Pub. L. No. 97-320, section 122(f) 96 Stat. 1469, 1482 (1982).

[2] Section 5(a) of the HOLA provides in part that the Board "is authorized under such rules and regulations as it may prescribe to provide for the organization, incorporation, examination, operation, and regulation of associations to be known as federal savings and loan association, or federal savings banks."

[3] *See, e.g.*, 79 Cong. Rec. 3154 (March 7, 1935) [Statement of Rep. Franklin W. Hancock, Jr. (D-N.C.)]; and *Home Owners' Loan and National Housing Act: Hearings on S. 1771 and H.R. 6021 Before the Senate Subcommittee of the Committee on Banking and Currency*, 74th Cong., 1st Sess. 24 (1935) [statement of I. Friedlander (President, U.S. Building and Loan League)].

[4] Depositors whose accounts are partially uninsured are required to execute formal assignments of their insured accounts.

[5] Equitable subrogation, also known as "legal" subrogation, is distinguished from "conventional" subrogation. The former arises by operation of law and, unlike the latter, does not depend on contract or agreement. 73 Am. Jur. 2d *Subrogation* § 8 (1974). At least one federal court has confirmed that the FSLIC's right of subrogation is derived from common law as well as from statutory sources. *See Federal Savings and Loan Insurance Corporation v. Heidrick*, No. HM 86–77 (D.Md. Jan. 7, 1986) (LEXIS, Genfed library, Dist. file).

[6] 1 G. Palmer, Law of Restitution § 1.5(b) (1978). *See Ford v. Stobridge*, 21 Eng. Rep. 780 (Ch. 1692); *Morgan v. Seymour*, 21 Eng. Rep. 525 (Ch. 1637).

[7] *See also* 73 Am. Jur. 2d *Subrogation* § 5 (1974); 4 J. Pomeroy, Equity Jurisprudence §§ 1211–12 (5th ed. 1941).

restitution, is to prevent unjust enrichment:

> The reason for subrogation when a surety pays a debt is that this prevents unjust enrichment of the principal. Once this is recognized, subrogation should always be available when and to the extent that it serves to prevent unjust enrichment.

1 G. Palmer, Law of Restitution § 3.6(b) (1978).[8]

Equity's interest in preventing unjust enrichment is, therefore, the basis for the FSLIC's right of equitable subrogation. In this regard, the FSLIC's rights are like those of any insurer:

> [T]he equitable right of subrogation as the legal effect of payment [of insurance] inures to the insurer *without any formal assignment* or any express stipulation to that effect in the [insurance] policy. Consequently, the refusal of the insured to make an assignment to the insurer of a cause of action against a wrongdoer through whose negligent act a loss occurred is no defense to an action by the insurer, even in the absence of an express convenant by the insured to assign.

44 Am. Jur. 2d *Insurance* section 1794 (1982) (emphasis added).

The foregoing principles dictate that the FSLIC, upon making available transferred accounts pursuant to section 405(b) of the NHA, is equitably subrogated to the rights of depositors regarding their insured accounts in the closed institution regardless of whether formal assignments have been made. Since the FSLIC, in fulfillment of its statutory mandate, has discharged the closed association's obligations to depositors with respect to their insured accounts, subrogation of the FSLIC to the rights of depositors in connection with such insured accounts is necessary in order to prevent unjust enrichment of such depositors. Thus, the "surrender and transfer" required by section 406(b)(2) of the NHA occurs by virtue of equitable subrogation.[9]

C. Assignment or Pledge of the FSLIC's Claim as Subrogee

Having become subrogated to the insured accounts of depositors pursuant to section 406(b)(2) and common law equitable subrogation, the FSLIC has claims against receiverships for the amount of such insured accounts. These claims, like other assets of the FSLIC, can be assigned or pledged pursuant to the implicit authority of section 402(d) of the NHA, 12 U.S.C. 1725(d). Section 402(d) of the NHA authorizes the FSLIC to borrow "for the purposes of this subchapter" (i.e., title IV of the NHA)[10] and directs that loans to the FSLIC from the Federal Home Loan Banks "shall be adequately secured, as determined by the Board."[11] Since there is no express authority for the FSLIC to provide security for loans anywhere in the NHA or in any other statute, section 402(d) must be viewed as implicitly authorizing the FSLIC to provide security—i.e., to assign or pledge its assets as collateral. Otherwise, the language in section 402(d) regarding adequate security is rendered meaningless or nugatory. Well-settled principles of statutory construction dictate that an interpretation which would leave a statute meaningless or nugatory should be avoided if possible: "[T]he courts start with the assumption that the legislature intended to enact an effective law."[12]

In addition to NHA section 402(d), separate and independent authority for the FSLIC to assign or pledge assets stems from its authority to provide financial assistance pursuant to NHA section 406(f), 12 U.S.C. 1729(f) (1982). Section 406(f) expressly authorizes the FSLIC, "in its sole discretion and upon such terms and conditions as [it] may prescribe," to make loans or contributions to, and to assume the liabilities of, persons or entities meeting the statutory prerequisites for such assistance, provided such assistance is not more expensive than liquidation. 12 U.S.C. 1729(f)(1), 1729(f)(2)(A), 1729(f)(4)(A) (1982). This authority is the basis for FSLIC guarantees of advances. Like a FSLIC guarantee, an assignment or pledge of FSLIC assets in essence constitutes a loan or contribution to, or a contingent assumption of the liabilities of, the person or entity involved.

D. Procedural Rule

Based on the foregoing analysis and authority, the Board hereby issues the following procedural regulation applicable to FSLIC receiverships (i.e., receiverships for associations chartered by the Board or state-chartered institutions insured by the FSLIC for which the FSLIC has been appointed as receiver). The regulation consists of five paragraphs, (a), (b), (c), (d), and (e).

Paragraph (a) states that the regulation is applicable to the FSLIC as Receiver for any insured institution.

Paragraph (b) provides that, when the FSLIC makes payment of an insured account or deposit to the account holder or depositor, the transfer of the claim of the account holder or depositor against the insured institution to the FSLIC—and the FSLIC's subrogation to such claim—shall be noted on the Receiver's books to the extent of the insurance paid.

Paragraph (c) provides that, in the event insurance is paid by making available a transferred account in another insured institution or by payment through an agent, the effective date of the transfer of the account holder's or depositor's claim to the FSLIC and the FSLIC's subrogation to such claim which the Receiver shall note on its books shall be the effective date on which such account is transferred to such other institution or agent by contracts or other actions of the FSLIC.

Paragraph (d) provides for notation by the Receiver of transfers—by assignment, pledge, conveyance or otherwise—of claims to which the FSLIC has been subrogated, whether such transfers are made by the FSLIC or by subsequent holders of record of interests in such claims. Clause (i) of paragraph (d) provides that the Receiver shall note any such transfers on its books as of the date of such transfer immediately upon notification by a holder of record of an interest in such claim. Clause (ii) of paragraph (d) provides that no further action or notice by the transferee is necessary to make the transfer effective. Clause (iii) of paragraph (d) provides that transferees shall acquire their interests free and clear of competing claims, liens, defenses, rights or interests of any party (including those of judgement or lien creditors of the

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[8] "As now applied, [the doctrine of subrogation] is broad enough to include every instance in which one person, not acting as a mere volunteer or intruder, pays a debt for which another is primarily liable, and which in equity and good conscience should have been discharged by the latter.

The doctrine of subrogation embraces all cases where, without it, complete justice cannot be done. Bottomed on this premise, there is, it has been said, no limit to the circumstances that may arise in which the doctrine may be applied."

73 Am. Jur. 2d *Subrogation* section 6 (1974).

[9] It should be noted that, as discussed in the supplementary information accompanying the proposed regulations for conservators and receivers published at 50 FR 48970 (November 27, 1985), the receiver has substantial equity powers. Moreover, as a fiduciary the receiver is obligated to employ the forcgoing equitable principles.

[10] Section 402(i) of the NHA, 12 U.S.C. 1725(i) (1982), allows the FSLIC to borrow from the Treasury an amount not exceeding an aggregate of $750,000,000 outstanding at any one time and prohibits the FSLIC from exercising its borrowing power under section 402(d) for the purpose of borrowing from any source other than the Federal Home Loan Banks.

[11] This clause was added to section 402(d) by section 125(a) of the Garn-St Germain Depository Institutions Act of 1982, Pub. L. No. 97-320, § 125(a), 96 Stat. 1469, 1485 (1982). The legislative history of this amendment, which is permanent legislation, does not offer any indication of the Congressional intent underlying the clause. However, the Board has issued a statement of policy concerning Federal Home Loan Bank loans to the FSLIC which provides that "[s]uch loans may be secured or unsecured, as determined by the Board." 12 CFR 531.2(b)(1) (1987).

[12] 73 Am. Jur. 2d *Statutes* § 249 (1974).

receiver), or any transferee of such party, unless such competing claims, liens, defenses, rights or interests are recorded in the books of the Receiver.

Finally, paragraph (e) provides that, upon written request by any purported holder of an interest in a claim to which the FSLIC has been subrogated, the Receiver shall inform such holder whether such interest is recorded in the Receiver's books and whether it is subject to any competing claims or interests recorded in the Receiver's books.

This regulation, effective upon adoption by the Board, is being issued without the notice and comment procedures of the Administrative Procedure Act, as amended ("APA"). Pursuant to 5 U.S.C. 553(b)(3)(A), 553(d) (1982), and in accordance with the Board's regulations published at 12 CFR 508.11 and 504.14 non-substantive procedural rules are not subject either to the notice and comment or delayed effective date requirements of the APA. Moreover, even if the notice and comment and delayed effective date requirements were applicable to this regulation, the Board finds good cause for not complying with these requirements, pursuant to 5 U.S.C. 553(b)(3)(B), 553(d)(3) (1982). Due to the instability of a significant number of insured institutions, immediate implementation of this regulation is necessary in order for the FSLIC to carry out its statutory responsibilities.

Regulatory Flexibility Analysis

Pursuant to Section 3 of the Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1164, 1165 (1980), the Board is providing the following regulatory flexibility analysis.

1. *Reasons, objectives, and legal basis underlying the rule.* These elements are incorporated above in the supplementary information regarding the rule.

2. *Small institutions to which the rule would apply.* The rule would apply to all institutions the accounts of which are insured by the FSLIC and for which the FSLIC has been appointed receiver as well as to all associations chartered by the Board.

3. *Impact of the rule on small institutions.* The rule will affect equally all institutions to which it applies and will not have a disproportionate impact on small institutions.

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

5. *Alternatives to the rule.* There are no alternatives to the rule that would have less impact on small institutions.

List of Subjects in 12 CFR Part 569c

Savings and loan associations.

Accordingly, the Board hereby amends Part 569c, Subchapter D, Chapter V of Title 12, *Code of Federal Regulations*, as set forth below.

PART 569c—RECEIVERSHIP RULES

1. The authority citation for Part 569c continues to read as follows:

Authority: Section 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 402, 406, 48 Stat. 1256, 1259, as amended (12 U.S.C. 1725, 1729); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR 1943-1948 Comp., p. 1071.

2. Section 569c.7-1 is added to read as follows:

§ 569c.7-1 Subrogation of the Corporation and Assignment of Claim.

(a) The provisions of this § 569c.7-1 apply to the Corporation as receiver for any insured institution.

(b) When the Corporation makes payment of an insured account or deposit in an insured institution, to the account holder or depositor (either hereinafter referred to as "depositor"), the transfer of the depositor's claim against the insured institution to the Corporation and the subrogation of the Corporation to such claim shall be noted on the books of the receiver to the extent of the insurance paid.

(c) In the event the Corporation makes payment of an insured account or deposit in an insured institution by making available to a depositor a transferred account in another insured institution or by payment through an agent, the effective date of the transfer of the depositor's claim to the Corporation and the subrogation of the Corporation which the receiver shall note on its books shall be the effective date on which such account is transferred to such other institution or payment through the agent pursuant to the actions of, or contracts entered into by, the Corporation.

(d) In the event that the Corporation transfers, by assignment or pledge, a depositor's claim to which it has been subrogated, or in the event that a subsequent holder of record of an interest in such claim makes such a transfer of its interest:

(1) The receiver shall immediately enter such transfer into its books as of the date of such transfer upon notice by any such holder of record of an interest in such claim;

(2) Such transfer shall be effective without further action or notice by the transferee; and

(3) The transferee shall acquire its interest free and clear of any claim, lien, defense, right, or interest of any party, including a judgment or lien creditor of the receiver, or any transferee of such party, unless such claim, lien, defense, right, or interest has been previously recorded in the books of the receiver.

(e) Upon written request from any purported holder of an interest in a depositor's claim to which the Corporation has been subrogated, the receiver shall promptly inform the holder whether that holder's interest in such claim is recorded in the books of the receiver and whether such interest is subject to any other competing claims or interests recorded in the books of the receiver.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89-3661 Filed 2-6-89; 12:56 pm]

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12 CFR Part 525

[No. 89-110]

Collateral for Bank Advances

Date: February 6, 1989.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board ("Board") is amending its regulations concerning Federal Home Loan Bank ("Bank") advances to specify that eligible collateral for Bank advances includes claims of the Federal Savings and Loan Insurance Corporation ("FSLIC") against receiverships, which the FSLIC acquired by subrogation or otherwise, and assignments or pledges of such claims.

EFFECTIVE DATE: February 6, 1989.

FOR FURTHER INFORMATION CONTACT: Lawrence W. Hayes, Deputy General Counsel, (202) 377-6428, or Richard B. Foley, Attorney, Office of General Counsel, (202) 377-7393, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: Section 352 of the Garn-St Germain Depository Institutions Act of 1982, Pub. L. No. 97-320, 96 Stat. 1469, 1507 (1982) ("DIA"), eliminated restrictions on eligible collateral for Bank advances contained in section 10(a) of the Federal Home Loan Bank Act ("Act"), 12 U.S.C. 1430(a) (1982), and authorized each Bank "to make secured advances to its members upon such security as the Board may prescribe." In amending section 10(a) of the Act, the Congress expressed a clear intent to "give the Bank Board authority

to prescribe what should constitute acceptable security." S. Rep. No. 536, 97th Cong., 2d Sess. 59 (1982).

In order to implement section 10(a) of the Act, as amended by the DIA, the board adopted regulations, published at 49 FR 34197 (August 29, 1984) and codified at 12 CFR Part 525, which provide that eligible collateral for Bank advances shall consist of the following types of property: (1) Fully-disbursed, whole first mortgages on improved residential property; (2) U.S. Government and Agency securities; (3) deposits of a Bank; or (4) other property acceptable to the Bank, as long as the Bank can readily ascertain its value and can perfect a security interest in it. The regulations also provide that the Banks shall determine the value of collateral for Bank advances and allow the Banks to take action at any time to perfect their security interest in such collateral.

The Board is now amending Part 525 to specify that eligible collateral for Bank advances includes claims of the FSLIC against receiverships, which the FSLIC acquired by subrogation or otherwise, and assignments or pledges of such claims. The new provision will replace the current § 525.7(b)(4), which will be redesignated as § 525.7(b)(5). In amending Part 525 as described, the Board is exercising its express authority under section 10(a) of the Act, as amended by the DIA, to prescribe the types of security upon which Banks can make advances to member institutions.

The amendment provides an additional source of liquidity for member institutions by enabling Banks to accept as eligible collateral for advances assignments or pledges of the FSLIC's claims against receiverships as subrogee of depositors to whom it has paid insurance of accounts pursuant to section 405(b) of the National Housing Act, as amended ("NHA"), 12 U.S.C. 1728(b) (1982). The FSLIC in its corporate capacity becomes subrogated to the claims of such depositors against receiverships by virtue of section 406(b)(2) of the NHA and the common law principle of equitable subrogation. Regulations being adopted by the Board contemporaneously with this regulation, to be codified at 12 CFR 578.1 and 569c.7–1, respectively, state that the FSLIC in its corporate capacity has the authority to assign or pledge its claims against receiverships as subrogee of depositors, and provide for the recognition of such assignments or pledges by the FSLIC as receiver.

This regulation, effective upon adoption by the Board, is being issued without the notice and comment procedures of the Administrative Procedure Act, as amended ("APA"). The Board finds that good cause exists for finding that these procedures, as well as the APA's requirement of a thirty-day delay of the effective date, are unnecessary and inapplicable with respect to this regulation, pursuant to 5 U.S.C. 553(b)(B) and 553(d)(1) (1982), and 12 CFR 508.11 and 508.14 of the Board's regulations because it further relieves regulatory restrictions concerning eligible collateral for Bank advances.

Regulatory Flexibility Analysis: Pursuant to section 3 of the Regulatory Flexibility Act, Pub. L. No. 96–354, 94 Stat. 1164, 1165 (1980), the Board is providing the following regulatory flexibility analysis.

1. Reasons, objectives, and legal basis underlying the rule. These elements are incorporated above in the supplementary information regarding the rule.

2. Small institutions to which the rule would apply. The rule applies to Banks and member institutions.

3. Impact of the rule on small institutions. The rule will affect all member institutions equally and will not have a disproportionate impact on small institutions.

4. Overlapping or conflicting federal rules. There are no known federal rules which may duplicate, overlap or conflict with this rule.

5. Alternatives to the rule. There are no alternatives to this rule which would have less impact on small institutions.

List of Subjects in 12 CFR Part 525

Credit, Federal home loan banks, Government securities.

Accordingly, the Board hereby amends Part 525, Subchapter B, Chapter V of Title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER B—FEDERAL HOME LOAN BANK SYSTEM

PART 525—ADVANCES

1. The authority citation for Part 525 continues to read as follows:

Authority: Sec. 10, 47 Stat. 731, as amended (12 U.S.C. 1430); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); Reorg. Plan No. 3 of 1947; 12 FR 4981, 3 CFR 1943–1948 Comp., p. 1071.

2. Amend § 525.7 by amending paragraph (b)(3) by removing the word "or" after the semicolon, redesignating paragraph (b)(4) as paragraph (b)(5), and by adding a new paragraph (b)(4), as follows:

§ 525.7 Collateral securing advances.

* * * * *

(b) * * *

(4) Claims of the Federal Savings and Loan Insurance Corporation ("Corporation") against a receivership, which the Corporation acquired by subrogation or otherwise, and assignments or pledges of such claims; or

* * * * *

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89–3062 Filed 2–6–89; 12:56 pm]

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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).