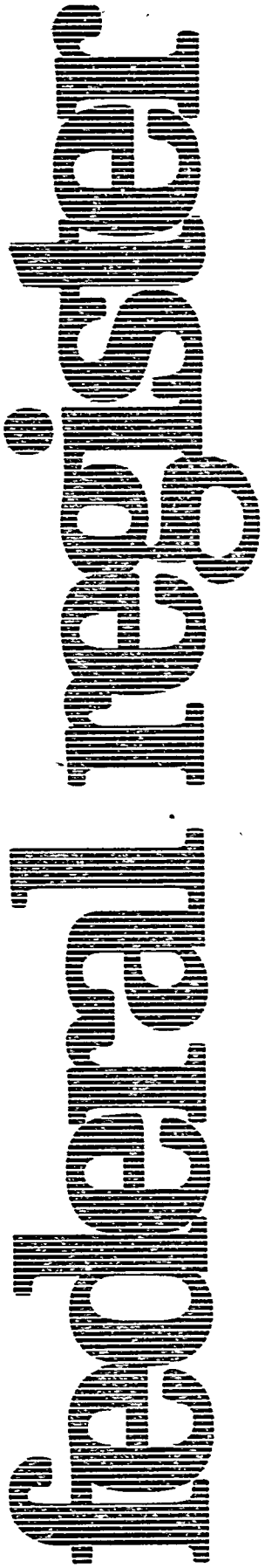
1-30-84
Vol. 49 No. 20
Pages 3639-3834



Monday
January 30, 1984

Selected Subjects

Administrative Practice and Procedure
Patent and Trademark Office
Air Pollution Control
Environmental Protection Agency
Animal Drugs
Food and Drug Administration
Aviation Safety
Federal Aviation Administration
Conflict of Interests
Interior Department
Environmental Impact Statements
Farmers Home Administration
Fisheries
National Oceanic and Atmospheric Administration
Foods
Food and Drug Administration
Grain
Federal Grain Inspection Service
Grant Programs—Health
Veterans Administration
Loan Programs—Agriculture
Farmers Home Administration
Marketing Agreements
Agricultural Marketing Service

CONTINUED INSIDE

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

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Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

Selected Subjects

Medical Devices
Food and Drug Administration

Medicare
Health Care Financing Administration

Natural Gas
Federal Energy Regulatory Commission

Old-Age, Survivors and Disability Insurance
Social Security Administration

Poultry and Poultry Products
Food Safety and Inspection Service

Reporting and Recordkeeping Requirements
Civil Aeronautics Board

Voting Rights
Personnel Management Office

Warehouses
Agricultural Marketing Service

Contents

Federal Register
Vol. 49, No. 20
Monday, January 30, 1984

Agricultural Marketing Service
RULES
3640 Oranges (navel) grown in Ariz. and Calif.
Warehouse regulations:
3639 Cotton; fees

Agriculture Department
See Agricultural Marketing Service; Farmers Home Administration; Federal Grain Inspection Service; Food Safety and Inspection Service; Packers and Stockyards Administration.

Alcohol, Drug Abuse, and Mental Health Administration
NOTICES
Meetings; advisory committees:
3693 February; correction

Architectural and Transportation Barriers Compliance Board
NOTICES
3676 Meetings; cancellation

Army Department
NOTICES
Environmental statements; availability, etc.:
3679 Anniston Army Depot, Ala., et al.

Arts and Humanities, National Foundation
NOTICES
Grants; availability, etc.:
3705 Museum services; conservation project support program
3706 Museum services; special project support program
Meetings:
3705 Arts National Council
3705 Visual Arts Advisory Panel

Civil Aeronautics Board
RULES
Accounts and reports for certificated air carriers; uniform system:
3643 Recordkeeping and reporting requirements
PROPOSED RULES
Air carriers:
3671 Smoking aboard aircraft; oral argument
NOTICES
Hearings, etc.:
3676 Royale Airlines, Inc.

Commerce Department
See International Trade Administration; National Oceanic and Atmospheric Administration; Patent and Trademark Office.

Conservation and Renewable Energy Office
NOTICES
Cooperative agreement awards:
3684 Energy Task Force Management Corp., Inc.; municipal and non-profit institutional buildings site demonstration program

Customs Service
PROPOSED RULES
Country of origin making:
3671 Unfinished sweaters from New Zealand and China

Defense Department
See Army Department; Navy Department.

Drug Enforcement Administration
NOTICES
Registration applications, etc.; controlled substances:
3697 Crisanti, Anthony J., D.D.S.
3699 Park, Nam Jin, M.D.
3700 Roya, Ray, M.D.
3697 Western Fher Laboratories, Inc.
3697 Wyeth Laboratories, Inc.

Education Department
NOTICES
3680 Agency information collection activities under OMB review
Grants; availability, etc.:
3681 Discretionary grant programs
Meetings:
3684 Women's Educational Programs National Advisory Council

Employment and Training Administration
NOTICES
Federal Supplemental Compensation Act:
3701 Instructions issued to State employment security agencies

Energy Department
See Conservation and Renewable Energy Office; Energy Information Administration; Federal Energy Regulatory Commission.

Energy Information Administration
NOTICES
Forms; availability, etc.:
3685 Electric power system report, annual (EIA-714A)
Meetings:
3685 National Petroleum Council

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
3647 Virginia
PROPOSED RULES
Hazardous waste management system:
3674 Test protocols for determining free liquid content; extension of time
NOTICES
3689 Agency information collection activities under OMB review
Meetings:
3690 Pretreatment Implementation Review Task Force

Water pollution control:
3832 Publicly-owned treatment works (POTWs); national municipal policy

Farmers Home Administration
RULES
3724 National Environmental Policy Act; implementation
PROPOSED RULES
Loan and grant programs:
3666 Emergency loans; crop insurance as loan closing condition

Federal Aviation Administration
PROPOSED RULES
3669 Federal colored airways
3670 Transition areas
NOTICES
3716 Exemption petitions; summary and disposition

Federal Energy Regulatory Commission
RULES
Natural Gas Policy Act:
3644 Incremental pricing; acquisition cost thresholds
3643 Oil pipelines; interest rate on amounts held subject to refund and eliminating undertaking requirements for gas pipelines and producers; technical amendments
NOTICES
Hearings, etc.:
3686 Carolina Power & Light Co.
3686 Consumers Power Co.
3686 Georgia Power Co.
3687 Montaup Electric Co.
3687, 3688 Panhandle Eastern Pipe Line Co. (3 documents)
3688 Southern California Edison Co.
3689 Southern Company Services, Inc.
3689 Tucson Electric Power Co.

Federal Grain Inspection Service
PROPOSED RULES
Grain standards:
3663 Rye
NOTICES
Meetings:
3676 Advisory Committee

Federal Mine Safety and Health Review Commission
NOTICES
3720 Meetings; Sunshine Act

Federal Reserve System
NOTICES
Bank holding company applications, etc.:
3690 First Security Corp. et al.
3690 Norwest Corp.; correction
3690 Upper Valley Bancorp, Inc., et al.
3720 Meetings; Sunshine Act (3 documents)

Federal Trade Commission
NOTICES
3720, 3721 Meetings; Sunshine Act (2 documents)

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
3645 Tylosin
Medical devices:
3645 Exemption from Federal preemption of State and local requirements; application copies
PROPOSED RULES
Color additives and food for human consumption:
3804 Incorporation by reference; update
NOTICES
Grants; availability, etc.:
3691 Orphan products; clinical studies of effects

Food Safety and Inspection Service
RULES
Meat and poultry inspection:
3641 Chickens and turkeys; removal of kidneys

Health and Human Services Department
See Alcohol, Drug Abuse, and Mental Health Administration; Food and Drug Administration; Health Care Financing Administration; Public Health Service; Social Security Administration.

Health Care Financing Administration
RULES
Medicare:
3648 Intermediaries and carriers; reduction in number of providers dealing directly with HCFA

Interior Department
See also Land Management Bureau; National Park Service.
RULES
3661 Conflict of interests; employee responsibilities and conduct

International Trade Administration
NOTICES
Antidumping:
3677 Animal glue and inedible gelatin from West Germany
3677 Export trade certificates of review; applications
Scientific articles; duty free entry:
3679 Mayo Foundation
3679 National Bureau of Standards
3679 University of Pennsylvania Trustees

Interstate Commerce Commission
NOTICES
Railroad operation, acquisition, construction, etc.:
3695 Missouri-Kansas-Texas Railroad Co.
3696 Northern Missouri Railroad, Inc., et al.
3696 Tongue River Railroad Co.
Railroad services abandonment:
3695 Illinois Central Gulf Railroad Co.

Justice Department
See also Drug Enforcement Administration; Juvenile Justice and Delinquency Prevention Office; Parole Commission.
NOTICES
Pollution control; consent judgments:
3696 Kansas City Power & Light Co et al.

Juvenile Justice and Delinquency Prevention Office
NOTICE
Grants; availability, etc.:
3700 Private sector corrections initiative for chronic serious juvenile offender; extension of time

Labor Department
See Employment and Training Administration.

Land Management Bureau
NOTICES
Environmental concern; designation of critical areas:
3693 Incandescent Rocks Scenic Area, Carson City District, Nev.
3694 Steamboat Hot Springs Geyser Basin Area, Carson City District, Nev.

Legal Services Corporation
NOTICES
3721 Meetings; Sunshine Act

National Aeronautics and Space Administration
NOTICES
Meetings:
3704 Advisofy Council
3704 History Advisory Committee
Patent licenses, exclusive:
3703 Standard Oil Co. of Cleveland

National Oceanic and Atmospheric Administration
PROPOSED RULES
Fishery conservation and management:
3674 Atlantic mackerel, squid, and butterfish; foreign fishing

National Park Service
NOTICES
Land protection plans; availability, etc.:
3694 Big Thicket National Preserve, Tex.
Meeting:
3695 Chesapeake and Ohio Canal National Historical Park Commission
3695 Santa Monica Mountains National Recreation Area Advisory Commission

Navy Department
NOTICES
Meetings:
3680 Naval Research Advisory Committee

Nuclear Regulatory Commission
PROPOSED RULES
Rulemaking petitions:
3667 University of Utah
NOTICES
Applications, etc.:
3707 Commonwealth Edison Co.
3708 Sacramento Municipal Utility District
Meetings:
3709 Reactor Safeguards Advisory Committee
3708 Reactor Safeguards Advisory Committee; date rescheduled

Pacific Northwest Electric Power and Conservation Planning Council
NOTICES
3721 Meetings; Sunshine Act

Packers and Stockyards Administration
NOTICES
Stockyards; posting and deposting:
3676 Pates Stockyards, Inc., N.C., et al.

Parole Commission
NOTICES
3721 Meetings; Sunshine Act

Patent and Trademark Office
PROPOSED RULES
Patent cases:
3768 Patent interference proceedings

Personnel Management Office
RULES
Voting rights program:
3661 Mississippi

Public Health Service
NOTICES
Organization, functions, and authority delegations:
3693 Health Resources and Services Administration

Securities and Exchange Commission
NOTICES
3709 Agency information collection activities under OMB review
Hearings, etc.:
3710 Capital T Money Fund et al.; correction
3710 Central & South West Corp.
3710 Consolidated Natural Gas Co.
3711 E. F. Hutton & Co. Inc. et al.
3712 Indiana & Michigan Electric Co. et al.
3713 LaMaur, Inc.
3713 Rodger & Sparks General Investments Inc.
3714 Sundsvallsbanken et al.
3715 Vermont Yankee Nuclear Power Corp.
Self-regulatory organizations; proposed rule changes:
3716 Municipal Securities Rulemaking Board
Self-regulatory organizations; unlisted trading privileges:
3716 Midwest Stock Exchange, Inc.

Social Security Administration
PROPOSED RULES
Social security benefits:
3672 Prisoners; nonpayment of benefits

Transportation Department
See Federal Aviation Administration.

Treasury Department
See Customs Service.

Veterans Administration
RULES
Medical benefits:
3646 State home facilities; construction grants

Separate Parts In This Issue

Part II
3724 Department of Agriculture, Farmers Home Administration

Part III
3768 Department of Commerce, Patent and Trademark Office

Part IV

3804 Department of Health and Human Services, Food and Drug Administration.

Part V

3832 Environmental Protection Agency

Reader Aids

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

CFR PARTS AFFECTED IN THIS ISSUE

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

7 CFR
101 ... 3639
907 ... 3640
1901 ... 3724
1924 ... 3724
1940 ... 3724
1941 ... 3724
1942 ... 3724
1943 ... 3724
1944 ... 3724
1945 ... 3724
1948 ... 3724
1980 ... 3724
Proposed Rules:
810 ... 3663
1945 ... 3666

9 CFR
381 ... 3641

10 CFR
Proposed Rules:
20 ... 3667

14 CFR
241 ... 3643
Proposed Rules:
71 (2 documents) ... 3669, 3670
252 ... 3671

18 CFR
154 ... 3643
273 ... 3643
282 ... 3644

19 CFR
Proposed Rules:
134 ... 3671

20 CFR
Proposed Rules:
404 ... 3672

21 CFR
558 ... 3645
808 ... 3645
Proposed Rules:
73 ... 3804
74 ... 3804
103 ... 3804
105 ... 3804
131 ... 3804
133 ... 3804
135 ... 3804
136 ... 3804
137 ... 3804
139 ... 3804
145 ... 3804
146 ... 3804
150 ... 3804
155 ... 3804
160 ... 3804
161 ... 3804
163 ... 3804
164 ... 3804
166 ... 3804
168 ... 3804
169 ... 3804
172 ... 3804
173 ... 3804
175 ... 3804
176 ... 3804
177 ... 3804
178 ... 3804
179 ... 3804
189 ... 3804

37 CFR
Proposed Rules:
1 ... 3768

38 CFR
17 ... 3646

40 CFR
52 ... 3647
Proposed Rules:
264 ... 3674
265 ... 3674

42 CFR
400 ... 3648
405 ... 3648
421 ... 3648

43 CFR
20 ... 3661

45 CFR
801 ... 3661

50 CFR
Proposed Rules:
611 ... 3674
655 ... 3674

Rules and Regulations

Federal Register
Vol. 49, No. 20
Monday, January 30, 1984

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 101

Federally Licensed Cotton Warehouses; Fees for Services

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule specifies increases to the fees and charges to be paid by cotton warehouses licensed under provisions of the United States Warehouse Act, as amended, which traditionally have been paid by such warehousemen. Increases are in keeping with the mandate of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35) and the amendment to the U.S. Warehouse Act (7 U.S.C. 241, *et seq.*). This increase in fees will bring charges for the same services at cotton warehouses to the same level charged for other agricultural commodities eligible for license under the Warehouse Act.

EFFECTIVE DATE: February 29, 1984.

FOR FURTHER INFORMATION CONTACT: Dr. Orval Kerchner, 202–447–3616.

SUPPLEMENTARY INFORMATION: This action has been reviewed under the USDA procedure established in accordance with Executive Order 12291 and Secretary's Memorandum 1512–1 and has been classified "non-major" because the proposal does not meet the criteria contained therein for major regulatory actions.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities because: (i) The amount of the new fees are the minimal amount necessary, and as nearly as practicable cover costs; and the amount of the fee increase is too small to have a significant economic impact; (ii) further, if there is any impact, the Secretary has to recover the costs of the services from the users of the services; and (iii) the use of the services is voluntary.

A proposed rule published in the August 18, 1983, Federal Register, 48 FR 37417, proposed fees for annual cotton warehouse licenses issued to warehousemen and a fee increase in the existing fees charged for: (1) Licensing persons to classify, sample, or weigh cotton; and (2) original examinations or inspections and/or reinspections of cotton warehouses when made upon application of a warehouseman.

The fee for licensing persons to classify, sample, or weigh cotton and the fees for original inspection and/or reinspection of a cotton warehouse when made upon application of a warehouseman are all increased. All of these fees are to cover, as nearly as practicable, the costs of providing such services or licenses, including administrative and supervisory costs. The proposed annual warehouse license fee is withdrawn.

The annual warehouse license fee was a new fee mandated by the Omnibus Budget Reconciliation Act of 1981, Pub. L. 97–35 and the amendment to the U.S. Warehouse Act (7 U.S.C. 241 *et seq.*) as a part thereof effective October 1, 1981. This fee was waived for fiscal years 1982 and 1983 when the Secretary in accordance with 156(d) of the Omnibus Budget Reconciliation Act determined that fees and charges to cotton warehouses licensed pursuant to the U.S. Warehouse Act should be waived to insure that the licensing and inspection procedures for cotton warehouses would be preserved. Funds were appropriated to pay for this service. Since the August 18, 1983, proposed rulemaking action was published, the necessary funds have been appropriated for fiscal year 1984. The proposal noted that if Congress did appropriate funds to pay for such services, the proposed fee schedule would be revised and appropriately modified. In view of the foregoing and in accordance with 156(d) of the Omnibus Budget Reconciliation Act the Secretary has determined that these fees and charges to cotton warehouses licensed pursuant to the U.S. Warehouse Act should be waived and not finalized. Therefore, this action omits the proposed charge for this service.

However, the increases in existing fees will be made as proposed. Specifically, the proposed increases: (1) In the existing fees charged for licensing persons to classify, sample, or weigh cotton; and (2) in fees for original inspection and/or reinspection of a cotton warehouse when made upon application of a warehouseman are implemented in this action. All of these fees are to cover, as nearly as practicable, the costs of providing such services or licenses including administrative and supervisory costs.

All of the comments received in response to the August 18, 1933, proposed rulemaking pertained to the annual warehouse fee. The majority of these comments opposed the assessment of this fee or the method used to compute it or both. The increased fees for licenses and inspection costs were not the subject of any letter of comment.

License Fees

The Warehouse Act provides that the Secretary may charge, assess, and cause to be collected a reasonable fee for each license issued to a warehouseman or to any person to classify, inspect, grade, sample, and/or weigh agricultural products stored or to be stored under provisions of the Warehouse Act. Accordingly, fees were always assessed pursuant to regulation (7 CFR 101.50) for each original warehouseman's license issued, for each amended or reinstated warehouseman's license issued and for each license issued to classify, sample, and/or weigh cotton.

The present fee for issuance of an original warehouseman's license is a modest one-time charge, and was intended to cover only the costs of issuance. The license is continued each year without a new license being issued but may be terminated any year should the warehouseman fail to furnish annually on or before the anniversary date such bond for the ensuing year as is required by the Act and regulations. The present fee has been in effect since 1952. Based upon present and projected costs, an increase from $20 to $50 is provided in this action for each original warehouseman's license, an increase from $10 to $50 for each amended or reinstated license and an increase from

$6 to $20 for each license, or amendment, issued to a sampler, classifier, and/or weigher. The changes reflect increases in several cost factors, including salaries, rent, and miscellaneous overhead, and include applicable administrative and supervisory costs. Such fees will increase the charges to the same level charged for other agricultural commodities eligible for license under the Warehouse Act.

Inspection of a Warehouse

The Warehouse Act provides that the Secretary may charge, assess, and cause to be collected a reasonable fee for every examination or inspection of a warehouse when such examination or inspection is made upon application of a warehouseman.

Accordingly, fees were assessed and collected pursuant to regulation (7 CFR 101.51) for each original inspection and/or reinspection when such inspection was made upon application of a warehouseman. This is a voluntary service in which the present fee for each original inspection or reinspection of a warehouse is based upon a flat $20, per 1,000 bales of cotton storage capacity of the warehouse with a $40 minimum and $500 maximum fee range. This fee has been in effect since 1969 and has not been increased since that time. Based upon present and projected costs, the fee is increased to $50 per 1,000 bales of cotton storage capacity with a $100 minimum to $1,000 maximum range. This increase reflects increases in several cost factors, including salaries, rent, miscellaneous overhead, and includes applicable administrative and supervisory costs.

Implementation of Fees

All of the fees specified in this final rule shall be assessed and collected as the service covered is performed.

Necessary, conforming amendments are made to §§ 101.52 and 101.53 to change the entity to which advance fee deposits are paid. The change is from the Treasurer of the United States to Agricultural Marketing Service, USDA to reflect the changes made by the Omnibus Budget Reconciliation Act of 1981. The amendment to § 101.53 was not included in the proposal but is included in this final action for the purpose of consistency. Furthermore, such changes merely reflect rules of agency, organization, procedure or practice under section 553 of the Administrative Procedures Act.

The rule contains no additional reporting or information collection requirements pursuant to Office of Management and Budget (OMB) regulations, 5 CFR Part 1320 Controlling Paperwork Burdens on the Public, which implements the Paperwork Reduction Act of 1980, Pub. L. 96-511. The additional reporting or information collection requirements contained in the proposed rule of August 18, 1983, were pertinent to the annual warehouse license fee. Because this fee will not be established, this rule does not contain these requirements.

List of Subjects in 7 CFR Part 101

Administrative practice and procedure, Cotton, Fees, Warehouses.

PART 101—COTTON WAREHOUSES

Therefore, 7 CFR Part 101—Cotton Warehouses is amended as follows:

1. Section 101.50 is revised as follows:

Fees

§ 101.50 License fees.

There shall be charged and collected a fee of $50 for each original warehouseman's license, and a fee of $50 for each amended, modified, extended, reinstated or duplicate warehouseman's license applied for by a warehouseman, and a fee of $20 for each license or amendment thereto issued to any person to classify, sample, or weigh agricultural products stored or to be stored under provisions of this act.

2. Section 101.51 is revised as follows:

§ 101.51 Warehouse inspection fee.

There shall be charged and collected for each original examination or inspection, or reexamination or reinspection of a warehouse under the Act a fee at the rate of $50 for each 1,000 bales of storage capacity, or fraction thereof, determined in accordance with § 101.5, but in no case less than $100 nor more than $1,000.

3. Section 101.52 is revised as follows:

§ 101.52 Advance deposit.

Before any license is granted, or an original examination or inspection is made, or reexamination or reinspection for modification of an existing license is made, pursuant to the regulation in this part, the applicant or licensee shall deposit with the service the amount of the fee prescribed. Such deposit shall be made in the form of a check, certified if required by the Service, draft, or post office or express money order, payable to the order of "Agricultural Marketing Service, USDA."

4. Section 101.53 is revised as follows:

§ 101.53 Return of excess deposit.

The Service shall hold in its custody each advance deposit made under § 101.52 until the fee, if any, is assessed. Any part of such advance deposit which is not required for the payment of any fee assessed shall be returned to the party depositing the same.

(Sec. 28, 39 Stat. 490; 7 U.S.C. 268)

Done at Washington, D.C., January 23, 1984.

William T. Manley,

Deputy Administrator, Marketing Program Operations.

[FR Doc. 84-2389 Filed 1-27-84; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 907

[Navel Orange Reg. 591; Navel Orange Reg. 590, Amdt. 1; Navel Orange Reg. 589, Amdt. 2]

Navel Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 591 establishes the quantity of fresh California-Arizona navel oranges that may be shipped to market during the period February 3-9, 1984. Regulation 590, Amendment 1, increases the quantity of such oranges that may be shipped during the period January 27-February 2, 1984, and Regulation 589, Amendment 2, increases the quantity of such oranges that may be shipped during the period January 20-26, 1984. Such action is needed to provide for the orderly marketing of fresh navel oranges for the period specified due to the marketing situation confronting the orange industry.

DATES: This regulation 591 becomes effective February 3, 1984, and the amendments are effective for the periods January 27-February 2, 1984, and January 20-26, 1984.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, 202-447-5975.

SUPPLEMENTARY INFORMATION: *Findings.* This rule has been reviewed under USDA procedures and Executive Order 12291 and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

This regulation and amendments are issued under the marketing agreement, as amended, and Order No. 907, as amended (7 CFR Part 907), regulating the handling of navel oranges grown in Arizona and designated part of California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as

amended (7 U.S.C. 601–674). The action is based upon the recommendation and information submitted by the Navel Orange Administrative Committee and upon other available information. It is hereby found that these actions will tend to effectuate the declared policy of the Act.

These actions are consistent with the marketing policy for 1983–84. The marketing policy was recommended by the committee following discussion at a public meeting on September 27, 1983. The committee met again publicly on January 24, 1984 at Bakersfield, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of navel oranges deemed advisable to be handled during the specified week. The committee reports the demand for navel oranges is good.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the Federal Register (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation and amendment are based and the effective date necessary to effectuate the declared policy of the Act. Interested persons were given an opportunity to submit information on views on the regulation at an open meeting, and the amendment relieves restrictions on the handling of navel oranges. It is necessary to effectuate the declared purposes of the Act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 907

Marketing agreements and orders, California, Arizona, Oranges (Navel).

1. § 907.891 is added as follows:

§ 907.891 Navel Orange Regulation 591.

The quantities of navel oranges grown in California and Arizona which may be handled during the period February 3, 1984, through February 9, 1984, are established as follows:

(a) District 1: 1,500,000 cartons;
(b) District 2: Unlimited cartons;
(c) District 3: Unlimited cartons;
(d) District 4: Unlimited cartons.

2. § 907.890 Navel Orange Regulation 590 paragraphs (a) through (d) are hereby revised to read:

§ 907.890 Navel Orange Regulation 590.

(a) District 1: 1,650,000 cartons;
(b) District 2: Unlimited cartons;
(c) District 3: Unlimited cartons;
(d) District 4: Unlimited cartons.

3. § 907.889 Navel Orange Regulation 589 (49 FR 1920) paragraphs (c) through (d) are hereby revised to read:

§ 907.889 Navel Orange Regulation 589.

(a) District 1: 2,000,000 cartons;
(b) District 2: Unlimited cartons;
(c) District 3: Unlimited cartons;
(d) District 4: Unlimited cartons.

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

Dated: January 25, 1984.

Russell L. Hawes,

Acting Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 84-2702 Filed 1-27-84; 8:45 am]

BILLING CODE 3410-02-M

Food Safety and Inspection Service

9 CFR Part 381

[Docket No. 80-084F]

Removal of Kidneys From Mature Chickens and Mature Turkeys

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This is a final rule amending the Federal poultry products inspection regulations by requiring the removal of kidneys from mature chicken and mature turkey carcasses after the inspectors complete post-mortem inspection of the poultry viscera, but before completion of eviscerating operations, and to prohibit the use of such kidneys for human food. High concentrations of cadmium, a heavy metal injurious to human health, are found in these kidneys causing them to be adulterated under the Poultry Products Inspection Act. Prohibiting kidneys from mature chicken and mature turkey carcasses to be used for human food will prevent a substantial amount of cadmium from entering the American diet. Additionally, the Department is amending the definition of "Ready-to-cook poultry" to include the removal of kidneys from mature chickens and mature turkeys.

EFFECTIVE DATE: February 29, 1984.

FOR FURTHER INFORMATION CONTACT: Dr. John C. Prucha, Director, Slaughter Inspection Standards and Procedures Division, Meat and Poultry Inspection Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250; (202) 447-3219.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Department has determined in accordance with Executive Order 12291 that this final rule is not a "major rule." It will not result in an annual effect on the economy of $100 million or more. There will be no major increase in cost or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions. It will not have a significant adverse effect on competition, employment, investment, productivity, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Five options were considered during the developmental phase of this regulatory action. These options included removal of kidneys from all poultry; or from all poultry destined for mechanical deboning; or from all mature chickens and mature turkeys destined for mechanical deboning; or from all mature poultry; or from all mature chickens and mature turkeys. The option of removal of kidneys from all mature chickens and mature turkey carcasses was selected as the most efficient and least costly option. This option will be relatively easy to enforce without being burdensome to the industry. It focuses on only those birds with a high probability of having kidneys contaminated with unacceptably high levels of cadmium and which comprise the vast majority of mature birds used commercially.

There are two types of costs which would be incurred by the poultry industry due to the removal of kidneys. The first is increased personnel costs for additional manpower on the production line to remove the kidneys. The second is product cost due to the loss of yield from the absence of kidney weight. Total industry costs are estimated to range between $1.5 million and $1.9 million annually. These figures assume total recovery of such kidneys (i.e., that all mature chickens and turkeys are sold with kidneys) compared with total loss. The figures may be inflated because the costs do not reflect that kidneys are presently being removed from some poultry. No significant impacts are expected on competition, innovation or foreign trade since the final rule will affect less than 5 percent of the poultry slaughtered under Federal inspection (less than 5 percent of all chickens slaughtered and only 1 percent of all turkeys slaughtered).

Effect on Small Entities

The Administrator, Food Safety and Inspection Service, has determined that this final rule will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act, Pub. L. 96–354 (5 U.S.C. 601), because the rule only requires the removal of kidneys from mature chickens and mature turkeys at the time of slaughter. It does not address all processed poultry products. It is not anticipated to have a significant economic impact because it affects less than 5 percent of the poultry slaughtered under Federal inspection (less than 5 percent of all chickens slaughtered and only 1 percent of all turkeys slaughtered).

Proposal

In the March 2, 1983, Federal Register (48 FR 8821) the Department published a proposal to amend the Federal poultry products inspection regulations to provide for the removal of kidneys from the carcasses of mature chickens and mature turkeys after USDA inspectors complete their post-mortem inspection of the poultry viscera, but before completion of eviscerating operations, and to prohibit the use of such kidneys for human food. The action resulted from a review of data that indicated that the kidneys of mature poultry are an adulterant because of their high cadmium concentration and should therefore be considered to be unfit for human food.

Cadmium is associated with acute and chronic health problems in humans. Acute toxic effects have been manifested in man through kidney, lung, and bone disorders. However, chronic kidney disease is the principal human health hazard associated with ingestion. The human body does not excrete all the cadmium ingested which results in its accumulation primarily in the kidneys and liver. Because of the low rate of excretion, once cadmium induced kidney disease begins, it is likely to continue even when exposure to the cadmium has stopped.

Comments

The Department received nine comments in response to the proposal. Two comments were submitted by trade associations, two by poultry processors, one by a nutritionist and four by private citizens. All of the comments expressed general support of the Department's intention to reduce dietary cadmium levels that could result in significant health problems. However, the comments from the trade associations and the processors raised three issues. Three of the comments questioned the validity of the data relied upon by the Department. Two of these three went on to suggest that mandatory kidney removal should only be applied to birds destined for mechanical separation. Finally, one of the poultry processors recommended that an Acceptable Quality Level (AQL) be established that would provide for those instances when kidney fragments were left in the carcass.

1. *Validity of the relied upon data.* Three of the commenters questioned the data the Department relied upon in formulating the proposal. One of the commenters argues that the inclusion of poultry kidneys in processed products does not result in a significant increase in dietary cadmium. This comment continues that "[b]eef, lamb and pork kidneys are readily available and consumed as a complete meat product." A second commenter states that the data does not support the cost of the requirement when examined in light of the anticipated benefit.

The Department takes the position that the reliance on the data referenced in the proposal is proper in the absence of any contradictory data. The commenter's arguments are judgmental, and unsupported by additional data.

The Department recognizes that cadmium is widespread in the environment and that exposure is unavoidable. However, the present levels of cadmium in the American diet are approaching the maximum tolerable levels proposed by the Food and Agriculture Organization/World Health Organization. It is the Department's position that the removal of mature chicken and mature turkey kidneys will eliminate an unnecessary source of dietary cadmium.

The Department is also aware that organ meats, particularly beef, lamb and pork kidneys, contain measurable amounts of cadmium. However, its data show that such levels are lower than those found in mature chicken and mature turkey kidneys. There remains the possibility that new evidence, including increased cadmium levels, will put the wholesomeness of such products into question. The Department will continue to be alert to the occurrence and the health implications of cadmium in organ meats, especially beef, lamb and pork kidneys. In any event, the status of cadmium in organ meats from other food animal species does not bear on this rule, nor does it preclude rulemaking in other areas should it be deemed appropriate.

Additionally, the overall cost of the requirement is being kept to a minimum in that only mature birds will be affected, and in that the removal can be accomplished without added equipment. The worst case total industry costs are estimated to range between $1.5 and $1.9 million, annually. As previously noted, these figures assume all mature chickens and turkeys are sold with kidneys, which is not the case because the kidneys of some poultry destined for export are now removed.

The Department has determined that the potential human health hazards associated with high cadmium ingestion justify the prohibition of mature chicken and mature turkey kidneys as a human food, particularly since such kidneys are not considered traditional items of human food, nor are they an expected product ingredient. Furthermore, this prohibition can be accomplished without resulting in unreasonable costs to producers.

2. *Application only to mechanically separated poultry.* Two of the commenters suggested that the removal of mature kidneys should only apply to those birds that will be mechanically separated. One of the commenters supported the suggestion on the basis that the rule was designed to prohibit the use of such kidneys in mechanically separated product; therefore, the requirement should only apply to those birds. The commenter also points to the fact that when mature chickens are marketed as whole birds, the kidneys are not consumed and thus there is no potential health risk.

Making the kidney removal requirement applicable only to mature chickens and turkeys destined for mechanical separation would require additional control procedures on the part of the inspection program and the industry. The slaughterer would have to know the ultimate destination and use of all mature poultry. The additional controls needed under such conditions would have a more onerous impact on industry and the inspection program than that being implemented under this rule. Further, such a limited removal requirement could not adequately prevent these kidneys from contributing cadmium to other products made from the carcasses of mature birds, e.g., commercial soup stock.

3. *Establishment of an AQL program.* A poultry processor supported the proposal provided an AQL sampling system was developed that would address questions likely to occur when the rule was implemented. For example, would a mature bird be considered ready to cook (R.T.C.) if kidney fragments were present in the carcass?

If not, would all birds from that lot be subject to reprocessing?

The inspection program is developing additional criteria for kidneys and kidney fragments which will address these and similar concerns. These criteria will be included in the poultry carcass inspection program directive 918.1 which currently applies to the R.T.C. reinspection procedures.

After careful consideration of the available data and the comments received, the Department has determined that the high concentration of cadmium in the kidneys of mature chickens and mature turkeys render each such kidney unfit for human food and otherwise adulterated under the Poultry Products Inspection Act (21 U.S.C. 453(g)), and, therefore, the kidneys of mature chickens and mature turkeys should not be permitted to be used for human food.

The Department is revising section 381.1(b)(44) of the regulations (9 CFR 381.1(b)(44)) which defines "Ready-to-cook poultry." This is poultry which has undergone processing to remove all unsuitable parts and organs and is ready for marketing. This change merely references the requirement that the kidneys of mature poultry be removed, as stated in the new section 381.65(d) of the regulations (9 CFR 381.65(d)) which requires that the kidneys of mature chickens and mature turkeys be removed from their carcasses after the inspectors complete their post-mortem inspection of the viscera, but before completion of the eviscerating operations, and would prohibit the use of such kidneys for human food.

List of Subjects in 9 CFR Part 381

Definitions, Mature poultry, Meat inspection, Poultry and poultry products, Poultry products inspection, Preparation of poultry products.

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

Accordingly, Part 381 of the Federal poultry products inspection regulations is amended as follows:

1. The authority citation for Part 381 reads as follows:

Authority: Section 14 of the Poultry Products Inspection Act, as amended by the Wholesome Poultry Products Act (21 U.S.C. 451 et seq.); the Talmadge-Aiken Act of September 28, 1962 (7 U.S.C. 450); and Subsection 21(b) of the Federal Water Pollution Control Act, as amended by Pub. L. 91-224 and by other laws (33 U.S.C. 1254).

2. Section 381.1(b)(44) is revised to read as follows:

§ 381.1 Definitions.

* * * * *

(44) Ready-to-cook poultry. "Ready-to-cook poultry" means any slaughtered poultry free from protruding pinfeathers, vestigial feathers (hair or down as the case may be) and from which the head, feet, crop, oil gland, trachea, esophagus, entrails, mature reproductive organs, and lungs have been removed, and in the case of certain mature poultry, as defined in § 381.170(a) (1)(vi), (vii) and (2)(iv), the kidneys have been removed in accordance with the requirements of § 381.65(d), and with or without the giblets, and which is suitable for cooking without need of further processing. Ready-to-cook poultry also means any cut-up or disjointed portion of poultry or other parts of poultry such as reproductive organs, head, or feet that are suitable for cooking without need of further processing.

* * * * *

3. Section 381.65 is amended by adding a new paragraph (d) to read as follows:

§ 381.65 Operations and procedures, generally.

* * * * *

(d) Kidneys of mature chickens and mature turkeys (poultry defined in § 381.170(a) (1)(vi) and (vii) and (2)(iv)) shall be removed from their carcasses after the inspectors complete their post-mortem inspection of the poultry viscera, but before completion of the eviscerating operations, and shall not be used for human food.

* * * * *

Done at Washington, DC, on January 13, 1984.

Donald L. Houston,

Administrator, Food Safety and Inspection Service.

[FR Doc. 84-2127 Filed 1-27-84; 8:45 am]

BILLING CODE 3410-DM-M

CIVIL AERONAUTICS BOARD

14 CFR Part 241

Approval of Extension of Reporting Requirements by OMB

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Approval of Extension of Reporting Requirements by the Office of Management and Budget.

SUMMARY: The Civil Aeronautics Board has extended the Form 41 reporting requirements found in Section 22 and the Service Segment Data reporting requirements found in Section 19-3 of Part 241 of the Board's Economic Regulations governing accounting and reporting by certificated air carriers. The Office of Management and Budget approved the extension of these requirements through October 31, 1984, under OMB Nos. 3024-0013 and 3024-0014, respectively. OMB approval is required under the Paperwork Reduction Act of 1980.

DATES: Effective: January 11, 1984 (Service Segment Data), January 16, 1984 (Form 41 Report).

DATED: January 25, 1984.

FOR FURTHER INFORMATION CONTACT: Jack Calloway, Data Requirements Section, Information Management Division, Office of Comptroller, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428, (202) 673-6042.

SUPPLEMENTARY INFORMATION:

List of Subjects in 14 CFR Part 241

Air carriers, and Uniform System of Accounts and Reports.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84-2201 Filed 1-27-84; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 154 and 273

[Docket No. RM77-22-000]

Rate of Interest on Amounts Held Subject to Refund for Oil Pipelines, and Eliminating Undertaking Requirements for Gas Pipelines and Producers

Issued: January 23, 1984.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; technical amendments.

SUMMARY: This document amends the portions of the final rule concerning the rate of interest on amounts held subject to refund for oil pipelines and eliminating the undertaking requirements for gas pipelines and procedures in Docket No. RM77-22-000, by making certain additional conforming changes that were inadvertently omitted from the final rule issued on December 28, 1982 (48 FR 1279, January 12, 1983).

FOR FURTHER INFORMATION CONTACT: Cathy Ciaglo, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426; (202) 357-8033.

Accordingly, the Federal Energy Regulatory Commission is making the following technical amendments to Title 18 of the Code of Federal Regulations:

PART 154—[AMENDED]

§ 154.102 [Amended]

1. In § 154.102(c)(1), the reference to "paragraph (d)(2)" is revised to read "paragraph (c)(2)."

2. In § 154.102(c)(2)(iii)(B), the reference to "paragraph (d)(2)(iii)(A)" is revised to read "paragraph (c)(2)(iii)(A)."

PART 273—[AMENDED]

§ 273.204 [Amended]

3. In § 273.204(c)(5), the reference to "§ 154.102(d)" is revised to read "§ 154.102(c)."

(Department of Energy Organization Act, 42 U.S.C. 7101–7352; E.O. 12009, 43 CFR 142; Interstate Commerce Act, 49 U.S.C. 1, *et seq.*; Natural Gas Act, 15 U.S.C. 717–717w)

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-2364 Filed 1-27-84; 8:45 am]

BILLING CODE 6717-01-M

18 CFR Part 282

[Docket No. RM79-14]

Natural Gas Policy Act of 1978; Publication of Incremental Pricing Acquisition Cost Thresholds

January 24, 1984.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order prescribing incremental pricing thresholds.

SUMMARY: The Director of the Office of Pipeline and Producer Regulation is issuing the incremental pricing acquisition cost thresholds prescribed by Title II of the Natural Gas Policy Act and 18 CFR 282.304. The Act requires the Commission to compute and publish the threshold prices before the beginning of each month for which the figures apply. Any cost of natural gas above the applicable threshold is considered to be an incremental gas cost subject to incremental pricing surcharging.

EFFECTIVE DATE: February 1, 1984.

FOR FURTHER INFORMATION CONTACT: Kenneth A. Williams, Federal Energy Regulatory Commission, 825 N. Capitol Street NE., Washington, D.C. 20426, (202) 357–8500.

SUPPLEMENTARY INFORMATION: Section 203 of the NGPA requires that the Commission compute and make available incremental pricing acquisition cost threshold prices prescribed in Title II before the beginning of any month for which such figures apply.

Pursuant to that mandate and pursuant to § 375.307(1) of the Commission's regulations, delegating the publication of such prices to the Director of the Office of Pipeline and Producer Regulation, the incremental pricing acquisition cost threshold prices for the month of February 1984 is issued by the publication of a price table for the applicable month. See FERC Statutes and Regulations ¶ 24,764.

List of Subjects in 18 CFR Part 282

Natural gas.

Kenneth A. Williams,

Director, Office of Pipeline and Producer Regulation.

TABLE I—INCREMENTAL PRICING ACQUISITION COST THRESHOLD PRICES

	January	February	March	April	May	June	July	August	September	October	November	December
Calendar Year 1980												
Incremental pricing threshold	$1.702	$1.738	$1.750	$1.762	$1.776	$1.790	$1.804	$1.819	$1.834	$1.849	$1.863	$1.877
NGPA section 102 threshold	2.358	2.381	2.404	2.428	2.453	2.478	2.504	2.532	2.560	2.588	2.614	2.640
NGPA section 109 threshold	1.786	1.799	1.812	1.825	1.839	1.853	1.867	1.883	1.899	1.915	1.929	1.943
130 percent of No. 2 fuel oil in New York City threshold	7.170	7.260	7.410	7.110	7.380	8.040	7.840	7.380	7.400	7.400	7.450	7.580
Calendar Year 1981												
Incremental pricing threshold	1.891	1.908	1.925	1.942	1.954	1.967	1.980	1.990	2.000	2.010	2.025	2.041
NGPA section 102 threshold	2.667	2.698	2.729	2.761	2.787	2.813	2.840	2.863	2.886	2.909	2.940	2.971
NGPA section 109 threshold	1.957	1.975	1.993	2.011	2.024	2.037	2.050	2.060	2.070	2.080	2.096	2.112
130 percent of No. 2 fuel oil in New York City threshold	7.610	7.760	8.260	9.010	9.510	9.430	9.360	9.260	8.660	8.700	8.930	8.990
Calendar Year 1982												
Incremental pricing threshold	2.057	2.071	2.085	2.099	2.108	2.113	2.120	2.129	2.139	2.149	2.159	2.169
NGPA section 102 threshold	3.003	3.033	3.063	3.093	3.112	3.132	3.152	3.176	3.200	3.224	3.249	3.274
NGPA section 109 threshold	2.128	2.143	2.158	2.173	2.180	2.187	2.194	2.204	2.214	2.224	2.234	2.244
130 percent of No. 2 fuel oil in New York City threshold	9.180	9.340	9.470	9.340	9.280	8.000	8.170	8.670	8.660	8.950	8.640	8.890
Calendar Year 1983												
Incremental pricing threshold	2.179	2.187	2.195	2.203	2.214	2.225	2.236	2.245	2.254	2.263	2.270	2.277
NGPA section 102 threshold	3.299	3.321	3.344	3.367	3.394	3.421	3.448	3.472	3.496	3.520	3.542	3.564
NGPA section 109 threshold	2.254	2.262	2.270	2.278	2.289	2.300	2.311	2.320	2.329	2.338	2.345	2.352
130 percent of No. 2 fuel oil in New York City threshold	9.420	9.320	8.820	8.120	7.550	6.950	7.540	7.610	7.440	7.550	7.670	7.860
Calendar Year 1984												
Incremental pricing threshold	2.283	2.291										
NGPA section 102 threshold	3.586	3.609										
NGPA section 109 threshold	2.359	2.367										
130 percent of No. 2 fuel oil in New York City threshold	7.730	7.570										

[FR Doc. 84-2400 Filed 1-27-84; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Tylosin

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed for V.P.O., Inc., providing for the manufacture of a 20-gram-per-pound tylosin premix. The premix will subsequently by used to make finished feeds for swine, beef cattle, and chickens.

EFFECTIVE DATE: January 30, 1984.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Puyot, Bureau of Veterinary Medicine (HFV–130), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857; 301–443–4913.

SUPPLEMENTARY INFORMATION: V.P.O., Inc., 4444 South 76th St., Omaha, NE 68127, is the sponsor of a supplement to NADA 98–431 submitted on its behalf by Elanco Products Co. This supplement provides for the manufacture of a 20-gram-per-pound tylosin premix subsequently to make complete feeds for swine, beef cattle, and chickens for use as in 21 CFR 558.625(f)(1) (i) through (vi). The supplement is approved and the regulations are amended to reflect the approval.

The firm presently holds an approval for the manufacture of a 40-gram-per-pound tylosin premix for such use. The basis for approval of the 20-gram-per-pound premix is the same as for the approval of the 40-gram-per-pound premix. The supplement to NADA 98–431 providing for the 40-gram-per-pound premix was approved by a final rule published in the Federal Register of July 26, 1983 (48 FR 33865). The freedom of information summary made available under the provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), which consisted of a summary of safety and effectiveness data and information submitted to support approval of the 40-gram-per-pound premix, applies also to this application and 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 Bureau of Veterinary Medicine has determined pursuant to 21 CFR 25.24(d)(1)(i) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact 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 (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), § 558.625 is amended by revising paragraph (b)(25) to read as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

§ 558.625 Tylosin.

* * * * *

(b) * * *

(25) To 043743: 4, 8, and 10 grams per pound, paragraph (f)(1)(vi)(*a*) of this section; 20 and 40 grams per pound, paragraph (f)(1) (i) through (vi) of this section.

* * * * *

Effective date. January 30, 1984.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: January 23, 1984.

Robert A. Baldwin,

Associate Director for Scientific Evaluation.

[FR Doc. 84-2415 Filed 1-27-84; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 803

[Docket No. 83N-0335]

Exemption From Federal Preemption of State and Local Medical Device Requirements; Number of Copies of Application

AGENCY: Food and Drug Administration.

ACTION: Final rule and request for comments.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule reducing the number of copies required to be submitted in an application for an exemption from Federal preemption of State and local requirements applicable to medical devices. The procedure is being changed to conform to Office of Management and Budget guidelines.

DATES: Effective March 30, 1984. Comments by February 29, 1984.

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

FOR FURTHER INFORMATION CONTACT: Les Weinstein, National Center for Devices and Radiological Health (HFK–140), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4874.

SUPPLEMENTARY INFORMATION: Section 521(a) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360k(a)) (the act) contains special provisions governing the regulation of devices by States and localities. That section prescribes a general rule that after May 28, 1976, no State or political subdivision of a State may establish or continue in effect any requirement with respect to a medical device intended for human use having the force and effect of law (whether established by statute, ordinance, regulation, or court decision), which is different from, or in addition to, any requirement applicable to such device under any provision of the act and which relates to the safety or effectiveness of the device or to any other matter included in a requirement applicable to the device under the act.

Section 521(b) of the act provides that, upon application by a State or political subdivision, the Commissioner of Food and Drugs may allow imposition of a requirement that is different from, or in addition to, any requirement applicable under the act to the device (and which is thereby preempted) by promulgating a regulation exempting the State or local requirement from preemption.

Part 803 of FDA's regulations (21 CFR Part 803) prescribes procedures for the submission, review, and approval of applications for exemption from Federal preemption of any State or local requirement applicable to medical devices. Section 803.20(b) requires that the application be in the form of a letter to the Commissioner of Food and Drugs and be signed by an individual who is authorized to request the exemption on behalf of the State or political subdivision (Office of Management and Budget (OMB) approval number 0910–0129). Section 803.20(b) also requires that the State or political subdivision applying for the exemption submit to FDA four copies of the application and all accompanying material, as well as any subsequent reports or correspondence concerning the application.

In the Federal Register of March 31, 1983 (48 FR 13666), OMB published a final rule (5 CFR Part 1320)

implementing the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511), which establishes policies and procedures for controlling paperwork burdens imposed by Federal agencies on the public. Section 1320.6(c) of OMB's general information collection guidelines, which are codified as part of its final rule, provides that an agency should not require persons to submit to the agency more than one original and two copies of any document unless the agency demonstrates that the requirement is necessary to satisfy a statutory requirement or some other substantial need.

Therefore, FDA is changing its procedure to conform to OMB's guideline by requiring an applicant to submit only an original and two copies of an application for exemption from preemption, accompanying materials, and any subsequent reports or correspondence concerning the application.

In accordance with 5 U.S.C. 553 (b) and (d) and 21 CFR 10.40, FDA has determined that there is good cause not to follow the usual requirements of prior notice and comment and delayed effective date. The reasons for this determination are that reducing the number of copies of applications for exemption required to be submitted to the agency will not affect the public health and will be less burdensome on, and less costly for, the applicant. Also, FDA has learned from experience that two copies are adequate for the agency to review and make a decision on an application. The agency, nevertheless, is providing a 30-day period during which it will accept comments on its change to the rule. If FDA decides on the basis of comments received that the changes should be modified or revoked, it will provide further notice in the Federal Register.

List of Subjects in 21 CFR Part 808

Exemption of specific State requirement, Medical devices.

PART 808—[AMENDED]

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 521, 701, 52 Stat. 1055–1056 as amended, 90 Stat. 574 (21 U.S.C. 360k, 371)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Part 808 is amended in § 808.20 by revising paragraph (b) to read as follows:

§ 808.20 Application.

* * * * *

(b) An application for exemption shall be in the form of a letter to the Commissioner of Food and Drugs and shall be signed by an individual who is authorized to request the exemption on behalf of the State or political subdivision. An original and two copies of the letter and any accompanying material, as well as any subsequent reports or correspondence concerning an application, shall be submitted to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. The outside wrapper of any application, report, or correspondence should indicate that it concerns an application for exemption from preemption of device requirements.

* * * * *

Interested persons may, on or before February 29, 1984, submit to the Dockets Management Branch (address above), written comments about the changes to this final rule. Such comments will be considered in determining whether further amendments, modifications, or revisions to the final rule are warranted. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. to 4 p.m., Monday through Friday.

Effective date. This regulation shall become effective March 30, 1984.

(Secs. 521, 701, 52 Stat. 1055–1056, as amended, 90 Stat. 574 (21 U.S.C. 360k, 371))

Dated: January 12, 1984.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 84-2417 Filed 1-27-84; 8:45 am]
BILLING CODE 4160-01-M

VETERANS ADMINISTRATION

38 CFR Part 17

Grants to States for Construction of State Home Facilities

AGENCY: Veterans Administration.

ACTION: Final regulation amendment.

SUMMARY: This revision to the appendix of a medical regulation updates the estimates of veteran population for each State to reflect 1980 census data. As a result of these changes, the revision also adjusts the maximum number of beds required to provide adequate nursing home care to veterans residing in each State to reflect the 4 bed per thousand veteran population limit. The Administrator is required to prescribe the maximum number of such beds by 38 U.S.C. 5034(1). A State home construction grant application may not be approved if it will result in more than the maximum number of beds prescribed in Appendix A (see 38 U.S.C. 5035(b)(4)). Although Appendix A to 38 CFR 17.171, prescribes the maximum number of such beds, when the beds to be constructed in a State will result in more than 2.5 beds per thousand veterans, the State shall provide sufficient justification for the Administrator to determine that the additional beds are required in that State.

EFFECTIVE DATE: This revision is effective January 13, 1984.

FOR FURTHER INFORMATION CONTACT: Rita Frampton, State Home Program Coordinator, Department of Medicine and Surgery (182), Veterans Administration, 810 Vermont Avenue, NW., Washington, D.C. 20420, 202–389–3679.

SUPPLEMENTARY INFORMATION: This proposed regulation revision was published at 48 FR 38253 to 38254 of the Federal Register of August 23, 1983. Interested persons were given 30 days to submit comments, however no comments were received, and the proposed revision is hereby being adopted as final.

The Administrator hereby certifies that this revision to the regulation is nonmajor in accordance with the requirements of Executive Order 12291, Federal Regulation. It will not have an annual effect on the economy of $100 million or more, will not cause a major increase in cost or prices and will not have other significant adverse effects on the economy.

The Administrator hereby certifies that this revision will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), this revision 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 rule will regulate only States planning construction of nursing home care beds at State Veterans Homes. States do not come within the RFA definition of "small entities" according to 5 U.S.C. 601(5). It will therefore 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 is 64.005.

List of Subjects in 38 CFR Part 17

Government contracts, grants programs—health, health care, health facilities, nursing homes, veterans.

Approved: January 13, 1984.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

PART 38—[AMENDED]

38 CFR Part 17, *Medical,* is amended by revising APPENDIX A to § 17.171 to read as follows:

Appendix A—(See Sec. 17.171) State Home Facilities for Furnishing Nursing Home Care

The maximum number of beds, as required by 38 U.S.C. 5034(1), to provide adequate nursing home care to veterans residing in each State not to exceed four beds per 1,000 veteran population is established as follows:

State	Veteran population[1]	Number of beds
Alabama	436,000	1,744
Alaska	50,000	200
Arizona	383,000	1,532
Arkansas	270,000	1,080
California	3,003,000	12,012
Colorado	401,000	1,604
Connecticut	413,000	1,652
Delaware	77,000	308
District of Columbia	65,000	260
Florida	1,392,000	5,568
Georgia	632,000	2,528
Hawaii	93,000	336
Idaho	121,000	484
Illinois	1,348,000	5,392
Indiana	680,000	2,720
Iowa	354,000	1,416
Kansas	300,000	1,200
Kentucky	405,000	1,620
Louisiana	453,000	1,812
Maine	154,000	616
Maryland	544,000	2,176
Massachusetts	720,000	2,880
Michigan	1,117,000	4,468
Minnesota	525,000	2,100
Mississippi	245,000	980
Missouri	647,000	2,588
Montana	108,000	432
Nebraska	191,000	764
Nevada	137,000	548
New Hampshire	138,000	552
New Jersey	925,000	3,700
New Mexico	162,000	648
New York	1,951,000	7,804
North Carolina	660,000	2,640
North Dakota	69,000	276
Ohio	1,385,000	5,540
Oklahoma	397,000	1,588
Oregon	400,000	1,600
Pennsylvania	1,593,000	6,372
Rhode Island	126,000	504
South Carolina	351,000	1,404
South Dakota	80,000	320
Tennessee	543,000	2,172
Texas	1,732,000	6,928
Utah	155,000	620
Vermont	64,000	256
Virginia	664,000	2,656
Washington	628,000	2,512
West Virginia	243,000	972
Wisconsin	574,000	2,296
Wyoming	67,000	268

[1] Estimate as of March 31, 1983.

Source: Office of Reports and Statistics, Veterans Administration. (Based on last available Bureau of the Census data) (June 1983.)

(38 USC 50 503(l); 38 U.S.C. 5035(b)(4))

[FR Doc. 84-2445 Filed 1-27-84; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA Docket Nos. AW043/044VA; A-3-FRL 2513-4]

Approval of Revisions to the Virginia State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On December 30, 1982, the Commonwealth of Virginia submitted an alternate compliance schedule for the Ford Motor Company's plant in Norfolk, Virginia as a revision to the State Implementation Plan (SIP). The schedule provides for compliance with the volatile organic compound (VOC) emission regulations through the installation of an electrophoretic deposition process (EDP) and the development of low solvent coating technology by November 30, 1984. EPA approves this alternative compliance schedule as a revision to the Virginia State Implementation Plan (SIP), as the schedule meets all of the necessary requirements of the Clean Air Act, and 40 CFR Part 51.

The Commonwealth submitted a variance for the Oyster Point Municipal Incinerator in Newport News, Virginia. However, EPA is withdrawing this SIP revision from further consideration, as Virginia has notified EPA that operation of the incinerator terminated on July 1, 1983.

EFFECTIVE DATE: February 29, 1984.

ADDRESSES: Copies of the revision and accompanying support material are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Air Management Branch, Curtis Building, Sixth and Walnut Streets, Philadelphia, PA 19106; ATTN: Mr. Harold Frankford.

Public Information Reference Unit, Room 2922, EPA Library, U.S. Environmental Protection Agency, 401 "M" Street, SW. (Waterside Mall), Washington, D.C. 20460.

Virginia State Air Pollution Control Board, Room 801, Ninth Street Office Building, Richmond, Virginia 23219, ATTN: Mr. John M. Daniel, Jr.

Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, D.C. 20408.

FOR FURTHER INFORMATION CONTACT: Mr. Harold Frankford at the Region III address stated above or telephone 215/597-8392.

SUPPLEMENTARY INFORMATION: The Ford Motor Company, located in Norfolk, Virginia, is engaged in the assembly of light duty trucks. The coating operations at the Ford plant are subject to the provisions of Section 4.55(e) of the Virginia regulations which prescribe the emission standards for the prime coat, top coat and final repair. Specifically, Ford is requesting an extension of two years to comply with the prime coat emissions standard in Section 4.55(e)(1).

Originally, Ford had planned to use high solids coatings applied by the conventional spray method to achieve the desired reduction by the end of 1982. However, response to customer demands for better product quality in the automotive industry led Ford to abandon the spray method for a combination of the dip and spray method. Ford now plans to control emissions by use of the electrophoretic deposition process (EDP) followed by a spray (guide coat) primer system to smooth out the rough spots. This new method will use low solvent coatings. While the change is directed primarily at quality control, the new approach will also significantly reduce emissions over the original approach. Current regulations set a standard of 3.2 lbs. of VOC per gallon of coating and the use of EDP will meet a standard of 1.9 lbs. of VOC per gallon of coating.

However, Ford cannot complete installation of the new equipment by the end of 1982 and wishes an extension until the end of 1984. The delay did not affect the attainment of the ozone standard in Southeastern Virginia by the end of 1982. The Commonwealth has certified that, after adequate public notice, a public hearing was held with respect to the Ford Motor Company SIP revision on March 15, 1982 in Virginia Beach, as required by 40 CFR 51.4.

The Commonwealth's attainment strategy for the Ford Motor Company's alternate compliance schedule is based upon a maximum allowable emission rate of 3188 tons per year by the end of 1982. In 1977 the actual emissions for the plant were 2,393 tons. Since production levels are now much lower and unlikely to return to 1977 levels before the end of 1984, the delay in compliance did not affect the attainment date. In a separate action apart from this rulemaking, EPA will determine whether the line and

process modifications should be subject to New Source Performance Standards (NSPS) requirements. Agency policy on this matter discussed in the October 21, 1981 Federal Register notice, 46 FR 51386.

On June 28, 1983, 48 FR 29716, EPA proposed approval of the alternate compliance schedule for Ford Motor Company, Norfolk and requested public comment. During the public comment period, ending July 28, 1983, no comments were received.

The Commonwealth had also submitted to EPA a variance request for the Oyster Point Municipal Incinerator in Newport News. EPA had proposed approval of this variance request and requested public comment on June 28, 1983, 48 FR 19176. However, on October 27, 1983, Virginia informed EPA that the Oyster Point Municipal Incinerator closed down permanently on July 1, 1983, and requested that the variance request be withdrawn from further consideration as a revision to the Virginia SIP. Accordingly, EPA withdraws this variance request from further rulemaking action.

Conclusion

The Administrator is approving this SIP revision based on a determination that it meets the requirements of Section 110(a)(2) of the Clean Air Act and 40 CFR Part 51. Requirements for Preparation, Adoption, and Submittal of State Implementation Plans.

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

Under Section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 30, 1984. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Incorporation by reference.

Dated: January 19, 1984.

William D. Ruckelshaus,

Administrator.

Note.—Incorporation by reference of the State Implementation Plan for the Commonwealth of Virginia was approved by the Director of the Federal Register on July 1, 1982.

PART 52—[AMENDED]

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

Subpart VV—Virginia

1. Section 52.2420 is revised by adding paragraph (c)(82) as follows:

§ 52.2420 Identification of plan.

* * * * *

(c) * * *

(82) Amendment for an alternate compliance schedule for the Ford Motor Company plant in Norfolk, Virginia submitted on December 30, 1982 by the Virginia State Air Pollution Control Board.

(Clean Air Act, Sec. 110 (42 U.S.C. 7401–7642))

[FR Doc. 84-2164 Filed 1-27-84; 8:45 am]
BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 400, 405 and 421

Medicare Program; Reduction in the Number of Providers Dealing Directly With HCFA

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

ACTION: Final rule.

SUMMARY: These regulations modify current Medicare rules concerning the option that allows Medicare providers to elect to receive payment directly from us, rather than through an intermediary, for covered services furnished to beneficiaries. The regulations also give us the authority to make other arrangements to service health care prepayment plans (health maintenance organizations (HMOs) and group practice prepayment plans (GPPPs)) that are presently dealing directly with us. The regulations clarify under what circumstances we may contract out for the purpose of making payments to providers. In addition, although this is a final rule, we are requesting public comment on the impact analysis.

EFFECTIVE DATE: These regulations are effective February 29, 1984.

FOR FURTHER INFORMATION, CONTACT: Norman Fairhurst, 301–594–9498.

SUPPLEMENTARY INFORMATION:

I. Background

In the Medicare program, the Secretary is responsible for making payment to providers of services and other entities for the covered services they furnish to Medicare beneficiaries.

Section 1816 of the Social Security Act (the Act) gives groups of providers the option of nominating an intermediary to determine the proper amount of reimbursement and to make such payments. Alternatively, if the provider declines to exercise the option of dealing with an intermediary, it submits its claims directly to the Secretary under section 1815. In such instances, section 1874 authorizes the Secretary to reimburse such providers either directly or by contract.

Section 1816 of the Act was amended in 1977 by the Medicare-Medicaid Anti-Fraud and Abuse Amendments (Pub. L. 95–142). The amendments authorize the Secretary to assign and reassign providers who had nominated intermediaries to other intermediaries. The amendments also authorize the Secretary to designate regional or national intermediaries with respect to a class or classes of providers.

Section 930(o) of the Omnibus Reconciliation Act of 1980 (Pub. L. 96–499) further amended section 1816(e) of the Act by adding a new paragraph (4), which requires the Secretary to designate regional agencies or organizations that have entered into an agreement under section 1816 of the Act to perform functions under that agreement for freestanding HHAs (that is, HHAs that are not a subdivision of a hospital) in the region. The statute further requires that if an HHA is hospital-affiliated (that is, the hospital and HHA are under common control), the Secretary shall assign that HHA to a regional intermediary only if the Secretary, after applying published criteria relating to administrative efficiency and effectiveness, determines that the assignment would result in the more effective and efficient administration of the Medicare program.

As of October 1, 1983, about 154 hospitals, 34 skilled nursing facilities (SNFs), 480 home health agencies (HHAs), 75 health maintenance organizations (HMOs), 42 group practice prepayment plans, (GPPPS), 361 Federal hospitals, 21 providers of outpatient physical therapy services and seven end-stage renal disease facilities, out of the approximately 12,800 providers and other entities that currently participate in the program, receive payment and "deal directly" with us.

On August 2, 1983 we published a proposed rule (48 FR 34979) that complied with certain court-imposed requirements that we carry out a full rulemaking process before contracting out the direct-deal freestanding HHA

workload. (For a full summary of legislative and legal actions, see 48 FR 34979.) The proposed rule also expanded on a previous NPRM (47 FR 7269) concerning contracting out our direct-dealing function for other types of providers such as hospitals, SNFs, providers of outpatient physical therapy services, end-stage renal disease facilities, and HMOs.

II. Provisions of the Proposed Rule

A. Reductions in the Number of Providers Dealing Directly With Us

Section 1874 of the Social Security Act gives the Secretary the authority to perform directly or by contract any of his or her functions under Medicare. Under that authority, we proposed to modify 42 CFR 421.103 to specify that we may contract out the functions of making payment determinations, disbursing payments, and related activities with respect to providers and other entities that we currently service directly. Thus, we would have required providers and other entities that currently deal directly with us to deal instead with fiscal intermediaries that already are under contract with us. However, we stated our intention to review carefully each type of provider or other entity now dealing directly with us to determine the least disruptive and most cost effective arrangement for the long term.

We also included in the preamble to that rule a detailed discussion of our tentative implementation plan. The implementation plan discussed: intermediary selection, transfer schedule, procedures during the change-over period, assurance of cash flow, and transition costs. The list of designated regional intermediaries to service freestanding HHAs published in a preamble to a final rule on September 1, 1982 (47 FR 38535) was repeated for information purposes.

Finally, we announced that the contracting out of certain functions that we presently perform for HMOs is currently under study. HMOs, while they are not providers with an election right, are presently serviced by us. The proposed rule announced our intention to establish our authority to modify this practice should we, in the future, choose to contract out some or all of that workload.

B. Contracting Out the Workload of Hospitals, Skilled Nursing Facilities, Outpatient Physical Therapy Providers and End-Stage Renal Disease Facilities

We stated that the proposed rule would be applicable to all direct-dealing providers, including hospitals, skilled nursing facilities, outpatient physical therapy providers, and end-stage renal disease facilities. The regional ombudsman (see section III. below) would have been available to address any concerns providers may have other than those that are the province of the Provider Reimbursement Review Board.

C. Contracting Out the Workload of Freestanding HHAs to Regional Intermediaries

Currently, we designate regional intermediaries under section 1816(e)(4) of the Act to serve those freestanding HHAs that have elected to nominate an intermediary. We proposed to modify 42 CFR 421.117 by requiring that freestanding HHAs that had been receiving payment directly from us would instead receive payments from the same regional intermediaries designated under section 1816(e)(4) of the Act; thus, each statewide regional intermediary would service all freestanding HHAs within its State.

We service approximately 12 percent of the HHAs participating in the Medicare program. We stated that approximately 425 freestanding HHAs were to be serviced under contract with designated intermediaries as a result of implementation of these regulations. This decision was reached after considering the following:

1. *Consolidating the workload*—In each State an intermediary under contract had already been designated to service freestanding HHAs that had elected to be reimbursed by a nominated intermediary (47 FR 38535).

We stated that we believe that contracting out the workload of those freestanding HHAs that had previously elected to be reimbursed directly by us would improve the administration of the home health benefit under the Medicare program, as discussed below.

We stated that we believe the use of statewide intermediaries would facilitate onsite review of HHAs by the intermediaries. This review has proven to be a significant tool for assuring improved reimbursement determinations and controlling overutilization of services and overpayments that have been of concern to us and the Congress for some time.

Finally, we stated that the use of one intermediary for each State would result in consistent application of Medicare policies with respect to HHAs within each State and would enhance delivery of necessary services by providing a consistent approach to medical policy interpretation and reimbursement for providers, beneficiaries and the home health community.

2. *Impact on Multi-State (Chain) Organizations*—We stated our preference that chain organizations choose to deal with designated regional intermediaries. We recognized that there may be cases in which the degree of centralization of the chain would make it more efficient for a lead intermediary to handle the home office audit and desk review of the chain's provider cost reports, determine the scope of provider audits, and perform final settlement of individual HHA cost reports. We included in the preamble to the NPRM our intention to consider that the designated regional intermediaries would have responsibility for provider reimbursement for the reporting period based on necessary input from the lead intermediary, would provide input to the lead intermediary in terms of provider audit and cost report settlement, and would perform the actual field audit work required.

We announced that any chain wishing to avail itself of this alternative would have to present its request in writing to the HCFA regional office serving the home office. The request would have to provide information concerning the chain's degree of centralization, such as is now required for a single intermediary to service an entire chain of any type. The regional office would evaluate each request and notify the chain in writing of our determination.

We also stated that we would consider allowing HHA chains to be serviced by a single intermediary and, to the extent appropriate, we would make provisions for audit and coverage determinations.

When evaluating the potential of single intermediaries to accommodate home health chains, we stated that we would consider: the capacity of the intermediary as it is affected by changes in data processing technology; the cost and/or savings to providers to transfer and operate; economy and timeliness in the delivery of services; conflict of interest between an intermediary and provider; and any additional pertinent factors.

D. Technical Clarifications

1. We proposed to modify 42 CFR 421.104 to clarify that a provider that does not belong to a provider association, or a provider that does not concur with its association's nomination for intermediary, may elect to receive payments from an intermediary with which we already have an agreement if both the intermediary and we agree to it. Current regulations at § 421.104(b) do not specifically state that a single provider may elect to receive payment

from an intermediary but rather imply that it may only form a group of two more providers to nominate an intermediary or receive payment directly from us.

2. We proposed a technical revision to § 421.104(b) that would change the title of § 421.104(b) from "Nomination by members or nonconcurring members" to "Action by nonmembers or nonconcurring members" to reflect that a single provider may elect to deal with an intermediary or with HCFA. The use of the word "action" instead of "nomination" is consistent with the language in § 421.103, which concerns provider options to elect to deal through an intermediary or directly with HCFA. "Nomination" is a more restrictive term in these regulations and concerns only provider associations' choice of intermediary.

3. We proposed to add language to § 421.1, Basis and Scope, to clarify that Section 1874 of the Act is one of the bases of Part 421 and that the statute and regulations permit us to perform certain functions directly or by contract.

4. We proposed to delete the definition of "the Administrator" from the definitions section (§ 421.3) and to revise all references to "the Administrator" to "HCFA". For consistency, we were going to change all references to "he or she" and "his or her" to "it" and "its", respectively.

III. Analysis and Response to Comments

We received 31 comments, primarily from freestanding HHAs or associations that represent freestanding HHAs. The commenters consisted of: 19 HHAs (18 freestanding and one hospital-based), six associations representing the HHAs, three intermediaries, two HMOs and one union (representing HCFA employees).

Most comments furnished the providers' views of the effects of using designated intermediaries and making greater use of contracting out. Two commenters endorsed the proposed rule. A number of providers that submit bills and claims to our Office of Direct Reimbursement (ODR) wrote in to express satisfaction with the present arrangement, especially with HHA electronic bill processing aspects, and to raise questions about how the proposed changes would be implemented.

Many HHAs, both those served by ODR and those served by intermediaries, have been opposed to the designated regional intermediary concept because the freestanding HHAs have no alternative to the designated intermediary. After discussions with provider associations and after evaluating the comments received, we have determined that freestanding HHAs should be allowed an opportunity to request an alternate intermediary. Consequently, we have designated (under section 1816(e)(4)) three intermediaries already serving as designated regional intermediaries to be additionally available as a group on a national basis to serve as alternative designated regional intermediaries.

All freestanding HHAs are being advised by this notice of the existence of the alternative designated intermediaries.

We will send the HHAs now served by ODR a separate notification and give them an opportunity to select the alternate intermediary in their area. Those ODR HHAs not wishing to receive payment from the designated regional intermediary may request to receive payment from the alternative designated regional intermediary. This request must be made within 30 days from the date of receipt of our notification.

Freestanding HHAs now served by designated regional intermediaries will also be allowed an opportunity to request a change from the designated regional intermediary to the alternative designated regional intermediary. Such requests will not be granted automatically; rather, an HHA will be required to demonstrate that the change to the alternative designated regional intermediary would be consistent with the effective and efficient administration of the Medicare program. (This policy is consistent with existing regulations at § 421.106(b) where HCFA is currently empowered to permit a provider to change to another intermediary or to direct payment if HCFA concludes that such change is in the best interest of the Medicare program.) Requests for such change must be made in accordance with the existing change-of-intermediary timeframe (§ 421.106(a)); i.e., at least 120 days before the end of the provider's current fiscal year.

In summary, the policy regarding which intermediary serves HHAs is that HHAs will deal with the designated regional intermediary except that:

- Chains may deal with a single intermediary where they meet the criteria stated elsewhere in this notice.
- HHAs currently serviced by ODR may request, within 30 days of receipt of our notification, to be serviced by the alternative designated regional intermediary.
- All other freestanding HHAs may request the opportunity to switch to the alternative designated regional intermediary. These requests must be made within the timeframe set forth at § 421.106 and will be evaluated consistent with the criteria set forth in that section.

All future HHA requests to transfer from the designated regional intermediary to an alternative designated regional intermediary or vice versa must be filed, and will be evaluated, in accordance with § 421.106.

A summary of the comments and our responses follow:

Comment: Several commenters expressed the view that assigning HHAs currently serviced by ODR to designated intermediaries was contrary to the intent of the Omnibus reconciliation Act of 1980. These commenters alleged that the 1980 amendments required the designation of intermediaries to serve HHAs but did not remove a provider's option to deal directly with the Federal government. The commenters placed great reliance on the following statement from the Conference Committee Report which accompanied Pub. L. 96-499: ". . . In requiring the designation of regional intermediaries for home health agencies, it is not the intent of the conferees that home health agencies would be precluded from contracting directly with the Health Care Financing Administration." (H.R. Rep. No. 1479, 96th Cong., 2nd Sess. 129 (1980).)

Response: As noted in the preamble to the NPRM, on September 14, 1982 the United States Court of Appeals for the District of Columbia Circuit held that, under Section 1874 of the Social Security Act, the Secretary has the authority to contract out reimbursement responsibilities and could thereby require direct-dealing freestanding home health agencies to seek reimbursement from designated regional intermediaries. The Court of Appeals' ruling indicated that the aforementioned statement in the Conference Committee Report did not mean that the Congress intended to give HHAs an unlimited right to deal directly with the Secretary. Rather, the Court found that this language merely indicated that the 1980 amendments did not mandate that the Secretary was absolutely required to designate regional intermediaries for direct-dealing HHAs. The Court found that the statement in the Conference Report did not limit, and in fact preserved, the Secretary's discretion to continue to perform his reimbursement function for the direct deal HHAs, either directly or by contract.

Comment: A number of commenters questioned that the transfer of providers currently serviced by ODR would result in efficiency or economy and asked that we further explain this change in light of anticipated costs that surely would have

to accompany transferring providers and in light of increased costs to intermediaries. A few commenters stated that the absence of a detailed cost comparison study is contrary to requirements of OMB Circular No. A–76.

Response: Currently, contractor intermediaries process 95 percent of the Part A bill volume. Our decision to contract out the ODR workload is based upon the general policy of the Federal Government to rely on commercial sources to supply the products and services the Government needs. Many of the ODR personnel have a good understanding and knowledge of the Medicare program and the impact of HCFA decisons on beneficiaries, providers and contractors. We believe that this knowlege would be better used in the overall administration of the Medicare and Medicaid programs.

Based on the consolidations and resulting transitions completed in the past, we have estimated that these transfers will not increase overall costs. There will be some one-time costs, of approximately $1 million, because of the need of some intermediaries to change their automated systems to accept bills using ODR's format. Costs to providers will be very minimal and such provider costs are reimbursable.

The requirements of OMB Circular A–76 are not applicable to this decision. Section 8 of the Revised Circular states that a decision for *in-house* performance is authorized only if a comparative cost analysis demonstrates that the Government is operating or can operate the activity at a lower cost. There is no comparable requirement for analysis concerning contracting out work performed in-house to the private sector.

Several of the commenters that questioned our conclusion raised specific issues involving implementation of a transfer, especially involving automated billing procedures. We do not intend to place automated providers in a position where they must forego efficiencies acquired via automation. For automated providers, the designated regional intermediary or alternative designated regional intermediary will be able to accommodate the automated functions currently provided by ODR. There should be no, or extremely minor, adjustments for paper-billing providers who constitute the majority of ODR providers. Any costs these providers incur will, at most be negligible.

We recognized that a major item of concern to providers would be the impact of a transfer on individual providers' automated data systems (i.e., billing, admission notices, discharge data, plans of treatment and denial notices). Of the 480 HHAs dealing with ODR, only 185 submit or receive automated data. Ninety-three of the 185 providers represent two multi-State chains that have each chosen to be served by a single intermediary for their entire chain. The remaining 92 HHAs scattered in 14 States may elect to be serviced by the designated regional intermediary or the alternative designated regional intermediary for that area. Most of the designated regional intermediaries and all of the alternative designated regional intermediaries are currently capable of accepting automated data. They will be required to write an interface program to accept data in the ODR format and modify their EDP systems to accept and respond to admission notices, starts of care, and billing formats used by ODR.

As we stated before, no provider will be asked to abandon its automated procedures to conform to the operations of a nonautomated intermediary in its area. Currently, all but eight intermediaries are capable of receiving and sending provider data via electronic media. An automated provider whose regional intermediary cannot process automated billing may deal with the alternative designated regional intermediary that can.

Comment: Nearly one-half of the commenters stated that we are not following the recommendations of the President's Private Sector Task Force (Grace Commission). The Grace Commission Report indicated three concerns—the basis for the decision to contract out, the value of ODR as an in-house laboratory and the value of ODR as a competitor.

Several other commenters requested, in a related comment, that we reconsider our plans to contract out our intermediary function, noting that ODR is reported to be efficient in its claim processing operations. These commenters stated numerous benefits to us of retaining an intermediary function. For example:

(a) ODR could be used as a testing ground for us to try innovative intermediary activities;

(b) ODR could be used as the intermediary for a host of demonstrations or experimental projects, such as hospice care;

(c) The ongoing availability of ODR creates a competitive environment for other intermediaries, since providers dissatisfied with their intermediary's performance could transfer to ODR; and

(d) ODR experience could be used to establish benchmarks to measure all intermediary performance.

Response: Our decision to contract out the intermediary functions for servicing providers now dealing directly with us is based upon a determination of our proper role. We do not believe the agency should perform operations which the private sector has demonstrated it can perform as well as we can.

On the basis of a wide range of measures, such as costs, timeliness, and accuracy, we concluded that the performance of private sector intermediaries usually ranks as well as or better than ODR. Hence, the providers being transferred to contractor intermediaries can be assured that they will continue to receive good service.

Our ongoing intermediary performance evaluation plans, the Contractor Performance Evaluation Program and the Annual Contractor Evaluation Report, help us to monitor intermediary performance and take action to assure that providers receive good service.

Concerning the issue of our having an in-house laboratory, we believe that our plans and ongoing operations are compatible with the tone of the Grace Commission. We recognize the need for a laboratory to test new methodologies. We will retain, within our Office of Research and Demonstrations, a claims processing capacity for multi-State demonstration projects and a limited capacity for new methodology testing.

ODR has never been our sole source for special analyses and testing; moreover, many of our contractors are engaged, on their own initiative or with our direct support, in billing initiatives and other productivity investments. We will also continue to experiment, demonstrate and improve operations through our private sector contractors.

The practicality of ODR's role as a competitor and alternative to intermediaries in a given area is at best marginal. ODR currently works at full capacity and would have little capability under any conditions to serve as a competitor and/or alternative for any substantial block of providers. Such alternatives can be better provided through the capacities of our private sector contractors than through any available HCFA resources.

Contrary to the opinion expressed by some providers, the claims workload of ODR does not lend itself to be used as a benchmark to evaluate other intermediaries. ODR processed only about 5 percent of the total Medicare intermediary volume in fiscal year 1982 and half of that volume was generated in one State. Benchmarks derived from this workload would not fairly and accurately assess other intermediaries.

Comment: Several HHAs reported that they had previously used other intermediaries and were pleased with

ODR's processing of their claims. They expressed dissatisfaction with a change and felt that their nomination rights were restricted with the assignment of the ODR providers to other intermediaries. The providers believe that phasing out ODR gives the Blue Cross Plans a monopoly in administering the Medicare program.

Response: After evaluating the comments received, we have determined that ODR's freestanding HHAs should be allowed an alternative to the designated regional intermediary. Before transferring the freestanding HHAs away from ODR, we are giving them the opportunity to choose either the designated intermediary for their region or the alternative regional intermediary designated by HCFA. Other freestanding HHAs now assigned to designated regional intermediaries may also request a transfer to the alternative designated regional intermediary. In addition, individual HHA chain organizations will have the opportunity to request lead and local intermediaries, or a single intermediary, to process their entire workload.

We are developing policy for use by the various regional designated, single, and lead and local intermediaries. The policy will address postpayment coverage compliance reviews, adequate onsite reviews of HHAs and consistent decisions pertaining to medical utilization and reimbursement.

The view that the phasing our of ODR will leave the Blue Cross Plans with a monopoly in the program is erroneous. We also have contracts with Aetna Life and Casualty Company, Hawaii Medical Service Association, Mutual of Omaha, The Prudential Insurance Company of America and the Travelers Insurance Company. With the exception of the Travelers Insurance Company, all of these intermediaries have also been designated to service freestanding HHAs. The performance of all intermediaries is monitored to assure adequacy of performance, and we are committed to assuring that the ODR providers receive the same as or a better level of service than is being provided by ODR. Furthermore, we are taking a number of steps to assure and measure good performance as discussed in Section V, Implementation.

Comment: Several commenters questioned our conclusions that using regional (usually statewide) intermediaries would permit a consistent application of coverage and reimbursement rules by auditors in those cases where all providers in an area have the same intermediary or intermediaries. In their view, use of statewide intermediaries would undermine Medicare as a national program.

Response: The commenters assume a rigidity in interpreting the application of coverage rules that is not borne out by the experience. They also disregard the benefits of centralization of bill processing expected to result from combining many small scale operations.

Some degree of latitude in judgment is allowed on how intermediaries are to implement coverage policy in the light of local medical practice. When individual judgment is applied, it can lead to differences among intermediaries in a small percentage of decisions. As we review this situation and meet regularly with providers, their associations and intermediaries, we will further reduce the instances, if any remain, of inconsistencies occurring in an area.

Comment: A few freestanding HHAs commented that HHA chain organizations are being granted preferential treatment by having opportunities in selecting an intermediary. Chains are to be granted an appeal mechanism through the lead intermediary alternative and the single intermediary concept gives chains the opportunity to select the most desirable intermediary.

Response: We define a chain as a group of providers under common ownership or control. The chain has effective central management controls such as:

(a) The parent company owns the controlling financial interest in each component facility;

(b) The home office controls the hiring, training, and discharging of individual facility administrators;

(c) The chain has an effective program of utilization controls ensuring proper utilization of services; and

(d) The chain management effectively oversees the individual facilities to assure compliance with company policies and procedures (e.g., periodic home office visits to facilities).

Our proposed plans for transferring freestanding HHAs announced in the preamble to the NPRM and our alternatives for chains were not developed to provide better service to one group or the other. Rather, the plans are based on our determination of the most cost effective and least disruptive approach for all concerned. In some instances it is logical that chains, because of their fiscal or operational makeup and degree of centralization, be allowed to deal with lead and local intermediaries, or with a single intermediary, to service the entire chain. These alternatives are not guaranteed. The chain must establish the need for an alternative.

We are giving HHAs an opportunity to request an alternative designated regional intermediary to assure that HHAs not belonging to a chain also have an alternative.

Comment: Several commenters expressed concern over the use of a contractor to carry out activities we presently perform for HMOs. They cite possible loss of competitive proprietary information if they are audited by intermediaries or carriers. Others suggested that we defer contracting out this function until a number of operational issues are addressed, such as whether risk-basis HMOs and cost-basis HMOs should be treated differently.

Response: As we stated in the preamble to the NPRM, we are announcing our option to perform our functions for HMOs and, by implication, other prepayment plans such as GPPPs, directly or by contract. We will continue to consult with health care prepayment plans to discuss concerns such as maintaining the confidentiality of proprietary information. No firm decision to contract out the health care prepayment plan workload has been made at this time.

Comment: Two commenters were concerned with our statement in the NPRM that we intend to contract with existing or newly established Medicare fiscal intermediaries or "other organizations" whose accountants are specialists in Medicare principles of reimbursement. They believed that the proposal to contract with organizations other than fiscal intermediaries does not follow the intent of Congress in sections 1816(e) and 1874 of the Act or the opinion of the Court of Appeals for the District of Columbia Circuit in *National Association of Home Health Agencies v. Schweiker.*

Response: We do not agree with this comment. Section 1816 of the Act merely authorizes (subject to restrictions) the Secretary to enter into an agreement with any organization or agency that is nominated as intermediary by a group of providers.

Section 1874 of the Act, on the other hand, concerns the Secretary's ability to perform Medicare functions either directly or by contract; there are no restrictions on the type of organization that we may choose to perform a given function by contract. The Court of Appeals found that we have the statutory authority to contract out the direct dealing providers; the Court did not limit us to contracting out with existing intermediaries.

Nevertheless, while we assert that we have the legal ability and right to

contract out with *any* entity under the authority of section 1874, our present intent, as we have announced previously, is to limit the contracting out of the direct-deal provider workload to current fiscal intermediaries (i.e., organizations who have entered into an agreement with the Secretary under section 1816).

Comment: Three commenters were concerned about our policy regarding appointment of an ombudsman for each HCFA regional office. One was concerned that the ombudsman would be biased because he or she would be a HCFA employee. Another commenter believed the ombudsman should not be another step in the appeals process. The third commenter stated that the provision for an ombudsman should be in the regulations.

Response: The concept of regional ombudsman was developed as a result of meetings with various provider groups and their association representatives who believed their views and concerns were seldom considered. They believed the elimination of ODR would deprive them of the one source receptive to their concerns.

We have appointed individuals and alternates to ombudsman-type positions. These individuals will have the authority to investigate and facilitate the resolution of issues that have not been settled by discussion between the provider and intermediary. They will continue to be available after the transition process to assure provider views are heard and considered in HCFA's management process. They will address all issues *except* Provider Reimbursement Review Board appeals. These individuals are knowledgeable with respect to program, operational and administrative concerns affecting HCFA, as well as the providers and intermediaries. As such, we expect them to make responsible decisions. The selection or appointment of individuals to various functions or positions, such as the ombudsman functions, are a part of HCFA's ongoing administrative processes; therefore, we see no need to include the appointment of individuals to this position in regulations.

Comment: One commenter requested that we define "chain organization" to (a) include two or more agencies under common ownership or control or (b) be subject to common operating manuals or procedures, and/or to common support services such as data processing, cost report preparation and tax return preparation.

Response: We do not agree with all of this comment. We have defined a chain elsewhere in the preamble. Example (a) of the comment falls under that definition but example (b) does not. The commenter's definition under (b) could include franchise providers. By definition a franchise is run independently of the franchisor and may have separate accounting and billing procedures in this instance. While the chain may provide general guidelines and support, the acutal decisionmaking and responsibility for adhering to program requirements lie with the franchisee.

We have agreed to the lead intermediary and single intermediary concepts to accommodate a chain's highly centralized accounting or common billing systems. While we wish to facilitate administrative simplicity for providers, we must also be concerned about program safeguards and, consequently, we do not feel it would serve any program purpose to broaden the definition of chain to encompass franchise providers.

Comment: One commenter wanted the fiscal impact of transfers to be minimized by guaranteeing reimbursement of "pass through" costs when HCFA requires a transfer to an organization not of the provider's choosing and that there be a transition plan to which the old and new intermediaries, HCFA and the provider all agree. Another commenter wanted us to state in our regulations that we will reimburse costs incurred because of the transfer.

Response: Provider costs incurred due to the transfer will be allowable and reimbursable under established Medicare reimbursement principles. If an HHA's costs exceed cost limits as a result of the intermediary transfer from ODR to an intermediary, an exception may be granted under § 405.460(f)(2). As § 405.460(f)(2) deals with excess costs, there is no need to include a statement in Part 421 indicating these costs may be allowable.

We anticipate few, if any, costs to be incurred by a provider because of the transition and these costs will be reimbursable under the usual rules.

We normally follows a transition procedure whenever providers are transferred from one intermediary to another. The procedure is followed whether one provider or a large group of providers is involved. From January 1982 through July 1983 we transferred almost 500 home health agencies to designated intermediaries. These transitions were completed successfully with no interruption to cash flow.

Comment: One commenter requested assurance that HAA chain providers' choices of a single intermediary would not be subjected to arbitrary rejection.

Response: Our decision will not be arbitrary; instead, it will be based upon whether a change improves the effective and efficient administration of the program.

Comment: One commenter suggested we reorganize the regulations to more closely follow the actual process we will follow. He gave specific suggestions for recodifying the regulation sections.

Response: We are not accepting this comment as we believe the order and format of the provisions are adequate for our purposes. However, we will consider the commenter's suggestions when contemplating further revisions or recodification of Part 421 in the future.

Comment: One commenter thought that providers should have at least 120 days lead time to transfer to an intermediary. Another commenter believed that it should not have to transfer until 1985.

Response: We do not believe that providers need 120 days, or more, to transfer. Previous transfers have been made in as little as two weeks without major disruption. For the impending transfers, providers will have at least 60 days notice, and we believe this is adequate to facilitate smooth transfers.

Comment: One commenter wanted us to add a performance measure to the Contractor Performance Evaluation Plan (CPEP) now instead of to the 1984 CPEP.

Response: The CPEP is a performance evaluation program designed to assess the effectiveness and efficiency with which Medicare contractors administer the Medicare program. The CPEP is comprised of criteria containing measures for evaluating levels of performance demonstrated by contractors in carrying out essential operations such as bill processing, provider reimbursement, and beneficiary services. It also contains statistical standards against which performance is measured in terms of cost, timeliness and quality.

The CPEP evaluation periods are based on the Federal government's fiscal year (i.e., October 1 through September 30). Thus, the performance elements that will measure an intermediary's responsiveness to provider concerns were effective October 1, 1983.

Comment: One commenter wanted us to guarantee cash flow by arranging a fixed regular monthly payment during the transition period.

Response: We believe existing payment procedures under ongoing operations and special circumstances are adequate to meet provider cash flow requirements.

IV. Provisions of the Final Regulations

A. We Are Adopting the NPRM as Final With the Changes as Summarized Below

As proposed, we are amending 42 CFR Part 421 to clarify the application of Section 1874 of the Act to providers that choose not to nominate or elect fiscal intermediaries. The amendments clarify our authority to contract with intermediaries or other organizations to make payments to those providers that have not elected to exercise the option to deal with an intermediary.

As proposed, we are redesignating § 421.103 (a) and (b) as § 421.103(a) (1) and (2). We are adding a clause to the contents of § 421.103(a)(1) to indicate that a provider's election to receive payment directly from HCFA is subject to a new § 421.103(b) (which states that we may contract out our direct payment functions). We are making a technical revision to § 421.105(b) as well, to show that a provider's option to receive payment directly from us as provided in § 421.103(a)(1) is subject to § 421.103(b). In addition to these proposed revisions, we are changing the word "shall" to "must" to be consistent with other such changes in Title 42, Chapter IV.

As proposed, we are adding a paragraph (b) to § 421.103 to state that FCFA may, as it determines to be appropriate, contract with any organization (including an intermediary with which we have previously entered into an agreement under 42 CFR 421.105 or designated as a regional or alternative designated intermediary under § 421.117) to make payments to any provider or group of provider. The amendments preserve the option now available to most providers to choose to receive payment through nominated intermediaries, but would modify the providers' option to deal directly with us.

As proposed, we are revising the contents of the current 42 CFR 421.104(b)(2) and redesignating the paragraph as § 421.104(b)(3). Current § 421.104(b)(2) states that providers may exercise their right to receive payment from the Administrator. As we stated earlier, we have the right under section 1874 of the Act to contract out the functions required to service providers; thus, providers do not have the absolute right to receive payment directly from us. Instead, they may elect to receive payment from us directly, and we may then either make those payments or contract out the responsibility. Section 421.104(b)(3) is revised to show that providers may elect to receive payment directly from HCFA as provided in § 421.103, which states that we may contract out our direct-payment function.

Again, as proposed, we are also making a technical revision to 42 CFR 421.104(b), by changing the title of § 421.104(b) from *Nomination by members or nonconcurring members* to *Action by nonmembers or nonconcurring members* to reflect that a single provider, as opposed to a group, may elect to deal with an intermediary or with us. We are also adding a new paragraph (b)(2) to clarify that a provider that does not belong to a provider association, or a provider that does not concur with its association's nomination for intermediary, may elect to receive payments from an intermediary with which we already have an agreement if both we and the intermediary agree to it.

In the proposed rule, we proposed two revisions to § 421.117, which concerns designation of intermediaries for freestanding home health agencies, to give section 1874 of the Act as a basis for the section and to require all freestanding HHAs to receive payment through HCFA-designated regional intermediaries. In this final rule, we are making four revisions to 42 CFR 421.117. First, as proposed, as stated in § 421.117(a), we are changing the basis for the section to include section 1874 of the Act; that is, intermediaries (both regional and alternative designated regional intermediaries) are designated under both section 1816(e)(4) and section 1874 of the Act.

The second revision to 42 CFR 421.117 revises paragraph (b) to require all freestanding HHAs to receive payment through regional intermediaries designated by us, except as permitted by new paragraphs (d), (e), and (f).

We are adding a paragraph (d) to § 421.117 to give each HHA chain the opportunity to deal with a lead and local intermediary, or a single intermediary, of its choice, subject to our approval.

Next, we are adding a new paragraph (e) to § 421.117 that offers freestanding HHAs an opportunity to request an alternative designated regional intermediary.

We are adding a new paragraph (f) to show that we will evaluate an HHA's request to change from its designated regional intermediary to the alternative designated regional intermediary in accordance with § 421.106(a) and that the request must be filed within the time frames set forth in § 421.106(a). We also state that there is an exception to the rules set forth in the new paragraph (f); the exception follows in a new paragraph (g).

The new paragraph (g) will give each of ODR's HHAs 30 days from the date it is notified that it will be transferred to the designated intermediary to request to be serviced by the alternative designated regional intermediary for its area.

As conforming changes, we are adding the concept of "alternative designated regional intermediary" to the definition of "intermediary" in § 421.3, and to § 421.103(b), and we are adding a necessary clarification to show that we do not designate alternative regional intermediaries for hospices, which were added to the definition on December 16, 1983 (48 FR 56008). We are also revising the latter section's title to show that the section discusses options available to both providers and to us.

In addition, we are revising § 421.128(f) to show clearly that intermediary rights to an appeals process do not include the right to appeal our designation of an alternative regional intermediary. We are revising § 421.1, Basis and Scope, as well, to show that in the regulations we state under what circumstances an intermediary or carrier may appeal an adverse action. This change is necessary to conform this section with § 421.128(f), which does not give an intermediary the right to appeal our designation of intermediaries as regional or alternative regional intermediaries for freestanding HHAs or as intermediary for hospices.

(In the regulations concerning hospices, the word "regional" was deleted in §§ 421.3, 421.103, and 421.128(f). We have revised these three sections to more clearly delineate the procedural differences between hospices and freestanding HHAs.)

We are amending 42 CFR Part 405, Subpart T, as proposed, to show that HCFA may, at its option, use a contractor to carry out the activities it presently performs for HMOs.

We are also adopting as proposed some technical changes to 42 CFR Part 421:

1. We are adding language to 42 CFR 421.1, *Basis and Scope*, to clarify that Section 1874 of the Act is one of the bases of Part 421 and that the statute and regulations permit us to perform certain functions, directly or by contract.

2. We are deleting the definition of "the Administrator" from the definitions section (§ 421.3) and revising all references to "the Administrator" to "HCFA." For consistency, we are changing all references to "he or she" and "his or her" to "it" and "its," respectively.

B. Other Technical Changes

1. In the proposed rule as published on August 2, 1983, there were numerous

typographical errors, most of which are obvious. However, we wish to point out the more technical and less obvious errors at this time:

A. Page 34980, column 2, last line: The letters "EB" in the parenthetical reference should be "FR".

B. Page 34981, column 2, line 8 of paragraph 2: The section number of the Omnibus Reconciliation Act of 1980 should read "930", not "940".

C. Page 34982, column 3: Under "III. Public Comments," the year in line 2 should read "1982", not "1981".

2. On March 25, 1983, we published definitions applicable to all regulations in 42 CFR Chapter IV, unless otherwise noted in particular rules (48 FR 12526). Although we deleted the definition in 42 CFR 421.3 of "Administrator", we did not delete or conform the other definitions to those in § 400.202.

We are deleting from § 421.3 the definitions of "Act", "carrier", "provider" and "Secretary" since they are now defined in Part 400. We are retaining the definition of "intermediary" since it has a broader meaning in § 421.3 than in § 400.202, but we are also revising it so that its wording conforms to that in Part 400 where the meanings of the two definitions are the same. We are changing "Blue Cross Association", in § 421.3 to the more accurate title of Blue Cross and Blue Shield Association. We are also revising 42 CFR 400.202 to eliminate references to ODR as part of the definitions of intermediaries and carriers.

V. Implementation

A. Notification to Providers

HCFA will send a notice to each affected provider (other than freestanding HHAs) serviced by ODR, requesting a preference of intermediary, where applicable.

Each freestanding HHA will be transferred to the appropriate designated regional intermediary. The notice to the HHAs will include the name of the alternative designated regional intermediary. Those ODR HHAs not wishing to receive payment from the designated regional intermediary may choose to receive payment from the alternative designated regional intermediary.

In addition, each HHA chain may choose, subject to our approval, to use local intermediaries from member HHAs and a lead intermediary for the chain as a whole. Alternatively, each HHA chain may also select a single intermediary to service the entire chain, subject to our approval. All single intermediaries and lead and local intermediaries must be designated regional intermediaries.

B. Classification of Intermediaries

The classifications of intermediaries to service HHAs are as follows:

1. Designated regional intermediary: The intermediary we designate to service freestanding HHAs under section 1816(e)(4) and 1874 of the Act.

2. Alternative designated regional intermediary: The designated regional intermediary we select as being available in an area to service a freestanding HHA in its area, as an alternative to the designated regional intermediary.

3. Lead and local intermediaries: An option available to a chain whose degree of centralization makes it more efficient for a lead intermediary to conduct the home office audit and final settlement of individual cost reports. The lead and local intermediaries are selected from the designated regional intermediaries. In cooperation with the lead intermediary, the designated regional intermediaries (the local intermediaries) are responsible for provider reimbursement throughout the year in the individual States.

4. Single intermediary: A designated regional intermediary we approve to service an HHA chain.

C. Ombudsman

As we indicated earlier in the Analysis and Response to Comments section, we have arranged for ombudsmen-type positions in each HCFA region. These individuals will assist providers in resolving any problems encountered during the transition or thereafter.

D. Transfer Schedule

In the proposed rule we announced that we planned to begin the transfer process on October 1, 1983 and, when possible, to transfer providers at the beginning of their fiscal year. The transfer schedule is primarily affected by the necessity to complete the transfer process in FY 1984 and by our commitment to a smooth orderly transition with adequate notice to providers.

1. All providers will receive at least 60 days notice of the date of transfer.

2. A preliminary transfer schedule has been prepared and will be made available upon request.

3. Providers may request an accelerated transfer date and approval will be granted unless the movement would create a burden on either ODR or the receiving intermediary.

4. Providers having a choice of intermediary will be notified shortly after this final rule is published and given 30 days to indicate their intermediary preference.

E. Procedures During the Change-Over Period

Each provider serviced by ODR will be notified by mail of procedures to follow during the change-over process. We will arrange for an orderly transition of service. As providers are transferred to intermediaries, the entire workload for that provider will be transferred, including pending claims, unsettled cost reports, outstanding appeals, etc.

F. Assurance of Cash Flow

We will make every effort to assure that there will be no interruption of cash flow to providers. We will work closely with the intermediaries and providers to identify and try to resolve problems that might interrupt the cash flow.

G. Transition Cost

Provider costs incurred due to the transfer will be allowable and reimbursable under established Medicare reimbursement principles.

We will be responsible for only those costs directly attributable to Medicare. As provided in 42 CFR 405.460(f)(2), administrative cost limits may be adjusted upward for a provider that shows that the additional costs are due to the transition. Where providers' costs exceed the limits as the result of the transfers to an intermediary, we will grant an exception, provided that the costs are reasonable, attributable to the circumstances specified, separately identified by the provider, and verified by its intermediary.

H. List of Designated Regional Intermediaries to Service Freestanding Home Health Agencies

Below is the list of intermediaries we have previously designated as the regional intermediaries to service freestanding HHAs. These designations were published in the preamble to a final rule on September 1, 1982 (47 FR 38535). The notifications sent to the individual HHAs will include the name of the designated regional intermediary as well as the alternative designated regional intermediary listed in section I below.

Alabama—Blue Cross and Blue Shield of Alabama
Alaska—Blue Cross and Blue Shield of Washington and Alaska
Arizona—Aetna Life and Casualty
Arkansas—Arkansas Blue Cross and Blue Shield, Inc.
California—Blue Cross of California
Colorado—Blue Cross of Colorado

Connecticut—Blue Cross and Blue Shield of Connecticut, Inc.
Delaware—Blue Cross of Delaware
District of Columbia—Group Hospitalization, Inc. (Washington, D.C.)
Florida—Aetna Life and Casualty (Clearwater, Florida)
Georgia—Blue Cross of Georgia/Columbus, Inc.
Hawaii—Hawaii Medical Service Association
Idaho—Blue Cross of Idaho Health Service
Illinois—Health Care Service Corporation, a Mutual Legal Reserve Company (Chicago, Illinois)
Indiana—Mutual Hospital Insurance, Inc. (Indianapolis, Ind.)
Iowa—Blue Cross of Iowa, Inc.
Kansas—Blue Cross of Kansas, Inc.
Kentucky—Blue Cross and Blue Shield of Kentucky, Inc.
Louisiana—Blue Cross of Louisiana
Maine—Associated Hospital Service of Maine
Maryland—Blue Cross of Maryland, Inc.
Massachusetts—Blue Cross of Massachusetts, Inc.
Michigan—Blue Cross and Blue Shield of Michigan
Minnesota—Blue Cross and Blue Shield of Minnesota
Mississippi—Blue Cross and Blue Shield of Mississippi, Inc.
Missouri—Blue Cross Hospital Service, Inc. of Missouri (St. Louis, Missouri)
Montana—Blue Cross of Montana
Nebraska—Mutual of Omaha Insurance Company
Nevada—Aetna Life and Casualty (Reno, Nevada)
New Hampshire—New Hampshire-Vermont Health Services, Inc.
New Jersey—The Prudential Insurance Company of America
New Mexico—New Mexico Blue Cross and Blue Shield, Inc.
New York—Blue Cross and Blue Shield of Greater New York
North Carolina—Blue Cross and Blue Shield of North Carolina
North Dakota—Blue Cross of North Dakota
Ohio—Hosiptal Care Corporation (Cincinnati, Ohio)
Oklahoma—Blue Cross and Blue Shield of Oklahoma
Oregon—Blue Cross of Oregon
Puerto Rico —Cooperative De Seguros De Vida De Puerto Rico
Pennsylvania—Blue Cross of Greater Philadelphia
Rhode Island—Hospital Service Corporation of Rhode Island
South Carolina—Blue Cross and Blue Shield of South Carolina
South Dakota—Blue Cross of Western Iowa and South Dakota
Tennessee—Blue Cross and Blue Shield of Tennessee (Chattanooga, Tennessee)
Texas—Group Hospital Service, Inc. (Dallas, Texas)
Utah—Blue Cross of Utah
Vermont—New Hamsphire-Vermont Health Services, Inc.
Virginia—Blue Cross of Southeastern Virginia (Roanoke, Virginia)
Washington—Blue Cross of Washington and Alaska
West Virginia—Blue Cross Hospital Service, Inc. (Charleston, West Virginia)
Wisconsin—Blue Cross/Blue Shield United of Wisconsin
Wyoming—Blue Cross of Wymong

Certain designated intermediaries service HHAs across State lines in keeping with their longstanding service areas in the following cases:

- Group Hospitalization, Inc., which services the District of Columbia; Prince Georges and Montgomery Counties in Maryland; Arlington County, Fairfax County, and the cities of Alexandria, Falls Church and Fairfax in Virginia;
- Blue Cross of Western Iowa and South Dakota, which services all of South Dakota and 26 counties in Iowa;
- Oregon Blue Cross, which services Oregon and Clark County in Washington, a suburb of Portland;
- St. Louis Blue Cross, which services Missouri, and Johnson and Wyandotte Counties in Kansas; and
- Chattanooga Blue Cross, which services Walker, Dade and Catoosa Counties in Georgia.

These service areas do not overlap with those of other designated intermediaries and thus meet the intent of the legislative mandate in Pub. L. 96-499.

I. Alternative Designated Regional Intermediaries

The alternate intermediaries and the States in which they will serve as alterntes are as follows:

The Prudential Insurance Company of America—Alabama, Connecticut, Delaware, the District of Columbia, Florida, Georgia, Iowa, Kentucky, Maine, Maryland, Massachusetts, Mississippi, New Hampshire, New York, North Carolina, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, and West Virginia.
Blue Cross of Iowa—Arkansas, California, Illinois, Indiana, Kansas, Louisiana, Michigan, Minnesota, Missouri, Nebraska, New Jersey, New Mexico, Ohio, Oklahoma, Texas, and Wisconsin.
Blue Cross of California—Alaska, Arizona, Colorado, Hawaii, Idaho, Montana, Nevada, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming.

J. Other Entities Dealing Directly with HCFA

The contracting out of certain functions presently performed by HCFA for health care prepayment plans (HMOs and GPPPs) is currently under study. Health care prepayment plans, while they are not providers with a nomination right, are presently serviced by HCFA. This regulation establishes our authority to modify this practice should we, in the future, choose to contract out some or all of the work.

VI. Impact Analyses

Executive Order 12291 requires us to prepare and publish a regulatory impact analysis for any regulations that are likely to have an annual effect on the economy of $100 million or more, cause a major increase in costs or prices, or meet other threshold criteria that are specified in that order. In addition, the Regulatory Flexibility Act of 1980 (Pub. L. 96-354) requires us to prepare and publish a regulatory flexibility analyses for regulations unless the Secretary certifies that the regulations will not have a significant economic impact on a substantial number of small entities. (For purposes of the Regulatory Flexibility Act, small entities include all nonprofit and most for-profit providers.) Under both the Executive Order and the Regulatory Flexibility Act, such analysis must, when prepared, show that the agency issuing the regulations has examined alternatives that might minimize unnecessary burden or otherwise ensure the regulations to be cost-effective.

In this final rule, we are responding to public comments concerning the Impact Analysis published in the August 2, 1983 NPRM and are making several changes and technical clarifications to provisions of the NPRM. Because of the concerns expressed by many commenters about this transfer, we are also providing the following analysis, that when combined with the rest of the preamble, constitutes a voluntary regulatory flexibility analysis.

A. Executive Order 12291

Executive Order 12291 requires us to prepare and make available to the public a regulatory impact analysis for any regulations likely to have an annual effect on the economy of $100 million or more, cause a major increase in costs or prices, or meet other threshold criteria specified in section 1(b) of the Order. We had determined that the proposed

rules did not meet the criteria for a "major rule" in section 1(b). Therefore, a regulatory impact analysis was not required.

In the proposed rule we also stated that these rules would increase our ability to improve administration and program effectiveness. We expected relatively minor one-time implementation costs substantially smaller than $100 million per year. Changes made in this final rule to the NPRM also do not meet the threshold criteria.

Under these final regulations, provision is made for all 185 automated HHAs to transfer to those regional intermediaries with capability to process their claims. We estimate that the one-time cost for intermediary assumption of these automated HHAs and the estimated transfer cost for the remaining providers will be approximately $1 million. This estimate incorporates costs for bill processing operations, audits, reimbursement for hearings and medical and utilization review functions. We are controlling contractor costs to assure operations in the private sector are no more costly than in ODR. Our discussions with other designated and alternative designated regional intermediaries and those intermediaries assuming the workload of the ODR hospitals and SNFs indicate that, in most cases, we can transfer the ODR workload at reasonable marginal rates.

We believe that extending to all freestanding HHAs the option of selecting one of the alternatives designated regional intermediaries, rather than the designated regional intermediary, will probably also result, at most, in a negligible economic impact. Each of the alternative designated regional intermediaries is properly equipped for automated billing procedures, thus mitigating any increase in operational costs. Also, the annual cost to process the bill volume generated by the freestanding HHAs will not increase overall but will simply shift among the intermediaries.

Therefore, we believe that the budgetary impact of this transfer will not be significant and we have determined that these final regulations will not meet the threshold criteria noted in section 1(b) of the Executive Order.

B. Regulatory Flexibility Act

In the proposed rule we stated that the Regulatory Flexibility Act requires us to prepare and make available to the public an initial regulatory flexibility analysis, under 5 U.S.C. 603(b), unless the Secretary certifies that an analysis is not required. The purpose of the analysis would be to explain the expected impact of the proposed regulations and to analyze alternatives that might reduce negative effects of regulations on small entities. (A small entity is a small business, a nonprofit enterprise, or a governmental jurisdiction with a population of less than 50,000.)

For purposes of regulatory flexibility analysis, we consider all providers and other entities participating in Medicare to be small entities. In the NPRM it was clear that a substantial number of small entities would be affected. However, we also determined that the impact on affected entities would not be significant. In the proposed rule we stated that we would minimize the impact of the rule change by making every effort to assure continued cash flow, basing reassignment on established cost reporting periods, and providing exceptions for providers that have costs exceeding their cost limits as a result of reassignment. Furthermore, changes made in these final rules result in additional efforts to minimize the impact of our decision to contract out the bill processing functions of ODR.

We continue to believe, as was discussed in the NPRM, that the impact of these regulations will not be significant and that an analysis is not required under 5 U.S.C. 603. Nevertheless, a number of commenters, including several members of Congress, expressed concern that no analysis of the impact on small businesses was completed prior to publication of the proposed rule. Therefore, we are providing a voluntary analysis to clarify our choice and to respond to concerns expressed. We are providing the public an opportunity to comment on the analysis.

(a) *Number of providers (Hospitals, SNFs, HHAs).* As of October 1, 1983, there were 1,057 providers remaining in ODR that would be affected by this transfer: 154 hospitals, 24 skilled nursing facilities, 429 home health agencies, 351 Federal hospitals and emergency hospitals, 21 providers of outpatient physical therapy services and 7 end-stage renal disease services facilities. (We are not contracting out the functions HCFA performs for health care prepayment plans at this time. These functions are performed by a component different from ODR.)

(b) *Efforts to minimize impact.* We believe these providers could be significantly affected by this rule if: (1) providers were not granted adequate time to prepare for a transfer; (2) a disruption in cash flow occurs; (3) chain organizations were forced to deal with multiple intermediaries; or, (4) automated providers were transferred to nonautomated intermediaries.

In their comments, providers also stated that they could be significantly affected by less tangible factors, such as perceived poor communications with certain intermediaries, previous differences of opinions (which may have led to their switching from an intermediary to ODR) or a general perference for a commercial intermediary over a Blue Cross Plan or *vice versa*.

To address all concerns, we developed three options: a single national alternative intermediary to the designated regional intermediaries; a small number of alternative designated intermediaries that providers could select, regardless of the providers' location; or a small number of alternative designated regional intermediaries that service designated areas.

The single national alternative intermediary would seem to preserve for providers a choice most similar to their present choice to select ODR. We did not select this option for several reasons. Unrestricted access to a designated national alternative intermediary could result in inefficient and expensive claims processing, audit and communications due to the distance and need for travel. (This is one of the problems that led Congress to require us to designate regional intermediaries for freestanding HHAs.) The potential for lack of timely response to provider concerns is high. Furthermore, this approach would be least compatible with our efforts to encourage consistent medical review and coverage decisions since the intermediary may be at a great distance from the provider. Finally, the choice of a single national intermediary runs counter to our future plans to regionalize our intermediary configuration.

The second option, a small number of alternative designated regional intermediaries from which all providers could freely choose would be most responsive to those providers that felt it important to select a commercial intermediary instead of a Blue Cross Plan or vice versa. We rejected this option for many of the reasons stated above, since it is very likely that selections resulting in a great distance between the provider and intermediary could occur. In fact, if all selected the same intermediary, the result could be identical to the first option.

We selected the option of three alternative designated regional intermediaries to service designated

areas and also developed operational provisions to minimize impact.

Included within the selected alternative are the following provisions that seek to minimize the affect of this rule change. First, all providers will receive at least 60 days' notice prior to transfer. This will give the provider and intermediary adequate time to conduct meetings, address concerns and complete any training the provider may require.

Second, we will work with the various intermediaries to assure that there is no disruption to providers' cash flow. We have experience in transferring large numbers of providers from one intermediary to another (HHA intermediary reconfiguration of 1982–July 1983; consolidation of Mutual of Omaha workload; consolidation of Blue Cross Plans and consolidation of The Travelers workload). In none of these instances did providers suffer a disruption in cash flow.

Third, with regard to chain organizations, each organization may request to use a single intermediary for its entire workload or to use local and lead intermediaries. Because of the fiscal or operational organizations of some chains and because of their degree of centralization, certain chains may find service by a single intermediary, or lead and local intermediaries, to be preferable to being serviced by the designated regional intermediary or the alternative designated regional intermediary.

Finally, we are responding to the needs of the 250 automated providers in several ways. We have begun transition activities with some hospitals and home health agencies. The intermediaries elected by these provider are automated. Where necessary the intermediaries are making adjustments to their system to accommodate billing procedures.

Automated HHAs will not have to transfer to an intermediary that cannot accept their automated billing. All three alternative designated regional intermediaries have the same systems capacity as ODR and may be chosen instead of a nonautomated regional intermediary. Automated billers represent only 185 of the 480 HHAs dealing with ODR; 93 of the 185 are members of two multi-State chains that have each chosen to be serviced by a single intermediary for the entire chain. The remaining 92 will each be transferred to one of 14 intermediaries or an alternative designated regional intermediary if selected by the HHA.

The remaining providers affected by the ODR transfer all submit paper bills to their intermediaries. These providers will experience few, if any, transition costs as the procedures for completing and submitting bills will remain the same. The primary changes will be learning the new intermediary contacts and the intermediary's address for mailing purposes.

A few providers commented that the Medicare regulations on cost apportionment may result in an impact on them, as they may not be totally reimbursed for administrative costs associated with the transfer. We agree that the lack of significant impact on a substantial number of providers does not preclude the fact that some individual providers could be affected, especially HHAs as noted by several commenters. However, the increased costs incurred by these providers because of the transition are allowable for Medicare reimbursement purposes under the usual rules. An appropriate portion will be reimbursed by Medicare. If increased costs subject the provider to the cost limits, the provider may request an exception to its cost limits for that fiscal year. By keeping overall transfer costs to a minimum, we also minimize the share of administrative costs not reimbursed using the cost apportionment rules. Further, we believe that expected intermediary improvements and increases in efficiency will diminish the impact of this transfer on individual providers.

Therefore, the Secretary certifies under 5 U.S.C. 605(b), as enacted by Pub. L. 96–354 (the Regulatory Flexibility Act of 1980), that these final regulations will not have a significant impact on a substantial number of small providers.

Although these regulations are final, we are providing interested parties an opportunity to comment on the Impact Analyses. If additional information results in changes to announced policies the comments and our responses will be published in a subsequent Federal Register. To assure consideration, comments on this impact analysis should be received by February 29, 1984.

Address comments in writing to: Health Care Financing Administration, Department of Health and Human Services, Attention: BPO–28–F, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to Room 309–G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, D.C., or to Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

In commenting, please refer to file code BPO–28–F.

Comments will be availabe for public inspection as they are received, beginning approximately three weeks after publication, in Room 309–G of the Department's offices at 200 Independence Ave., SW., Washington, D.C. 20201, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (202–245–7890).

List of Subjects

42 CFR Part 400

Medicare, Medicaid.

42 CFR Part 405

Administrative practice and procedure, Certification of compliance, Clinics, Contracts (Agreements), End-Stage Renal Disease (ESRD), Health care, Health facilities, Health maintenance organizations (HMO), Health professions, Health suppliers, Home health agencies, Hospitals, Inpatients, Kidney diseases, Laboratories, Medicare, Nursing homes, Onsite surveys, Outpatient providers, Reporting requirements, Rural Areas, X-rays.

42 CFR Part 421

Administrative practices and procedure, Contracts (Agreements), Courts, Health care, Health facilities, Health maintenance organizations (HMO), Health professions, Information (Disclosure), Lawyer, Medicare, Professional Standards Review Organizations (PSRO), Reporting requirements.

A. 42 CFR Part 400 is amended as set forth below:

PART 400—INTRODUCTION: DEFINITIONS

Part 400, Subpart B is amended as follows:

Subpart B—Definitions

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Section 400.202 is amended by revising the definitions "Carrier and "Intermediary" as follows:

§ 400.202 Definitions specific to Medicare.

As used in connection with the Medicare program, unless the context indicates otherwise—

"Carrier" means an entity that has a contract with HCFA to determine and make Medicare payments for Part B benefits payable on a charge basis and to perform other related functions.

* * * * *

Intermediary" means an entity that has a contract with HCFA to determine and make Medicare payments for Part A or Part B benefits payable on a cost

basis and to perform other related functions.

* * * * *

B. 42 CFR Part 405 is amended as set forth below:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

Part 405, Subpart T is amended as follows:

Subpart T—Health Maintenance Organizations

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

Authority: Sec. 1102, 1833(a)(1)(A), 1871, 1874, and 1876 (42 U.S.C. 1302, 1395l(a)(1)(A), 1395hh, 1395kk and 1395mm).

2. Section 405.2001 is amended by revising paragraph (a) as follows:

§ 405.2001 Health maintenance organizations; general.

(a) *Introduction.* The regulations in this Subpart T set forth the requirements which an organization must meet in order to be eligible to enter into a contract with the Secretary as a health maintenance organization (HMO) under the health insurance program for the aged and disabled (title XVIII of the Social Security Act) and to be reimbursed through capitation payments for covered items or services the organization furnishes title XVIII beneficiaries who have enrolled with it. Any references in this subpart to functions being performed by HCFA may at HCFA's option be performed directly by HCFA or by contract.

C. 42 CFR Part 421 is amended as set forth below:

PART 421—INTERMEDIARIES AND CARRIERS

1. The Table of Contents is amended as follows:

* * * * *

Subpart B—Intermediaries

* * * * *

Sec.

421.103 Options available to providers and HCFA.

* * * * *

421.114 Assignment and reassignment of providers by HCFA.

* * * * *

421.117 Designation of Regional and Alternative Designated Regional Intermediaries for Freestanding Home Health Agencies and for Hospices.

* * * * *

2. The authority citation is revised as follows:

Authority: Sec. 1102, 1815, 1816, 1833, 1842, 1861(u), 1871, 1874, and 1875 of the Social Security Act (42 U.S.C. 1302, 1395g, 1395h, 1395, 1395u, 1395x(u), 1395hh, 1395kk, and 1395ll), and 42 U.S.C. 1395b–1.

3. In addition to revisions noted below, all references to "the Administrator" in Part 421 are revised to read "HCFA."

4. Part 421, Subpart A is amended as follows:

Subpart A—Scope, Definitions, and General Provisions

a. Section 421.1 is revised to read as follows:

§ 421.1 Basis and scope.

(a) This part is based on sections 1815, 1816, 1842, and 1874 of the Social Security Act and 42 U.S.C. 1395b–1 (experimental authority).

(b) The provisions of this part apply to agreements with Part A (Hospital Insurance) intermediaries and contracts with Part B (Supplementary Medical Insurance) carriers. They also state that HCFA may perform certain functions directly or by contract. They specify criteria and standards to be used in selecting intermediaries and evaluating their performance; in assigning or reassigning a provider or providers to particular intermediaries, and in designating regional or national intermediaries for certain classes of providers. The provisions set forth the instances where there is the opportunity for a hearing for intermediaries and carriers affected by certain adverse actions. In some circumstances, the adversely affected intermediaries may request a judicial review of hearings decisions on (1) assignment or reassignment of a provider or providers or (2) designation of an intermediary or intermediaries to serve a class of providers.

b. Section 421.3 is amended by removing the definitions of Act, Administrator, Carrier, Provider and Secretary and revising the definition of Intermediary as follows:

§ 421.3 Definitions.

"Intermediary" means an entity that has a contract with HCFA to determine and make Medicare payments for Part A or Part B benefits payable on a cost basis and to perform other related functions. For purposes of designating regional or alternative regional intermediaries for freestanding home health agencies and of designating intermediaries for hospices under § 421.117 as well as for applying the performance criteria in § 421.120 and the statistical standards in § 421.122 and any adverse action resulting from such application, the term intermediary also means a Blue Cross Plan which has entered into a subcontract approved by HCFA with the Blue Cross and Blue Shield Association to perform intermediary functions.

5. Part 421, Subpart B is amended as follows:

Subpart B—Intermediaries

a. Section 421.100 is amended by revising paragraph (g) as follows:

§ 421.100 Intermediary functions.

* * * * *

(g) *Information and reports.* The intermediary must furnish to HCFA any information and reports that HCFA requests in order to carry out its responsibilities in the administration of the Medicare program.

* * * * *

b. Section 421.103 is revised as follows:

§ 421.103 Option available to providers and HCFA.

(a) Except for hospices (which are covered under § 421.117), a provider may elect to receive payment for covered services furnished to Medicare beneficiaries:

(1) Directly from HCFA (subject to the provisions of paragraph (b) of this section); or

(2) Through an intermediary, when both HCFA and the intermediary consent.

(b) Whenever HCFA determines it appropriate, it may contract with any organization (including an intermediary with which HCFA has previously entered into an agreement under § 421.105 and § 421.110 or designated as a regional or alternative regional intermediary under § 421.117) for the purposes of making payments to any provider that does not elect to receive payment from an intermediary.

c. Section 421.104 is amended by revising the heading of paragraph (b), by revising paragraph (b)(2), and by adding a new paragraph (b)(3) as follows:

§ 421.104 Nominations for intermediary.

* * * * *

(b) *Action by nonmembers or nonconcurring members.* Providers that nonconcur in their association's nomination, or are not members of an association, may:

* * * * *

(2) Elect to receive payments from a fiscal intermediary with which HCFA already has an agreement, if HCFA and the intermediary agree to it (see § 421.103); or

(3) Elect to receive payment from HCFA as provided in § 421.103.

d. Section 421.105 is amended by revising paragraph (b) as follows:

§ 421.105 Notification of action on nomination.

* * * * *

(b) Any member of a group or association having more than one nominated intermediary approved by HCFA to act on its behalf must withdraw its nomination from all but one or exercise the option provided in § 421.103(a), subject to § 421.103(b), to receive payment directly from HCFA.

e. Section 421.106 is amended by revising paragraph (b) as follows:

§ 421.106 Change to another intermediary or to direct payment.

* * * * *

(b) If HCFA finds the change is consistent with effective and efficient administration of the program and approves the request under paragraph (a) of this section, it will notify the provider, the outgoing intermediary and the newly elected intermediary (if any) that the change will be effective on the first day following the close of the fiscal year in which the request was filed.

f. Section 421.114 is amended by revising the title and introductory paragraph as follows:

§ 421.114 Assignment and reassignment of providers by HCFA.

HCFA may assign or reassign any provider to any intermediary if it determines that the assignment or reassignment will result in more effective and efficient administration of the Medicare program. Before making this determination HCFA will consider—

* * * * *

g. Section 421.116 is amended by revising paragraph (a) as follows:

§ 421.116 Designation of national or regional intermediaries.

(a) After considering intermediary performance measured against the criteria and standards specified in §§ 421.120 and 421.122, HCFA may designate a particular intermediary to serve a class of providers nationwide or in any geographic area it defines. HCFA may make this designation if it determines that the designation will result in a greater degree of effectiveness and efficiency in the administration of the Medicare program than could be achieved by an assignment of providers to an intermediary preferred by the providers.

* * * * *

h. Section 421.117 is revised by revising the title and paragraphs (a) and (b), and by adding paragraphs (d), (e), (f), and (g) as follows:

§ 421.117 Designation of Regional and Alternative Designated Regional Intermediaries for Freestanding Home Health Agencies and for Hospices.

(a) This section is based on section 1816(e)(4) of the Social Security Act, which requires the Secretary to designate regional intermediaries for freestanding home health agencies (HHAs), on section 1816(e)(5) of the Social Security Act, which requires the Secretary to designate intermediaries for hospices, and on Section 1874 of the Act, which permits HCFA to contract with any organization for the purpose of making payments to any provider that elects to receive payment directly from HCFA.

(b) Except as provided in paragraphs (d), (e), and (f) of this section, freestanding HHAs that elect to receive payment for covered services furnished to Medicare beneficiaries through an intermediary under § 421.103(a)(2) of this subpart and HHAs that elect to receive payment directly from HCFA under § 421.103(a)(1) of this subpart must receive payment through a regional intermediary designated by HCFA.

* * * * *

(d) An HHA chain not desiring to receive payment from designated regional intermediaries may request service by one lead intermediary with the assistance of a local designated regional intermediary. Alternatively, the chain may request to be serviced by a single intermediary. A lead, local, or a single intermediary must be an organization that is a designated regional intermediary. Any request made under this paragraph is evaluated by HCFA in accordance with the critiera contained at § 421.106 of the subpart.

(e) An HHA not wishing to receive payment from a regional intermediary designated under paragraph (b) of this section may submit a request to the HCFA Regional Office to receive payment through an alternative regional intermediary designated by HCFA.

(f) Except as provided in paragraph (g) of this section, any request that an HHA may make to change from a designated regional intermediary to an alternative designated regional intermediary, in accordance with paragraph (e) of this section, is evaluated by HCFA in accordance with the criteria set forth at § 421.106(b) of this subpart and must be filed within the timeframe established at § 421.106(a) of this subpart.

(g) Exception: An HHA that is receiving payment directly from HCFA under § 421.103(a)(1) of this subpart as of January 30, 1984 is eligible to request that it receive payments from an alternative designated regional intermediary without regard to the limitations contained in § 421.106 of this subpart. However, each such HHA will have only 30 days after the date of receipt of HCFA's notification that the HHA will be transferred to a designated regional intermediary to request the alternative designated regional intermediary.

i. Section 421.128(f) is revised to read as follows:

§ 421.128 Intermediary's opportunity for a hearing and right to judicial review.

* * * * *

(f) Exception. An intermediary adversely affected by the designation of a regional intermediary or an alternative regional intermediary for freestanding HHAs, or an intermediary for freestanding hospices, under § 421.117 of this subpart is not entitled to a hearing or judicial review concerning adverse effects caused by the designation of an intermediary.

6. Part 421, Subpart C is amended as follows:

Subpart C—Carriers

Section 421.200 is amended by revising paragraph (g) as follows:

§ 421.200 Carrier functions.

* * * * *

(g) *Information and reports.* The carrier must furnish to the Administrator any information and reports that HCFA requests in order to carry out its responsibilities in the administration of the Medicare program. The carrier must be responsive to requests for information from the public.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare-Hospital Insurance)

Dated: November 26, 1983.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

Approved: December 27, 1983.

Margaret M. Heckler,

Secretary.

[FR Doc. 84-2424 Filed 1-27-84; 8:45 am]

BILLING CODE 4120-03-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 20

Employee Responsibilities and Conduct

AGENCY: Department of the Interior.

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of Appendix C to 43 CFR Part 20. This Appendix lists all positions within the Department of the Interior for which Statements of Employment and Financial Interests (Form DI-212) are required to be filed. This Appendix has been updated as of December 1, 1983 and has been printed as an agency document. This document will not be published in the Federal Register but will be available to the public upon request.

EFFECTIVE DATE: January 30, 1984.

ADDRESS: Copies of Appendix C may be obtained through the Deputy Ethics Counselor for each bureau or office within the Department of the Interior. The address is 18th and C Streets, NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Mr. Gabriele J. Paone or Mr. Mason Tsai, Departmental Ethics and Audit Coordination Staff, U.S. Department of the Interior, Washington, D.C. 20240; (202) 343-3932 or (202) 343-5916.

SUPPLEMENTARY INFORMATION: The Department of the Interior requested and received approval from the Office of Government Ethics, Office of Personnel Management, to publish Appendix C to 43 CFR Part 20 as an agency document. The availability of this document is announced in the Federal Register. Notice of this arrangement was initially provided with the publication of 43 CFR Part 20 as a proposed rule on October 6, 1980 (45 FR 66370). This arrangement meets administrative requirements which affect only Department of the Interior employees and at the same time defrays the cost of publishing the Appendix C listing in the Federal Register. Copies of the Appendices are available from the above address.

Appendix C lists Department of the Interior positions, in addition to GS (or GM)-15's for which a Confidential Statement of Employment and Financial Interests (Form DI-212) is required to be filed by Executive Order 11222. Positions identified in Appendix C are effective for the February 1, 1984 filing deadline. Appendix C was approved by the Office of Government Ethics, Office of Personnel Management, on December 15, 1983.

List of Subjects in 43 CFR Part 20

Conflicts of interest, Government employees.

Authorities: Appendix C to Part 20 of Title 43 of the Code of Federal Regulations is published under Executive Order 11222, 30 FR 6469, 3 CFR, 1964-65 Comp., as amended (18 U.S.C. 201 Note); 5 CFR 735.104; and 5 U.S.C. 301.

Appendix C was compiled by Bureau and Office Ethics Counselors and consolidated by Gabriele J. Paone and Mason Tsai of the Departmental Ethics and Audit Coordination Staff.

Dated: January 20, 1984.

Richard R. Hite,

Deputy Assistant Secretary of the Interior.

[FR Doc. 84-2423 Filed 1-27-84; 8:45 am]

BILLING CODE 4310-10-M

OFFICE OF PERSONNEL MANAGEMENT

45 CFR Part 801

Voting Rights Program; Appendix A; Mississippi

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: This notice identifies the location of a new office for filing applications or complaints under the Voting Rights Act of 1965, as amended. The Attorney General has determined that this designation is necessary to enforce the guarantees of the Fourteenth and Fifteenth amendments to the Constitution.

EFFECTIVE DATE: January 30, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. Michael D. Clogston, Coordinator, Voting Rights Program, Office of Personnel Management, Washington, D.C. 20415; 202-632-5691.

SUPPLEMENTARY INFORMATION: The Attorney General has designated Copiah County, Mississippi, as an additional examination point coming under the provisions of the Voting Rights Act of 1965, as amended. He has determined that this designation is necessary to enforce the guarantees of the Fourteenth and Fifteenth amendments to the Constitution. Accordingly, pursuant to Section 6 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973d, the U.S. Office of Personnel Management will appoint Federal examiners to review the qualifications of applicants to be registered to vote and Federal observers to observe local elections.

Pursuant to Section 553(b)(3)(B) of title 5 of the United States Code, the Director finds that good cause exists for waiving the general notice of proposed rulemaking. The notice is being waived because of OPM's legal responsibilities under 42 U.S.C. 1973e(a) and other parts of the Voting Rights Act of 1965, as amended, which require OPM to publish counties certified by the U.S. Attorney General and locations within these counties where citizens can be federally listed and become eligible to vote, and where Federal observers can be sent to observe local elections.

Pursuant to Section 553(d)(3) of title 5 of the United States Code, the Director finds that good cause exists to make this amendment effective in less than 30 days. The regulation is being made effective immediately to allow Federal examiners to immediately register voters and Federal observers to observe elections under the authority of the Voting Rights Act of 1965, as amended.

E.O. 12291, Federal Regulation

OPM has determined that this is not a major rule as defined under Section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because its purpose is the addition of one new location to the list of counties in the regulation concerning OPM's responsibilities under the Voting Rights Act.

List of Subjects in 45 CFR Part 801

Administrative practice and procedures, Voting rights.

U.S. Office of Personnel Management.

Donald J. Devine,

Director.

Accordingly, the Office of Personnel Management amends § 801.202 of 45 CFR Part 801, Appendix A, by alphabetically adding Copiah County, Mississippi, to read as follows:

PART 801—VOTING RIGHTS PROGRAM

§ 801.202 Times and places for filing and forms of application

* * * * *

Appendix A

* * * * *

Mississippi

County; Place for filing; Beginning date.

* * * * *

Copiah; Hazelhurst—W.S. Henley Building, 122 South Lowe Street; December 13, 1983.

* * * * *

(5 U.S.C. 1103; secs. 7, 9, 79 Stat. 440, 441 [42 U.S.C. 1973c, 1973g]).

[FR Doc. 84-2403 Filed 1-27-84; 8:45 am]
BILLING CODE 6325-01-M

Proposed Rules

Federal Register
Vol. 49, No. 20
Monday, January 30, 1984

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

Federal Grain Inspection Service

7 CFR Part 810

Proposed Revision of the U.S. Standards for Rye

AGENCY: Federal Grain Inspection Service. USDA.

ACTION: Proposed rule.

SUMMARY: According to the requirements for the periodic review of existing regulations, the Federal Grain Inspection Service (FGIS) has reviewed the U.S. Standards for Rye, and proposes to revise the format of the standards to conform to other grain standards, delete the special grade "Tough", revise certain definition of terms, add a section for temporary modification of equipment and procedures, revise the section on percentages to clarify its scope, revise the Sample grade requirements for rye, and make other miscellaneous changes including revisions referencing FGIS handbooks.

DATE: Comments must be submitted on or before March 30, 1984.

ADDRESS: Comments must be submitted in writing, in duplicate, to Lewis Lebakken, Jr., Information Resources Management Branch, USDA, FGIS, Room 0667 South Building, 1400 Independence Avenue, SW., Washington, D.C. 20250, telephone (202) 382–1738. All comments received will be made available for public inspection at the above address during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., address as above, telephone (202) 382–1738.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This proposed rule has been issued in conformance with Executive Order 12291 and Secretary's Memorandum 1512–1. The action has been classified as nonmajor, because it does not meet the criteria for a major regulation established in the order.

Regulatory Flexibility Act Certification

Dr. Kenneth A. Gilles, Administrator, FGIS, has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities because most users of rye inspection services do not meet the requirements for small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*)

Review of Standards

This review of the standards included a determination of the continued need for the standards; the potential for clarifying or simplifying the language of the standards; changes in marketing practices and functions affecting the standards; changes in technology and economic conditions in the area affected by the standards; and a determination of the potential for improving the standards and their application through the incorporation of grading factors or tests which better indicate quality attributes. The objective is to assure that the standards continue to serve the needs of the market to the greatest possible extent.

A notice requesting public comment on the U.S. Standards for Rye was published in the March 17, 1983 Federal Register (48 FR 11276). Within the 60-day comment period, 6 comments were received. All comments addressed two primary issues:

1. Should the format of the rye standards (7 CFR 810.401 *et seq.*) be updated to conform to the current arrangement of the sections as in the wheat standards?

2. Should the special grade "Tough" be deleted from the standard? All 6 commenters agreed that the format of the rye standards should be updated. Five commenters agreed that the special grade "Tough" should be deleted, and one favored the retention of the special grade so as to reference moisture. One commenter offered an additional suggestion, which was to delete the special dockage procedure when an excessive amount of wild buckwheat seed is present in a sample. A study is needed to explore alternate approaches and procedures that would minimize the variability in test results. If the study indicates that changes are needed, appropriate action will be taken to amend the procedure.

A review of all related information indicates that certain revisions in the standards would increase the clarity and effectiveness of the standards and reflect current marketing practices. As a result of this review FGIS is proposing changes to the U.S. Standards for Rye.

Comments including data, views, and arguments are solicited from interested persons. Pursuant to section 4(b) of the United States Grain Standards Act (7 U.S.C. 76(b)), upon request, such information may be orally presented in an informal manner. It should be noted that pursuant to section 4(b) of the Act no standards established or amendments or revocations of standards under the Act are to become effective less than one calendar year after promulgation, unless in the judgment of the Administrator the public health, interest, or safety requires that they become effective sooner.

1. To enhance clarity and uniformity between standards, FGIS proposes to revise the U.S. Standards for Rye by dividing the standards into 4 parts, and into sections such as currently exist in the U.S. Standards for Wheat. Specifically, in addition to the changes discussed below, Part I, *Terms Defined* would consist of a new § 810.401, *Definition of Rye* and a new § 810.402, *Definition of other terms.* Part II, *Principles Governing Application of Standards* would consist of a new § 810.403, *Basis of determination*, a new § 810.404, *Temporary modifications in equipment and procedures*, and a new § 810.405, *Percentages.* Part III, *Grades, Grade Requirements, and Grade Designations* would consist of a new § 810.406, *Grades and grade requirements* and a new § 810.407, *Grade designations.* Part IV, *Special Grades, Special Grade Requirements, and Special Grade Designations* would consist of a new § 810.408, *Special grades and special grade requirements* and a new § 810.409, *Special grade designations.* Incidental to this revision, paragraph (a), *Grades and grade requirements for rye* of the current § 810.402, *Grades, grade requirements, and grade designations* is included in the new § 810.406, *Grades and grade requirements*, and paragraphs (b), *Grade designations for rye* and (c), *Optional grade designations* are included in the new § 810.407, *Grade designations*; the

current § 810.403, *Dockage* is included in the new § 810.402, *Definition of other terms*; the current § 810.403a, *Special grade; Plump rye*, § 810.405, *Special grade; Smutty rye*, § 810.406, *Special grade; Garlicky rye*, § 810.407, *Special grade; Weevily rye*, and § 810.408, *Special grade; Ergoty rye*, are included in the new § 810.408, *Special grades and special grade requirements* and the new § 810.409, *Special grade designations*; the current § 810.404, *Special grade; Tough rye* is deleted; and in the current § 810.409, *Grade factors; definitions*, paragraph (a), *Basis of grade determinations* is clarified and included in the new § 810.403, *Basis of determination*, paragraph (b), *Percentages* is clarified and included in the new § 810.405, *Percentages*, and paragraphs (c), *Percentage of moisture*, (d), *Test weight per bushel*, (e), *Foreign material*, (f), *Other grains*, (g), *Damaged kernels*, and (h), *Heat-damaged kernels* are clarified and included in the new § 810.402, *Definition of other terms*, as are definitions for 4 new terms, *Distinctly low quality, Sieve, 0.064 x ⅜ oblong hole, Stones*, which are similar to those terms which appear in other standards so as to specify its definition, and *Thin rye*.

2. The special grade Tough is not indicative of grain quality and is only utilized when the moisture content is more than 14.0 percent, but not more than 16.0 percent.

Moisture content is an indicator of storability. However, storability is also affected by many other factors such as temperature, aeration, and cleanliness of the rye. Moisture content is required by regulations (7 CFR 800.162(a)) to be shown on official certificates when an official grade determination is made, and knowledge of the actual moisture content of a lot of rye is useful to the buyer. Discounts for moisture in most markets are based on the percentage of moisture. While it is true that the presence of excess moisture in grain may support the growth of undesirable organisms and the development of odors, moisture content is not deleterious to the quality of grain, and should not be a criterion in designating grain Sample grade.

3. The current definitions in the rye standards for moisture and test weight per bushel contain obsolete references, including former organizational and handbook references. This proposal includes revised definitions for these and the terms rye, damaged kernels, dockage, foreign material, heat damage, and other grain so as to clarify the same.

4. The equipment and procedures referred to in the rye standards are applicable to grain produced and harvested under normal environmental conditions. FGIS proposes to provide that, when adverse growing or harvesting conditions make impractical the use of routine procedures, minor temporary modifications in the equipment or procedures may be required to obtain results expected under normal conditions. Accordingly, the addition of a new § 810.404 on temporary modifications in equipment and procedures is proposed. Adjustments in interpretations (i.e., identity, quality, and condition) shall not be made. This section is similar to sections which apply in other grain standards.

5. In the interest of promoting clarity and uniformity between the various grain standards, it is proposed that a new § 810.405, *Percentages* be added to clarify and specify the application of current rounding and recording procedures for all percentage determinations.

6. FGIS proposes to add the limit of two crotalaria seeds in a 1000-gram sample to the new § 810.406 to more clearly define U.S. Sample grade rye. This limit currently is included in § 810.901 which considers grain exceeding this limit as distinctly low quality. 7 CFR 810.901 still is applicable to certain other grains but no longer will apply to rye.

7. FGIS proposes to amend § 810.901 since the provision will be included in the Sample grade definition; and the section will not be referenced in the rye standards.

8. FGIS proposes to include in the definition of Sample grade, the limits for stones, pieces of glass, castor beans, and particles of an unknown foreign substance(s) or a commonly recognized harmful or toxic substance(s). The limits of 8 or more stones, 2 or more pieces of glass, 2 or more castor beans, and 4 or more particles of an unknown foreign substance(s) or a commonly recognized harmful or toxic substance(s) are specified in the Inspection Handbook and have been followed in the inspection process for many years and do not constitute new limits. The limits are added to the definition of U.S. Sample grade for clarity and to conform to other updated grain standards.

9. Other changes to the rye standards which result from the revision in format and updated definitions include: (a) Smut balls, in addition to being considered in determining the special grades "Smutty" or "Light smutty", also are considered foreign material; additionally, the presence of a quantity of smut so great that one or more grade requirements cannot be accurately determined will not be a factor grading rye U.S. Sample grade; (b) ergot will be stated in hundredth percent, (c) the maximum limit for heat-damaged kernels in grade U.S. No. 1 will be 0.2 percent, (d) the maximum number of rodent or bird pellets or other animal filth permitted in the numerical grades will be reduced from 2 to 1.

Smut balls are foreign to grain and should be considered as foreign material. Smut balls are light and weigh very little, therefore will not make a significant impact on the calculated percentage of foreign material; however, for uniformity with other standards, they will be considered foreign material. A proposal being considered would amend the wheat standards so that the presence of a quantity of smut so great that one or more grade requirements cannot be accurately determined will not grade wheat U.S. Sample grade. If the proposal is accepted, then the rye standards should conform because of the simularities between the grains. Moreover, the special grades "Light smutty" and "Smutty" are retained. Also, for uniformity between standards, ergot will be certificated in terms of a hundredth percent instead of the current tenth percent. Heat-damaged limits in the wheat standards for grades U.S. No. 1 and 2 are 0.2 percent for both grades. The previous limits of 0.1 percent and 0.2 percent in grades U.S. No. 1 and 2, respectively, were found to be too restrictive for practical application under current sampling and inspection procedures. In wheat, the allowable limits of rodent or bird pellets or other animal filth in the numerical grades were reduced from 2 to 1 to agree more closely with limits applied under the Food, Drug, and Cosmetic Act (21 U.S.C. 342 *et seq.*).

It is therefore proposed that the above changes be made for the purpose of uniformity to conform to the wheat standard.

10. Incorporated also into this proposal are nonsubstantive changes to update references to handbooks and FGIS's organizational structure.

List of Subjects in 7 CFR Part 810

Export, Grain.

PART 810—[AMENDED]

Accordingly, it is proposed that the United States Standards for Rye (7 CFR 810.401—810.409 and 810.901) be revised to read as follows:

United States Standards for Rye[1]

Terms Defined

§ 810.401 Definition of rye.

The grain of common rye (*Secale cereale* L.) which, before the removal of the dockage, consists of 50 percent or more of rye and not more than 10 percent of other grains for which standards have been established under the United States Grain Standards Act and which, after the removal of the dockage, contains 50 percent or more of whole kernels of rye.

§ 810.402 Definition of other terms.

For the purpose of these standards, the following terms shall have the meanings stated below:

(a) *Damaged kernels.* Kernels, pieces of rye kernels, and other grains that are badly ground-damaged, badly weather-damaged, diseased, frost-damaged, heat-damaged, insect-bored, mold-damaged, sprout-damaged, or otherwise materially damaged.

(b) *Distinctly low quality.* Rye which is obviously of inferior quality because it contains foreign substances or because it is in an unusual state or condition, and which cannot be properly graded by use of the other grading factors provided in the standards. Distinctly low quality shall include the presence of any objects too large to enter the sampling device; i.e., large stones, wreckage, etc.

(c) *Dockage.* All matter other than rye which can be readily removed from a portion of the original sample by use of an approved device in accordance with procedures prescribed in the Grain Inspection Handbook.[2] Also, underdeveloped, shriveled, and small pieces of rye kernels removed in separating the material other than rye and which cannot be recovered by properly rescreening or recleaning. (See also § 810.405 and § 810.407.) For the purpose of this paragraph, "approved device" shall include the Carter Dockage Tester and any other equipment that is approved by the Administrator as giving equivalent results.[3]

(d) *Foreign material.* All matter other than rye which remains in the sample after the removal of dockage.

(e) *Heat-damaged kernels.* Kernels, pieces of rye kernels, and other grains that are materially discolored and damaged by heat which remain in the same after the removal of dockage.

(f) *Moisture.* Water content in rye as determined by an approved device in accordance with procedures prescribed in the Equipment Handbook.[2] For the purpose of this paragraph, "approved device" shall include the Motomco Moisture Meter and any other equipment that is approved by the Administrator as giving equivalent results.[3]

(g) *Other grains.* Barley, corn, cultivated buckwheat, einkorn, emmer, flaxseed, guar, hull-less barley, nongrain sorghum, oats, Polish wheat, popcorn, poulard wheat, rice, safflower, sorghum, soybeans, spelt, sunflower, sweet corn, triticale, wheat, and wild oats.

(h) *Sieve, 0.064 × ⅜ oblong-hole.* A metal sieve 0.032 inch thick with oblong perforations 0.064 inch by 0.375 inch.

(i) *Stones.* Concreted earthy or mineral matter and other substances of similar hardness that do not disintegrate readily in water.

(j) *Test weight per bushel.* The weight per Winchester bushel (2,150.42 cubic-inch capacity) as determined on a dockage-free test portion of the original sample using an approved device in accordance with instructions in the Grain Inspection Handbook.[2] Test weight per bushel shall be expressed to the nearest tenth of a pound. For the purpose of this paragraph, "approved device" shall include the Fairbanks-Morse or Ohaus Test Weight Per Bushel Apparatus and any other equipment that is approved by the Administrator as giving equivalent results.[3]

(k) *Thin rye.* Rye and other matter that will readily pass through a 0.064 × ⅜ inch oblong-hole sieve.

Principles Governing Application of Standards

§ 810.403 Basis of determination.

(a) *Distinctly low quality.* The determination of distinctly low quality shall be made on the basis of the lot as a whole at the time of sampling when a condition exists that may not appear in the representative sample and/or the sample as a whole.

(b) *Certain quality determinations.* Each determination of rodent pellets, bird droppings, other animal filth, broken glass, castor beans, crotalaria seeds, dockage, garlic, live weevils or other insects injurious to stored grain, moisture, temperature, an unknown foreign substance(s), and a commonly recognized harmful or toxic substance(s) shall be upon the basis of sample as a whole.

(c) *All other determinations.* All other determinations shall be upon the basis of the grain when free from dockage, except the determination of odor shall be upon either the basis of the grain as a whole or the grain when free from dockage.

§ 810.404 Temporary modifications in equipment and procedures.

The equipment and procedures referred to in the rye standards are applicable to rye produced and harvested under normal environmental conditions. Abnormal environmental conditions during the production and harvest of rye may require minor temporary modifications in the equipment or procedures to obtain results expected under normal conditions. When these adjustments are necessary, proper notification will be made in a timely manner. Adjustments in interpretations (i.e., identity, quality, and condition) are excluded and shall not be made.

§ 810.405 Percentages.

(a) Percentages shall be determined on the basis of weight and shall be rounded off as follows:

(1) When the figure to be rounded is followed by a figure greater than 5, round to the next higher figure; e.g., state 0.46 as 0.5.

(2) When the figure to be rounded is followed by a figure less than 5, retain the figure; e.g., state 0.54 as 0.5.

(3) When the figure to be rounded is even and is followed by the figure 5, retain the even figure. When the figure to be rounded is odd and is followed by the figure 5, round the figure to the next higher number, e.g., state 0.45 as 0.4; state 0.55 as 0.6.

(b) Percentages shall be stated in whole and tenth percent to the nearest tenth percent, except when determining the identity of rye and the percentage of dockage and ergot. The percentage when determining the identity of rye shall be stated to the nearest whole percent. The percentage of dockage when equal to one percent or more shall be stated in terms of whole percent, and when less than one percent shall not be stated. A fraction of a percent shall be disregarded. The percentage of ergot shall be stated to the nearest hundredth percent.

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[1] Compliance with the provisions of the standards does not excuse failure to comply with the provisions of the Federal Food, Drug, and Cosmetic Act, or other Federal laws.

[2] The Equipment Handbook and the Grain Inspection Handbook copies may be obtained from the Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC 20250.

[3] Requests for information on approved devices and procedures, criteria for approved devices, and requests for approval of devices should be directed to the Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC 20250.

Grades, Grade Requirements, and Grade Designations

§ 810.406 Grades and grade requirements for rye (See also § 810.408).

Grade No.	Minimum test weight per bushel (pounds)	Maximum limits of—			
		Damaged kernels (rye and other grains)		Foreign material	
		Total (percent)	Heat damaged (percent)	Total (percent)	Foreign matter other than wheat (percent)
U.S. No. 1 [1]	56.0	2.0	0.2	3.0	1.0
U.S. No. 2 [1]	54.0	4.0	0.2	6.0	2.0
U.S. No. 3 [1]	52.0	7.0	0.5	10.0	4.0
U.S. No. 4 [1]	49.0	15.0	3.0	10.0	6.0

U.S. Sample grade—U.S. Sample grade shall be rye which:

(1) Does not meet the requirements for the grades U.S. Nos. 1, 2, 3, or 4, or

(2) Contains 8 or more stones, 2 or more pieces of glass, 3 or more crotalana seeds (*Crotalana* spp.), 2 or more castor beans (*Ricinus communis*), 4 or more particles of an unknown foreign substance(s) or a commonly recognized harmful or toxic substance(s), or 2 or more rodent pellets, bird droppings, or an equivalent quantity of other animal filth per 1,000 grams or rye; or

(3) Has a musty, sour, or commercially objectionable foreign odor (except smut or garlic odor); or

(4) Is heating or otherwise of distinctly low quality.

[1] Rye in grade U.S. No. 1 may contain not more than 10.0 percent, in grade U.S. No. 2 not more than 15.0 percent, and in grade U.S. No. 3 not more than 25.0 percent of thin rye.

§ 810.407 Grade designations.

(a) *Grade designations for rye.* The grade designations for rye shall include in the following order: (1) The letters "U.S."; (2) the number of the grade or the words "Sample grade"; (3) the special grade "Plumb", if applicable (see also §810.409); (4) the word "Rye"; (5) each applicable special grade except "Plump" (see also § 810.409) and, when applicable, the word "dockage" together with the percentage thereof.

(b) *Optional grade designations.* Rye may be certificated (under certain conditions[4], when supported by official analysis, as "U.S. No. 2 or better Rye," "U.S. No. 3 or better Rye," etc. The special grade designation and dockage, when applicable, also shall be included (under certain conditions[4]) in the certification.

Special Grades, Special Grade Requirements, and Special Grade Designations

§ 810.408 Special grades and special grade requirements.

A special grade, when applicable, is supplemental to the grade assigned under § 810.406. Such special grades are established and determined as follows:

(a) *Plump rye.* Rye which contains no more than 5.0 percent of rye and other matter that will pass through a 0.064 × ⅜ oblong-hole sieve.

(b) *Ergoty rye.* Rye which contains more than 0.30 percent of ergot.

(c) *Light garlicky rye.* Rye which contains in a 1,000-gram portion two or more, but not more than six, green garlic bulblets or an equivalent quantity of dry or partly dry bulblets.

(d) *Garlicky rye.* Rye which contains in a 1,000-gram portion more than six green garlic bulblets or an equivalent quantity of dry or partly dry bulblets.

(e) *Light smutty rye.* Rye which has an unmistakable odor of smut, or which contains in a 250-gram portion smut balls, portions of smut balls, or spores of smut in excess of a quantity equal to 14 smut balls, but not in excess of a quantity equal to 30 smut balls of average size.

(f) *Smutty rye.* Rye which contains in a 250-gram portion smut balls, portions of smut balls, or spores of smut in excess of a quantity equal to 30 smut balls of average size.

(g) *Weevily rye.* Rye which is infested with live weevils or other insects injurious to stored grain. As applied to rye, the meaning of the term "infested" is set forth in the Grain Inspection Handbook.[2]

§ 810.409 Special grade designations.

Special grade designations shall be made in addition to all other information prescribed in § 810.407.

(a) The grade designation for plump rye shall include, preceding the word "Rye", the word "Plump", as warranted, and all other information prescribed in § 810.407. The grade designation for ergoty, light garlicky, garlicky, light smutty, smutty, and weevily rye shall include, following the word "Rye", the word(s) "Ergoty", "Light garlicky", "Garlicky", "Light smutty", "Smutty", or "Weevily", as warranted, and all other information prescribed in § 810.407.

[4] The conditions are listed in the Grain Inspection Handbook. Copies may be obtained from the Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, D.C. 20250.

Interpretations

§ 810.901 Interpretation with respect to the term distinctly low quality.

The term *distinctly low quality*, when used in the United States Standards for Soybeans and Flaxseed, shall be construed to include grain which contains more than two crotalaria seeds (*Crotalaria* spp.) in 1,000 grams of grain.

(Secs. 5 and 16, Pub. L. 94-582, 90 Stat. 2869 and 2884 (7 U.S.C. 76 and 87e))

Dated: January 17, 1984.

Kenneth A. Gilles,

Administrator.

[FR Doc. 84-2503 Filed 1-27-84; 8:45 am]

BILLING CODE 3410-EN-M

Farmers Home Administration

7 CFR Part 1945

Emergency Loans

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration (FmHA) proposes to amend its Emergency (EM) regulation to require crop insurance, if available, as a loan closing condition when EM loan funds are to be used as the primary source of financing for the ensuing year's crop production expenses; or when FmHA has a security interest in the crop(s). This action is needed because crop insurance is a feasible management tool that affords farmers relief from crop production losses caused by natural disaster; and assures those farmers, who carry full coverage, of at least getting back a substantial portion of their investment in their insured crop(s). The intended effect of this action is to eliminate EM borrower discretion of maintaining available crop insurance when they depend on EM loan assistance to continue their farming operations.

EFFECTIVE DATE: Comments must be received on or before February 29, 1984.

ADDRESSES: Submit written comments in duplicate to Carl Opstad, Chief, Directive Management Branch, Farmers Home Administration, USDA, Room 6348-S, Washington, D.C., 20250, telephone 202-382-9725. All written comments made pursuant to this notice will be available for public inspection during regular work hours at the above address.

FOR FURTHER INFORMATION CONTACT: Chester Bailey, Emergency Loan Officer, Emergency Division, Farmers Home Administration, USDA Room 5346-S,

Washington, D.C. 20250, telephone (202) 382–1642.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Secretary's Memorandum 1512–1, which implements Executive Order 12291, and it has been determined to be nonmajor because there is no substantial change from practices under existing rules, and no annual effect on the economy of $100 million or more, or a major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States based enterprises to compete with foreign-based enterprises in domestic or export markets.

Intergovernmental Consultation should be carried out in accordance with 7 CFR Part 3015 Subpart V, "Intergovernmental Review of Department of Agriculture Programs and Activities." See FmHA Instruction 1940–J, available in any FmHA Office.

This document has been reviewed in accordance with 7 CFR Part 1901, Subpart G, "Environmental Impact Statements." It is the determination of FmHA that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, and Environmental Impact Statement is not required.

Need for Government Action

FmHA has found that some farmers believe it is financially advantageous for them to avoid maintaining crop insurance because the federally subsidized EM disaster loan program is available to help them recover from a natural disaster. The availability of subsidized EM disaster loans provides an incentive for some farmers to assume otherwise unacceptable financial risk. FmHA believes Federal disaster compensation programs should provide farmers with incentives to reduce their risk of sustaining severe financial loss. Comprehensive crop insurance offers a financially acceptable means for most farmers to protect themselves and the Government from economic losses, when crop(s) are primary security for FmHA EM loan assistance.

The publishing of this action as a proposed rule with a shortened 30 day comment period is warranted to enable farmers sufficient time to adequately develop their production and financial plans for the 1984 crop season. This action is consistent with the Administration's mandate to provide supervised credit. The implementation of this action will enhance the potential of EM borrowers to return more quickly to their normal sources of credit, since the increased financial risk caused by adverse weather conditions will be reduced by crop insurance.

The Catalog of Federal Domestic Assistance number for emergency loans is 10.404.

Major Alternative Actions Considered Are as Follows

Alternative No. 1: Continue with existing regulations. If the regulation is not amended, EM borrowers will not be be required to maintain crop insurance, thus allowing them to use their discretion in obtaining crop insurance coverage. FmHA borrowers, who provide crops as collateral for EM loans, will have little incentive to carry crop insurance; and the Government will bear the full risk of the EM loan when a natural disaster affects the loan security.

Alternative No. 2: Amend regulations to require FmHA EM borrowers to maintain crop insurance, if available, when crops are relied on as security for FmHA EM loans. FmHA has determined that crop insurance is a useful management tool and should not be discretionary when EM borrowers pledge crops as security for EM loan assistance. This alternative will reduce the Government's financial responsibilities in assisting farmers who fail to utilize Federal or other crop insurance programs by reducing crop yield risk due to natural disasters.

The Agency selects alternative No. 2

List of Subjects in 7 CFR Part 1945

Agriculture, Disaster assistance, Loan programs—Agriculture.

PART 1945—[AMENDED]

Therefore, as proposed, §1945.169(o) of Subpart D of Part 1945, Chapter XVIII, Title 7, Code of Federal Regulations is revised to read as follows:

§ 1945.169 Security requirements.

* * * * *

(o) *Crop insurance.* Crop insurance is a good farm management tool. Loan approval officials will, therefore, encourage all borrowers, who grow crops, to obtain and maintain FCIC crop insurance or multi-peril crop insurance, if it is available.

(1) When EM loan funds (EM production loss loans and/or EM annual production loans to grandfathered borrowers as defined in § 1945.167(e) of this subpart) are to be used as the primary source of financing for the ensuing year's crop production expenses, and those crops will serve as basic security for the loan, crop insurance will be required, if available, as a loan closing condition; and FmHA will require an "Assignment of Indemnity" on the borrower's crop insurance policy(ies).

(2) Even if FmHA is *not* the primary lender for annual crop production expenses, but has or will have a security interest in the crop(s), FmHA will require the borrower to carry crop insurance, even if the primary lender will be the beneficiary under the "Assignment of Indemnity."

(3) When actual loss loans are based on physical losses only, crop insurance will not be required unless the EM loan funds are to be used for annual crop production expenses.

(4) When the payment of crop insurance premiums is not required until after harvest, the premiums will be paid by releasing insured crop(s) sale proceeds notwithstanding the limits in 1882.17(a) of Subpart A of Part 1882 of this chapter. If the borrower's crop losses are sufficient to warrant an indemnity payment, the premium due will be deducted by the insurance carrier from such payment. The FmHA County Office will maintain a record on Form FmHA 1905–12, "Monthly Expirations," of the dates which borrower's crop insurance premiums must be paid. This is in accordance with FmHA Instruction 1905–A, a copy of which is available in any FmHA office, and will assure that a crop insurance policy is not terminated while insured crop(s) serve as basic security for FmHA loans.

* * * * *

(7 U.S.C. 1989; 7 CFR 2.23; 7 CFR 2.70)

Dated: January 16, 1984.

Frank W. Naylor, Jr.,

Under Secretary for Small Community and Rural Development.

[FR Doc. 84-2304 Filed 1-27-84; 8:45 am]

BILLING CODE 3410-07-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 20

[Docket No. PRM-20-14]

University of Utah; Filing of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of receipt of petition for rulemaking from the University of Utah.

SUMMARY: The Commission is publishing for public comment this notice of receipt of a petition for rulemaking dated November 29, 1983, which was filed with the Commission by the University of Utah. The petition was docketed by the Commission on December 1, 1983, and has been assigned Docket No. PRM–20–14. The petitioner requests that the Commission amend its regulations to provide additional options for the disposal of very low concentrations of short-lived radionuclides.

DATE: Comment period expires March 30, 1984. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: A copy of the petition for rulemaking is available for public inspection and copying at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555.

All persons who desire to submit written comments concerning the petition for rulemaking should send their comments to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

FOR FURTHER INFORMATION CONTACT: John Philips, Chief, Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301–492–7086 or Toll Free: 800–368–5642.

SUPPLEMENTARY INFORMATION: Section 20.306 of 10 CFR, published on March 11, 1981 (46 FR 16230), was designed to grant licensees greater leeway in disposing of liquid scintiallation media and animal carcasses containing tracer levels of hydrogen-3 (tritium) and carbon-14. According to the petitioner, the rule provided substantial relief from some of the financial and operational burdens of low-level radioactive waste disposal. However, the petitioner seeks further relief through additional options in order to alleviate a number of problems associated with the disposal of experimental animal waste material and certain radionuclide components, discussed below, that many licensees apparently are experiencing under the current regulations.

At present, § 20.306 addresses the disposal of hydrogen-3 and carbon-14 only. The petitioner points out that other radionuclides (i.e., phosphorus-32, sulfur-35, iron-59, iodine-125, and iodine-131(are other used in combination with hydrogen-3 and carbon-14 in medical and biological research. Further, these radionuclides have half-lives of between 8 and 87 days. Because these other radionuclides are not mentioned specifically in the regulations, some licensees currently preserve, freeze and store all animal carcasses containing radionuclides other than hydrogen-3 anc carbon-14. Those licensees with authorized incinerators retain the carcasses for a short period of time prior to batch incineration. However, licensees who do not have appropriate incinerators must store wastes for a long period of time to allow the radioactivity to decay before disposing of the wastes as nonradioactive. The petitioner states that this practice of storing radionuclides prior to decay could result in risks from flammability, toxicity and infection.

Licensees must dispose of another type of radioactive waste, scintillation vials. In the past, these licensees have been accustomed to shipping intact scintillation vials in approved containers to the radioactive waste disposal site in the State of Washington, the only site accepting liquid waste. However, as the petitioner indicated, after December 31, 1983, the Washington disposal site will no longer accept unsolidified liquid scintillation media.

In order to overcome the problems that the petitioner has itemized, he has recommended the following revision and addition to the regulations:

Proposed Revision

Section 20.306 Disposal of specific wastes.

(b) 0.05 microcuries of hydrogen-3 or carbon-14, per gram of *biodegradable animal bedding material, animal excreta or* animal tissue, averaged over the weight of the entire animal; provided however, tissue may not be disposed of under this section in a manner that would permit its use either as food for humans for as animal feed.

Proposed Addition

Section 20.307 Disposal of short-lived radionuclides by burial.

Any licensee may dispose of licensed material consisting of any mixture of hydrogen-3, carbon-14 and redionuclides with half-lives of less than 100 days, in the types of waste media, at the concentration limits and to the types of burial facilities specified below:

(a) 0.05 microcuries per gram of biodegradable animal bedding material, animal excreta or animal tissue, averaged over the mass of such materials generated per animal, may be disposed of in a sanitary landfill;

(b) 0.05 microcuries per gram of medium used for liquid scintillation counting may be disposed of in an approved hazardous waste landfill without regard to the radioactivity contained in medium;

(c) Wastes that are disposed of under the provisions of this section are not be labeled as radioactive and, for purposes of collection and transport, may be treated as nonradioactive;

(d) Nothing in this section, however, relieves the licensee of maintaining records showing the receipt, transfer and disposal of such licensed material as specified in seciton 30.51 of this chapter; and

(e) Nothing in this section relieves the lciensee from complying with other applicable Federal, State and local regulations governing any other toxic or hazardous property of these materials.

According to the petitioner, these changes would substantially reduce non-radiological risk related to the collection, storage, packaging, and shipping of certain biological and chemical wastes without compromising or reducing radiation protection. It is also stated that these changes would also allow significant reductions in costs for waste disposal by NRC licensees involved in extensive biomedical research. These reduction in risk would be achieved, under these proposed amendments, in the following manner:

1. Because these wastes would be disposed of on a site that has Federal and State requirements for the control of chemical and biological hazards and that will contain waste materials for many years, the burial of radionuclides with half-lives of less than 100 days would not result in any migration into the human environment prior to decaying into innocuous levels.

2. By limiting the wastes that can be buried under this proposal to materials that have no attraction for human contact, the risk of potential salvage of contaminated articles is eliminated.

3. The biological and chemical characteristics of the specified wastes rule out inputs to human food chains.

4. The low concentrations permitted for the proposed methods of disposal would preclude significant exposures to personnel involved in the collection and transportation of the wastes. Because of this, there would be not restrictions on handling of the waste and there would be no need for special containers or labels.

The petitioner concludes by stating that handling and disposal of the specified wastes in the manner

proposed in the petition would reduce overall risk from flammable and toxic chemicals and from pathogenic organisms without significantly changing the risk from radiation exposure.

In order to help evaluate the merits of this petition, the NRC staff requests biomedical research institutions and other users of the short-lived radionuclides, in addition to their comments on the petition itself, to provide information on:

(1) Their usual inventory of these short-lived radionuclides;

(2) The amounts used and the activity, volume, and types of materials disposed of annually or monthly;

(3) Estimates of the cost of packaging, storage, transportation, and disposal of this material; and

(4) The costs of any alternative methods of disposal which have been examined. In particular, the amount of any cost savings resulting from methods of disposal which would become available if the petition were granted would be extremely helpful.

Dated at Washington, DC this 25th day of January, 1984.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 84-2457 Filed 1-27-84; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 83-AAL-5]

Proposed Revocations and Amendments to Federal Colored Airways

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revoke two Colored Federal Airways and delete certain segments of five others in the State of Alaska. This action is being proposed because pilots no longer request these airways and air traffic control (ATC) no longer assigns them in ATC clearances. Information in the affected areas of the associated aeronautical charts would be more discernible if these airways were no longer depicted.

DATES: Comments must be received on or before March 14, 1984.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Alaskan Region, Attention: Manager, Air Traffic Division, Docket No. 83-AAL-5, Federal Aviation Administration, 701 C Street, Box 14, Anchorage, AK 99513.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, D.C.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: William C. Davis, Airspace and Air Traffic Rules Branch (AAT-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to achnowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 83-AAL-5." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to §§71.103, 71.105, and 71.107 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to: Revoke Red Federal Airways R-27 and R-40; delete segments of Amber Federal Airways A-15 and A-2 between Delta Junction, AK, RBN and Chena, AK, RBN; delete segments of Green Federal Airways G-6 and G-9 between Aniak, AK, NDB and Sparrevohn, AK, NDB (the description incorrectly refers to Cairn Mountain, AK, NDB as Sparrevohn, AK, NDB), and between Sparrevohn, AK, RBN (the description incorrectly refers to Cairn Mountain, AK, NDB as Sparrevohn, AK, RBN) and Campbell Lake, AK, RBN, respectively; and delete the segment of Red Federal Airway R-39 between Julius, AK, RBN and Chena, AK, RBN. Aircarft operators planning or conducting flight under IFR no longer request or use these route segments except as alternate routes. The Colored Federal Airways in the State of Alaska are in existence today only as alternate airways for use during periods when any VOR or VORTAC making up the VOR Fedeal Airway segments that exist parallel to them is out of service due to routine maintenance. Additionally, the VOR's or VORTAC's that make up these parallel VOR Federal Airways have been replaced with more reliable solid-state equipment virtually eliminating the need for these airway segments as alternate airways. Further, ATC radar surveillance has been expanded covering these airways and airway segments and enabling ATC to provide alternate routes with radar guidance when a navigational aid is out of service. Sections 71.103, 71.105, and 71.107 of Part 71 of the Federal Aviation Regulations were republished in Advisory Circular AC 70-3A dated January 3, 1983.

List of Subjects in 14 CFR Part 71

Aviation safety, Colored federal airways.

The Proposed Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend §§ 71.103, 71.105, and 71.107 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

§ 71.105

A-15 [Amended]
By deleting the words "RBN; Delta Junction, AK, RBN; Chena, AK, RBN;" and substituting the words "NDB; to Delta Junction, AK, NDB. From Chena, AK, NDB via"
A-2 [Amended]
By deleting the words "RBN; Delta Junction, AK, RBN; Chena, AK, RBN;" and substituting the words "NDB; to Delta Junction, AK, NDB. From Chena, AK, NDB via"

§ 71.103

G-6 [Amended]
By deleting the words "via Aniak, AK, NDB to Sparrevohn NDB." and substituting the words "; to Aniak, AK, NDB."
G-9 [Amended]
By deleting the words "Sparrevohn, AK, RBN; 24 miles, 29 miles, 53 MSL, 14 miles, 10,500 MSL, 42 miles, 12,500 MSL, to Campbell Lake, AK, RBN." and substituting the words "to Cairn Mountain, AK, NDB."

§ 71.107

R-27 [Revoked]
R-39 [Amended]
By deleting the words "RBN; Julius, AK, RBN; Chena, AK, RBN." and substituting the words "NDB; to Julius, AK, NDB."
R-40 [Revoked]

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); [49 U.S.C. 106(g) (revised, Pub. L. 97-449, January 12, 1983)]; and 14 CFR 11.65)

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

Issued in Washington, D.C., on January 23, 1984.

John W. Baier,
Acting Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 84-2421 Filed 1-27-84; 8:45 am]
BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 83-AGL-26]

Proposed Alteration of Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The nature of this Federal Action is to designate an additional amount of controlled airspace determined necessary as a result of the relocated Marysville NDB at Union County Airport, Marysville, Ohio.

The intended effect of this action is to insure segregation of the aircraft using approach procedures in instrument weather conditions from other aircraft operating under visual weather conditions in controlled airspace.

DATES: Comments must be received on or before March 2, 1984.

ADDRESS: Send comments on the proposal in triplicate to FAA Office of Regional Counsel, AGL-7, Attention: Rules Docket Clerk, Docket No. 83-AGL-26, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket will be available for examination by interested persons in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

An informal docket will also be available for examination during normal business hours in the Airspace, Procedures, and Automation Branch, Air Traffic Division, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

FOR FURTHER INFORMATION CONTACT: Edward R. Heaps, Airspace, Procedures, and Automation Branch, Air Traffic Division, AGL-530, FAA, Great Lakes Region, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7360.

SUPPLEMENTARY INFORMATION: The relocation of the Marysville NDB requires that the FAA alter the designated airspace to insure that the procedure will be contained within controlled airspace. The additional designated airspace includes two areas, one approximately 1 mile x 3 miles located southeast of Union County Airport, and the other approximately 1 mile x 1 mile located northeast of the airport.

Minimum descent altitudes may be established below the floor of the 700-foot controlled airspace.

Aeronautical maps and charts will reflect the defined areas which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 83-AGL-26." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future

NPRM's should also request a copy of Advisory Circular No. 11-2, which describes the application procedures.

The Proposal

The FAA is considering an amendment to §71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the transition area airspace near Marysville, Ohio.

Section 71.181 of Part 71 of the Federal Aviation Regulations was published in Advisory Circular AC 70-3A dated January 3, 1983.

List of Subjects in 14 CFR Part 71

Transition areas, Aviation safety.

The Proposed Amendment

PART 71—[AMENDED]

Accordingly, Pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Section 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

Marysville, OH

That airspace extending upward from 700 feet above the surface within a 5-mile radius of Union County Airport, Marysville, Ohio (latitude 40°13'29"N., longitude 83°21'00"W.); and within 3 miles either side of the 091° bearing from the Marysville NDB (latitude 40°13'31"N., longitude 83°20'54"W.) extending from the NDB to 12 miles east of the NDB, excluding the portions overlying the Delaware Ohio, and the Columbus, Ohio, transition areas.

(Sec. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983))

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

Issued in Des Plaines, Illinois, on January 9, 1984.

Paul K. Bohr,

Director, Great Lakes Region.

[FR Doc. 84-2120 Filed 1-27-84; 8:45 am]

BILLING CODE 4910-13-M

CIVIL AERONAUTICS BOARD

14 CFR Part 252

Smoking Aboard Aircraft

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Oral Argument on proposals to amend 14 CFR Part 252—Smoking Aboard Aircraft.

SUMMARY: The CAB will hold oral argument on its proposals to amend its rules concerning smoking aboard aircraft. The CAB proposed to ban smoking on small aircraft, ban the smoking of cigars and pipes on all U.S. airlines, ban smoking when the aircraft ventilation is not adequate, and provide special protections for those especially sensitive to smoke, EDR-461, 48 FR 24918, June 3, 1983. The CAB additionally proposed to ban smoking on short flights and to require additional protections for those especially sensitive to smoke, EDR-461B, 48 FR 43341, September 23, 1983.

DATE: Oral Argument will be held Tuesday, February 14, 1984, at 10:00 a.m. (local time).

ADDRESSES: Oral Argument will be held in Room 1027, Universal Building, 1825 Connecticut Ave., NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: David Schaffer, Office of General Counsel, Rules & Legislation Division, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 28420; (202) 673-5442.

Dated: January 25, 1984.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84-2555 Filed 1-27-84; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 134

Country Of Origin Marking of Certain Unfinished Sweaters

AGENCY: U.S. Customs Service, Treasury.

ACTION: Notice of proposed change in country of origin marking; solicitation of comments.

SUMMARY: Customs has previously ruled that New Zealand was the correct country of origin of sweaters made by sending New Zealand yarn to the People's Republic of China where it was knitted into sweater parts, partially sewn together, then finished in New Zealand by completing the sewing and subjecting the garments to a process called "Super Wash".

Customs has been requested to rescind this ruling on the basis that the completion of the sewing and the "Super Wash" process do not result in a substantial transformation of the partially completed garment. Without a substantial transformation, the People's Republic of China is the correct country of origin, not New Zealand.

Since any change in the sweaters' country of origin will have an effect on their status for textile quota purposes, and because this matter is of sufficient importance to involve the interests of the domestic industry, this notice invites public comments on it before any change is made.

DATE: Comments must be received on or before March 30, 1984.

ADDRESS: Comments (preferably in triplicate) should be addressed to the Commissioner of Customs, Attention: Regulations Control Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Darrell D. Kast, Entry, Licensing and Restricted Merchandise Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-5765).

SUPPLEMENTARY INFORMATION:

Background

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), provides that all articles of foreign origin, or their containers, imported into the United States, shall be legibly and conspicuously marked to indicate the English name of the country of origin to an ultimate purchaser in the United States, unless specifically exempted. Part 134, Customs Regulations (19 CFR Part 134), sets forth the country of origin marking requirements of 19 U.S.C. 1304. Section 134.1(b), Customs Regulations (19 CFR 134.1), defines "country of origin" as the country of manufacture, production or growth of any article of foreign origin entering the United States. Further work or material added to an article must effect a substantial transformation in order to render a second country the "country of origin" within the meaning of Part 134.

The importance of determining an article's correct country of origin lies not only in informing the ultimate purchaser but also in the effect it has on any import quota that may pertain to that article. An import quota is a quantity control system, usually based on bilateral agreements with the countries concerned, which limits the amount of certain merchandise that may enter the United States from a foreign country. Quotas vary according to the country doing the exporting, and the specific type of merchandise involved.

An article which enters the United States marked with the wrong country of origin may be incorrectly charged to that country's import quota. The incorrectly marked articles may cause the quota for that country to fill faster than it should, resulting in fewer articles entering the United States from the exporting country than would otherwise be permitted. Conversely, more articles than the quota permits may enter the United States from the actual country of origin than are permitted. Wool sweaters which are the product of the People's Republic of China are subject to quota restraints agreed upon in a bilateral agreement between that country and the United States.

The finishing process used by New Zealand sweater producers on sweaters they export to the United States has aroused a controversy concerning the sweaters' correct country of origin. These producers purchase raw New Zealand wool and have it spun into yarn and dyed in New Zealand. They then send the yarn on consignment to the People's Republic of China where it is then knitted into sweater parts, namely the fronts, backs and sleeves which are joined together only at the shoulders. The partially joined parts are then returned to New Zealand to be finished into sweaters by sewing the side seams and sleeve seams, undergoing a proprietary process called "Super Wash," and when specifications so require, adding buttons, zippers, shoulder pads, elbow pads, etc.

It is Customs understanding that the function of the "Super Wash" process is to chemically treat the wool material so that the finished garment may be cleaned in a household washing machine. "Super Washing" is also supposed to assist in the sizing of the garment, and give it a softer touch, lighter color and greater durability than it would otherwise have had had it not undergone this process.

In a ruling #719580 dated June 15, 1982, on this matter, the issue before Customs was whether the importer's process of sewing, "Super Washing" and otherwise finishing the sweaters in New Zealand effected a substantial transformation of the sweater from unfinished parts into a finished garment. Without a substantial transformation, the country where the parts were originally produced and partially joined is the country of origin, not New Zealand where the sweater was completed. Customs held that the completion of the sewing, "Super Washing" and other finishing in New Zealand, was in fact a substantial transformation.

The U.S. Department of Commerce has requested that Customs rescind this ruling on the basis that the completion of the sewing and the "Super Wash" process do not result in a substantial transformation. Therefore, Commerce contends that New Zealand is not the correct country of origin and as a result, these incorrectly marked sweaters are entering the United States free of the textile import quotas imposed on sweaters of Chinese origin. In view of the concern of the Commerce Department and U.S. sweater manufacturers, Customs has determined that a review of the above ruling is warranted.

Authority

Because the change in position, if implemented, would result in a restriction on the importation of the subject sweaters, and because the issue is of significant importance to the domestic industry, Customs is giving interested parties notice and an opportunity to comment in accordance with § 177.10(c)(2), Customs Regulations (19 CFR 177.10(c)(2)).

Comments

Consideration will be given to any written comments timely submitted to the Commissioner of Customs. Comments submitted will be available for public inspection in accordance with § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on normal business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Control Branch, Headquarters, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2426, Washington, D.C. 20229.

Drafting Information

The principal author of this document was Glen E. Vereb, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

Approved: January 11, 1984.

Alfred R. De Angelus,

Acting Commissioner of Customs.

John M. Walker, Jr.,

Assistant Secretary of the Treasury.

[FR Doc. 84-2348 Filed 1-27-84; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

[Reg. No. 4]

Federal Old-Age Survivors, and Disability Insurance Benefits; Nonpayment of Benefits to Prisoners

AGENCY: Social Security Administration, HHS.

ACTION: Proposed rules.

SUMMARY: Section 339 of the Social Security Amendments of 1983, Pub. L. 98-21, suspends payments of old-age, survivors, and disability insurance benefits to persons in prison for conviction of a felony. Benefits will continue to be paid to family members entitled to benefits as dependents of prisoners. This provision extends to all other title II Social Security benefits the statutory prohibition against payment of benefits to prisoners which already applied to disability insurance benefits and childhood disability benefits.

DATES: We will consider your comments if we receive them no later than March 30, 1984.

ADDRESSES: Send your written comments to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, Maryland 21203, or deliver them to the Office of Regulations, Social Security Administration, 3-A-3 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235 between 8:00 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: W. Ziegler, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, Telephone 301-594-7415.

SUPPLEMENTARY INFORMATION: In section 339 of Pub. L. 98-21, enacted April 20, 1983, Congress amended section 202 of the Social Security Act (the Act) to eliminate all monthly benefit

payments under section 202 or 223 of the Act to any person for any month during which that person is confined in a jail, prison, or other penal institution or correctional facility pursuant to his or her conviction of a felony. This provision of the law extends to the other title II insurance benefits the basic restriction on payment of benefits to prisoners that already applied to disability insurance benefits and childhood disability benefits under section 5(c) of Pub. L. 96–473, which was effective with monthly benefits payable beginning October 1, 1980. The new nonpayment provision, which applies to title II insurance benefits including disability and childhood disability benefits, is effective for benefits payable for months beginning on or after May 1, 1983.

To conform with this change in the law, we are proposing to amend 20 CFR 404.468 to explain that if a person is confined in a jail, prison, or other penal institution or correctional facility for conviction of a felony committed at any time, monthly Social Security benefits to which he or she is otherwise entitled, on his or her own earnings record or on another person's earnings record, will not be paid for any month after April 1983 (or after September 1980 in the case of disability or childhood disability benefits), during all or part of which the person is so confined. The only exception to the nonpayment of a prisoner's benefits will be if the person is entitled to benefits on the basis of a disability and is actively and satisfactorily participating in a vocational rehabilitation program which is specifically approved by a court of law for that person and which the Secretary of Health and Human Services expects will result in the person's being able to do substantial gainful work upon release and within a reasonable time.

Although benefits are not payable to the prisoner during confinement, payment of benefits will be made to other persons entitled to benefit payments on the prisoner's earnings record (who are not themselves subject to the prisoner provision) as if the prisoner were still receiving benefits.

Benefits will be restored to the prisoner effective with the first full month after release from prison if he or she is otherwise still entitled to these benefits.

The proposed rules implementing section 339 of Pub. L. 98–21 will generally follow the rules adopted in the implementation of section 5(c) of Pub. L. 96–473 except that the nonpayment provision will now apply to all monthly Social Security benefits and not just to certain benefits based on disability. Those rules, 20 CFR 404.468, were published in the Federal Register (48 FR 5711) on February 8, 1983.

Thus, a crime will be considered a felony if it is an offense which constitutes a felony under applicable law. In jurisdictions which do not classify any crime as a felony, such as the State of New Jersey, the U.S. military under the Uniform Code of Military Justice, and some foreign countries, an offense punishable by death or imprisonment for a term exceeding one year will be considered a felony for purposes of these regulations. (See 20 CFR 404.468(b).) This latter rule is the same as the definition of a felony in 18 U.S.C. Sec. 1(1), the U.S. Criminal Code.

A jail, prison, or other penal institution or correctional facility includes any facility which is under the control and jurisdiction of the agency in charge of the penal system or any facility in which convicted criminals can be incarcerated. This includes, for example, a mental hospital for the criminally insane which is used as a place for incarcerating convicted criminals, regardless of whether that institution is operated by the correctional authority. A person under sentence of confinement to any of these facilities is considered "confined" even though he or she is temporarily hospitalized outside the facility or is temporarily or intermittently outside the facility to work, attend school, or for some other reason. However, a prisoner who is released on parole or because his or her sentence has ended, been suspended or overturned would no longer be considered confined in the penal facility. (See 20 CFR 404.468(c).)

These proposed regulations will amend § 404.468 to apply the prohibition against payment of benefits to prisoners to all monthly Social Security benefits.

Executive Order 12291: These proposed regulations have been reviewed under Executive Order 12291 and do not meet any of the criteria for a major regulation. The implementation of section 339 of Pub. L. 98.21 will produce a negligible reduction in benefit payments each year. Program costs will be minimal. Therefore, a regulatory impact analysis is not required.

Regulatory Flexibility Act: We certify that these proposed regulations will not, if promulgated, have a significant economic impact on a substantial number of small entities because they only affect a small number of beneficiaries.

Paperwork Reduction Act: These proposed regulations impose no reporting/recordkeeping requirements necessitating clearance by the Office of Management and Budget.

(Catalog of Federal Domestic Program Nos. 13.802, Social Security Disability Insurance; 13.803, Social Security Retirement Insurance; 13.805, Social Security Survivors Insurance)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Death benefits, Disabled, Old-Age, Survivors and Disability Insurance.

Dated: September 27, 1983.

Louis D. Enoff,

Acting Commissioner of Social Security.

Approved: January 10, 1984.

Margaret M. Heckler,

Secretary of Health and Human Services.

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950– ——)

For the reasons set out in the preamble, Part 404, Subpart E, Chapter III of Title 20, Code of Federal Regulations, is proposed to be amended as set forth below.

Subpart E—Deductions; Reductions; and Nonpayments of Benefits

20 CFR Part 404, Subpart E is amended as follows:

1. The authority citation for Subpart E reads as follows:

Authority: Secs. 205, 207, and 1102; 53 Stat. 1363, as amended, 79 Stat. 379, as amended, 49 Stat. 647, as amended; sec. 5 of Reorganization Plan No. 1 of 1953, 67 Stat. 18; 42 U.S.C. 405, 407, 1302, unless otherwise noted.

2. Section 404.468 is revised to read as follows:

§ 404.468 Nonpayment of benefits to prisoners.

(a) *General.* No monthly benefits will be paid to any individual for any month any part of which the individual is confined in a jail, prison, or other penal institution or correctional facility for conviction of a felony. This rule applies to disability benefits (§ 404.315) and child's benefits based on disability (§ 404.350) effective with benefits payable for months beginning on or after October 1, 1980. For all other monthly benefits, this rule is effective with benefits payable for months beginning on or after May 1, 1983. However, it applies only to the prisoner; benefit payments to any other person who is entitled on the basis of the prisoner's wages and self-employment income are payable as though the prisoner were receiving benefits.

(b) *Felonious offenses.* An offense will be considered a felony if—

(1) It is a felony under applicable law: or

(2) In a jurisdiction which does not classify any crme as a felony, it is an offense punishable by death or imprisonment for a term exceeding one year.

(c) *Confinement.* In general, a jail, prison, or other penal institution or correctional facility is a facility which is under the control and jurisdiction of the agency in charge of the penal system or in which convicted criminals can be incarcerated. Confinement in such a facility continues as long as the individual is under a sentence of confinement and has not been released due to parole or pardon. An individual is considered confined even though he or she is temporarily or intermittently outside of that facility (e.g., on work release, attending school, or hospitalized).

(d) *Vocational rehabilitation exception.* The nonpayment provision of paragraph (a) of this section does not apply if a prisoner who is entitled to benefits on the basis of disability is actively and satisfactorily participating in a rehabilitation program which has been specifically approved for the individual by a court of law. In addition, the Secretary must determine that the program is expected to result in the individual being able to do substantial gainful activity upon release and within a reasonable time. No benefits will be paid to the prisoner for any month prior to the approval of the program.

[FR Doc. 84-2509 Filed 1-27-84; 8:45 am]
BILLING CODE 4190-11-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 264 and 265

[SWH-FRC 2515-4]

Hazardous Waste Management System; Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities

AGENCY: Environmental Protection Agency.

ACTION: Extension of comment period.

SUMMARY: The Environmental Protection Agency noticed on December 28, 1983 (48 FR 57144), the availability of a final contractor report, *Test Protocols for Determining the "Free Liquid" Content of Hazardous Waste,* for public comment. The report summarizes the results of laboratory tests on a number of test protocols, including the paint filter test that the Agency proposed in the Federal Register on February 25, 1982. The Agency is hereby extending the comment period for this report until February 17, 1984, in order to give everyone interested in commenting on the report adequate time to do so.

DATES: Comments on the report must be submitted on or before February 17, 1984.

ADDRESS: Comments should be addressed to the Docket Clerk, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, Telephone (202) 382-4672. Comments should identify the regulatory docket and report title as follows: "Section 3004, *Test Protocol for Determining The "Free Liquid" Content of Hazardous Waste".*

A copy of the report is available for reading in the EPA Library and the Subtitle C Docket Room (Room S-212A), both located at the above address, during the hours of 9:00 a.m. to 4:00 p.m. Monday through Friday excluding holidays. Copies of the report are also available for reading at the EPA Regional Libraries.

FOR FURTHER INFORMATION CONTACT: For a single copy of the report contact the RCRA Hotline at (800) 424-9346 (toll free) or at (202) 382-3000. For additional information contact Paul Cassidy at (202) 382-4682.

SUPPLEMENTARY INFORMATION: The Agency published a notice of availability of information and request for comments on December 28, 1983, concerning a report titled, *Test Protocols for Determining the "Free Liquid" Content of Hazardous Waste.* The Agency specifically requested comments on the accuracy and completeness of the information presented in the report, especially regarding the paint filter test parts of the report. The Agency is extending the original comment date from January 27, 1984 until February 17, 1984 for a number of reasons. There has been tremendous interest in this report and as such there was a period of time when the Agency did not have copies of the report available for those persons interested in obtaining a copy. There has been a backlog of requests for this report, due to the large amount of interest, and as such many people who would like to comment may not have an adequate period of time in which to do so. Therefore, the Agency has extended the comment period until February 17, 1984.

Under Executive Order 12291, EPA must judge whether a regulation or rule, including any implementation guidance, is "Major" and therefore subject to the requirement of a Regulatory Impact Analysis. This notification is not a rule.

This notification simply extends an original comment date.

Dated: January 20, 1984.

Jack McGraw,

Acting Assistant Administrator for Solid Waste and Emergency Response.

[FR Doc. 84-2432 Filed 1-27-84; 8:45 am]
BILLING CODE 6560-50-M

DEPARTMENT OF COMMERCE

National Oceanic and Atomospheric Administration

50 CFR Parts 611 and 655

[Docket No. 30920-192]

Foreign Fishing and Atlantic Mackerel, Squid and Butterfish Fisheries

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of proposed allocation of reserve.

SUMMARY: NOAA proposes to allocate the entire reserve of 35,850 metric tons (mt) of Atlantic mackerel to the total allowable level of foreign fishing (TALFF). This action is allowed by procedures established in the regulations implementing the Fishery Management Plan for the Atlantic Mackerel, Squid, and Butterfish Fisheries (FMP). The intended effect of the allocation is to achieve full utilization of the optimum yield for the fishery.

DATE: Comments must be submitted in writing on or before February 14, 1984.

ADDRESS: Comments should be sent to Salvatore A. Testaverde, National Marine Fisheries Service, State Fish Pier, Gloucester, Massachusetts 01930-3097. Mark "Comments on Atlantic Mackerel Reserve" on the outside of the envelope.

FOR FURTHER INFORMATION CONTACT: Salvatore A. Testaverde, 617-281-3600 extension 273.

SUPPLEMENTARY INFORMATION: The emergency interim rule that merged the three separate regulations implementing the fishery management plans for the Atlantic Mackerel, Squid, and Butterfish fisheries into 50 CFR Part 655 (48 FR 14554, April 4, 1983) established a mechanism to allocate all or part of the mackerel reserve to TALFF on or about November 1 of each year. A reserve of 35,850 mt of Atlantic mackerel was established for the 1983-1984 fishing

year (48 FR 33001), July 20, 1983). The regulations made final on September 30, 1983, at 48 FR 44834, direct the Director of the Northeast Region, National Marine Fisheries Service (Regional Director, NMFS), to project total domestic mackerel harvest for the entire fishing year, April 1 through March 31, based on U.S. landings through September and on the results of a survey of the intent of domestic fishermen to harvest mackerel during the remainder of the year. Based upon this projection, the Regional Director determines the disposition of the reserve allocation.

The reported domestic commercial landings of Atlantic mackerel from April 1, 1983 through September 30, 1983 were 1,568 mt, and this figure was used to project the total catch for the entire fishing year. The Regional director estimated that U.S. landings, including an estimated recreational catch of 4,000 mt, would total between 6,000 and 7,000 mt. Also, the November–December 1983 survey of processors of Atlantic mackerel indicates that the processors intend to take 5,300 mt for the entire fishing year. Based upon this information, the Regional Director has estimated that the total U.S. harvest of Atlantic mackerel, including recreational catches, will total between 9,000 and 10,000 mt.

NOAA is presently considering two mackerel joint ventures (JV) for the current fishing year. One JV is a renewal, first approved at the beginning of this fishing year, and the second JV is to begin in January 1984. Both JVs have requested mackerel amounts for directed fisheries. Since the 1983–1984 fishig year ends on March 31, 1984, the amounts expected for "over-the-side" purchase from U.S. vessels is accommodated within the 30,000 mt domestic annual harvest. The new TALFF of 71,700 mt is expected to accommodate directed fishing by foreign nations within the fishery conservation zone.

Comments on this proposed allocation of reserve should be submitted by the date indicated above to the address provided, and will be considered by the Regional Director in the final allocation decision.

Classification

This action is required by 50 CFR Part 655, and complies with E.O. 12291.

List of Subjects

50 CFR Part 611

Fisheries, Foreign relations, Reporting and recordkeeping requirements.

50 CFR Part 655

Fisheries, Reporting and recordkeeping requirements.

(16 U.S.C. 1801 *et seq.*)

Dated: January 25, 1984.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 84-2423 Filed 1-27-84; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 49, No. 20
Monday, January 30, 1984

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

Federal Grain Inspection Service

Advisory Committee Meeting

Pursuant to the provisions of section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), a notice is hereby given of the following committee meeting:

Name: Federal Grain Inspection Service Advisory Committee.

Date: February 15, 1984.

Place: U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 2096 South Building, Washington, D.C. 20250.

Time: 8:30 a.m.

Purpose: To provide advice to the Administrator of the Federal Grain Inspection Service on the efficient and economical implementation of the U.S. Grain Standards Act of 1976 (the Act), to assure the normal movement of grain in an orderly and timely manner.

The agenda includes: (1) Discussion of the pending reauthorization of certain provisions of the Act; (2) financial matters; (3) inspection and weighing issues; (4) standards proposals; and (5) other matters.

The meeting will be open to the public. Public participation will be limited to written statements unless otherwise requested by the Committee Chairman. Persons, other than members, who wish to address the Committee at the meeting or submit written statements before or at the meeting should contact Dr. Kenneth A. Gilles, Administrator, FGIS, U.S. Department of Agriculture, Washington, D.C. 20250, telephone (202) 382–0219.

Dated: January 25, 1984.

Kenneth A. Gilles,

Administrator.

[FR Doc. 84–2426 Filed 1–2–84; 8:45 am]

BILLING CODE 3410–EN–M

Packers and Stockyards Administration

Pates Stockyards, Inc. and Union Stock Yards; Depositing of Stockyards

It has been ascertained, and notice is hereby given, that the livestock markets named herein, originally posted on the respective dates specified below as being subject to the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*), no longer come within the definition of a stockyard under said Act and are, therefore, no longer subject to the provisions of the Act.

Facility No., name, and location of stockyard	Date of posting
NC–140 Pates Stockyards, Inc., Whitesville, North Carolina.	July 11, 1959.
VA–131 Union Stock Yards, Richmond, Virginia.	Oct. 31, 1921.

Notice or other public procedure has not preceded promulgation of the foregoing rule. There is no legal justification for not promptly deposting a stockyard which is no longer within the definition of that term contained in the Act.

The foregoing is in the nature of a change relieving a restriction and may be made effective in less than 30 days after publication in the Federal Register. This notice shall become effective upon publication in the Federal Register.

(42 Stat. 159, as amended and supplemented; 7 U.S.C. 181 *et seq.*)

Done at Washington, D.C., this 25th day of January 1984.

Jack W. Brinckmeyer,

Chief, Financial Protection Branch, Livestock Marketing Division.

[FR Doc. 84–2499 Filed 1–27–84; 8:45 am]

BILLING CODE 3410–KD–M

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Cancellation of Meeting

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of Cancellation of ATBCB Meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (ATBCB) has cancelled its Board and Committee meetings scheduled for February 9 and 10, 1984 (January 9, 1984; 49 FR 1103) in accordance with Section II.A.2 of the ATBCB's Statement of Organization and Procedures.

FOR FURTHER INFORMATION CONTACT: Larry Allison, Special Assistant for External Affairs (202) 245–1591 (voice or TDD).

Robert M. Johnson,

Executive Director.

[FR Doc. 84–2436 Filed 1–27–84; 8:45 am]

BILLING CODE 6820–BP–M

CIVIL AERONAUTICS BOARD

Application of Royale Airlines, Inc., for Certificate Authority

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order To Show Cause 84–1–90.

SUMMARY: The Board is proposing to find Royale Airlines, Inc., fit, willing, and able and to issue a certificate of public convenience and necessity to it authorizing scheduled interstate and overseas air transportation of persons, property, and mail between all points in the United States, its territories and possessions.

DATE: Objections: All interested persons having objections to the Board issuing the proposed certificate shall file, and upon all persons listed below no later than February 10, 1984, a statement of objections, together with a summary of testimony, statistical data, and other material expected to be relied upon to support the objections.

ADDRESSES: Objections to the issuance of a final order should be filed in Docket 41882 and should be addressed to the Docket Section, Civil Aeronautics Board, Washington, D.C. 20428, and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Carolyn S. Kramp, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428 (202) 673–5090.

SUPPLEMENTARY INFORMATION: The complete text of Order 84–1–90 is available from the Distribution Section, Room 100, 1825 Connecticut Avenue, NW., Washington, D.C. 20428. Persons outside the metropolitan area may send

a postcard request for Order 84-1-90 to that address.

By the Civil Aeronautics Board: January 24, 1984.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84-2500 Filed 1-27-84; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review; Application

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Application.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and invites interested parties to submit information relevant to the determination of whether a certificate should be issued.

DATES: Comments on this application must be submitted on or before Feburary 21, 1984.

ADDRESS: Interested parties should submit their written comments, original and five (5) copies, to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 6711, Washington, D.C. 20230.

Comments should refer to this application as "Export Trade Certificate of Review, application number 84-00004."

FOR FURTHER INFORMATION CONTACT: Charles S. Warner, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377-5131, or Eleanor Roberts Lewis, Assistant General Counsel for Export Trading Companies, Office of General Counsel, 202/377-0937. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (Pub. L. 97-290) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. the Regulations implementing Title III are found at 48 FR 10596-10604 (March 11, 1983) (to be codified at 15 CFR Part 325). A certificate of review protects its holder and the members identified in it from private treble damage actions and civil and criminal liability under Federal and state antitrust laws for the export trade, export trade activities and methods of operation specified in the certificate and carried out during its effective period in compliance with its terms and conditions.

Standards for Certification

Proposed export trade, export trade activities, and methods of operation may be certified if the applicant establishes that such conduct will:

1. Result in neither a substantial lessening of competition or restraint of trade within the United States nor a substantial restraint of the export trade of any competitor of the applicant,
2. Not unreasonably enhance, stabilize, or depress prices within the United States of the goods, wares, merchandise, or services of the class exported by the applicant,
3. Not constitute unfair methods of competition against competitors engaged in the export of goods, wares, merchandise, or services of the class exported by the applicant, and
4. Not include any act that may reasonably be expected to result in the sale for consumption or resale within the United States of the goods, wares, merchandise, or services exported by the applicant.

The Secretary will issue a certificate if he determines, and the Attorney General concurs, that the proposed conduct meets these four standards. For a further discussion and analysis of the conduct eligible for certification and of the four certification standards, see "Guidelines for the issuance of Export Trade Certificates of Review," 48 FR 15937-40 (April 13, 1983).

Request for Public Comments

The Office of Export Trading Company Affairs (OETCA) and the applicant have agreed that this notice fairly represents the conduct proposed for certification. Through this notice, OETCA seeks written comments from interested persons who have information relevant to the Secretary's determination to grant or deny the application summarized below. Information submitted by any person in connection with the application(s) is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552).

The OETCA will consider the information received in determining whether the proposed conduct is "export trade," an "export trade activity" or a "method of opeation" as defined in the Act, regulations and guidelines and whether it meets the four certification standards. Based upon the public comments and other information gathered during the analysis period, the Secretary may deny the application or issue the certificate with any terms or conditions necessary to assure compliance with the four standards.

The OETCA has received the following application for an Export Trade Certificate of Review:

Applicant: Harold L. Porter Associates International, Ceredo, WV 25507
Application No.: 84-00004
Date Received: January 16, 1984.
Date Deemed Submitted: January 18, 1984.
Members in Addition to Applicant: None.
Summary of Application: Applicant proposes to act primarily as a commission agent for small to medium-sized firms desiring to export arts and crafts native to West Virginia; chemicals; coal; mining machinery and spare parts; and timber, lumber and wood products. Efforts to find interested firms will focus on the area within 250 miles of Ceredo, West Virginia. Markets for their products will be sought worldwide.

In addition to acting purely as commission agent, the applicant may undertake to arrange export financing for clients, and, in some cases, take title to goods. Exclusive agreements with both domestic suppliers and overseas sellers or agents are comtemplated.

The OETCA is issuing this notice in compliance with section 302(b)(1) of the Act which requires the Secretary to publish a notice of the application in the Federal Register identifying the persons submitting the application and summarizing the conduct proposed for certification. Interested parties have twenty (20) days from the publication of this notice in which to submit written information relevant to the determination of whether a certificate should be issued.

Dated: January 25, 1984.

Irving P. Margulies,

Acting General Counsel.

[FR Doc. 84-2497 Filed 1-27-84; 8:45 am]

BILLING CODE 3510-25-M

[A-428-062]

Animal Glue and Inedible Gelatin From West Germany; Preliminary Results of Administrative Review of Antidumping Finding and Tentative Determination To Revoke In Part

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Preliminary Results of Administrative Review of Antidumping

Finding and Tentative Determination to Revoke in Part.

SUMMARY: The Department of Commerce has conducted an administrative review of the antidumping finding on animal glue and inedible gelatin from West Germany. The review covers the eight known manufacturers and/or exporters and one third-country reseller of West German animal glue and inedible gelatin to the United States and the period December 1, 1981 through November 30, 1982. Seven firms and the third-country reseller did not export to the United States during the period. The review indicates the existence of no dumping margins for the eighth firm, Fritz Hacker & Sohn GmbH, during the period.

As a result of the review the Department has preliminarily determined to require cash deposits of estimated antidumping duties on future entries equal to the margins calcuated on the last know shipments for the non-shipping firms. The Department has also tentatively determined to revoke the finding with respect to Hacker.

Interested parties are invited to comment on these preliminary results and tentative determination to revoke in part.

EFFECTIVE DATE: January 30, 1984.

FOR FURTHER INFORMATION CONTACT: Elizabeth L. Wright or Robert J. Marenick, Office of Compliance, International Trade Administration, U. S. Department of Commerce, Washington, D.D. 20230, telephone: (202) 377–5255.

SUPPLEMENTARY INFORMATION:

Background

On September 9, 1983, the Department of Commerce ("the Department") published in the Federal Register (48 FR 40759) the final results of its last administrative review of the antidumping finding on animal glue and inedible gelatin from West Germany (42 FR 64116, December 22, 1977) and announced its intent to immediately conduct its next administrative review. As required by section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department has now conducted that administrative review.

Scope of the Review

Imports covered by the review are shipments of animal glue and inedible gelatin, of which there are two principal types, hide glue and bone glue. Animal glue is an organic colloid of protein derivation. There is no significant difference between animal glue and inedible gelatin. Animal glues are odorless , dry, hard, hornlike materials. They are used as general purpose adhesives in industries producing abrasives, paper containers, book and magazine bindings, and leather goods. They are also used as sizing agents and as colloids in emulsions and cleaning compounds. Animal glue and inedible gelatin are currently classifiable under items 455.4000 and 455.4200 of the Tariff Schedules of the United States Annotated.

The review covers the eight known manufacturers and/or exporters and one third-country reseller of West German animal glue and inedible gelatin to the United States and the period December 1, 1981 through November 30, 1982.

Seven firms and the one third-country reseller did not export West German animal glue and inedible gelatin to the United States during the period. The estimated antidumping duties cash deposit rates for these firms will be based on the most recent rate for each firm.

United States Price

In calculating United States price the Department used purchase price, as defined in section 772 of the Tariff Act, since all sales were made to unrelated purchasers in the United States prior to importation. Purchase price was based on the c.i.f. packed price. Where applicable, deductions were made for foreign inland freight, ocean freight, and marine insurance. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value the Department used home market price, as defined in section 773 of the Tariff Act, since sufficient quantities of such or similar merchandise were sold in the home market to provide a basis for comparison. Home market price was based on the ex-factory, packed price with an adjustment for cash discounts. No other adjustments were claimed or allowed.

Preliminary Results of the Review and Tentative Determination To Revoke in Part

As a result of our comparison of United States price to foreign market value, we preliminarily determine that for the period December 1, 1981 through November 30, 1982, the following margins exist:

	Margin (percent)
Manufacturer/exporter:	
Chemische Dungerfabriek Rendsburg	*158.00
G. Conradt & Sohn	*67.00
Johannes Martens K-G	*0
Ph. Carl Weiss	*16.34
Nienburger Gelatin GmbH	*158.00
Fritz Hacker & Sohn GmbH	0
Deutsche Gelatin-Fabriken Stoess & Co./Gould-Metall	*158.00
Third-country reseller: Marcuse, Dorme & Company Limited (U.K.)	*16.34

* No shipments during the period.

The Department has concluded that all sales of West German animal glue and inedible gelatin y Fritz Hacker & Sohn GmbH were made at not less than fair value for at least a two-year period. As provided for in § 353.54(e) of the Commerce Regulations, Hacker has agreed in writing to an immediate suspension of liquidation and reinstatement of the finding if circumstances develop which indicate that West German animal glue and inedible gelatin manufactured and exported by Hacker to the United States is being sold by Hacker at less than fair value.

Therefore, we tentatively determine to revoke the finding on animal glue and inedible gelatin from West Germany with regard to Fritz Hacker & Sohn GmbH. If this partial revocation is made final, it will apply to entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice.

Interested parties may submit written comments on these preliminary results and tentative determination to revoke in part within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

Further, as provided for in § 353.48(b) of the Commerce Regulations, a cash deposit of estimated antidumping duties based upon the above margins shall be required. For any future entries from a new exporter not covered in this or prior administrative reviews, whose first shipments of animal glue and inedible gelatin occurred after November 30, 1982 and who is unrelated to any covered firm, no cash deposit shall be required. These deposit requirements are effective for all shipments of West German animal glue and inedible gelatin entered,

or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review.

This administrative review, tentative determination to revoke in part, and notice are in accordance with sections 751 (a)(1) and (c) of the Tariff Act (19 U.S.C. 1675 (a)(1), (c)) and §§ 353.53 and 353.54 of the Commerce Regulations (19 CFR 353.53, 353.54).

Dated: January 19, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-2450 Filed 1-27-84; 8:45 am]

BILLING CODE 3510-DS-M

Mayo Foundation; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No. 83-310. Applicant: Mayo Foundation, Rochester, MN 55905. Instrument: Titanium Product System for Osseointegration. Manufacturer: Bofors Nobelpharma, Sweden. Intended use: See notice at 48 FR 45279.

Comments: None receieved.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument is a unique system of bone compatible titanium tools and fixtures for anchoring bridges to the jawbone. The National Institutes of Health advises in its memorandum dated December 6, 1983 that (1) the capability of the foreign instrument described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument of apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 84-2453 Filed 1-27-84; 8:45 am]

BILLING CODE 3510-DS-M

National Bureau of Standards; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No. 83-268. Applicant: National Bureau of Standards, Washington, D.C. 20234. Instrument: Accessories for a Laser Microprobe Mass Analzyer. Manufacturer: Leybold-Heraeus, GmBH, West Germany. Intended use: See notice at 48 FR 38870.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: This is a compatible accessory for an instrument previously imported for the use of the applicant. The instrument and accessory were made by the same manufacturer.

The National Institutes of Health advises in its memorandum dated November 2, 1983 that the accessory is pertinent to the intended uses and that it knows on no comparable domestic accessory.

We know of no domestic accessory which can be readily adapted to the instrument.

(Catalog of Federal Domestic Assistance Progrm No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 84-2451 Filed 1-27-84; 8:45 am]

BILLING CODE 3510-DS-M

Trustees of the University of Pennsylvania; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No. 83-299. Applicant: Trustees of the University of Pennsylvania, Philadelphia, PA 19104. Instrument: GX-13 Single Cathode Rotating Anode X-ray Generator and Accessories. Manufacturer: Marconi Avionics Ltd., United Kingdom. Intended use: See notice at 48 FR 40933.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides the required intensity (up to 27 kW/mm ^{2}) and small spot size ($\leq$0.3 mm $\times$ 0.3 mm). The National Institutes of Health advises in its memorandum dated November 2, 1983 that (1) the capability of the foreign instrument described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 84-2452 Filed 1-27-84; 8:45 am]

BILLING CODE 3510-DS-M

DEPARTMENT OF DEFENSE

Department of the Army

Intent To Prepare Environmental Impact Statements and to Initiate the Public Scoping Process for the Construction and Operation of Chemical Munition Disposal Systems

AGENCY: Department of the Army, Department of Defense.

ACTION: Notice of Intent to Prepare Environmental Impact Statements (EISs) on the potential impact from the design, construction, operation, and decontamination of proposed chemical agent demilitarization facilities at Anniston Army Depot (ANAD), Alabama; Lexington-Blue Grass Depot Activity (LBDA), Lexington, Kentucky;

and US Army Depot Activity Umatilla (UMDA), Hermiston, Oregon. The proposed facilities would be used to demilitarize M55 Rockets and other obsolete/unserviceable chemical agents/munitions currently stored at the above locations. Alternatives to the proposed action include:

a. Continued storage of obsolete/unserviceable chemical agents/munitions at ANAD, LBDA and UMDA.

b. Construction of a chemical agents/munitions demilitarization facility at an alternate location and shipment of the chemical agents/munitions stored at ANAD, LBDA, and UMDA to the demilitarization facility.

2. The Department of the Army recognizes its responsibility to demilitarize obsolete/unserviceable chemical warfare agents and munitions in a safe and environmentally acceptable manner. The Army further recognizes the need under National Environmental Policy Act (NEPA) to discuss and analyze in a ppropriate environmental documentation, the potential impact from construction, operation and subsequent decontamination of the proposed demilitarization facilities at ANAD, LBDA, and UMDA.

3. Notice is further given to the Army's intention to initiate the scoping process for these environmental impact statements. The purposes of this scoping process are those stated in 32 CFR 651.32 and are designed to aid the Army in determining the significant issues related to the proposed action. The process incorporates appropriate public participation including Federal, State and local agencies, as well as residents within the affected environment.

4. Questions and comments regarding both the scope of and the issues to be analyzed in the environmental documentation may be addressed to Dr. John A. Akinyemi, US Army Toxic and Hazardous Materials Agency, ATTN: DRXTH-ES, Aberdeen Proving Ground, MD 21010. Initial scoping meetings will be held at later dates to be announced in local news media so that interested individuals and agencies may assist the Department of the Army in scoping the environmental documentation. Individuals wishing individual notification of meetings may request this service by writing to Dr. Akinyemi at the address above. As specific issues are identified through the receipt of comments, additional public meetings and seminars may be scheduled if required.

Dated: January 20, 1984.

Lewis D. Walker,

Deputy for Environment, Safety and Occupational Health, OASA (IL&FM).

[FR Doc. 84-2412 Filed 1-27-84; 8:45 am]

BILLING CODE 3710-92-M

Department of the Navy

Naval Research Advisory Committee, Panel on Man-in-the-Loop Targeting; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. I), notice is hereby given that the Naval Research Advisory Committee Panel on Man-in-the-Loop Targeting will meet on February 22, 1984, at the Naval Ocean Systems, Center, San Diego, California and on February 23, 1984, at Commander Third Fleet Analysis Division, Ford Island, Hawaii. Sessions of the meeting will commence at 8:00 a.m. and terminate at 12:30 p.m. on February 22, 1984. All sessions of the meeting will be closed to the public.

The entire agenda for the meeting will consist of discussions relating to insights into command and control and battle management decision processes and observation of a demonstration of the automated mission planning system for the TOMAHAWK Land Attack Missile. In addition, exposure to human factors and targeting tactics and training will be provided. These matters constitute classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive order. The classified and non-classified matters to be discussed are so inextricably interwined as to preclude opening any portion of the meeting. 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, U.S.C.

For further information concerning this meeting contact: Commander M. B. Kelley, U.S. Navy, Office of Naval Research (Code 100N), 800 North Quincy Street, Arlington, VA 22217, Telephone number (202) 696-4870.

Dated: January 19, 1984

William F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve, Alternate Federal Register Liaison Officer.

[FR Doc. 84-2453 Filed 1-27-84; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Deputy Under Secretary for Management invites comments on the proposed information collection requests as required by the Paperwork Reduction Act.

DATES: Interested persons are invited to submit comments on or before February 29, 1984.

ADDRESSES: Written comments or requests should be addressed to Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208 New Executive Office Building, Washington, D.C. 20503 and/or Margaret Webster, Department of Education, 400 Maryland Avenue, SW., Room 4074, Switzer Building, Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 426-7304.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OBM) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The requirement for public consultation may be amended or waived by OBM to the extent that the public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform the statutory obligations.

The Deputy Under Secretary for Management publishes this notice containing proposed information requests prior to the submission of these requests to the Office of Management and Budget. Public comment is invited and copies of the requests may be obtained from the addresses named above.

Dated: January 25, 1984.

Charles L. Heatherly,

Deputy Under Secretary for Management.

OFFICE OF EDUCATION RESEARCH AND IMPROVEMENT

Extension

State-Level Personnel Exchange (Elementary-Secondary)

ED 2428-1;-2
Quarterly
State or Local Governments

Reporting Burden: Responses: 32; Burden Hours: 48

Abstract: The forms are used to obtain minimal administrative information needed for responsible operation of the Personnel Exchange program. It is used to establish the identity of the requestor, to check State authorization for travel, and to determine if the purpose of the request is within the scope of the program.

New

Library Services and Construction Act (LSCA), Application, Title II (Public Library Construction) Under Authorization of the Emergency Jobs Bill (P.L. 98-8) and Administered Under LSCA, Title II
Non-recurring
State or Local Governments
Reporting Burden: Responses: 52; Burden Hours: 156

Abstract: This form allows for the submission of the Annual Program Plan as authorized under the statutory provisions of Sections 201 through 203 of P.L. 91-600, as amended.

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

Extension

Indian Fellowship Application (New and Continuation)

ED 501
Annually
Individuals or Households
Reporting Burden: Responses: 880; Burden Hours: 2,250

Abstract: This application enables students to enter professional fields of medicine, law, education, business administration, engineering, natural resources, and related fields. It is used to obtain information needed to determine eligibility for funds, select Fellows, and determine the amount to be awarded each applicant. Applicants are Indian graduate and undergraduate students.

Application for Federal Assistance (Non-Construction Programs) Migrant Education Program

ED 362
Annually
State or Local Governments
Reporting Burden: Responses: 51; Burden Hours: 408
Recordkeeping Burden: Recordkeepers: 51; Burden Hours: 408

Abstract: Under Chapter I, Education Consolidation and Improvement Act, the Migrant Education Program determines eligibility on the basis of the annual submission of a State Migrant Education Program application. The Department of Education's Migrant Education Division conducts a comprehensive application review and approval process prior to awarding a grant to each State.

OFFICE OF MANAGEMENT

Extension

Computer Generated "Recipient Cash Advance Request"

ED 874
State or Local Governments; Non-Profit Institutions; Small Businesses or Organizations
Reporting Burden: Responses: 84,000; Burden Hours: 84,000

Abstract: The form is used by recipients to obtain funds for grants received from the Department of Education. It is used by those recipients who do not qualify for a Letter of Credit. Recipients request advances so Federal funds are available only immediately prior to the actual disbursement for award activity in accordance with General Accounting Office and U.S. Treasury regulations.

OFFICE OF POSTSECONDARY EDUCATION

Extension

Application for Certification for Participation in Programs Under Title IV of the Higher Education Act of 1965, as amended

ED 633
Annually
State or Local Governments; Businesses or Other for Profit; Non-Profit Institutions; Small Businesses or Organizations
Reporting Burden: Responses: 2,000; Burden Hours: 5,600

Abstract: This form is used by colleges, universities, and vocational schools to apply to the Department of Education to be certified to participate in student financial assistance programs under Title IV, of the Higher Education Act of 1965, as amended.

New

Higher Education Act Title IV, Quality Control Project

On Occasion
State or Local Governments; Businesses or Other For-Profit; Non-Profit Institutions; Small Businesses or Organizations
Reporting Burden: Responses: 8,400; Burden Hours: 8,400

Abstract: The purpose of the study is to identify which procedures or practices in the delivery system are prone to error and to suggest corrective actions. Information from audits and program reviews indicate that the payment errors may be higher than the $624 million found in the Pell Grant program in 1982-83. The purpose of this project is to determine the program-wide error rates, the types, and probable causes.

Residence and Migration of College Students, Fall 1984

ED 2300-2.8
Biennually
Individuals or Households; State or Local Governments; Non-Profit Institutions
Reporting Burden: Responses: 3,325; Burden Hours: 4,933

Abstract: The Department of Education and States use residence and migration data for use in economic and financial planning and policy formulation, particularly in regard to tracking the migration of students from State to State, which has a direct impact on college costs, student financial needs, and sources of such funds. This is of special importance in recruiting for many institutions.

Institutional Payment Summary for Pell Grants

On Occasion
Businesses or Other For-Profit; Non-Profit Institutions; Small Businesses or Organizations
Reporting Burden: Responses: 5,200; Burden Hours: 31,200

Recordkeeping Burden: Recordkeepers: 5,200; Burden Hours: 852

Abstract: The Institutional Payment Summary along with the Student Aid Report Part 3 is replacing the functions of the Progress Report, ED 255-3 and the Student Validation Roster, ED 255-4. The Institutional Payment Summary is the vehicle through which the Higher Education community reports cumulative payment data for the students at their institutions eligible to receive a Pell Grant. Adjustments to an institution's Pell Grant funding level will be made based on the information contained on this form and Student Aid Report, ED 255-1 that accompanies the Institutional Payment Summary.

[FR Doc. 84-2340 Filed 1-27-84; 8:45 am]
BILLING CODE 4000-01-M

Discretionary Grant Programs Under the Rehabilitation Act of 1973, as Amended; Application Notices Establishing Closing Dates for Transmittal of Fiscal Year 1984 Applications

AGENCY: Department of Education.

ACTION: Application notices establishing closing dates for transmittal of Fiscal Year 1984 applications.

SUMMARY: The purpose of this application notice is to inform potential applicants of fiscal and programmatic information and closing dates for transmittal of applications for new projects under certain grant programs awarded by the Department of Education under Titles I and III of the Rehabilitation Act of 1973, as amended.

Organization of Notice

This notice covers certain discretionary grant programs administered by the Rehabilitation Services Administration within the Department of Education in which there is expected to be competition for new projects in Fiscal Year 1984.

This notice contains two parts. Part I includes, in chronological order, the list of all closing dates covered by this notice. Part II consists of the individual application announcements for each program. These announcements are in the same order as the closing dates listed in Part I.

Instructions for Transmittal of Applications

Applicants should note specifically the following instructions for the transmittal of applications:

Transmittal of Applications: Applications for all projects must be mailed or hand delivered on or before the closing date given in the individual program announcements included in this document.

Applications Delivered by Mail: Applications for new projects must be addressed to the Department of Education, Application Control Center, Attention: (Appropriate CFDA No.), 400 Maryland Avenue, SW., Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other evidence of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

Applicants are encouraged to use registered or at least first class mail.

Each late applicant for a new award will be notifed that its application will not be considered.

Applications Delivered by Hand: Hand-delivered applications must be taken to the U.S. Department of Education, Application Control Center, Room 5673, Regional Office Building #3, 7th and D Streets, SW., Washington, D.C.

The Application Control Center will accept hand-delivered applications between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays and Federal hoildays. Hand-delivered applications will not be accepted after 4:30 p.m. on the closing date.

Intergovernmental Review

On June 24, 1983, the Secretary published in the Federal Register final regulations (34 CFR Part 79, published at 48 FR 29158 *et seq.*) implementing Executive Order 12372 entitled "Intergovernmental Review of Federal Programs." The regulations took effect September 30, 1983.

These programs are subject to the requirements of the Executive Order and the requlations in 34 CFR Part 79. The objective of Executive Order 12372 is to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

The Executive Order—

- Allows States, after consultation with local officials, to establish their own process for review and comment on proposed Federal financial asistance,
- Increases Federal responsiveness to State and l;ocal officials by requiring Federal agencies to accommodate State and local views or explain why those views will not be accommodated, and
- Revokes OMB Circular A-95.

Transactions with nongovernmental entities, including State postsecondary educational institutions and federally recognized Indian tribal governments, are not covered by Executive Order 12373. Also excluded from coverage are research, development, or demonstration projects that do not have a unique geographic focus and are not directly relevant to the governmental responsibilities of a State or local government within that geographic area.

The following is the current list of States that have established a process, designated a single point of contact, and have selected these programs for review.

State		
Arizona	Massachusetts	South Carolina
Arkansas	Michigan	South Dakota
California	Mississippi	Tennessee
Colorado	Missouri	Texas
Connecticut	Montana	Utah
Delaware	Nebraska	Vermont
District of Columbia	Nevada	Virginia
Florida	New Hampshire	Washington
Hawaii	New Jersey	West Virginia
Illinois	New Mexico	Wisconsin
Indiana	New York	Wyoming
Kansas	North Carolina	Northern Mariana Islands
Kentucky	Ohio	Virgin Islands
Louisiana	Oklahoma	
Maine	Oregon	
Maryland	Pennsylvania	
	Rhode Island	

Immediately upon receipt of this notice, applicants that are governmental entities, including local educational agencies, must contact the appropriate State single point of contact to find out about, and to comply with, the State's process under the Executive Order. Applicants proposing to perform activities in more than one State should contact, immediately upon receipt of this notice, the single point of contact for each State and follow the procedures established in the States under the Executive Order. A list containing the single point of contact for each State is included in the application package for these programs.

In States not listed above, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State process recommendation and other comments submitted by a State single point of contact and any comments from State, areawide, regional, and local entities must be mailed or hand delivered by May 23, 1984 for the Client Assistance Projects (84.128F) and Handicapped Migratory Agricultural and Seasonal Farmworker Vocational Rehabilitation Service Projects (84.128G), to the following address:

The Secretary, U.S. Department of Education, Room 4181, (Appropriate CFDA No. 84.128F or 84.128G), 400 Maryland Avenue, SW., Washington, D.C. 20202. Telephone Number (202) 245-8862. (Proof of mailing will be determined on the same basis as applications).

PLEASE NOTE THAT THE ABOVE ADDRESS IS NOT THE SAME ADDRESS AS THE ONE TO WHICH THE APPLICANT SUBMITS ITS COMPLETED APPLICATION. *DO NOT*

SEND APPLICATIONS TO THE ABOVE ADDRESS.

Part I—List of Program Application Announcements Published in This Notice

CFDA No.	Program	Closing date
84.128F	Client Assistance Projects	Mar. 23, 1984.
84.128G	Handicapped Migratory Agricultural and Seasonal Farmworker Vocational Rehabilitation Service Projects.	Mar. 23, 1984.

Part II—Application Announcements for Each Program

84.128F—Client Assistance Projects—New Projects

Closing date: March 23, 1984.

Authority for this program is contained in Section 112 of the Rehabilitation Act of 1973, as amended. (29 U.S.C. 732).

Awards are made under this program to State vocational rehabilitation agencies.

The purpose of this program is to provide counselors to inform and advise all clients and client applicants in a project area of all available benefits and their rights to seeking these benefits under the Rehabilitation Act of 1973, as amended.

Available funds: The total amount of funds awarded under this grant program for Fiscal Year 1983 was $1,734,000. The total amount of funds available for Client Assistance Projects in Fiscal Year 1984 is $3,500,000. An estimated 58 new projects will be awarded with the average grant totalling approximately $60,000. These estimates do not bind the Department of Education to a specific number of grants or to the amount of any grant unless that amount is otherwise specified by statute or regulations.

It is expected that new projects funded under this program in Fiscal Year 1984 will be limited to one year of support.

Application forms: Application forms and program information packages are available and may be obtained by writing to the Office of Developmental Programs, Rehabilitation Services Administration, Office of Special Education and Rehabilitative Services, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. The program information is intended to aid applicants in applying for assistance under this competition. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirement beyond those specifically imposed under the statute and regulations governing the competitions.

The Secretary strongly urges that the narrative portion of the application not exceed 25 pages in length. The Secretary further urges that applicants not submit information that is not requested.

Applicable regulations: Regulations applicable to this program include the following:

(a) Regulations governing the Client Assistance Projects Program (34 CFR Parts 369 and 370); and

(b) Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77, 78, and 79.)

Further Information: Leslie B. Cole, Division of Special Projects, Office of Developmental Programs, Rehabilitation Services Administration, Office of Special Education and Rehabilitative Services, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3324, Mary E. Switzer Building, Washington, D.C. 20202. Telephone: (202) 245-0352.

84.128G—Handicapped Migratory Agricultural and Seasonal Farmworker Vocational Rehabilitation Service Projects

Closing date: February 15, 1984—New Projects.

Authority for this program is contained in Section 312 of the Rehabilitation Act of 1973, as amended. (29 U.S.C.777b).

Awards are made under this program to State vocational rehabilitation agencies or local agencies administering a vocational rehabilitation program under written agreements with State agencies.

The purpose of this program is to support projects for providing vocational rehabilitation services to handicapped migratory agricultural workers or handicapped seasonal farmworkers.

Available funds: The total amount of funds awarded under this program for Fiscal Year 1983 was $951,000. The total amount of funds available for Handicapped Migratory Agricultural and Seasonal Farmworkers Vocational Rehabilitation Service Projects in Fiscal Year 1984 is $950,000. An estimated 9 new projects will be awarded with the average grant totalling $105,000. An estimated 9 new projects will be awarded with the average grant totalling $105,000. These estimates do not bind the Department of Education to a specific number of grants or to the amount of any grant unless that amount is otherwise specified by statute or regulations.

Subject to the conditions set forth in EDGAR regarding continuation of multi-year projects, it is expected that new projects funded under this program in Fiscal Year 1984 will receive continuation support for up to two additional budget periods.

Application forms: Application forms and program information packages are available and may be obtained by writing to the Office of Developmental Programs, Rehabilitation Services Administration, Office of Special Education and Rehabilitation Services, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. The program information is intended to aid applicants in applying for assistance under this competition. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirement beyond those specifically imposed under the statute and regulations governing the competition.

The Secretary strongly urges that the narrative portion of the application not exceed 25 pages in length. The Secretary further urges that applicants not submit information that is not requested.

Applicable regulations: The following regulations are applicable to this program:

(a) Regulations governing Handicapped Migratory Agricultural and Seasonal Farmworker Vocational Rehabilitation Service Projects (34 CFR Parts 369 and 375); and

(b) Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77, 78, and 79).

Further information: Frank S. Caracciolo, Division of Special Projects, Rehabilitation Services Administration, Office of Special Education and Rehabilitative Services, U.S. Department of Education, Room 3327, Mary E.

Switzer Building, 400 Maryland Avenue, SW., Washington, D.C. 20202. Telephone: (202) 245-0389.

Dated: January 24, 1984.

Madeleine Will,

Assistant Secretary of Special Education and Rehabilitative Services.

[FR Doc. 84-2454 Filed 1-27-84; 8:45 am]

BILLING CODE 4000-01-M

National Advisory Council on Women's Educational Programs; Meeting

AGENCY: Department of Education.

ACTION: Amendment of Notice.

SUMMARY: This notice sets forth the schedule and proposed agenda of a meeting of the National Advisory Council on Women's Educational Programs and its Executive, Civil Rights, Federal Policies, Practices and Programs, and Women's Educational Equity Act Committees. This notice also describes the function of the Council. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is to notify the general public of their opportunity to attend and that a portion of the meeting will be closed.

DATE: February 14, 1984, 7:30 p.m. until business is completed. February 15, 1984, 9:00 a.m. to 12:15 p.m. and 1:45 p.m. to 5:00 p.m.

February 16, 1984, 9:00 a.m. until business is completed (approximately 11:30 a.m.).

ADDRESS: The meetings will be at the Hotel Washington, Pennsylvania Avenue at 15th Street, NW. (See details below for exact location and times of meetings.)

FOR FURTHER INFORMATION CONTACT: Sharon Petersen, Special Assistant to the Executive Director, National Advisory Council on Women's Educational Programs, 425 13th, NW., Suite 416, Washington, D.C. 20004, (202) 376-1038.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Women's Educational Programs is established pursuant to Pub. L. 95-561. The Council is mandated to (a) advise the Secretary on matters relating to equal education opportunities for women and policy matters relating to the administration of the Women's Educational Equity Act of 1978; (b) make recommendations to the Secretary with respect to the allocation of any funds pursuant to the Act, including criteria developed to insure an appropriate geographical distribution of approved programs and projects throughout the Nation; (c) recommend criteria for the establishment of program priorities; (d) make such reports as the Council determines appropriate to the President and Congress on the activities of the Council; and (e) disseminate information concerning the activities of the Council.

The Executive Committee will meet February 14, 1984 from 7:30 p.m. to 8:30 p.m. Agenda will include discussion of the Annual Report and WEEA Evaluation, proposed forums and policy and procedure amendments. The Executive Committee meeting will be closed at 8:30 p.m. and continue until business is completed. The Executive Committee will be completing a review of staff performance. The review and subsequent discussion will include information that relates solely to the internal personnel rules and practices of the agency and will disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy. Such matters are protected by exemptions (2) and (6) of Section 552b(c) of Title 5 U.S.C.

The Civil Rights, Women's Educational Equity Act, and Federal Policies, Practices and Programs Committee will meet February 15, 1984, from 9:00 a.m. to 10:45 a.m.

The meeting of the National Advisory Council on Women's Educational Programs will take place February 15, 1984, from 11:00 a.m. to 12:15 p.m. and from 1:45 p.m. to 5:00 p.m. and February 16, 1984, from 9:00 a.m. to 11:00 a.m. The meeting will be closed to the public for staff performance reports from 11:00 a.m. and continuing until business is completed. The agenda will include committee reports, proposed forums, and the Annual Report and WEEA Evaluation.

A portion of the meeting will be open to the public. Records will be kept of the proceedings and will be available for public inspection at the office of the National Advisory Council on Women's Educational Programs. A summary of the activities of the closed sessions and related matters which would be informative to the public consistent with the policy of Section 552b(c) of Title 5 U.S.C. will be available to the public within 14 days of the meeting at the Council's office, 425 13th Street, NW., Suite 416, Washington, D.C. 20004.

Signed at Washington, D.C., on January 25, 1984.

Rosemary Thomson,

Executive Director.

[FR Doc. 84-2513 Filed 1-27-84; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

Solicitation for a Cooperative Agreement Award; Financing Energy Conservation in Municipal and Non-Profit Institutional Buildings Site Demonstrations Program

AGENCY: Office of Conservation and Renewable Energy, Department of Energy.

ACTION: Notice of Solicitation for a Cooperative Agreement Award.

SUMMARY: DOE announces that pursuant to the DOE Financial Assistance Rules, 10 CFR 600.7(b), it is restricting eligibility for the award of a cooperative agreement to organize and manage four site demonstrations to show the feasibility of using a variety of comprehensive energy service agreements to finance, install, and maintain energy conservation measures in municipal and non-profit institutional buildings.

FOR FURTHER INFORMATION CONTACT: Frank M. Stewart, CE-26, U.S. Department of Energy, Division of Institutional Conservation Programs, Washington, D.C. 20585.

Solicitation No.: DE-F601-84CE-65600.

Authority: Title III, Part II of the National Conservation Policy Act of 1978, Pub. L. 95-619; DOE Financial Assistance Rules, 10 CFR Part 600 and 600.7(b) (47 FR 44076, October 5, 1982).

Project Scope: This cooperative agreement will provide a representative demonstration of the feasibility of using comprehensive energy service agreements in public sector buildings by developing and overseeing four site demonstrations, and by disseminating the results of those demonstrations by means of reports and training sessions. Eligibility for award of this cooperative agreement is being limited to the Energy Task Force Management Corporation, Inc., because of its unique capability to enlist the participation of municipal and local governments in an energy management demonstration project. The terms of the cooperative agreement shall be from January 30, 1984 to April 15, 1986. The amount of DOE funds awarded shall be $193,000.

Issued in Washington, D.C., on January 17, 1984.

Pat Collins,

Acting Assistant Secretary, Conservation and Renewable Energy.

[FR Doc. 84-2435 Filed 1-27-84; 8:45 am]

BILLING CODE 6450-01-M

Energy Information Administration

Secondary and Tertiary Storage Task Group of the Coordinating Subcommittee of the National Petroleum Council's Committee on Petroleum Inventories and Storage Capacity; Meeting Change

This notice is to advise of the new time and location of the meeting of the Secondary and Tertiary Storage Task Group of the Coordinating Subcommittee of the National Petroleum Council's Committee on Petroleum Inventories and Storage Capacity (February 1–2, 1984) as published in the issue of January 19, 1984 (49 FR 2291).

The Secondary and Tertiary Storage Task Group will hold its meeting starting at 8:30 a.m., in the San Felipe—B Room of the Warwick Post Oak Hotel, 2001 Post Oak Boulevard, Houston, Texas.

Issued at Washington, D.C. on January 24, 1984.

J. Erich Evered,

Administrator, Energy Information Administration.

[FR Doc. 84–2434 Filed 1–25–84; 1:35 pm]

BILLING CODE 6450–01–M

[Proposed Form EIA–714A]

Annual Electric Power System Report

AGENCY: Energy Information Administration, Department of Energy.

ACTION: Request for comment on proposed Form EIA–714A, "Annual Electric Power System Report."

SUMMARY: The Energy Information Administration (EIA) and the Federal Energy Regulatory Commission (FERC) of the Department of Energy are proposing 3 forms to collect information that was previously collected on FPC Form 12, "Power System Statement," Form EIA–119M, "Monthly Report of Electric Energy, Capability, and Peak Load," and Form EIA–119A, "Annual Projection of System Changes." The replacement forms are Form EIA–714A, "Annual Electric Power System Report," Form EIA–714P, "Annual Electric Power Plant Report," and Form EIA–714S, "Annual Electric Utility Report." Form EIA–714A will be filed by all electric utilities that, based on the reporting period, generate all or part of system requirements, and own operable generating capacity greater than 25 megawatts, and whose net energy for system plus firm sales for resale are greater than 100,000 megawatthours.

This Federal Register notice pertains to the Form EIA–714A. Forms EIA–714P and EIA–714S are currently under development and are expected to be published in the Federal Register for comment in mid 1984.

The Form EIA–714P will collect static plant and equipment information from each utility that operates a power plant or plans to operate a power plant within 10 years of the filing date of the report.

The Form EIA–714S will collect electric utility generation and sales data.

DATES: Written comments must be received by EIA within 60 days of the publication of this notice.

ADDRESSES: Comments should be sent to Mr. Albert A. Breuel at the address listed below.

FOR FURTHER INFORMATION CONTACT: To obtain additional information or copies of the proposed Form EIA–714A, contact: Al Breuel, Office of Coal, Nuclear, Electric and Alternate Fuels, Energy Information Administration, Department of Energy, MS–2F021, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252–6541.

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Action
III. Request for Comments

I. Background

In order to fulfill its responsibilities under the Federal Energy Administration Act of 1974 (Pub. L. 93–275), and the Department of Energy Organization Act (Pub. L. 95–91), the Department of Energy (DOE) finds it necessary to continue the collection of data previously reported in portions of the FPC Form 12, "Power System Statement," Form EIA–119M, "Monthly Report of Electric Energy, Capability, and Peak Load," and Form EIA–119A, "Annual Projection of System Changes."

FERC requires the data under the provisions of the Federal Power Act (FPA) to implement its responsibilities under the Act. The Commission must consider whether certain proposed actions are in the public interest. These areas of concern include the following: hydropower licensing, interconnection and coordination of facilities, rates and charges, and wheeling. Prior to deciding whether a proposed action is in the public interest, the Commission must perform analyses of power system operations. Some examples of the uses of the data for these analyses are electric utility load simulation and modeling, determining levels and trends in small power production and cogeneration, and transmission line determinations associated with hydroelectric licensing functions.

EIA requires the data to provide the DOE and others with timely electric systems data that would facilitate electric power systems reliability and adequacy analyses, to prepare status reports on the electric utility industry, to monitor electric utility forecasts of loads and plans for system expansion, and to obtain a comprehensive picture of energy generation, transfers, and load distributions.

II. Current Action

The new Form EIA-714A, "Annual Electric Power System Report," is designed to collect information for use by the EIA, the FERC, and other interested parties on the status of electric utilities and their generation, transmission, and distribution of electric energy in the United States and its possessions. The form is comprised of the following nine schedules:

Schedule 1—Capability and Output of System Generating Plants
Schedule 2—Energy Transfers
Schedule 3—System Net Generation, Energy Transfers, and Peaks by Months
Schedule 4—System Hydroelectric Data
Schedule 5—System Load Data by Specified Week
Schedule 6—Summer and Winter Peak Load and Annual Energy Forecasts
Schedule 7—Distribution of System Load by Service Area
Schedule 8—High Voltage Line Data
Schedule 9—System Maps and Diagrams

III. Request for Comments

EIA invites the public to comment on the new form within 60 days of the publication of this notice. The following general guidelines are provided to assist in the preparation of responses:

(As a potential respondent)

A. Are the instructions and definitions clear and sufficient?

B. Can the data be submitted using the definitions included in the instructions?

C. Can the data be submitted within the response time specified in the instructions?

D. How many hours, including time for preparation and administrative review, will your utility require to complete and submit a form?

E. What is the estimated cost of completing this form, including the direct and indirect costs associated with the data collection? Direct costs should include all costs, such as administrative costs, directly attributable to providing this information.

F. How can the form be improved?

G. Do you know of other Federal, State, or local agencies that collect similar data? If you do, specify the agency and the means of collection.

H. Would your company collect and organize the data required in the proposed form if the form were not required?

(As a potential user)

A. Can you use data at the levels of detail indicated on the form?

B. For what purpose would you use these data? (Be specific.)

C. How could the form be improved to better meet your specific data needs?

D. Are there alternative sources of data and do you use them? What are their deficiencies?

EIA is also interested in receiving comments from other persons regarding their views on the need for the collection of this information.

Comments submitted in response to this notice will be included in the request for Office of Management and Budget approval of this data collection and will become a matter of public record.

Issued in Washington, D.C. January 24, 1984.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 84-2503 Filed 1-27-84; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. ER84-212-000]

Carolina Power & Light Co.; Filing

January 25, 1984.

The filing Company submits the following:

Take notice that on January 16, 1984, Carolina Power & Light Company (CP&L) tendered for filing changes outlined below in its agreement with Brunswick Electric Membership Corporation.

1. Brunswick EMC—The termination and cancellation of the Southport 23 KV Point of Delivery.

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, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rule of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before February 7, 1984. 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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-2473 Filed 1-27-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EC84-11-000]

Consumers Power Co.; Application

January 25, 1984.

Take notice that on January 16, 1984, Consumers Power Company (Applicant) filed an Application pursuant to Section 203 of the Federal Power Act seeking authority to sell a 64% undivided ownership interest to Wolverine Power Supply Cooperative, Inc. (Wolverine) in Applicant's 345 kv double circuit transmission line extending from its Tittabawassee Substation to its Kenowa-Thetford 345 kv Transmission Line.

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, N.E., Washington, D.C. 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 10, 1984. 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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-2474 Filed 1-27-84; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2413-006]

Georgia Power Co.; Application for Approval of Amended Exhibit S

January 25, 1984.

Take notice that the Georgia Power Company, the Licensee for the Lauren Shoals Project, FERC No. 2413, filed on August 22, 1983, an application for approval of an Amended Exhibit S in compliance with Article 53 of the project license. The project is located on the Oconee and Apalachee Rivers in Greene, Hancock, Morgan, Oglethorpe and Putman Counties, Georgia.

The Licensee proposes to designate three parcels of the land, totaling about 10,000 acres, for wildlife management. The parcels, which would be managed by the Georgia Department of Natural Resources, would be in exchange for 10,300 acres of land that are presently being managed for wildlife. The land proposed for wildlife management would include: (1) approximately 5,000 acres of land adjacent to the project in Greene and Hancock Counties (Oconee Wildlife Management Area); (2) approximately 200 acres in the Wallace Dam tailrace area in Putnam County (Oconee Waterfowl Management Area); and (3) approximately 5,000 acres of land in Harris County, Georgia adjacent to the Licensee's Bartletts Ferry Project, FERC No. 485 (Blanton Creek Wildlife Management Area).

Correspondence with the Licensee should be directed to: Mr. W. L. Westbrook, Senior Vice President, Georgia Power Company, P.O. Box 4545, Atlanta, Georgia.

Agency Comments—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Licensee). If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Motion to Intervene—Anyone may file comments, a protest, or a motion to intervene in accordance with the requirements of Rules 211 or 214, 18 CFR 385.211 or 385.214, 47 FR 19025-26 (1983). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be filed on or before March 12, 1984.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS, "PROTEST", or "MOTION To INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capital Street, N.E., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Deputy Director, Project Management Branch, Division of Hydropower Licensing, Federal Energy

Regulatory Commission, Room 208 RB at the above address.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-2475 Filed 1-27-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-55-001]

Montaup Electric Co.; Compliance Report

January 25, 1984.

Take notice that on January 6, 1984, Montaup Electric Company (Montaup) submitted for filing its Compliance Report pursuant to A Commission's Order issued on December 28, 1983.

Any person desiring to be heard or to protest said filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before February 10, 1984. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-2476 Filed 1-27-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-151-000]

Panhandle Eastern Pipe Line Co.; Application

January 25, 1984.

Take notice that on December 27, 1983, Panhandle Eastern Pipe Line Company (Applicant), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP84-151-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas on behalf of the Kansas Power and Light Company (Kansas Power and Light), all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Applicant requests certificate authorization to implement a certain transportation agreement between Applicant and Kansas Power and Light dated August 12, 1983. Pursuant to this agreement, Applicant proposes to transport on behalf of Kansas Power and Light a daily volume of natural gas not to exceed 25,000 Mcf on an interruptible basis from an existing point of receipt in Kingfisher County, Oklahoma to an existing interconnection of the facilities of Kansas Power and Light and Applicant in Reno County, Kansas. Applicant indicates that the gas to be transported is gas purchased by Kansas Power and Light from Phillips Petroleum Company pursuant to a gas purchase contract dated August 12, 1983.

Applicant states that no new facilities are required to implement the service. Applicant also indicates that the term of the transportation contract extends until December 31, 1984, and for successive terms of six months, unless cancelled by either party giving three months written notice to the other.

Applicant also indicates that Kansas Power and Light would pay a transportation charge of 8.02 cents per Mcf.

Any person desiring to be heard or to make protest with reference to said application should on or before February 13, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) 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 application 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 Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-2477 Filed 1-27-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-152-000]

Panhandle Eastern Pipe Line Co.; Application

January 25, 1984.

Take notice that on December 27, 1983, Panhandle Eastern Pipe Line Company (Applicant), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP84-152-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public covenience and necessity authorizing the transportation of natural gas on behalf of the Kansas Power and Light Company (Kansas Power and Light), all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Applicant requests authorization to implement a certain transportation agreement between Applicant and Kansas Power and Light, dated October 13, 1983. Pursuant to this agreement, Applicant proposes to transport on behalf of Kansas Power and Light a daily volume of natural gas not to exceed 1,000 Mcf on an interruptible basis from a proposed point of receipt in Kiowa County, Kansas to an existing interconnection of the facilities of Kansas Power and Light and Applicant in Reno County, Kansas. Applicant indicates that the gas to be transported is gas purchased be Kansas Power and Light from Rine Exploration Company pursuant to a gas purchase contract dated October 13, 1983.

Applicant indicates that the only new facilities required to implement the service are measurement facilities at the point of receipt and that those facilities would be constructed under Applicant's blanket authorization issued in Docket No. CP83-83-000.

Applicant states that the term of the transportation contract extends until October 13, 1985, and for successive terms of six months thereafter, unless cancelled by either party giving three months prior written notice to the other.

Applicant also indicates that Kansas Power and Light would pay a transportation charge of 4.01 cents per Mcf.

Any person desiring to be beard or to make any protest with reference to said application should on or before February 13, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) 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 application 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 Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-2478 Filed 1-27-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-153-000]

Panhandle Eastern Pipe Line Co.; Application

January 25, 1984.

Take notice that on December 27, 1983, Panhandle Eastern Pipe Line Company (Applicant), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP84-153-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas on behalf of the Kansas Power and Light Company (Kansas Power and Light), all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Applicant requests certificate authorization to implement a certain transportation agreement between Applicant and Kansas Power and Light dated August 23, 1983. Pursuant to this agreement, Applicant proposes to transport on behalf of Kansas Power and Light a daily volume of natural gas not to exceed 3,000 Mcf on an interruptible basis from existing points of receipt in Dewey County, Oklahoma to an existing interconnection of the facilities of Kansas Power and Light and Applicant in Reno County, Kansas.

Applicant indicates that the gas to be transported is gas purchased by Kansas Power and Light from Fitkin Oil Company (Fitkin) pursuant to a gas purchase agreement dated August 8, 1983. Applicant also indicates that Fitkin is a producer-supplier of Applicant's and has granted Applicant temporary relief from its take-or-pay obligations and has temporarily released this gas from prior commitment to Applicant.

Applicant states that no new facilities are required to implement the service and that the term of the transportation contract extends until December 31, 1984, and for successive terms of six months, unless cancelled by either party giving three months prior written notice to the other.

Applicant also indicates that Applicant would charge Kansas Power and Light a transportation charge of 40.37 cents per Mcf, including an 8.02-cent per Mcf transmission charge and a 32.35-cent per Mcf gathering charge.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 13, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) 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 application 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 Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-2479 Filed 1-27-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-211-000]

Southern California Edison Co.; Filing

January 25, 1984.

The filing Company submits the following:

Take notice that on January 18, 1984, Southern California Edison Company (Edison) tendered for filing an agreement entitled "Agreement For Interruptible Transmission of Non-Firm Energy Purchased by Vernon From the State of California Department of Water Resources", which has been executed by Edison and The City of Vernon, California (Vernon).

Edison states that under the terms and conditions of the Agreement, Edison is willing to provide to Vernon interruptible transmission service for delivery of Non-Firm Energy purchased by Vernon from the State of California Department of Water Resources (CDWR) over Edison's electrical transmission facilities from the Point of Attachment to the Point of Delivery.

Edison requests an effective date of January 3, 1984, and therefore requests waiver of the Commission's notice requirements.

Copies of this filing were served upon the Public Utilities Commission of the State of California and the City of Vernon, California.

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, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 384.211, 385.214). All such motions or protests should be filed on or before February 7, 1984. 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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-2429 Filed 1-27-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-210-000]

Southern Company Services, Inc.; Filing

January 25, 1984.

The filing Company submits the following:

Take notice that on January 12, 1984, Southern Company Services, Inc. (SCS) tendered for filing an Agreement among Arkansas Power & Light Company, Louisiana Power & Light Company, Mississippi Power & Light Company, New Orleans Public Service Inc. (hereinafter collectively referred to as Middle South Companies) and Middle South Services, Inc. (MSS); Gulf States Utilities Company (GSU); and Alabama Power Company, Georgia Power Company, Gulf Power Company and Mississippi Power Company (hereinafter collectively referred to as Southern Companies), and Southern Company Services, Inc. (SCS). The Agreement provides that GSU and Southern Companies will install one or more fixed tap phase shifters, with a minimum capacity of 1500 MVA, as an integral part of the proposed 500 KV interconnection between Southern Companies and GSU. The installation of such equipment is intended to reduce any adverse parallel power flows on the electric systems of Middle South Companies. The Agreement contains other reliability provisions unique to such interconnection and its effect upon the electric systems of Middle South Companies.

SCS states that it reserves the right to contest jurisdiction of this Commission over the terms of the Agreement.

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, D.C. 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 7, 1984. 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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-2431 Filed 1-27-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-213-000]

Tucson Electric Power Co.; Filing

January 25, 1984.

The filing Company submits the following:

Take notice that on January 10, 1984, Tucson Electric Power Company (Tucson) tendered for filing Amendment No. 3 to the Tucson-San Diego Ten Year Power Sale and Interconnection Agreement between Tucson and San Diego Gas & Electric Company (San Diego). Tucson states that the primary purpose of this Amendment is to provide the terms and conditions under which the parties will proceed through the remaining terms of the Tucson-San Diego Ten Year Power Sale and Interconnection Agreement dated November 29, 1978.

Tucson requests an effective date of January 6, 1984.

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, D.C. 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 7, 1984. Protests will be considered by the Commission in determining the appropriate action 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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-2432 Filed 1-27-84; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPPE-FRL 2512-3]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 3507(a)(2)(B) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.) requires the Agency to publish in the Federal Register a notice of proposed information collection requests that have been forwarded to the Office of Management and Budget (OBM) for review. The information collection requests listed are available to the public for review and comment.

FOR FURTHER INFORMATION CONTACT: David Bowers; Office of Standards and Regulations; Information Management Section (PM-223); U.S. Environmental Protection Agency; 401 M Street, S.W.; Washington, D.C. 20460, telephone (202) 382-2742 or FTS 382-2742.

SUPPLEMENTARY INFORMATION:

Air Programs

- Title: Lead Additive Reports for Refineries and Importers and for Manufacturing Facility or Site (EPA #0232).

Abstract: EPA uses the information in these reports to verify compliance of individual refineries, gasoline importers and lead additive manufacturers with the lead phasedown regulations.

Respondent: Petroleum product refiners and importers.

* * * * *

Agency PRA Clearance Requests Completed by OBM

Except as noted, the following requests were cleared on 5 January 1984:

EPA #0015, Application for Thermal Effluent Variance, (OMB #2000-0197)

EPA #0016, Application for Innovative Pollution Control Technology Variance (OMB #2000-0196)

EPA #0017, Application for Nonconventional Pollutant Waiver (OMB #2000-0195)

EPA #0021, Permittee Notice of Regulated Discharge Cessation (OMB #2000-0203)

EPA #0022, Wastewater Permittee Report on Inaccurate Previous Information (OMB #2000-0202)

EPA #0024, Facility and Permit Transfer Report (OMB #2000-0200)

EPA #0025, Permit Consolidation Request (OMB #2000-0182)

EPA #0029, Request for Modification, Revocation and Reissuance, or Termination of Permit (OMB #2000-0199)

EPA #0077, Request for Fundamentally Different Factors Variance (OMB #2000-0184)

EPA #0128, State Request for NPDES Program Revision (OMB #2000-0181)

EPA #0131, State Report of Wastewater Permits (OMB #2000-0179)

EPA #0132, State Recordkeeping for NPDES Compliance Evaluation Programs (OMB #2000-0180)
EPA #0136, Modification of Permit Application (OMB #2000-0499)
EPA #0137, State Certification of EPA-Issued Permits (OMB #2000-0185)
EPA #0168, State Report on NPDES Compliance Evaluation Program (OMB #2000-0239)
EPA #1047, National Inorganic/ Radionuclide Survey of Public Water Systems, was cleared January 11 (OMB #2040-0055)

* * * * *

Comments on all parts of this notice should be sent to:

David Bowers (PM-223), U.S. Environmental Protection Agency, Office of Standards and Regulations, 401 M Street, S.W., Washington, D.C. 20460; and

Wayne Leiss, Carlos Tellez or Rick Otis, Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building (Room 3228), 726 Jackson Place, N.W., Washington, D.C. 20503.

Dated: January 20, 1983.

Daniel J. Fiorino,

Acting Director, Regulation and Information Management Division.

[FR Doc. 84-2317 Filed 1-27-84; 8:45 am]
BILLING CODE 6560-50-M

[OW-FRL-2516-3]

Pretreatment Implementation Review Task Force (Proposed); Open Meeting

Pursuant to Pub. L. 92-463, notice is hereby given that a preliminary meeting of the (proposed) Pretreatment Implementation Review Task Force will be held on February 14 & 15, 1984. The meeting times on February 14 are from 10:30 a.m. to 5:00 p.m. and on February 15, from 9:00 a.m. to 4:30 p.m. in Room S353, Waterside Mall, 401 M Street, SW., Washington, D.C.

The principal agenda items will be to identify the implementation problems for the EPA Regions and States, municipalities, and individual publicly owned treatment works (POTWs) associated with the pretreatment regulations 1984 deadline. The agenda will also include briefings and discussions on other topics of interest to the Task Force. Any member of the public wishing to make comments is invited to submit them in writing to Mr. Richard Kinch no later than February 25, 1984. The meeting will be open to the public. Any member of the public wishing additional information should contact Mr. Richard Kinch or Mr. Jerry Parker (EN-336) U.S. EPA, 401 M Street, SW., Washington, D.C. 20460 ((202) 426-7035.).

Currently, this Committee and its functions are under review by the Office of Management and Budget (OMB). EPA is continuing to coordinate with OMB to assure the most expeditious review and concurrence on establishment of this committee.

Dated: January 26, 1984.

Jack E. Ravan,

Assistant Administrator, Office of Water.

[FR Doc. 84-2679 Filed 1-27-84; 9:44 am]
BILLING CODE 6560-50-M

FEDERAL RESERVE SYSTEM

First Security Corp., et al.; Engaging de Novo in Permissible Nonbanking Activities

The bank holding companies listed in this notice have filed a notice under § 225.23(a)(1) of the Board's Regulation Y (49 FR 794) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (49 FR 794) to commence or to engage *de novo,* either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated for that application. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. With respect to each notice, interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than February 23, 1984.

A. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *First Security Corporation,* Salt Lake City, Utah, to engage through its subsidiary, First Security Financial, Salt Lake City, Utah, in making consumer, business and mortgage loans; lease financing; and acting as agent of selling credit life and credit disability insurance related to extensions of credit, where the insuance is limited to assuring repayment of the outstanding balance due on a specific extension of credit in the event of death, disability or involuntary unemployment of the debtor.

2. *Olympic National Bancorp,* Los Angeles, California, to engage through its proposed subsidiary, O.N.B. Mortgage Company, Los Angeles, California, in the activities of making or acquiring for its own account and for the account of others loans and other extensions of credit and servicing loans and other extensions of credit by any person.

Board of Governors of the Federal Reserve System, January 24, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-2409 Filed 1-27-84; 8:45 am]
BILLING CODE 6210-01-M

Norwest Corp.; Correction

This notice corrects a previous Federal Register document (FR Doc. 84-1646), published at page 2528 of the issue for Friday, January 20, 1984. Norwest Corporation, Minneapolis, Minnesota has also applied for permission to relocate an existing office within Jacksonville, Florida.

Board of Governors of the Federal Reserve System, January 24, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-2407 Filed 1-27-84; 8:45 am]
BILLING CODE 6210-01-M

Upper Valley Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and section 225.14 of the Board's Regulation Y (49 FR 794) to become a bank holding

company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842[c]).

Each application is available for immediate inspection at the Federal Reserve Bank indicated for that application. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. With respect to each application, interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than February 23, 1984.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Upper Valley Bancorp, Inc.*, Olyphant, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of The National Bank of Olyphant, Olyphant, Pennsylvania.

B. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Rural Financial Services, Inc.*, Dousman, Wisconsin; to become a bank holding company by acquiring 86 percent or more of the voting shares of Dousman State Bank and Mansfield State Bank, Dousman, Wisconsin and Johnson Creek, Wisconsin. Comments on this application must be received not later than February 19, 1984.

C. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Citizens Dimension Bancorp, Inc.*, Muskogee, Oklahoma; to acquire 12.4 percent of the voting shares or assets of Charter Bancshares, Inc., Oklahoma City, Oklahoma and Charter National Bank, Oklahoma City, Oklahoma.

2. *First York Ban Corp.*, York, Nebraska; to acquire 100 percent of the voting shares or assets of the First National Bank of Bradshaw, Bradshaw, Nebraska; The Blue River Bank, McCool Junction, Nebraska; and Farmers & Traders Bank, Waco, Nebraska.

3. *High Country Investment Corporation*, Evergreen, Colorado; to acquire 93.5 percent of the voting shares or assets of Bank of Glendale, N.A., Denver, Colorado (a *de novo* bank).

4. *Waverly Bancshares, Inc.*, Waverly, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of Waverly Investment Company, Kansas City, Missouri, and thereby indirectly acquire The Bank of Waverly, Waverly, Missouri.

Board of Governors of the Federal Reserve System, January 24, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-2000 Filed 1-27-84; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 84N-0004]

Clinical Studies of Safety and Effectiveness of Orphan Products; Availability of Grants

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of funds for Fiscal Year 1984 for awarding grants to support clinical trials on safety and effectiveness of orphan products. FDA has funds to award approximately 10 to 20 grants ranging from $20,000 to $70,000. The agency will consider awarding grants greater than $70,000 if they extend over a 2- or 3-year period. In adition, FDA maintains a list of nongovernmental organizations interested in funding orphan products research. Applicants who do not receive awards under this announcement may wish to apply to those organizations.

DATE: Applications must be received by April 30, 1984. The earliest beginning date for awards is September 25, 1984.

ADDRESSES: Applications should be submitted to, and application kits are available from, Helen M. Crown, State Contracts and Assistance Agreements Branch (HFA-520), Food and Drug Administration, Rm. 12A-27, 5600 Fishers Lane, Rockville, MD 20857; 301-443-6170. The list of nongovernmental organizations is available from the Office of Orphan Products Development (HF-35), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Benjamin P. Lewis, Office of Orphan Products Development (HF-35), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857; 301-443-4903.

SUPPLEMENTARY INFORMATION: FDA will support the clinical studies covered by this notice under section 301 of the Public Health Service Act (42 U.S.C. 241). FDA's research program is described in the Catalog of Federal Domestic Assistance, No. 13.103.

I. Background

FDA has established an Office of Orphan Products Development to identify and facilitate the availability of orphan products. Orphan products are drugs, biologics, medical devices (including in vitro diagnostics), foods for medical purposes, and veterinary products that may be useful in an uncommon or common disease but lack committed commercial sponsorship because they are not considered commercially attractive for marketing. A subcategory of orhan products consists of those marketed products for which there is evidence suggesting usefulness in an uncommon, serious disease but which are not labeled for that disease because substantial evidence is lacking.

One way to make orphan products more easily available is to support research to determine whether the porducts are safe and effective. FDA has allocated funds to support such research.

II. Research Goals and Objectives

A. Clinical Studies

FDA will consider only clinical studies for determining whether the products are safe and effective for premarket approval under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), including the addition of new uses for marketed drugs. Ordinarily, there should already be available at least some preliminary clinical research suggesting effectiveness and relative safety. FDA will also consider applications where persuasive pharmacologic evidence is available that a product has a reasonable possibility of being effective even though no clinical trials have yet been performed. All studies subject to requirements for clinical investigations under the Federal Food, Drug, and Cosmetic Act are to be conducted in accordance with those requirements in addition to the requirements of the request for application (RFA).

Because funds are relatively limited, FDA cannot consider large research projects involving many subjects (human, or animal in the case of a veterinary drug) and long-term followup.

The typical study considered for support may involve up to several dozen subjects, will be well-controlled, and directed to providing substantial evidence of the product's safety and effectiveness. Pharmacokinetic studies will also be considered if they are necessary to determine safe and effective doses in subjects with serious organ disease that might affect drug disposition. But pharmacokinetic studies will be considered only if they are part of studies for determining effectiveness of a drug or are proposed as desirable information to obtain for drugs that are already shown to be effective. In designing a well-controlled study, the investigator should keep in mind that historical controls or use of the subject as his or her own control are generally less desirable and reliable than active control or, when ethical, placebo controls.

B. Statistical Support

Statistical expertise is helpful in the planning, design, execution, and analysis of clinical investigations and clinical pharmacology to ensure the validity of estimates of safety and efficacy obtained from human studies. Applicants will be expected to provide a statistical basis for the number of patients chosen for the trial based upon the proposed outcome measures. Applicants should also document the appropriateness of the statistical procedures to be used in analysis of the results.

C. Informed Consent of Human Subjects

Consent and/or assent forms and any additional information that might be given to a subject must accompany the grant submission (Form PHS 398). Information that is given to the subject or the representative shall be in language understandable to the subject or the representative. No informed consent, whether oral or written, may include any exculpatory language through which the subject or the representative is made to waive any of the subject's legal rights, or releases or appears to release the investigator, the sponsor, the institution, or its agents from liability for negligence.

If a study involves both adults and children, separate consent forms should be provided for the adults and the parents or guardians of the children.

1. *Elements of informed consent (21 CFR 50.25)*—(a) *Basic elements of informed consent.* In seeking informed consent, the following information shall be provided to each subject:

(1) A statement that the study involves research, an explanation of the purposes of the research and the expected duration of the subject's participation, a description of the procedures to be followed, and identification of any procedures which are experimental.

(2) A description of any reasonably foreseeable risks or discomforts to the subject.

(3) A description of any benefits to the subject or to others which may reasonably be expected from the research.

(4) A disclosure of appropriate alternative procedures or courses of treatment, if any, that might be advantageous to the subject.

(5) A statement that describes the extent, if any, to which confidentiality of records identifying the subject will be maintained and that notes the possibility that the Food and Drug Administration may inspect the records.

(6) For research involving more than minimal risk, an explanation as to whether any compensation and any medical treatments are available if injury occurs and, if so, what they consist of, or where further information may be obtained.

(7) An explanation of whom to contact for answers to pertinent questions about the research and research subjects' rights, and whom to contact in the event of a research-related injury to the subject.

(8) A statement that participation is voluntary, that refusal to participate will involve no penalty or loss of benefits to which the subject is otherwise entitled, and that the subject may discontinue participation at any time without penalty or loss of benefits to which the subject is otherwise entitled.

(b) *Additional elements of informed consent.* When appropriate, one or more of the following elements of information shall also be provided to each subject:

(1) A statement that the particular treatment or procedure may involve risks to the subject (or to the embryo or fetus, if the subject is or may become pregnant) which are currently unforeseeable.

(2) Anticipated circumstances under which the subjects's participation may be terminated by the investigator without regard to the subject's consent.

(3) Any additional costs to the subject that may result from participation in the research.

(4) The consequences of a subject's decision to withdraw from the research and procedures for orderly termination of participation by the subject.

(5) A statement that significant new findings developed during the course of the research which may relate to the subject's willingness to continue participation will be provided to the subject.

(6) The approximate number of subjects involved in the study.

(c) The informed consent requirements are not intended to preempt any applicable Federal, State, or local laws which require additional information to be disclosed for informed consent to be legally effective.

(d) Nothing here is intended to limit the authority of a physician to provide emergency medical care to the extent the physician is permitted to do so under applicable Federal, State, or local law.

III. Reporting Requirements

Financial status reports will be required at the end of each budget period. The progress reports required under a grant award (45 CFR Part 74) should be submitted by the principal investigator or project manager.

IV. Mechanism of Support

A. *Award instrument.* Support will be in the form of grant awards. These awards will be subject to all policies and requirements that govern the research grant programs of the Public Health Service including the provisions of 42 CFR Part 52, 45 CFR Part 74, and requirements for cost sharing.

B. *Eligibility.* These grants are available to any public or private nonprofit entity (including State and local units of government) and any for-profit entity.

C. *Length of support.* The length of support will depend upon the nature of the study and may extend beyond 1 year. For studies where the expected date of completion is more than 1 year, however, continuation of support beyond the first year will be based upon review of performance during the preceding year and availability of funds.

D. *Funding plan.* The number of studies funded will depend on the quality of the applications received and the availability of funds.

V. Review Procedure and Criteria

A. *Review methods.* Applications will undergo initial review by experts in the field relative to the specific application. The experts will review and evaluate each application based on its scientific merit. The applications will be subject to a second-level review to evaluate them based on their relevance to the aims of the Orphan Products Development Program. Applications will also be reviewed before issuance of an FDA grant award to ensure to the extent practicable that proposed studies are consistent with requirements for

approval under the Federal Food, Drug, and Cosmetic Act.

B. *Review criteria.* Applications must be responsive to this request for applications. Those judged not to be responsive will be forwarded to the Division of Research Grants, National Institutes of Health, for review and consideration as unsolicited applications. Applications that are judged to be unresponsive will not be considered for funding under this RFA. Applications will be reviewed according to the following criteria.

1. Responsiveness of the RFA.
2. The soundness of the rationale for the study.
3. The appropriateness of the study design to answer the question posed.
4. The evidence presented by the applicant that it will be able to recruit the proposed number of subjects and complete the study during the allotted period.
5. The plans for complying with regulations for protection of human and animal subjects as applicable to the proposed study.
6. The research experience, training, and competence of the principal investigator and the support staff.

VI. Format for Application

Applications must be submitted on Form PHS 398, Application for Public Health Service Grant. The face page of the application must reflect the RFA Number RFA–FDA–OP–84–1. To ensure confidentiality of individual salary information, applicants may choose to include that information on the original application only. In that case, all copies of the application should reflect only a total amount for salaries and fringe benefits. The application checklist should reflect whether this is a new application or a revision. No action will be taken by the funding agency to delete confidential information. Data included in the application, if restricted with the legend specified below, may be entitled to confidential treatment as trade secret or confidential commercial information within the meaning of the Freedom of Information Act (5 U.S.C. 552(b)(4)) and the rgulations of the Food and Drug Administration implementing that act (21 CFR 20.61).

The collection of information requested on Form PHS 398 and the instructions have been submitted by the Public Health Service to the Office of Management and Budget (OMB), and were approved and assigned OMB control number 0925–0001.

Legend

Unless disclosure is required by the Freedom of Information Act as amended (5 U.S.C. 552) as determined by the freedom of information officials of the Department of Health and Human Services, data contained in the portions of this application which have been specifically identified by page number, paragraph, etc., by the applicant as containing restricted information shall not be used or disclosed except for evaluation purposes.

The original and six copies of the completed application should be delivered to, and application kits are available from, Helen M. Crown (address above).

Label the outside of the mailing package and the top of the application face page "Response to RFA–FDA–OP–84–1."

Applications must be received by 4 p.m. on April 30, 1984. Applications received after that time will be considered only if they arrive in time to permit orderly processing. Applications received too late for orderly processing will be referred to the Division of Research Grants, National Institutes of Health, for review as unsolicited applications.

FDA's Office of Orphan Products Development maintains a list of nongovernmental organizations interested in funding orphan products research. Applicants may request this list from the Office of Orphan Products Development (HF–35), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Applicants who do not receive awards under this announcement may wish to apply to those organizations.

Dated: January 24, 1984.

Mark Novitch,

Acting Commissioner of Food and Drugs.

[FR Doc. 84-2318 Filed 1-25-84; 11:27 am]

BILLING CODE 4160-01-M

Public Health Service

Health Resources and Services Administration; Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HB (Health Resources and Services Administration), of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (47 FR 38409–24, August 31, 1982 as amended at 48 FR 6784, February 15, 1983) is amended to reflect a change in the title of the United Southeastern Tribal Program Office (USET), Indian Health Service (IHS).

Under section HB–10, Organization and Functions, the Indian Health Service (HBN), change the title of the United Southeastern Tribal Program Office (HBNFU) to read the Nashville Program Office (HBNFU).

Dated: January 20, 1984.

Edward N. Brandt,

Assistant Secretary for Health.

[FR Doc. 84-2423 Filed 1-27-84; 8:45 am]

BILLING CODE 4160-16-M

Alcohol, Drug Abuse, and Mental Health Administration

Advisory Committee Meeting; Correction

In FR Doc. 84–1833, beginning on page 2957 in the issue of Tuesday, January 24, 1984, make the following correction:

On page 2958, third column, under Pharmacology Research Subcommittee of the Drug Abuse Biomedical Research Review Committee, the date now reading "February 21–13" should read "February 21–23."

Dated: January 24, 1984.

Sue Simons,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 84-2314 Filed 1-27-84; 8:45 am]

BILLING CODE 4160-20-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Incandescent Rocks Scenic Area of Critical Environmental Concern, Reno Planning Area; Designation of Public Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Designation of public lands within the Reno Planning Area as the Incandescent Rocks Scenic Area of Critical Environmental Concern (ACEC).

SUMMARY: Pursuant to the authorities in the Federal Land Policy and Management Act (FLPMA) of 1976 and the authorization from the Director, I have designated the following described public lands within the Reno Planning Area as an Area of Critical Environmental Concern:

Mt. Diablo Meridian, Nevada

T. 23 N., R. 20 E.,
Sec. 1, NE¼NE¼, S½NE¼, E½SW¼, SE¼.
T. 23 N., R. 21 E.,
Sec. 6, all.
T. 24 N., R. 21 E.,
Sec. 31, Lot 4, SE¼SW¼.

The area described totals about 1,072 acres of public land.

EFFECTIVE DATE: The Incandescent Rocks Scenic Area ACEC designation became effective on the same day the Reno Management Framework Plan was officially adopted—January 19, 1983. The designation was authorized by regulation (43 CFR Part 1600) effective September 6, 1979.

ADDRESSES: For further information about this designation, contact either of the following Bureau of Land Management officials:

Edward F. Spang, Nevada State Director, Bureau of Land Management, Nevada State Office, 300 Booth Street, P.O. Box 12000, Reno, Nevada 89520, (702) 784–5451.

Tom Owen, District Manager, Carson City District, Bureau of Land Management, 1050 E. William, Suite 335, Carson City, Nevada 89701, (702) 882–1631.

SUPPLEMENTARY INFORMATION: An ACEC as defined by FLPMA is an area "within the public lands where special management attention is needed (when such areas are developed or where no development is required) to protect and prevent irreparable damage to important historical, cultural, or scenic values, fish and wildlife resources, or other natural systems or processes, or to protect life and safety from natural hazards."

The Incandescent Rocks area contains outstanding scenic geologic features that are currently under threat from mining exploration and off-road vehicle activities. Protection measures will include limiting the area to off-road vehicles, and requiring mining plans of operations for all surface disturbing activities.

Opportunity for public comment on this ACEC designation occurred during the period between March 1981 and January 1983, when comments were requested on the Reno Management Framework Plan and the accompanying Reno Environmental Impact Statement. A series of open houses and public meetings were conducted for the purpose of receiving public comments.

Dated: January 19, 1984.

Edward F. Spang,

State Director, Nevada.

[FR Doc. 84-2439 Filed 1-27-84; 8:45 am]

BILLING CODE 4310-HC-M

Steamboat Hot Springs Geyser Basin Area of Critical Environmental Concern, Reno Planning Area; Designation of Planning Area

AGENCY: Bureau of Land Management, Interior.

ACTION: Designation of public lands within the Reno Planning Area as the Steamboat Hot Springs Geyser Basin Area of Critical Environmental Concern (ACEC).

SUMMARY: Pursuant to the authorities in the Federal Land Policy and Management Act (FLPMA) of 1976 and the authorization from the Director, I have designated the following described public lands within the Reno Planning Area as an Area of Critical Environmental Concern:

Mt. Diablo Meridian, Nevada

T. 18 N., R. 20 E.,
Sec. 33, NE¼NW¼.

The area described totals about 40 acres of public land.

EFFECTIVE DATE: The Steamboat Hot Springs Geyser Basin ACEC designation became effective on the same day the Reno Management Framework Plan was officially adopted—January 19, 1983. The designation was authorized by regulation (43 CFR Part 1600) effective September 6, 1979.

ADDRESSES: For further information about this designation, contact either of the following Bureau of Land Management officials:

Edward F. Spang, Nevada State Director, Bureau of Land Management, Nevada State Office 300 Booth Street, P.O. Box 12000, Reno, Nevada 89520, (702) 784–5451.

Tom Owen, District Manager, Carson City District, Bureau of Land Management, 1050 E. William, Suite 335, Carson City, Nevada 89701, (702) 882–1631.

SUPPLEMENTARY INFORMATION: An ACEC as defined by FLPMA is an area "within the public lands where special management attention is needed (when such areas are developed or where no development is required) to protect and prevent irreparable damage to important historical, cultural, or scenic values, fish and wildlife resources, or other natural systems or processes, or to protect life and safety from natural hazards. ".

The Steamboat Hot Springs Geyser Basin is one of the few remaining active geyser areas in the United States and the oldest known location of continuous hot springs deposition in the world. Unique geologic and botanical features have been threatened by vehicle use, vandalism and unauthorized surface occupancy. Protection measures will include curtailing off-road vehicle and unauthorized surface occupancy activities, and development of interpretive/recreation facilities.

Opportunity for public comment on this ACEC designation occurred during the period between March 1981 and January 1983, when comments were requested on the Reno Management Framework Plan and the accompanying Reno Environmental Impact Statement. A series of open houses and public meetings were conducted for the purpose of receiving public comments.

Dated: January 19, 1984.

Edward F. Spang,

State Director, Nevada.

[FR Doc. 84-2440 Filed 1-27-84; 8:45 am]

BILLING CODE 4310-HC-M

National Park Service

Availability Draft Land Protection Plan; Big Thicket National Preserve, Texas

Pursuant to the National Environmental Policy Act of 1969, Title 40 of the Code of Federal Regulations, Part 516 of the Departmental Manual, Charpter 1 of Title 36 of the Code of Federal Regulations, and the policy statement for Preparation of Land Protection Plans printed in the Federal Register on May 11, 1983 (48 FR 21121), the National Park Service has prepared a Draft Land Protection Plan for Big Thicket National Preserve, Polk, Hardin, Liberty, Jasper, Tyler, Orange and Jefferson Counties, Texas.

The Draft Land Protection Plan addresses the protection of 6,479 acres within the established boundaries that have not been acquired. It considers alternate means of protection, establishes priorities, provides for public use and safety and identifies what land or interest in land needs to be in Federal ownership in order to achieve management purposes consistent with the intent of Congress in authorizing the preserve. Any request for or expenditure of acquisition funds and subsequent activities will be based on the approved plan.

Copies of the Draft Land Protection Plan are available from Big Thicket National Preserve, Post Office Box 7408, Beaumont, Texas 77706; and the Southwest Regional Office, National Park Service, Post Office Box 728, Santa Fe, New Mexico 87501, and will be sent upon request.

Anyone wishing to comment on the Draft Land Protection Plan should provide them to the Superintendent, Big Thicket National Preserve, at the address provided above, within 30 days from the publication date of this notice.

Dated: January 17, 1984.

Robert I. Kerr,

Regional Director, Southwest Region.

[FR Doc. 84-24563 Filed 1-27-84; 8:45 am]

BILLING CODE 4310-70-M

Chesapeake and Ohio Canal National Historical Park Commission; Meeting

Notice is hereby given in accordance with Federal Advisory Committee Act that a meeting of the Chesapeake and Ohio Canal National Historical Park Commission will be held Saturday, March 3, 1984, at 1:00 p.m. at the Brookmont Baptist Church, Brookmont, Maryland.

The Commission was established by Pub. L. 91-664 to meet and consult with the Secretary of the Interior on general policies and specific matters related to the administration and development of the Chesapeake and Ohio Canal National Historical Park.

The members of the Commission are as follows:

Miss Carrie Johnson, Chairman, Arlington, Virginia
Mr. Carl L. Shipley, Washington, D.C.
Ms. Polly Bloedorn, Bethesda, Maryland
Mr. James B. Coulter, Annapolis, Maryland
Mrs. Constance Lieder, Baltimore, Maryland
Mr. William H. Ansel, Jr., Romney, West Virginia
Mr. Silas Starry, Shepherdstown, West Virginia
Ms. Bonnie Troxell, Cumberland, Maryland
Mr. John D. Millar, Cumberland, Maryland
Mr. Rockwood H. Foster, Washington, D.C.
Mr. Barry Passett, Washington, D.C.
Ms. Barbara Yeaman, Brookmont, Maryland
Ms. Joan LaRock, Lovettsville, Virginia
Ms. Elise Heinz, Arlington, Virginia
Ms. Marjorie Stanley, Silver Spring, Maryland
Mrs. Minny Pohlmann, Dickerson, Maryland
Dr. James H. Gilford, Frederick, Maryland
Mr. R. Lee Downey, Williamsport, Maryland
Mr. Edward K. Miller, Hagerstown, Maryland

Matters to be discussed at this meeting include:

Old and new business
Superintendent's report
Committee reports
  Plans and Projects Committee
  Recreation Policies and Issues Committee
  Resource Protection Committee
Public Comments

The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning the matters to be discussed.

Persons wishing further information concerning this meeting, or who wish to submit written statements, may contact Richard L. Stanton, Superintendent, C&O Canal National Historical Park, P.O. Box 4, Sharpsburg, Maryland 21782.

Minutes of the meeting will be available for public inspection six (6) weeks after the meeting at Park Headquarters, Sharpsburg, Maryland.

Dated: January 23, 1984.

Robert Stanton,

Acting Regional Director, National Capital Region.

[FR Doc. 84-2464 Filed 1-27-84, 8:45 am]

BILLING CODE 4310-70-M

Santa Monica National Recreation Area Advisory Commission; Meeting

Notice is hereby given that the Santa Monica Mountains National Recreation Area Advisory Commission will hold a public meeting on Wednesday, February 8, 1984 at 7:30 p.m. in the hall of St. Columbus Episcopal Church, 1251 Las Posas Road, Camarillo, CA.

The topic for discussion will include:

Superintendent's Status Report of the Santa Monica Mountains National Recreation Area.
Election of the Vice Chairperson for 1984.
Recommendations on the Draft Land Protection Plan.
Recommendations on the Development Concept Plan for Rancho Sierra Vista.

Persons wishing to receive further information on this meeting or who wish to submit written statements may contact the Superintendent, Santa Monica Mountains National Recreation Area, 22900 Ventura Boulevard, Suite 140, Woodland Hills, California 91364.

A summary of public comment will be available by April 10, 1984.

Dated: January 3, 1984.

William Webb,

Acting Superintendent.

[FR Doc. 84-2465 Filed 1-27-84, 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-43 (Sub-102)]

Illinois Central Gulf Railroad Company—Abandonment—In Tunica County, MS; Findings

The Commission has issued a certificate authorizing illinois Central Gulf Railroad Company to abandon 28.4 miles ot rail line between milepost 27.00 near Clack, MS (excluding Clack) and milepost 55.40 near Lula, MS (excluding Lula), in Tunica County, MS.

The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

James H. Bayne,

Acting Secretary.

[FR Doc. 84-2467 Filed 1-27-84, 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30394]

Missouri-Kansas-Texas Railroad Company-Operation—Tarrant and Dallas Counties, TX; Modified Rail Certificate

January 23, 1984.

On January 16, 1984, a notice was filed by the Missouri-Kansas-Texas Railroad Company (MKT) for a modified certificate of public convenience and necessity under 49 CFR Part 1150 Subpart C. The line to be operated is the former line of the Chicago, Rock Island and Pacific Railroad Company between milepost 611.9 and milepost 646.1 (essentially between Dallas and Ft. Worth), a distance of 34.2 miles in Tarrant and Dallas Counties, TX. The cities of Dallas and Fort Worth, TX, have acquired the line formerly abandoned in No. AB-46 (Sub-No. 22), *Chicago, Rock Island and Pacific Railroad Company, Debtor (William M. Gibbons, Trustee)—Abandonment—Entire System* (not printed), served May 27, 1980.

MKT will operate the line pursuant to a service agreement with Dallas and Fort Worth.

This notice shall be served upon the Association of American Railroads (Car Service Division) as agent of all railroads subscribing to the car-service and car-hire agreement, and upon the

American Short Line Railroad Association.

By the Commission, Richard Lewis, Acting Director, Office of Proceedings.

James H. Bayne,

Acting Secretary.

[FR Doc. 84-2483 Filed 1-27-84; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket Nos. 30348 and 30359]

Rail Carriers; Northern Missouri Railroad, Inc. and Colorado and Eastern Railroad Co.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemptions.

SUMMARY: The Commission exempts from the requirement of prior approval under: (1) 49 U.S.C. 10901, the lease and operation by Northern Missouri Railroad, Inc. (NM) of 156.15 miles of railroad between Kelly, MO and the Iowa/Missouri state line, and by Colorado and Eastern Railroad Company (C&E) of 65.15 miles of railroad between the Iowa/Missouri state line and Council Bluffs, Iowa; (2) 49 U.S.C. 11343, the exchange of overhead trackage rights between NM and C&E over the above-described lines, and the acquisition of trackage rights by NM over a segment of Norfolk and Western Railway Company between Kelly and Brunswick, MO, a distance of 2.86 miles, subject to conditions for the protection of employees described in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified by *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980); and (3) 49 U.S.C. 11301, the issuance by NM of 15,000 shares of $10 par value common stock and $99,000 in subordinated debentures.

DATES: This exemption is effective on January 27, 1984. Petitions to reopen must be filed by February 16, 1984.

ADDRESSES: Send pleadings referring to Finance Docket Nos. 30348 and 30359 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Northern Missouri Railroad, Inc., John D. Heffner, 1776 K Street, NW, Suite 700, Washington, DC 20006

(3) Colorado and Eastern Railroad Company, Thomas F. McFarland, Jr., 20 North Wacker Drive, Chicago, IL 60606

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Interstate Commerce Commission, Room 2227, Washington, DC 20423, or call toll free (800) 424-5403 or 289-4357 (DC Metropolitan area).

Decided: January 24, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett and Gradison.

James H. Bayne,

Acting Secretary.

[FR Doc. 84-2466 Filed 1-27-84; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30186]

Tongue River Railroad Company—Rail Construction and Operation—In Custer, Powder River, and Rosebud Counties, MT

AGENCY: Interstate Commerce Commission.

ACTION: Notice accepting construction and securities applications.

SUMMARY: The Tongue River Railroad Company (TRRC), a limited partnership consisting of Transportation Properties, D.S. Cartage Corporation, Otter Creek Transportation Company, and Tongue River Holdings, Inc., has filed an application under 49 U.S.C. 10901, as supplemented January 6, 1984, seeking authority to construct and to operate an 89-mile rail line between Miles City, MT, and two terminal points, one in Rosebud County, and one in Powder River County, MT. The proposed line would begin in Miles City and extend approximately 72.3 miles south to a point near Ashland, MT. There it would divide, with one branch proceeding 8.9 miles up the Tongue River Valley to the proposed Montco Mine, and the other branch extending 7.7 miles up the Otter Creek drainage.

The purpose of the rail line is to transport sub-bituminous coal from several proposed mine sites in Rosebud and Powder River Counties to the terminus in Miles City.

The proposed transaction will be financed by applicant's issuance of two series of notes: (a) Three series of short-term notes for the interim construction financing of the rail line and necessary working capital in the amount of $175 million (including interest during construction and all fees and expenses) and (b) a series of long-term notes for the same purpose and amounts as permanent replacement financing for the short-term notes. An application under 49 U.S.C. 11301 and 11302 has been filed.

The construction and securities applications are complete and have been accepted for consideration.

Copies of the applications are available for inspection at the Commission's Office of the Secretary.

DATES: (1) Comments (five copies) must be filed by February 10, 1984. (2) TRRC may file replies by February 15, 1984.

ADDRESSES: Send comments referring to Finance Docket No. 30186 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Applicant's representatives:

Thomas E. Ebzery, Village Center 1, 1500 Poly Drive, Billings, MT 59102

Robert L. Calhoun, 1025 Connecticut Avenue, N.W., Washington, DC 20036

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245

Decided: January 19, 1984.

By the Commission, Richard Lewis, Acting Director, Office of Proceedings.

James H. Bayne,

Acting Secretary.

[FR Doc. 84-2464 Filed 1-27-84; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on January 5, 1984 a proposed Consent Decree in *United States* v. *Kansas City Power & Light Company and Babcock & Wilcox Company,* Civil Action No. 84-2006 was lodged with the United States District Court for the District of Kansas. The proposed Consent Decree concerns control of asbestos emissions in connection with the renovation of equipment in a utility power generating plant near La Cygne, Kansas.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Kansas City Power & Light Company and Babcock & Wilcox Company,* D.J. Ref. No. 90-5-2-1-608.

The proposed Consent Decree may be examined at the office of the United States Attorney, District of Kansas, Federal Building, 812 North 7th Street, Kansas City, Kansas 66101, and at the Region VII Office of the Environmental Protection Agency, 324 East 11th Street, Kansas City, Missouri 64106. Copies of the Consent Decree may be examined at

the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, D.C. 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.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 84-2442 Filed 1-27-84; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

Manufacturer of Controlled Substances; Western Fher Laboratories, Inc.; Registration

By notice dated November 15, 1983, and published in the Federal Register on November 23, 1983, (48 FR 52988), Western Fher Laboratories, Inc., Carretera 132, KM 25.3, P.O. Box 7468, Ponce, Puerto Rico 00732, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of Phenmetrazine (1630), 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 24, 1984.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 84-2463 Filed 1-27-84; 8:45 am]

BILLING CODE 4410-09-M

Wyeth Laboratories, Inc.; Manufacturer of Controlled Substances; Registration

By Notice dated November 15, 1983, and published in the Federal Register on November 23, 1983 (48 FR 52988), Wyeth Laboratories, Inc., 611 East Nield Street, West Chester, Pennsylvania 19380, 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
Pethidine (Meperidine) (9230)	II
Pethidine-Intermediate-A (9232)	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 24, 1984.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 84-2440 Filed 1-27-84; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 83-5]

Anthony J. Crisanti, D.D.S.; Revocation of Registration

On January 5, 1983, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) directed an Order to Show Cause to Anthony J. Crisanti, D.D.S. (Respondent), 347 W. 24th Place, Chicago, Illinois 60616. The Order to Show Cause proposed to revoke DEA Certificate of Registration AC7813880 and deny an application for renewal executed by Respondent on August 4, 1982. Respondent, through counsel, requested a hearing on the issues raised by the Order to Show Cause. The hearing in this matter was held June 7, 1983, in Chicago, Illinois. Administrative Law Judge Francis L. Young presided. On October 5, 1983, Judge Young issued his opinion and recommended findings of fact, conclusions of law, ruling and decision. In compliance with 21 CFR 1316.65(b) as amended, copies of the Administrative Law Judge's opinion were served on the Respondent and on Government counsel. Respondent, through counsel, filed exceptions to the Administrative Law Judge's opinion and recommended decision. On November 1, 1983, the Administrative Law Judge transmitted the record of these proceedings, including Respondent's exceptions and a supplement to his opinion and recommended decision, to the Administrator. The Administrator has considered this 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.

Respondent pled guilty on April 1, 1982, in the Circuit Court of Cook County, Illinois, to three counts of delivery of controlled substance, a felony relating to controlled substances. This plea stemmed from an investigation of Respondent conducted by members of the DEA Chicago Task Force. DEA Special Agent Cesar Palma and Chicago Police Officer Herbert Milton testified at the hearing in Chicago. They learned from a cooperating individual that a dentist was selling "T's and Blues" on the street. "T's and Blues" are a combination of pentazocine (Talwin), a Schedule IV controlled substance and pyribenzamine. Judge Young found that these two substances were widely available and very popular on the street in Chicago at the time. They were used in combination by addicts primarily as a substitute for heroin, the supply of which had become restricted.

The cooperating individual (CI) arranged a meeting between Respondent and Officer Milton for the afternoon of March 4, 1981, so that Officer Milton, then operating undercover, could purchase a quantity of "T's and Blues" from Respondent. Officer Milton testified that he met Respondent in the parking lot of a fast food restaurant. The CI introduced Officer Milton to Respondent, who gave the CI a brown package which the CI in turn gave to Officer Milton. The officer opened the package and found a bottle of Talwin and a bottle of pyribenzamine. After opening the bottles, Officer Milton gave Respondent $1500 for the bottles and their contents. Officer Milton inquired of Dr. Crisanti how continuous his source of supply could be. Respondent replied that his supply was relatively unlimited but he preferred to sell in lots of 1200 since that is how the bottles were packaged by the pharmaceutical company.

On March 12, 1982, Officer Milton telephoned Respondent at his office and asked if he had T's and Blues available. Respondent stated that he did and they agreed on a price of $2500 for one thousand sets of Talwin and pyribenzamine. (One Talwin and one pyribenzamine tablet comprise a set.) Officer Milton proceeded to Respondent's office, where Respondent sold him 1,000 sets (2,000 pills) of "T's and Blues". Respondent told Officer Milton that he was distributing to the Disciples street gang in Chicago and he wanted to break away from them. When

Officer Milton told Respondent that he could purchase the quantity Respondent had been dealing to the street gang, Respondent was pleased.

On March 27, 1981, Officer Milton visited Respondent's office. Dr. Crisanti escorted him back to his private office where Dr. Crisanti placed a shoe box atop his desk and asked if Officer Milton wanted 1,000 or 2,000 sets. The officer asked for 2,000 sets. Respondent told Officer Milton he could supply him with unlimited quanitites of Talwin and pyribenzamine for the next nine months. Respondent was pleased to hear Officer Milton tell him that he could buy 5,000 sets for the remaining nine months. At this point DEA Special Agents appeared and arrested Respondent. Judge Young found that while Officer Milton was operating undercover he wore a ragged jacket and frayed blue jeans and gym shoes without laces and that Officer Milton had never been a dental patient of Dr. Crisanti. Judge Young also found that the arresting Agents adequately apprised Respondent of his rights against self-incrimination and that Respondent freely gave a statement in which he admitted the illegal distribution.

Respondent called Dr. Robert Damptz to testify. Dr. Damptz is a psychiatrist who has been treating Respondent since September, 1981. Dr. Damptz testified that when he began his treatment Respondent was suffering from methaqualone addiction. Dr. Damptz opined that the addiction to methaqualone effected Respondent's behavior and the illegal sales of Talwin were an outcome of that addiction. While Dr. Damptz testified that he found Respondent's mind to have cleared, he also testified that he made no physical examination or test of Respondent other than one surprise urinalysis approximately two weeks before the hearing in June, 1983. Further, while Dr. Damptz was of the opinion that there is but "slim" likelihood of Respondent again abusing a controlled substance, he did testify that relapse is always possible since methaqualone is a physically addicting substance similar to alcohol.

Respondent testified in his own behalf at the hearing. Judge Young found that Respondent began taking methaqualone shortly after setting up his dental practice upon graduation from dental school. Respondent testified that he could not sleep at night due to the sudden slowing of the pace of his life. Dr. Crisanti ordered the methaqualone from dental supply houses using the DEA official order form for Schedule II controlled substances. He testified that he had abused methaqualone for approximately four years, including five months while he was under the treatment of Dr. Damptz. Respondent also testified that during the period he was taking methaqualone he was making illegal bets with a bookmaker, wagering approximately $50 on sporting events sometimes as often as once a week. Judge Young recommended that Respondent's present registration be revoked and his pending application should be denied.

The Administrative Law Judge further recommended that a new application submitted by the Respondent be considered in a positive manner provided that the Respondent satisfy nine conditions. The conditions which Judge Young suggested are as follows:

a. Such application is received no sooner than two years after the effective date of the final order in this proceeding;

b. No new or additional unlawful conduct othe than that disclosed on the record in this proceeding becomes known to DEA;

c. Within three months of the effective date of the final order in this proceeding Respondent ceases to practice alone and resumes dental practice in association with at least one other licensed dentist registered by DEA;

d. Each and every prescription or dispensing or administering of a controlled substance for one of Respondent's patients is effected by a dentist with whom Respondent is practicing, as described in c., above, using his own judgment, after considering Respondent's recommendation in the case;

e. A dentist with whom Respondent is practicing as described in c., above, certifies in a writing accompanying the application that for at least twenty-one months immediately preceding the date of application Respondent has exercised a high degree of good professional judgment in recommending controlled substances for his patients and that Respondent has shown no indication of abuse or unlawful handling of controlled substances;

f. The certificate provided for e., above, includes a statement of the controlled substances Respondent needs to use in his dental practice, detailing the patient conditions actually encountered by Respondent which require those substances;

g. Respondent's court probation officer certifies in a writing accompanying the application that Respondent has successfully completed his court-ordered probation, complying with all of the terms and conditions thereof;

h. Dr. Damptz, or another qualified psychiatrist, certifies in a writing accompanying the application that Respondent continued in active psychotherapy at least until the end of his court-imposed probationary period, the writing to include a description of Respondent's mental condition as of the date of the application, said condition being such as to give reasonable assurance that there is no basis for anticipating controlled substance abuse by Respondent in the future; and

i. In all other respects, Respondent meets the requirements imposed by law for the DEA registration applied for.

Respondent, through counsel, filed exceptions to the opinion and recommended ruling in which he asked that the exceptions not be taken in opposition to the opinion and recommended ruling but rather as a petition for clarification of the opinion. The gist of Respondent's exceptions is that the recommended ruling did not expressly mention a choice in which Respondent either practices dentistry without prescribing or dispensing controlled substances or practices dentistry in association with another dentist who would be responsible for prescribing and dispensing these drugs. Judge Young responded to the exceptions by writing a supplement to his opinion in which he stated that the arrangement proposed in the recommended ruling would permit Respondent to make a record of demonstrated care and responsibility in the handling of controlled substances. The Administrative Law Judge correctly pointed out that Respondent always has the option of practicing without a DEA registration and without utilizing any controlled substances. Should Respondent not enter into an association with another dentist, then the Administrative Law Judge states that he would not be able to present a record of compliance with the recommendations if he applied for DEA registration in the future.

After examining the record in this case, the Administrator agrees with the Administrative Law Judge's recommendation that the Respondent's registration be revoked and his pending application denied. However, the Administrator is unwilling to adopt the Administrative Law Judge's recommendation that a future application filed by the Respondent be given positive consideration if the suggested conditions are met. While those conditions are well considered and while compliance with them will be indicative of the Respondent's good faith and the sincerity of his desire to

handle controlled substances responsibly in the future, the Administrator will not commit this agency to registering this individual again without a complete review of his intervening conduct. If it is necessary to issue another Order to Show Cause and to convene another hearing in order to properly evaluate the Respondent at that time, then such proceedings will be initiated. In all other respects the Administrator adopts the findings of fact and conclusions of law recommended by the Administrative Law Judge.

Having concluded that there is a lawful basis for the revocation of Respondent's registration and the denial of his application for renewal, and having further concluded that under the facts presented in this case, the registration should be revoked and the registration denied, the Administrator of the Drug Enforcement Administration, under the authority vested in him by 21 U.S.C. 823, 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration AG7813860 previously issued to Anthony J. Crisanti, D.D.S., be revoked and an application executed by Respondent on August 4, 1982, and any other pending applications for renewal be denied.

Dated: January 24, 1984.

Francis M. Mullen, Jr.,

Administrator.

[FR Doc. 84-2470 Filed 1-27-84; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 83-8]

Nam Jin Park, M.D.; Denial of Application

On February 22, 1983, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued to Nam Jin Park, M.D. (Respondent), 14 Barry Park Court, Searingtown, New York 11507, an Order to Show Cause proposing to deny the Respondent's pending application for DEA registration under 21 U.S.C. 823 (f) Respondent, through counsel, requested a hearing on the issues raised by the Order to Show Cause.

The hearing in this matter was held in Washington, D.C. on June 30, 1983. Administrative Law Judge Francis L. Young presided. On November 3, 1983, Judge Young issued his opinion and recommended findings of fact, conclusions of law, ruling and decision. On November 18, 1983, Government counsel filed exceptions to the recommended ruling of the Administrative Law Judge. Judge Young transmitted the record of these proceedings, including the Government's exceptions, to the Administrator on December 2, 1983. The Administrator has considered this 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 Administrator found that in early 1979 Respondent was employed as a psychiatrist at the Unity Health Center in the Bronx, New York and at the Creedmor Psychiatric Center, a facility operated by the State of New York. In early 1979, an informant told DEA Special Agent Richard Bell that the physicians at Unity Health Center were dispensing prescriptions for controlled substances with no physical examination. In February, March and April, 1979, five or six DEA Special Agents, working alone and undercover, went to the Unity Health Center on several occasions. On each occasion the Agent informed the receptionist that he had come for some pills or merely "the usual." After a short wait the Agent was directed to a small cubicle in which Respondent was waiting. The Agent told Respondent that he, the Agent, had come for some pills or "the usual." On each occasion Dr. Park gave the Agent prescriptions for Tuinal, Elavil and Valium or for two of the three. Dr. Park was represented to be a psychiatrist but there was no trace of psychotherapy or any other form of physician-patient relationship existing between Respondent and any of the Agents. None of them was given a medical examination. None of them displayed any symptoms of a physical or mental or emotional condition calling for substances for which Respondent gave them prescriptions. At no time did an Agent spend more than ten minutes with Respondent. The Agent told Respondent on two dates that he was giving some of his pills to a girl friend but Respondent gave the Agent the requested prescriptions anyway. Respondent did say once that the girl friend should cut down. Yet on another occasion Respondent gave the Agent a larger prescription than the Agent requested so that there would be a few extra pills for the girl friend. During the two years the Respondent was employed at the Unity Health Center he wrote 5,200 prescriptions for controlled substances. His employment there was only part-time working ten to twenty hours per week.

Respondent was convicted on May 13, 1980 in the United States District Court for the Southern District of New York of one count of conspiracy to dispense and distribute Schedule II and Schedule IV controlled substances in violation of 21 U.S.C. § 846, a felony conviction relating to controlled substances. Respondent was also convicted on May 13, 1980 of one count of tax evasion. Imposition of sentence on these two convictions was suspended and Respondent was placed on probation for two years. Therefore, there is a lawful basis for denial of Respondent's application for registration under 21 U.S.C. 824(a)(2). *Serling Drug Company*, Docket No. 74-12, 40 FR 11918 (1975); *Norman Bridge Drug Co., Inc.*, Docket No. 74-22, 41 FR 3103 (1976); *Raphael C. Cilento, M.D.*, Docket No. 79-2, 44 FR 30466 (1979); and *Aaron A. Moss, D.D.S.*, Docket No. 80-2, 45 FR 72850 (1980).

In a prior DEA administrative proceeding an Order to Show Cause was issued to Respondent in July 1980. In a final agency order dated November 4, 1980, then-Administrator Bensinger revoked Dr. Park's DEA registration but waived the applicability of 21 CFR 1301.76(a) so that Dr. Park might continue to be employed at the Creedmor Psychiatric Center. (21 CFR 1301.76(a) prohibits any DEA registered entity from employing a person with access to controlled substances whose own registration has been revoked.)

Creedmor discharged Respondent shortly after the 1980 DEA final order was entered. In 1981, Dr. Park resumed practice as a psychiatrist full-time in Brooklyn, New York. Dr. Park has been maintaining a private practice in an office there not utilizing any controlled substances in his practice. So far he has been able adequately to treat his patients, but he wishes to be able to obtain employment in a state or city hospital. To do this he desires to have a DEA registration.

The Administrative Law Judge does not believe that Respondent should be granted a DEA registration. However, Judge Young does recommend that the Administrator waive 21 CFR 1301.76(a) without one of the conditions imposed by Administrator Bensinger and recommended by Government counsel: that Dr. Park be permitted only to administer or order the administration, rather than the prescribing, of controlled substances. The Government also recommended that Dr. Park make complete disclosure of his past controlled substances related offenses to each registrant who employs him or contemplates employing him. Judge Young bases his recommendation on his belief that Respondent has been rehabilitated since he successfully completed his probationary period.

The Government filed exceptions to the Administrative Law Judge's opinion stating that there is no evidence in the

record that Respondent has been sufficiently rehabilitated to responsibly handle controlled substances. The Government recommends the waiver of 21 CFR 1301.76(a) should Respondent find employment in a state or municipal institution. However, the Government suggests that Respondent be permitted only to administer or order the administration of controlled substances. Government counsel recommended this condition based on Respondent's inability to articulate at the hearing the crucial difference between administering and prescribing controlled substances.

The Administrator has reviewed this record in its entirety and agrees with the Government's recommendation. Respondent should not be granted a DEA certificate of registration but 21 CFR 1301.76(a) should be waived to allow any DEA registrant to employ Respondent. The Administrator feels however, that given the lack of sufficient evidence of rehabilitation and Respondent's linguistic difficulties, the Respondent should only be allowed to administer or order the administration of controlled substances.

Having concluded that there is a lawful basis for the denial of the Respondent's application for registration and having further concluded that under the facts and circumstances presented in this case the application should be denied, 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 the application of Nam Jin Park, M.D., for registration under the Controlled Substances Act, be, and it hereby is, denied. The Administrator further orders that a waiver of 21 CFR 1301.76(a) will be granted to any DEA registrant employing him to allow Nam Jin Park, M.D. to administer or order the administration of controlled substances provided Dr. Park makes complete disclosure of his past controlled substances related offenses to such registrant.

Dated: January 23, 1984.

Francis M. Mullen, Jr.,

Administrator.

[FR Doc. 84-2472 Filed 1-27-84; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 82-34]

Ray Roya, M.D.; Denial of Application

On September 28, 1982, the then-Acting Administrator of the Drug Enforcement Administration (DEA) directed an Order to Show Cause to Ray Roya, M.D. (Respondent), 3429 North Harlem, Chicago, Illinois, proposing to deny Dr. Roya's application for DEA registration under 21 U.S.C. 823(f). Respondent, through counsel, requested a hearing on the issues raised by the Order to Show Cause.

The hearing in this matter was held in Chicago, Illinois on June 8, 1983. Administrative Law Judge Francis L. Young presided. Respondent represented himself at the hearing when is counsel, although duly notified of the hearing, failed to appear. On November 1, 1983, Judge Young issued his opinion and recommended findings of fact, conclusions of law, ruling and decision. No exceptions were filed and on December 2, 1983, Judge Young transmitted the record of these proceedings to the Administrator. The Administrator has considered this record in its entirety and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth.

The Administrative Law Judge found that Respondent had been convicted in the United States District Court for the Northern District of Illinois on 24 counts of illegal distribution of controlled substances. Therefore, there are lawful grounds for denial of Respondent's application under 21 U.S.C. 824(a)(2).

Judge Young also cited as grounds for the denial of this most recent application the reasons set out in the final order of the then-Acting Administrator in *Ray Roya, M.D.*, Docket No. 80-22, 46 FR 45842 (September 15, 1981). The Administrative Law Judge adopted all of the findings of fact and conclusions he recommended to the Administrator in the earlier case.

Judge Young found that nothing presented at the hearing on June 8, 1983 shows any reason to change the final decision in the instant proceeding from the final decision made in 1981. Dr. Roya has wholly failed to address the matter of his fitness to hold a DEA registration. He has not shown that he recognizes that his prior illegal acts were wrongful. He has given no basis whatever for a belief that he would refrain from future abuse of a DEA registration. The Administrative Law Judge has recommended that the Respondent's application be denied.

The core of Dr. Roya's earlier presentation appeared to be that Nazis and Nazi sympathizers in the United States are conspiring against him. This conspiracy, according to Dr. Roya, resulted in his conviction and other legal problems. Without abandoning this theory, Dr. Roya perceives the conspiracy to have widened to include members of the Masonic Order and all persons with "sick genes."

The Administrator wholeheartedly adopts the recommended rulings, findings of fact, conclusions of law and decision of the Administrative Law Judge in their entirety. The Administrator is aware that the State of Illinois restored Respondent's complete license to practice medicine in Illinois. However, this fact does not alter the Administrator's conclusion that Respondent is totally incapable of responsibly handling controlled substances. Protection of the public health and safety requires that the application be denied.

Having concluded that there is a lawful basis for the denial of the Respondent's application for registration and having further concluded that under the facts and circumstances presented in this case the application should be denied, 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 the application of Ray Roya, M.D., for registration under the Controlled Substances Act, be, and it hereby is, denied.

Dated: January 23, 1984.

Francis M. Mullen, Jr.,

Administrator.

[FR Doc. 84-2471 Filed 1-27-84; 8:45 am]

BILLING CODE 4410-09-M

Office of Juvenile Justice and Delinquency Prevention

Grants; Private Sector Corrections Initiative for the Chronic Serious Juvenile Offender; Change of Date for Submission of Applications

AGENCY: Office of Juvenile Justice and Delinquency Prevention, Justice.

ACTION: Notice of issuance of amendment to the above noted guideline, changing the date for submission of applications.

SUMMARY: Because of the delay between completion of the guideline and actual publication and the resulting short turn-around time for submission of applications, OJJDP has determined that it will change the date for submission of applications from February 17, 1984, for hand delivery and February 10, 1984 for mailing to March 16, 1984. Applications must be mailed or hand delivered to Office of Juvenile Justice and Delinquency Prevention (OJJDP), Room 786, 633 Indiana Avenue, N.W., Washington, D.C. 20531, by 5:30 p.m. on

or before March 16, 1984. Applications sent by mail will be considered to be received on time if sent by registered or certified mail no later than March 16, 1984, as evidenced by the U.S. Postal Service postmark.

The original announcement was published January 6, 1984 on page 952.

Alfred S. Regnery,

Administrator.

[FR Doc. 84-2402 Filed 1-29-84; 8:45 am]

BILLING CODE 4410-18-M

DEPARTMENT OF LABOR

Employment and Training Administration

Federal Supplemental Compensation; Change 3 to General Administration Letter No. 2-83, and GAL No. 1-84

Part A of Title V of the Social Security Amendments of 1983 (Pub. L. 98-21) amended the Federal Supplemental Compensation (FSC) Act of 1982 to extend the FSC program to September 30, 1983, and to provide additional weeks of benefits to prior FSC recipients. The Department of Labor issued implementing instructions to all State employment security agencies with Change 2 to General Administration Letter No. 2-83. GAL 2-83 was published in the Federal Register on December 3, 1982 (47 FR 54706); Change 2 was published in the Federal Register on April 19, 1983 (48 FR 16772).

Two subsequent telegraphic messages corrected the instructions in Change 2 relating to the maximum FSC payable in a State. These corrections were incorporated into Change 3 to GAL 2-83. Pub. L. 98-92 amended the FSC Act, requiring modification to the instructions in Change 3. Instructions for implementing Pub. L. 98-92 were issued to the State employment security agencies in General Administration Letter No. 1-84, which is published below. Change 3 and the two telegraphic messages are also published below.

Dated: January 23, 1984.

Patrick J. O'Keefe,

Acting Deputy Assistant Secretary of Labor.

Directive: General Administration Letter No. 2-83, Change 3

Classification: UI.
Correspondence symbol: TEUMI.
Date: July 15, 1983.
Expiration date: November 30, 1983.

To: All State Employment Security Agencies.
From: Royal S. Dellinger, Administrator, for Regional Management.
Subject: Federal Supplemental Compensation.

1. *Purpose.* To provide revisions to GAL 2-83, Change 2, implementing Part A of Title V of the Social Security Amendments of 1983.

2. *Reference.* Pub. L. 98-21, Part A of Title V of the Social Security Amendments of 1983; telegraphic messages dated May 24, 1983, and June 10, 1983.

3. *Background.* The referenced Messages to ETA Regional Administrators provided further instructions on implementation of Pub. L. 98-21. These messages apply to sections of GAL 2-83, Change 2, concerning the Maximum FSC Benefits Payable.

4. *Effect of Changes.* The May 24, 1983, telegraphic message clarified the beginning date of one FSC period and the ending date of another FSC period. It provided that any new period whether the new period is for more or less weeks than the old period, begins with the beginning of the third week following the FSC indicator week. The old period ends at the end of the second week after the indicator week. This clarification took effect on the date of the telegraphic message.

The June 10, 1983, telegraphic message reinterpreted Section 602(e)(2)(B) of the Federal Supplemental Compensation Act of 1982 (as amended by Section 502(a) of Pub. L. 98-21, the Social Security amendments of 1983). This section relates to the 4-week limitation on a drop in the maximum number of weeks of FSC payable in a State. The reinterpretation provides that the 4-week rule applies only to States where the maximum FSC payable for the first week beginning *after* March 27, 1983, would have been reduced by more than 4 weeks when compared to the maximum FSC payable for the week beginning March 27, 1983. Based on this criterion, only one State meets the 4-week limitation.

The reinterpretation of Section 602(a)(2)(B) took effect the week beginning June 19, 1983, and did not require SESAs to make *retroactive* redeterminations of FSC monetary entitlement. However, SESAs must provide affected claimants with advance written notice of the change in duration of FSC benefits. The requirement of advance notice is met when the SESA provides such notice before an individual actually claims the week the change in duration takes effect. Monetary redeterminations of FSC entitlement must be issued promptly following the advance notice to claimants.

5. *Action Required.* Administrators should provide the above information and attached instructions to appropriate staff.

6. *Inquiries.* Direct questions to the appropriate Regional Office.

7. *Attachment.* Changes to the attachment to GAL 2-83, Change 2.

FSC Amendments by Pub. L. 98-21 to the Federal Supplemental compensation Act of 1982; Implementing Instructions

Part I. Explanation of the FSC Amendments in Pub. L. 98-21

Section A. *"Maximum FSC Payable" is changed to read as follows:*

1. *Maximum FSC Payable.* The number of weeks of FSC payable in a State—for weeks which begin after March 31, 1983—are 14, 12, 10 or 8 weeks. A State's extended benefit status is no longer a criterion in determining the number of weeks payable in a State. The State's extended benefit trigger rate for a week (i.e., the most recent 13-week insured unemployment rate) determines the maximum FSC payable.

In determining when an FSC period of one duration begins and another ends, any such period, whether the new period is for more or less weeks than the old period, begins with the beginning of the third calendar week and the old period ends at the end of the second calendar week after the FSC indicator week. Beginning on April 3, 1983, each State will begin a new FSC benefit period and establish the maximum payable to each FSC claimant as follows:

a. *14 weeks.* States in a "6-percent period" pay up to 14 weeks of FSC. A 6-percent period begins when the FSC indicator rate equals or exceeds 6.0 percent and ends when the State's FSC indicator rate drops below 6.0 percent. A 6-percent period must last at least 4 weeks and may begin as early as the first calendar week which begins after March 31, 1983 (i.e., April 3, 1983).

b. *12 weeks.* States in a "5-percent period" pay up to 12 weeks of FSC. A 5-percent period begins when the State's FSC indicator rate equals or exceeds 5.0 percent but is less than 6.0 percent and ends when the State's FSC indicator rate drops below 5.0 percent or equals or exceeds 6.0 percent. A State must stay in a 5-percent period for at least 4 weeks, except that it may move to a 6-percent period at any time after one week in a 5-percent period. A 5-percent period may begin as early as the first calendar week which begins after March 31, 1983 (i.e., April 3, 1983).

c. *10 weeks.* States in a "4-percent period" pay up to 10 weeks of FSC. A 4-percent period begins when the State's FSC indicator rate equals or exceeds 4.0 percent but is less than 5.0 percent and ends when the State's FSC indicator rate drops below 4.0 percent or equals or exceeds 5.0 percent. A State must stay in a 4-percent period for at least 4 weeks, except that it may move to a higher period at any time after one week in a 4-percent period. A 4-percent period may begin as early as the first calendar week which begins after March 31, 1983 (i.e., April 3, 1983).

d. *8 weeks.* The base level of FSC payable is up to 8 weeks. Eight weeks of FSC are payable in States in a "low-unemployment period." A low-unemployment period begins when the State's FSC indicator rate is less than 4.0 percent, and may begin as early as the first calendar week which begins after March 31, 1983 (i.e., April 3, 1983). A State is not required to remain in a low-unemployment period longer than one week, and after one week may move to a higher period.

e. *Base Maximun.* The FSC amendments specify that notwithstanding the above levels of FSC, the maximum weeks of FSC payable in a State shall not be more than 4 weeks lower than the maximum FSC payable in the State for the week beginning March 27, 1983. However, this limitation applies only to States where the maximum number of weeks of FSC payable would have been more than 4 weeks less for the first week beginning after

March 27, 1983, than the maximum FSC payable for the week beginning March 27, 1983. For any State to which this 4-week limitation applies, it will continue to apply to all weeks which begin before October 1, 1983.

Part II. Procedures for Implementing FSC

Subsection 1 of Section E. "*Maximum FSC Benefits Payable*" is changed to read as follows:

1. *Maximum FSC Payable in a State.* The number of weeks of FSC payable in a State are 14, 12, 10 or 8 weeks. The State's FSC indicator rate for a week (i.e., the most recent 13-week insured unemployment rate) determines the maximum FSC payable. In determining when one FSC period begins and another ends, any new FSC period, whether the new period is for more or less weeks than the old, begins with the beginning of the third calendar week following the FSC indicator week. The old period ends at the end of the second calendar week after the FSC indicator week. Each State begins a new FSC benefit period on April 3, 1983, and establishes the maximum payable to each FSC claimant as follows:

a. *Fourteen weeks.* States which are in a "6-percent period" will pay up to 14 weeks (i.e., 14 times the weekly benefit amount) of FSC benefits.

b. *Twelve weeks.* States which are in a "5-percent period" pay up to 12 weeks (i.e., 12 times the weekly benefit amount) of FSC benefits.

c. *Ten weeks.* States which are in a "4-percent period" will pay up to 10 weeks (i.e., 10 times the weekly benefit amount) of FSC benefits.

d. *Eight weeks.* States which are in a "low unemployment period" will pay up to 8 weeks (i.e., 8 times the weekly benefit amount) of FSC benefits.

e. *Base Maximum.* The maximum weeks of FSC payable in a State for any week beginning on or after April 3, 1983 (and prior to October 1, 1983) shall not be more than 4 weeks lower than the maximum FSC payable in the State for the week beginning March 27, 1983. However, this 4-week limitation applies only to a State where the maximum FSC payable for the *first* week beginning after March 27, 1983, is more than 4 weeks less than the maximum FSC payable for the week beginning March 27, 1983. Accordingly, the maximum FSC payable in a State can drop more than 4 weeks below the maximum for the week beginning March 27, 1983, provided the change occurs beginning with any week after April 3, 1983.

There is no minimum "off" period for States which drop below the 4.0, 5.0 or 6.0 percent indicator rates. For example, a State may drop below 4.0, 5.0 or 6.0 percent and remain in such lower period for the remainder of the FSC program, or a State which drops to a 4.0 or 5.0 percent period may remain in such lower period for as few as 4 weeks and drop again to an even lower period. On the other hand, a State which drops to a lower period may at anytime after one week in such lower period move up to a higher period.

Determinations of the beginning and ending of 6-percent, 5-percent, 4-percent, and low-unemployment periods shall be made by the head of the State agency, according to these instructions and 20 CFR Part 615. Public notice shall be given of any such determination, and each individual affected by the change shall be given a written notice of the change in the maximum FSC payable to the individual.

Telegraph Message

Accounting classification: 3172-1-2-A-220-15220-2330-000.

Date prepared: June 10, 1983.

To: All Regional Administrators.
From: Royal S. Dellinger, Administrator, for Regional Management.
Subject: FSC Base Maximum.

GAL 2-83, Change 2, Section E, Subsection 2e. *Base Maximum* Interpreted Section 602(e)(2)(B) of the Federal Supplemental Compensation act of 1982 (as amended by Section 502(a) of Pub. L. 98-21, the Social Security Amendments of 1983) relating to the base maximum weeks of FSC payable in a State. The GAL states that "The maximum weeks of FSC payable in a state for any week beginning on or after April 3, 1983, shall not be more than 4 weeks lower than the maximum FSC payable in the State for the week beginning March 27, 1983."

Closer examination of the Conference Report that accompanies Pub. L. 98-21 necessitates a reinterpretation of Section 602(e)(2)(B). The Conference Report states that: "This provision would apply only in those States where the maximum number of FSC weeks payable for the first week beginning after March 27, 1983, or, if later, the first week FSC benefits provided under this bill are payable was more than 4 weeks less than the maximum number of weeks payable under the FSC law in effect on March 27, 1983." Accordingly, the 4-week rule applies to States where the maximum FSC payable would have been 4 weeks less for the week beginning *after* March 27, 1983, than the maximum FSC payable for the week beginning March 27, 1983. Thus, States can drop more than 4 weeks below the level of FSC payable for the week beginning March 27, 1983, if the drop in the maximum FSC payable occurs for a week beginning *after* the first week beginning after March 27, 1983. Based on this criterion only Delaware meets the 4-week limitation.

This reinterpretation of Section 602(a)(2)(B) immediately impacts Arizona, Kansas, Massachusetts and North Carolina. In each of these States, the maximum FSC payable should be 8 rather then 10 weeks. However, this reinterpretation does *not* require retroactive and redeterminations should not be made retroactive. This change is effective beginning with the first day of the week after the week the States are given actual notice by the regional offices of this reinterpretation. States should make redeterminations of monetary entitlements based on the 8-week maximum FSC payable as of the effective date of this reinterpretation and provide affected claimants with advance notice of such change and advance notice of such redeterminations.

Regional offices *must* provide all States with written notice of the information contained in this TWX *immediately.* All States must be notified in the time for the change to be effective with the week beginning June 19, 1983. All States when affected by this change must provide claimants with advance notice of the change and advance notice of any redeterminations.

We are preparing a revision to GAL 2-83, Change 2 to reflect this new interpretation of Section 602(e)(2)(B). We will issue and publish it in the Federal Register as soon as possible.

Direct questions to Irene Lynn on 8-376-7062.

Telegraphic Message

Accounting classification: 3172-1-2-A-220-15220-2330-000.

Date prepared: May 17, 1983.

To: All Regional Administrators.
Cite: TEUMI.
Subject: FSC Trigger Notice.

A question has arisen about the FSC trigger with respect to the beginning date of a new FSC period and the ending date of an old FSC period. The beginning date shown on the trigger notice is the first day of the third week after the indicator week. Section 502(3)(A) of Pub. L. 98-21 provides that an FSC period will begin with the third week after the indicator week. This same section of the law provides that an FSC period ends with the third week after the trigger week. Obviously, there would be an overlap of one week in the beginning and ending dates of an FSC period if both provisions are viewed independently. Since two periods cannot be applicable to the same week, any new FSC period, whether the new period is for more or less weeks than the old period, will begin with the beginning of the third week and the old period will end at the end of the second week after the indicator week.

Regions are reminded that trigger notices showing the applicable duration levels in States for a given week are available on the VAX system on the Tuesday of the week prior to the week for which a claim can be filed.

Questions may be directed to Ed Kerley on 8-376-6194.

Royal S. Dellinger,

Administrator for Regional Management.

Directive: General Administration Letter 1-84

Classification: UI.
Correspondence symbol: TEUMI.
Date: November 2, 1983.
Expiration date: October 31, 1984.

To: All State Employment Security Agencies.
From: Royal S. Dellinger, Deputy Assistant Secretary for Employment and Training.
Subject: Federal Supplemental Compensation.

1. *Purpose.* To provide instructions for implementing Pub. L. 98-92.

2. *References.* Pub. L. 98-21, Part A of Title V of the Social Security Amendments of 1983, GAL 2-83, Change 3, Pub. L. 98-92, signed September 2, 1983.

3. *Background.* GAL 2-83, Change 3, Issued revised instructions relating to the 4-week limitation on a drop in the maximum number of weeks of FSC payable in a State. The revised instructions narrowed the applicability of the 4-week rule so that only

one State met the 4-week limitation. Section 1(a) of Pub. L. 98-92 amended Section 602(e)(2)(B) of the FSC Act and, thus, requires modification of the instructions contained in GAL 2-83, Change 3. Section 1(c) of Pub. L. 98-92 contained another amendment to the FSC program.

4. *Summary of Amendments.* Pub. L. 98-92 amended Section 602(e)(2)(B) of the FSC Act of 1982, relating to the 4-week limitation on the drop in the maximum number of weeks of FSC payable in a State. This amendment freezes from dropping further the maximum FSC payable in States where the maximum for the week beginning July 24, 1983, is 4 or more weeks less than the maximum FSC payable for the week beginning March 27, 1983. States meeting this criterion are frozen at their July 24, 1983, level, effective August 7, 1983, and remain frozen through the remainder of the FSC program, i.e. through October 18, 1983.

Section 1(c) of Pub. L. 98-92 provides extra weeks of benefits to certain individuals in States where the FSC maximum payable has dropped more than 4 weeks from the level payable for the week beginning March 27, 1983.

This amendment specifies that in determining the maximum weeks of FSC payable to an individual who established an FSC account with an effective date before June 5, 1983, the maximum shall not be more than 4 weeks less than the maximum in the State for the week beginning March 27, 1983. This provision is effective for weeks of unemployment beginning on or after the date of enactment, that is, weeks of unemployment beginning on or after September 4, 1983.

Section 1(d) of Pub. L. 98-92 also contains a special rule for determining eligibility under these amendments for prior exhaustees of FSC. This rule prohibits States from applying any eligibility requirements to prior exhaustees for the period after the date of their exhaustion and before the first week beginning after the date of enactment, i.e., September 4, 1983.

5. *Modified Instructions.*

a. *Limitation on Reduction of Maximum FSC Weeks Payable in a State.* The maximum FSC payable is frozen in those States where the maximum FSC payable for *the* week beginning July 24, 1983, is 4 or more weeks less than the maximum FSC payable for *the* week beginning March 27, 1983. States meeting this criterion are frozen at their July 24, 1983, level beginning with the week of August 7, 1983, and they remain frozen throughout the remainder of the FSC program (i.e. through October 18, 1983) unless the State moves to a higher FSC level. A state may move to a higher FSC level whenever its insured unemployment rate equals or exceeds the rate specified for such higher level. Twenty-one States are directly affected by this new rule in that the FSC maximum payable in these States in frozen at a level above 8 weeks, the lowest maximum FSA payable. The States and the level at which they are frozen are:

State	Maximum FSC payable
Alabama	10
Arkansas	10
California	10
Delaware	10
Idaho	10
Illinois	12
Kentucky	10
Louisiana	12
Maine	10
Michigan	10
Mississippi	12
Montana	10
New Mexico	10
Ohio	10
Oregon	12
Rhode Island	10
Utah	10
Vermont	10
Washington	12
Wisconsin	10
Wyoming	12

Any State which met the criterion and, for the week beginning on July 31, 1983, dropped below its July 24 level is restored to the higher level effective August 7, 1983. However, any State which drops 4 or more weeks below the maximum FSC payable for the week beginning March 27, 1983, subsequent to the week beginning July 24, 1983, is not frozen at the higher maximum payable.

b. *Effect on Additional Entitlement.* Nothing in Pub. L. 98-92 affects the additional entitlement, i.e. the 10, 8, or 6 weeks provided for in Section 602(e)(D)(ii) of the FSC Act. Thus, a State's base FSC maximum may be frozen at 10 weeks but the additional entitlement is set at 6 weeks if the State's IUR falls below 4 percent.

c. *Individual Eligibility for Extra Weeks of FSC.* Certain individuals in States where the FSC maximum had dropped more than 4 weeks from their March 27, 1983, level may be eligible for extra weeks of FSC. To be eligible, an individual must have established an FSC account with an effective date before June 5, 1983. Establishing an account means that the effective date when an individual was determined monetarily eligible for FSC is before June 5, 1983.

In determining the maximum weeks of FSC payable to an individual who established an FSC account with an effective date before June 5, 1983, the maximum shall not be more than 4 weeks less than the maximum number of FSC weeks payable in the State for the week beginning March 27, 1983. This provision requires States to identify individuals whose FSC accounts were made effective before June 5, 1983. Once these individuals are identified, the SESA must determine whether the individual's last FSC monetary entitlement was more than 4 weeks less than the maximum payable for the week beginning March 27, 1983. Any individual who meets these conditions will be eligible for further FSC benefits for weeks of unemployment beginning on or after September 4, 1983, the effective date of this provision.

The SESA must notify each individual in writing of his/her potential entitlement. The SESA must also issue monetary redeterminations to all individuals affected by the 4-week limitation who file claims for further FSC under this provision.

d. *Special Eligibility Rule.* A special rule applies in determining eligibility of individuals who exhausted FSC prior to September 4, 1983. This rule specifies that an individual's eligibility for any further weeks of FSC under these amendments shall not be limited or terminated by reason of any event or failure to meet any requirements of State or Federal law relating to eligibility for unemployment benefits occurring after the date of exhaustion of FSC and before the first week beginning after the date of enactment, i.e., September 4, 1983.

The eligibility requirements to which this provision applies include but are not limited to an issue which might arise with respect to:

1. Separations from work;
2. Refusal of referrals or offer of work; and
3. Ability to work and availability and active search for work.

e. *Effect on Interstate Claims.* The limitation on payments of FSC to interstate claimants still applies (Section 602(d)(3) of the FSC Act), and is not affected by the changes in Pub. L. 98-92. Claimants are entitled to the lesser of the amount payable in the liable or agent State. Thus, for the affected interstate claims, the liable State must insure that the maximum payable does not exceed the maximum FSC payable in the liable or agent State, whichever is lower.

f. *Effect on Agreements.* The amendments in Pub. L. 98-92 do not require any modification to the existing agreements for administering the FSC program.

6. *Effect on Prior Issuances.* The instructions contained in this directive supersede any prior issuances containing instructions for implementing Section 602(e)(2)(B) of the Federal Supplemental Compensation Act of 1982, and any prior issuance inconsistent with the amendments in Sections 1(c) and 1(d) of Pub. L. 98-92.

7. *Action Required.* Administrators should provide the above information to appropriate staff.

8. *Inquiries.* Direct questions to the appropriate Regional Office.

[FR Doc. 84-2331 Filed 1-27-84; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 84-03]

Intent To Grant an Exclusive Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Intent to Grant an Exclusive Patent License.

SUMMARY: NASA hereby gives notice of intent to grant to Standard Oil Company of Cleveland, Ohio, a limited, exclusive, royalty-bearing, revocable license to practice the following inventions.

U.S. Patent No. 3,996,064: Electrically Rechargeable REDOX Flow Cell; issued December 7, 1976

U.S. Patent No. 4,159,366: Electrochemical Cell for Rebalancing REDOX Flow System; issued on June 26, 1979
U.S. Patent No. 4,192,910: Catalyst Surfaces for the Chromous/Chromic REDOX Couple; issued March 11, 1980
U.S. Patent No. 4,270,984: Catalyst Surfaces for the Chromous/Chromic REDOX Couple; issued on June 2, 1981
U.S. Patent No. 4,382,116: Zirconium Carbide as the Electrocatalyst for the Chromous/Chromic REDOX Couple; issued May 3, 1983
U.S. Application Patent No. 352,821: Improved Chromium Electrodes for REDOX Cells; filed February 26, 1982
NASA Case No. LEW-14,028: Negative Electrode Catalyst for the Fe/Cr Redox Energy Storage System

The proposed exclusive license will be for a limited number of years and will contain appropriate terms and conditions to be negotiated in accordance with the NASA Patent Licensing Regulations, 14 CFR 1245.2. NASA will negotiate the final terms and conditions and grant the exclusive license unless, within 60 days of the date of this Notice, the Director of Patent Licensing receives written objections to the grant, together with supporting documentations. The Director of Patent Licensing will review all written responses to the Notice and then recommend to the Assistant General Counsel for Patent Matters whether to grant the exclusive license.

DATE: Comments to this notice must be received by 60 days from the date of publication in the Federal Register).

ADDRESS: National Aeronautics and Space Administration, Code GP, Washington, D.C. 20546.

FOR FURTHER INFORMATION CONTACT: Mr John G. Mannix (202) 453–2430.

Dated: January 20, 1984.

S. Neil Hosenball,

General Counsel.

[FR Doc. 84–2401 Filed 1–27–84; 8:45 am]

BILLING CODE 7510–01–M

[Notice 84–09]

NASA Advisory Council, History Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, History Advisory Committee.

DATE AND TIME: February 14, 1984, 9 a.m. to 4:45 p.m.

ADDRESS: National Aeronautics and Space Administration, 400 Maryland Avenue, Room 6004, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Sylvia D. Fries, Code LBH, National Aeronautics and Space Administration, Washington, DC 20546; (202/453–2999).

SUPPLEMENTARY INFORMATION: The History Advisory Committee was established to provide advice and guidance to the NASA history program, which maintains an archives and publishes works in the history of aeronautics and space science and technology. The Committee, chaired by Dr. Melvin Kranzberg, is comprised of 8 members.

This meeting will be closed to the public from 3:20 to 4:30 p.m. on February 14 for a discussion of the qualifications of those who have submitted proposals to prepare a program history as the first project in a new series of histories. Such a discussion would invade the privacy of the proposers and other individuals involved. Since this session will be concerned with matters listed in 5 U.S.C. 552b(c)(6), it has been determined that the meeting be closed to the public for this period of time. The remainder of the meeting will be open to the public up to the seating capacity of the room (approximately 50 persons including the Committee members and participants). Visitors will be requested to sign a visitor's register.

Type of Meeting: Open, except for a closed session as noted in the agenda below.

Agenda

February 14, 1984:

9 a.m.—Welcome and Introduction of New Members.

10 a.m.—History Program Review.

10:45 a.m.—Publishing and Contracting Issues.

1:30 p.m.—Discussion of Proposal to do NASA Lewis Research Center History.

2:20 p.m.—New Series.

3:20 p.m.—Evaluation of proposals for First Volume, New Series (Closed Session).

4:30 p.m.—History Advisory Committee Planning.

4:45 p.m.—Adjourn.

Dated: January 24, 1984.

Richard L. Daniels,

Deputy Director, Logistics Management and Information Programs Division, Office of Management.

[FR Doc. 84–2430 Filed 1–27–84; 8:45 am]

BILLING CODE 7510–01–M

[Notice 84–10]

NASA Advisory Council; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council.

DATE AND TIME: February 15, 1984, 9 a.m. to 5 p.m., and February 16, 1984, 8:30 a.m. to 3 p.m.

ADDRESS: National Aeronautics and Space Administration, Federal Building 6, 400 Maryland Avenue SW, Washington, DC 20546, on February 15 from 9 a.m. to 12:15 p.m., Room 7002; from 1:15 p.m. to 5 p.m., Room 6004—on February 16, Room 7002.

FOR FURTHER INFORMATION CONTACT: Mr. Nathaniel B. Cohen, Code LB, National Aeronautics and Space Administration, Washington, DC 20546; (202/453–8335).

SUPPLEMENTARY INFORMATION: The NASA Advisory Council was established as an interdisciplinary group to advise senior management on the full range of NASA's programs, policies, and plans. The Council is chaired by Mr. Daniel J. Fink and is composed of twenty-five members. Standing committees containing additional members report to the Council and provide advice in the substantive areas of aeronautics, life sciences, space applications, space and earth science, space systems and technology, and history, as they relate to NASA's activities..

This meeting will be closed to the public from 2:30 p.m. to 3 p.m. on Fegruary 16 for a discussion of the qualifications of candidates for membership. Such a discussion would invade the privacy of the candidates and other individuals involved. Since this session will be concerned with matters listed in 5 U.S.C. 552b(c)(6), it has been determined that the meeting be closed to the public for this period of time. the remainder of the meeting will be open to the public up to the seating capacity of the room, which is approximately 60 persons including Council members and other participants. Visitors will be requested to sign a visitor's register.

Type of Meeting: Open—except for a closed session as noted in the agenda below.

Agenda:

9: a.m.—Introductory Remarks.
9:15 a.m.—FY 1985 President's Budget and NASA Planning.
1:15 p.m.—Space Station.
2:30 p.m.—Commercialization of Space.
3:30 p.m.—Results of Recent Space Science Missions.
5 p.m.—Adjourn.

February 16, 1987:

8:30 a.m.—Reports of NAC committees.
10:30 a.m.—NASA Response to NAC Study Recommendations.
1 p.m.—Council Discussion and Issues for Letter Report to Administrator.
2:30 p.m.—Closed Session on Membership.
3 p.m.—Adjourn.

Dated: January 24, 1984.

Richard L. Daniels,

Deputy Director, Logistics Management and Information Programs Division, Office of Management.

[FR Doc. 84-2431 Filed 1-27-84; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Council on the Arts; Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the National Council on the Arts will be held on February 10-11, 1984, from 9:00 a.m.-5:30 p.m. in room M-09 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, D.C. 20506.

A portion of this meeting will be open to the public on February 10, from 9:00 a.m.-5:30 p.m. and on February 11, from 9:00 a.m.-12:30 p.m. Topics for discussion will include: Program Review and Guidelines for the Expansion Arts, Folk Arts, Opera-Musical Theater, Music Ensembles and Endowment Fellows Programs; Five-Year Planning; Service Organizations; Local Arts Support; and the Arts Education.

The remaining sessions of this meeting on February 11, from 1:30-5:30 p.m. are for the purpose of Council review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 682-5433.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

January 20, 1984.

[FR Doc. 84-2441 Filed 1-27-84; 8:45 am]

BILLING CODE 7537-01-M

Visual Arts Advisory Panel; Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Visual Arts Advisory Panel (Forums/Residencies Section) to the National Council on the Arts will be held on February 15-16, 1984, from 9:00 a.m.-6:00 p.m. in Room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, D.C. 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 682-5433.

John H. Clark,

Director, Council and Panel Operations, National Endowment for the Arts.

January 25, 1984.

[FR Doc. 84-2433 Filed 1-27-84; 8:45 am]

BILLING CODE 7537-01-M

Conservation Project Support Program; Grant Application for Fiscal Year 1984

AGENCY: Institute of Museum Services, NFAH.

ACTION: Grant Application Notice for Fiscal Year 1984.

This grant application announcement applies only to the Conservation Project Support Program (CP).

Applications are invited by the Institute of Museum Services (IMS) for Conservation Project (CP) awards under 45 CFR Part 1180 for Fiscal Year 1984.

Nature of program: IMS makes awards under the CP grant program to allow museums to conduct conservation activities that they are not currently performing. The activities include, but are not limited to, the following, as applied to art, history, natural history, science and technology, and living collections:

(1) Technical examination of materials and surveys of environmental and collection conditions;

(2) Provision, insofar as practicable, of optimum environmental conditions for housing, exhibition, monitoring, reformating, nurturing and transportation of objects;

(3) Physical treatment of objects, specimens and organisms, for the purpose of stabilizing, conserving and preserving their condition, removal of inauthentic additions or accretions, and physical compensation for losses; species survival activities; and

(4) Research and training in conservation. Section 206 of the Museum Services Act, Title II of Pub. L. 94-462, as amended, contains authority for this program. (20 U.S.C. 965)

Deadline date for transmittal of applications: An application for a grant must be mailed or hand-delivered by April 6, 1984.

Applications delivered by mail: An application sent by mail must be addressed to the Institute of Museum Services, 1100 Pennsylvania Avenue, NW., Room 609, Washington, D.C. 20506.

An applicant must be prepared to show one of the following as proof of timely mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other dated proof of mailing acceptable to the Director of IMS.

If an application is mailed through the U.S. Postal Service, the Director does not accept either of the following as proof of mailing: (1) A private metered postmark; or (2) a mail receipt that is not date-cancelled by the U.S. Postal Service.

Aplications delivered by hand: An application that is hand-delivered must

be taken to the Institute of Museum Services, Old Post Office Building, 1100 Pennsylvania Avenue, NW., Room 609, Washington, D.C. 20506.

IMS will accept a hand-delivered application between 9:00 a.m. and 4:30 P.M. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays.

An application that is hand-delivered will not be accepted after 4:30 p.m. on the deadline date.

Program information: Program information is contained in the guidelines and standards for the Conservation Project program. Applicable final regulations were published on June 17, 1983 in FR Vol. 48, No. 118, pages 27727–27734 and in the application forms and accompanying instructions in the Application Package. See paragraph on *Application Forms.*

Available funds: An appropriation for the Institute of Museum Services for Fiscal Year 1984 is contained in the Department of the Interior and Related Agencies Appropriation Act, 1984 Pub. L. 98–146 (November 4, 1983).

IMS makes a conservation grant for not more than $25,000 for Fiscal Year 1984. Museums are required to provide a match which is at least equal to the amount of the grant.

Application forms: IMS is mailing application forms and program information in an Application Packet to museums and other institutions on its General Operating Support mailing list. Applicants may obtain Application Packets by writing to the Institute of Museum Services, 1100 Pennsylvania Avenue, NW., Room 609, Washington, D.C. 20506.

Applicable regulations: Published in this issue of the Federal Register are the guidelines and standards for the Conservation Project grants for Fiscal Year 1984 which are contained in a new section 1180.20 of Title 45 of the Code of Federal Regulation.

FOR FURTHER INFORMATION CONTACT:
For further information contact Ruth Weant, Program Director, Institute of Museum Services, 1100 Pennsylvania, NW., Room 609, Washington, D.C. 20506. Telephone: (202) 786–0539.

(Catalog of Federal Domestic Assistance No. 45.301 Institute of Museum Services)

Susan E. Phillips,

Director, Institute of Museum Services.

[FR Doc. 84–2512 Filed 1–27–84; 8:45 am]

BILLING CODE 7036–01–M

Special Project Support Program, Grant Application for Fiscal Year 1984

AGENCY: Institute of Museum Services, NFAH.

ACTION: Grant Application Notice for Fiscal Year 1984.

This grant application announcement applies only to the Special Project Program (SP).

Applications are invited by the Institute of Museum Services (IMS) for Special Project (SP) awards under 45 CFR Part 1180 for Fiscal Year 1984.

Nature of program: IMS makes awards under the SP Program to museums for one-year projects which will be carried out in addition to the museum's usual operating programs. The purpose of these awards is to support innovative or exemplary projects which will increase or improve museum services for the public, or that will provide a general, unique, model or financial benefit to the museum field. Section 206 of the Museum Services Act, Title II of Pub. L. 94–462, as amended, contains authority for this program. (20 U.S.C. 965)

Deadline date for transmittal of applications: An application for a new grant must be mailed or hand-delivered by April 6, 1984.

Applications delivered by mail: An application sent by mail must be addressed to the Institute of Museum Services, 1100 Pennsylvania Avenue, NW., Room 609, Washington, D.C. 20506.

An applicant must be prepared to show one of the following as proof of timely mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other dated proof of mailing acceptable to the Director of IMS.

If an application is mailed through the U.S. Postal Service, the Director does not accept either of the following as proof of mailing: (1) A private metered postmark; or (2) a mail receipt that is not date-cancelled by the U.S. Postal Service.

Applications delivered by hand: An application that is hand-delivered must be taken to the Institute of Museum Services, Old Post Office Building, 1100 Pennsylvania Avenue, NW., Room 609, Washington, D.C. 20506.

IMS will accept a hand-delivered application between 9:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays and Federal holidays.

An application that is hand-delivered will not be accepted after 4:30 p.m. on the deadline date.

Program information: Program information is contained in the final regulations published on June 17, 1983 in FR Vol. 48, No. 118, pages 27727–27734 and in the application forms and accompanying instructions in the Application Package. See paragraph on *Application Form.*

Available funds: An appropriation for the Institute of Museum Services for Fiscal Year 1984 is contained in the Department of the Interior and Related Agencies Appropriation Act, 1984 Pub. L. 98–146 (November 4, 1983). This Act appropriates $20,150,000 for the IMS for Fiscal Year 1984, $720,000 of which is expected to be available for SP grants.

It is anticipated that no museum will receive more than $50,000 under the Act for Fiscal Year 1984 and than most museums which are funded will receive a smaller amount. (45 CFR 1180.9). In addition, IMS normally does not make grants for more than 10 percent of a museum's most recently completed fiscal year's actual non-federal operating income.

Application forms: IMS is mailing application forms and program information in an Application Packet to museums and other institutions by request only. Applicants may obtain Application Packets by writing to the Institute of Museum Services, 1100 Pennsylvania Avenue, NW., Room 609, Washington, D.C. 20506.

Applicable regulations: Final regulations for the General Operating Support and Special Project grant programs were published in the Federal Register on June 17, 1983 FR Vol. 48, No. 118, pages 27727–27734. The National Museum Services Board has approved the issuance of a limited number of technical amendments to these regulations to reflect legislative changes or requests for clarification. These amendments will be set forth in a future publication in the Federal Register. These amendments are expected to apply to the Fiscal Year 1984 GOS and SP competitions.

FOR FURTHER INFORMATION CONTACT:
For further information contact Ruth Weant, Program Director, Institute of Museum Services, 1100 Pennsylvania Avenue, NW., Room 609, Washington, D.C. 20506. Telephone: (202) 786–0539.

(Catalog of Federal Domestic Assistance No. 45.301 Institute of Museum Services)

Dated: January 24, 1984.

[FR Doc. 84–2511 Filed 1–27–84; 8:45 am]

BILLING CODE 7036–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-373

Commonwealth Edison Company; 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-11, issued to Commonwealth Edison Company (the licensee), for operation of the La Salle County Station, Unit 1 located in La Salle County, Illinois.

The amendment would change the La Salle Unit 1 technical specification requirements for fast starts on the diesel generators, consistent with the provisions of the Unite 2 Technical Specifications. The changes would minimize mechanical stress and wear on the diesel generators in that the fast starts will only be required on a semi-annual basis. Other starts required by the Technical Specifications to meet the surveillance requirements will be preceded by an engine prelube period and/or other warm-up procedures recommended by the manufacturer. Recent analyses by the NRC staff indicates that two fast starts per year is a sufficient number to assure the required diesel generator start capabliity under design basis conditions. In addition the reliability and availablility will be increased by the major reduction in the required fast starts from a nominal once-a-month basis to once every six months. The licensee by letter of December 9, 1983, as modified by letter of January 11, 1984, requested these changes be made in an amendment to the Unit 1 Technical Specifications.

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 proposed amendment involves no significant hazards consideration, as defined by the Commission's regulation 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 proposed changes do not affect reactor operations or accident analyses and have no radiological consequences. Therefore, operation in accordance with the proposed amendment clearly involves no significant hazards consideration because the changes will not (1) involve a significant increase in the probability or consequence of an accident previously evaluated because the reliability of the diesel generators will be increased due to decreased wear and stress on the diesel engine while verifying the fast start only on a semi-annual basis; (2) create the possibility of a new or different kind of accident from and accident previously evaluated because the same surveillances are performed and only the time period of the fast starts has changed; and (3) involve a significant reduction in the margin of safety because the overall reliability of the diesel generators will be maintained and no reduction in availability of the diesel generators will be made.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attn: Docketing and Service Branch.

By February 29, 1984, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be issued in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisifies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and state comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attn: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. by the above date. Where petitions are filed duing the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to A. Schwencer: petitioner's name and telephone number; date petition was mailed; plant name, and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Isham, Lincoln, Beale, Suite 840, 1120 Connecticut Avenue, NW., Washington, D.C. 20036, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or request 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 which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Public Library of Illinois Valley Community College, Rural Route No. 1, Ogelsby, Illinois 61348.

Dated at Bethesda, Maryland this 20th day of January 1984.

For the Nuclear Regulatory Commission.

A. Schwencer,

Chief, Licensing Branch No. 2, Division of Licensing.

[FR Doc. 84-2459 Filed 1-27-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-312]

Sacramento Municipal Utility District; Issuance of Amendment to Facility Operating License and Negative Declaration

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 52 to Facility Operating License No. DPR-54, issued to Sacramento Municipal Utility District (the licensee), which revised the Technical Specifications for operation of Rancho Seco Nuclear Generating Station, located in Sacramento County, California. The amendment is effective as of its date of issuance.

The amendment allows an increase in the spent fuel storage capacity from 579 spaces to 1080 spaces through the use of high density storage racks.

The application for the amendment 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 amendment. Notice of Consideration of Issuance of Amendment to Facility Operating License in connection with this action was published in the Federal Register on December 9, 1982 (47 FR 55440).

No request for a hearing or petition for leave to intervene was filed following notice of the proposed action. The Commission has prepared an environmental impact appraisal for this action and has concluded that an environmental impact statement for this particular action is not warranted because it will not significantly affect the quality of the human environment.

For further details with respect to this action, see (1) the application for amendment dated September 28, 1982, as supplemented by letters dated March 8, 1983, March 29, 1983, May 2, 1983, July 22, 1983, October 3, 1983, November 10, 1983, and December 22, 1983, (2) Amendment No. 52 to License No. DPR-54, (3) the Commission's related Safety Evaluation, and (4) the Commission's Environmental Impact Appraisal. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the Sacramento City-County Library, 828 I Street, Sacramento, California. A copy of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 20th day of January 1984.

For the Nuclear Regulatory Commission.

John F. Stolz,

Chief, Operating Reactors Branch No. 4, Division of Licensing.

[FR Doc. 84-2460 Filed 1-27-84; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Regulatory Policies and Practices; Changes

The ACRS Subcommittee on Regulatory Policies and Practices scheduled for February 8, 1984 has been *rescheduled for Tuesday, February 7, 1984, 10:00 a.m., Room 1167, 1717 H Street, NW, Washington, DC.* The Subcommittee will discuss the Proposed General Statement of Policy and Procedures for Enforcement Actions (SECY-83-487) and other matters related to enforcement activities.

All other items regarding this meeting remain the same as announced in the Federal Register published Tuesday, January 24, 1984 (49 FR 2973).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant Designated Federal Employee, Mr. M.C. Gaske (telephone 202/634-3265) between 8:15 a.m. and 5:00 p.m., EST.

Dated: January 25, 1984.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 84-2461 Filed 1-27-84; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Meeting

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b.), the Advisory Committee on Reactor Safeguards will hold a meeting on February 9–11 1984, in Room 1046, 1717 H Street, NW., Washington, DC. Notice of this meeting was published in the Federal Register on January 25, 1984.

The agenda for the subject meeting will be as follows:

Thursday, February 9, 1984

8:30 A.M.–8:45 A.M.: Opening Remarks (Open)—The ACRS Chairman will report briefly on matters of current interest regarding ACRS activities.

8:45 A.M.–11:30 A.M.: Radiological Effects (Open)—The members will hear and discuss a report of its Subcommittee on Reactor Radiological Effects regarding occupational doses associated with reactor operations and recovery from accidents (TMI–2) and the establishment of a de minimums level of radiation exposure.

11:30 A.M.–12:30 P.M.: Probabilistic Risk Assessment (Open)—The Committee will hear and discuss a report by representatives of the NRC Staff regarding the application of PRA in the regulatory process.

1:30 P.M.–2:15 P.M.: Consideration of Severe Accidents (Open)—The members will hear and discuss a report by members of the NRC Staff regarding a proposed NRC policy statement regarding consideration of severe accidents in the regulation of nuclear reactors.

2:15 P.M.–3:00 P.M.: Activities of the NRC Office of International Programs (Open)—The members will hear a report from members of the NRC Staff regarding the activities of the Office of International Programs.

3:00 P.M.–3:15 P.M.: Congressional Activities (Open)—The members will hear a report from ACRS Chairman and Subcommittee Chairman on Reactor Research Programs regarding testimony before the Congressional Subcommittee on Energy and the Environment.

3:15 P.M.–5:30 P.M.: NRC Safety Research Program (Open)—The members will discuss the proposed ACRS report to the U.S. Congress on the proposed NRC safety research program and budget for FY 1985–86.

Friday, February 10, 1984

8:30 A.M.–12:30 P.M.: Diablo Canyon Nuclear Power Station (Open/Closed)—The ACRS members will hear and discuss reports regarding proposed plant changes and related matters regarding deficiencies in the design and construction of this station. Representatives of the NRC Staff and applicants will participate as appropriate.

Portions of ths session will be closed as necessary to discuss Proprietary Information applicable to the matter, information which involves accusing persons of a crime, and information which would disclose investigatory records.

12:30 P.M.–1:00 P.M.: Future Committee Activities (Open)—The members will discuss anticipated activities of ACRS subcommittees and items proposed for consideration by the full Committee.

1:30 P.M.—4:30 P.M.: Preparation of ACRS Reports (Open/Closed)—The members will discuss proposed reports to the U.S. Congress and the NRC regarding matters considered during this meeting.

Portions of this session will be closed as necessary to discuss items involved in an adjudicatory proceeding, information which involves accusing a person of a crime, and information which would disclose investigatory records.

4:30 P-M.–5:30 P.M.: ARCS Subcommittee Activities (Open) The members will hear and discuss reports of designated ACRS subcommittees regarding recent activities including consideration of proposed changes in NRC enforcement policy and implementing requirements for emergency response capability.

Saturday, February 11, 1984

8:30 A.M.—12:30 P.M.: Preparation of ACRS Reports (Open/Closed)—The members of the Committee will discuss proposed Committee comments/and reports regarding matters considered during this meeting.

Portions of this session will be closed as necessary to discuss information involved in an adjudicatory proceeding, information which involves accusing a person of a crime, and information which would involve investigatory records.

Procedurs for the conduct of and participation in ACRS meetings were published in the Federal Register on September 28, 1982 (48 FR 44291). In accordance with these procedures, oral or written statments may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS Executive Director as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a telephone call to the ACRS Executive Director, R. F. Fraley, prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with Subsection 10(d) Pub. L. 92–463 that it is necessary to close portions of this meeting as noted above to discuss Proprietary Information [5 U.S.C. 552b(c)(4)], information involved in an adjudicatory proceeding [5 U.S.C. 552b(c)(10), information which involves accusing a person of a crime [5 U.S.C. 552b(c)(5)], and information which would disclose investigatory records [5 U.S.C. 552b(c)(7)].

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 202/634–3265), between 8:15 A.M. and 5:00 P.M. EST.

Dated: January 25, 1984.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 84-2462 Filed 1-27-84; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash (202) 272–2700.

Upon Written Request Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs and Information Services, Washington, D.C. 20549.

Extension

Form 8

No. 270-279

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission has submitted for an extension of clearance Form 8, for amendments to applications for registration or reports filed pursuant to Section 12, 13 and 15(d) of the Securities Exchange Act of 1934. The form provides a basis for the Commission to fulfill its statutory responsibility to ensure that issuers of publicly-traded securities provide investors and the marketplace with adequate information.

Submit comments to OMB Desk Officer, Ms. Katie Lewin (202) 395-7231, Office of Information and Regulatory Affairs, Room 3235 NEOB, Washington, D.C. 20503.

George A. Fitzsimmons,

Secretary.

January 20, 1984.

[FR Doc. 84-2468 Filed 1-27-84; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 13731A; 812-5707]

Capital T Money Fund and The Travelers Indemnity Co.; Errata

January 20, 1984.

In the Matter of Capital T Money Fund, The Travelers Indemnity Company, 99 High Street, Boston, Massachusetts 02110.

This is to correct an error made in Investment Company Act Release No. 13731, issued January 18, 1984, In the Matter of Capital T Money Fund, et al. In the above referenced notice of filing of application it was stated that interested persons may request a hearing until 5:30 p.m., February 13, 1984. The expiration of the notice period should have read 5:30 p.m., February 7, 1984.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-2493 Filed 1-27-84; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 23207; 70-6943]

Central and South West Corp.; Proposed Issuance and Sale of Common Stock Pursuant to Restricted Stock Plan and Solicitation of Proxies

January 24, 1984.

Central and South West Corporation ("CSW"), 2400 San Jacinto Tower, Dallas, Texas 75222, a registered holding company, has filed a declaration with this Commission pursuant to Sections 6(a), 7, and 12(e) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 50(a)(5), 62, and 65 thereunder.

CSW proposes to issue and sell shares of its common stock pursuant to a Restricted Stock Plan ("Plan"). Pursuant to the Plan and in order to aid in securing and retaining key executive employees of outstanding ability for CSW and its subsidiaries, employees selected by the Board of Directors (or a committee thereof) will be eligible from time to time during the term (10 years) of the Plan to be awarded shares of CSW common stock. The number of shares is to be determined by the Board or a committee thereof. No more than 500,000 shares of common stock will be awarded under the Plan, subject to certain adjustments to reflect combinations, reclassifications, or subdivisions of such shares. Any shares granted pursuant to the Plan will be subject to forfeiture if the recipient thereof, otherwise than by reason of his death, total disability, or normal retirement, ceases to render substantial services on a regular basis to CSW or its subsidiaries during a restricted period following the grant, which period will be established by the Board, or a committee thereof, in connection with each grant. Subject to this risk of forfeiture, the recipient of shares under the Plan will have all rights as a stockholder with respect to the shares, including but not limited to the right to receive dividends thereon and the right to vote such shares; provided, however, that with respect to any shares still within the respective restrictive period, the recipient will be precluded from selling, pledging, or otherwise transferring such shares. The Plan is subject to approval by CSW stockholders, and CSW proposes to solicit proxies with respect thereto in connection with the Company's annual meeting to be held on April 19, 1984.

The declaration and any amendments thereto are available for public inspection through the Commission's Office of public reference. Interested persons wishing to comment or request a hearing should submit their views in writing by February 21, 1984, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the declarant at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the declaration, as filed or as it may be amended, may be permitted to become effective.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-2487 Filed 1-27-84; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 23206; 70-6942]

Consolidated Natural Gas Co.; Proposal To Redeem Outstanding Shares of Preferred Stock

January 24, 1984.

Consolidated Natural Gas Company, ("Consolidated") Four Gateway Center, Pittsburgh, Pennsylvania 15222, a registered holding company has filed a declaration with this Commission pursuant to Sections 6(a)(2), 7 and 12(c) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 42 thereunder.

As of January 1, 1984 Consolidated had outstanding 300,000 shares of its 10.96% cumulative preferred stock, Series A, $100 par value. Consolidated now proposes to call all of these shares for redemption, effective on or before March 30, 1984. The redemption would be at the optional redemption price of $110.17 per share, plus accrued dividends from January 1, 1984 to the redemption date.

Consolidated will deposit amounts sufficient to redeem the shares and accrued dividends with the redemption agent, Manufacturers Hanover Trust Company, in trust, for payment to the holders of the preferred stock, upon surrender of the stock certificates. Upon the deposit of funds, the shares called for redemption shall no longer be deemed outstanding, and all rights with respect to the shares shall cease and terminate, except the right to receive the redemption price and accrued dividends, without interest, upon

presentation and surrender of the certificates.

The declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by February 17, 1984, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the declarant at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the declaration, as filed or as it may be amended, may be permitted to become effective.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-2490 Filed 1-27-84; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 13733; 812-5684]

E. F. Hutton & Company Inc. and Hutton Telephone Trust, First Tax-Free Exchange Series and Subsequent Series; Application

January 20, 1984.

Notice is hereby given that Hutton Telephone Trust, First Tax-Free Exchange Series and Subsequent Series ("Trust") One Battery Park Plaza, New York, New York 10004, registered under the Investment Company Act of 1940 ("Act"), and E. F. Hutton & Company Inc. ("E. F. Hutton"), the sponsor, depositor and principal underwriter of the Trust (Trust and Hutton together, "Applicants"), filed an application on October 24, 1983, and an amendment thereto on December 27, 1983, pursuant to Section 6(c) of the Act, certain proposed purchases of securities by E. F. Hutton, acting as principal, from the Trust in conjunction with the dividend reinvestment arrangements in which the Trust may participate. All interested persons are referred to the application on file with the Commission for statement of the representations contained therein, which are summarized below, and to the Act for a statement of the relevant statutory provisions.

Applicants represent that the First Tax-Free Exchange Series of the Trust was created under the laws of the State of Massachusetts by execution of a trust agreement between E. F. Hutton, as sponsor, and the Bank of New England, N.A., as trustee, on September 26, 1983. It is stated that the First Series has been created, and that Subsequent Series of the Trust will be created, for the purpose of providing current holders of American Telephone & Telegraph Company ("AT&T") common stock, through an exchange of their AT&T shares for units of the Trust, a practical method of maintaining their equity interests in AT&T and, after the implementation of the proposed plan of reorganization of AT&T (scheduled to take effect on January 1, 1984), as summarized hereinafter, their investment in AT&T and the seven regional holding companies to be divested by AT&T ("Regional Companies"). Applicants state further that E.F. Hutton is registered with the Commission as a broker-dealer and as an investment adviser; that the Trust's Notification of Registration on Form N-8A and its registration statement on Form N-8B-2 under the Act as well as the registration statement of the First Tax-Free Exchange Series on Form S-6 under the Securities Act of 1933, were filed on June 15, 1983; and that the registration statement of the First Tax-Free Exchange Series on Form S-6 became effective, and the initial deposit of AT&T shares was made, on September 26, 1983.

It is further represented that in December, 1982, AT&T submitted a proposal for reorganization designed to effectuate a consent decree entered into earlier that year relating to certain antitrust proceedings brought by the United States Department of Justice in 1974. As part of the plan, AT&T intends to group its twenty-two operating companies under the Regional Companies and transfer ownership of the Regional Companies to stockholders of AT&T pursuant to a reorganization. AT&T stockholders, it is stated, will retain their AT&T shares, and will be entitled to receive, in the reorganization, one share in each of the Regional Companies for every ten AT&T shares they hold. Applicants state that units of the Trust are offered to holders of AT&T shares on the basis of 100 units for each AT&T share validly tendered for exchange pursuant to the exchange offer described in the current prospectus of the Trust. The minimum purchase for Trust units is 100, it is represented, and E. F. Hutton sells, as sponsor, 1.5% of the AT&T shares tendered for exchange prior to depositing the remaining AT&T shares in the Trust, retaining the proceeds as a sales charge on the sale of units.

It is further stated that subsequent to the initial deposit of AT&T shares in the Trust, E. F. Hutton intends to deposit additional AT&T shares tendered pursuant to the exchange offer on various "exchange dates." In order to be exchanged for Trust units, Applicants state, AT&T shares must be placed in the custody of E. F. Hutton, the sponsor, no later than two business days prior to any exchange date. E. F. Hutton also may register and form additional series of the Trust, either before or after implementation of the reorganization plan, it is stated, and a series of the Trust that is formed after implementation of the reorganization plan would be created by the deposit of shares of the Regional Companies in addition to shares of AT&T, it is noted.

Applicants further state that, beginning in April 1984, holders of Trust units will receive monthly income distributions from the Trust, the record dates for such distributions being the first day of each month, and the date of distribution being the fifteenth day of each month or the next business day if the fifteenth day is not a business day. Prior to April 1984, it is stated, the Trust will pay the net income from any dividends received on the AT&T shares in the Trust immediately upon its receipt of the dividends, applying the same record date as that of AT&T. It is contemplated, in addition, that the Trust will participate in the dividend reinvestment plans of AT&T and the Regional Companies, provided that the trust determines that participation is likely to increase the net dividend income of the Trust; the shares received pursuant to such plans are to be sold to generate cash for payment of dividends to Trust unitholders.

To illustrate the probable characteristics of the dividend reinvestment arrangements in which the Trust will be participating, Applicants note that under AT&T's current reinvestment plan, the price of AT&T shares purchased with reinvested dividends is equivalent to 95% of the average of the daily high an low sale prices at AT&T shares of common stock on the New York Stock Exchange ("NYSE") for the period of five trading days ending on the day of purchase (which is the dividend payment date on the AT&T shares). Applicants state further that although the price of the shares is determined by reference to the NYSE daily high and low sale prices over a five-day period, a ruling by the Internal Revenue Service has provided

that the tax basis for each AT&T share purchased with reinvested dividends pursuant to the present AT&T reinvestment plan is equal to the average of the high and low sale price on the NYSE on the dividend payment date. If no trading occurs on that date, it is stated, the basis for such shares is determined by the average of the high and low sales prices on the trading days immediately preceding and following the dividend payment date.

Applicants maintain that the purpose of the Trust's participation in the AT&T dividend reinvestment plan, and in similar plans, is to obtain dividend income for distribution to Trust unitholders greater than that which would be obtained if the trustee were to elect to receive quarterly dividends in cash, without participation. Since the purpose of said participation is not to acquire additional AT&T shares (or Regional Company Stock) to be retained in the portfolio of the Trust, it is stated, all shares received pursuant to such plans will be sold immediately. However, because the "price" of the shares "purchased" with reinvested cash dividends cannot be ascertained until the date of purchase, Applicants state, the trustee must make the decision to participate in the AT&T reinvestment plan for each quarterly dividend without being certain that the net proceeds of the liquidation of the shares to be acquired will exceed the amount which could have been received as a cash dividend. It is further stated, however, that because of the 5% discount available upon the purchase of AT&T shares with reinvested dividends, and the relatively stable price of these securities, it is believed that the net proceeds generally will exceed the cash dividend that would be received in the absence of participation in the dividend reinvestment plans.

Applicants not further that in addition to the uncertainty pertaining to the price to be paid for shares purchased with reinvested dividends, uncertainty faces the trustee in arranging to dispose of the shares thus acquired following their receipt. Accordingly, in order to minimize the expense and uncertainty attending the Trust's participation in the reinvestment plans, Applicants propose to adopt an arrangement pursuant to which E. F. Hutton would be permitted to purchase the shares being acquired by the Trust under the dividend reinvestment plans, immediately upon receipt, at a price equal to the Trust's tax basis in the shares (without payment of transaction costs). Applicants believe that the reinvestment plans of the Regional Companies will provide for similar methods of determining the purchase price and tax basis of the reinvestment shares, and Applicants propose for each such plan to use the tax basis of the shares received as the purchase price to E. F. Hutton. With the risk of loss and transaction costs upon disposition of shares thus eliminated, Applicants assert, the trustee's capability of making the decision as to whether or not to participate in a particular dividend reinvestment arrangement should be augmented, thus benefitting all holders of Trust units through increased dividend income.

Applicants request an order of the Commission issued purusant to Section 6(c), based upon the criteria set forth in that section, and in Section 17(b) of the Act, exempting from the prohibitions of Section 17(a), the proposed class of transactions pursuant to which E. F. Hutton is to purchase from the Trust such shares as the Trust receives in accordance with its participation in the dividend reinvestment plans of AT&T and the Regional Companies under the arrangement described above. Applicants submit that the terms of the class of transactions proposed are reasonable and fair, and do not involve overreaching, and that the exemptions requested are necessary or appropriate in the public interest and consistent with the protection of investors, the policy of the Trust and the purposes fairly intended by the policy and provisions of the Act. They further contend that although, as the result of the method of determining the purchase price an tax basis of the shares under the dividend reinvestment plans, the current market price of the reinvestment shares at the time of the sale to E. F. Hutton may be more or less than the Trust's tax basis (or the purchase price), the Trust would benefit by being enabled to establish the price at which it will dispose of such shares at an amount which does not include any brokerage commissions and which will eliminate taxable gain or loss on the disposition. In addition, it is asserted that there would be no opportunity for E. F. Hutton to overreach the Trust under the proposal, as the purchase price would be determined solely by external market forces, rather than by negotiation between buyer and seller. Finally, Applicants state taht they have not been able to find a party not affiliated with the Trust who would be willing to enter into the purchase arrangments contemplated.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than February 14, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for the request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-2494 Filed 1-27-84; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 23204; 70-5925]

Indiana & Michigan Electric Co. and American Electric Power Co., Inc.; Proposed Amendments to Nuclear Fuel Leases

January 20, 1984.

In the Matter of Indiana & Michigan Electric Company, One Summit Square, P.O. Box 60, Fort Wayne, Indiana 46801 and American Electric Power Company, Inc., 1 Riverside Plaza, Columbus, Ohio 43216.

American Electric Power Company, Inc. ("American"), a registered holding company, and its electric utility subsidiary company, Indiana & Michigan Electric Company ("I&MECo"), has filed with this Commission a post-effective amendment to the declaration in this proceeding pursuant to Sections 9(a), 10, 12(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 45 promulgated thereunder.

By order in this proceeding dated November 1, 1978 (HCAR No. 20759), authorization was granted to I&MECo and Indiana & Michigan Power Company ("I&MECo"), then a wholly-owned subsidiary of I&MPCo, to enter into amendments to the separate Nuclear Material Lease Agreements between I&MPCo, as lessee, and PruLease, Inc. ("PruLease"), as lessor, relating to the acquisition of nuclear material for use at Units No. 1 and 2 of the Donald C. Cook Nuclear Plant. Among other things, the Commission approved amendments to the Unit No. 1 Nuclear Material Lease Agreement (the "1971 Lease") that would permit

I&MPCo to lease nuclear material having a maximum Stipulated Casualty Value of $75 million and amendments to the Unit No. 2 Nuclear Material Lease Agreement (the "1977 Lease") that would permit I&MPCo to lease nuclear material having a maximum Stipulated Casualty Value of $100 million. The lease amendments also substantially conformed the material terms of the 1971 Lease and 1977 Lease, including the calculation of rent formula and termination of lease provisions.

On November 30, 1979, I&MPCo was merged into I&MECo, and, as a result of said merger, I&MECo assumed all rights and obligations of I&MPCo under the separate Nuclear Material Lease Agreements. Although I&MECo's obligations under the 1971 Lease and 1977 Lease are separate and distinct, PruLease and I&MECo, recognizing that all material terms of the two leases are identical, have agreed to an increase in the separate lease limits on the maximum Stipulated Casualty Value of nuclear material that may, at any one time, be leased by I&MECo, provided that the aggregate maximum Stipulated Casualty Value of leased nuclear material shall not exceed $175 million. Specifically, by Letter Agreement dated November 1, 1983, I&MECo and PruLease have agreed that I&MECo may lease nuclear material having a maximum Stipulated Casualty Value under the 1971 Lease of up to $100 million and nuclear material having a maximum Stipulated Casualty Value of up to $125 million under the 1977 Lease, provided that the aggregate Stipulated Casualty Value of nuclear material leased under the two leases may not exceed $175 million at any one time. The Letter Agreement provides I&MECo with flexibility in acquiring nuclear material for the two units of the Cook Plant, based on the current requirements of the separate units, without the associated expense (in the form of "nonusage" fees) of maintaining unnecessarily high lease lines under the separate leases. American proposes to extend to PruLease, Inc. the unconditional guaranty of the obligations of I&MECo under the 1977 Lease, as amended.

The post-effective amendment to the declaration and any further amendments are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by February 16, 1984, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the declarants at the addresses specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the declaration, as now amended or as it may be further amended, may be permitted to become effective.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-2432 Filed 1-27-84; 8:45 am]
BILLING CODE 8010-01-M

[File No. 1-4924]

LaMaur, Inc.; Application To Withdraw From Listing and Registration

The above named issuer has filed an application with the Securities and Exchange Commission pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the specified security from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

1. The common stock of LaMaur Inc. ("Company") is listed and registered on the Amex. Pursuant to a Registration Statement on Form 8-A which became effective on January 9, 1984, the Company is also listed and registered on the New York Stock Exchange ("NYSE"). The Company has determined that the direct and indirect costs and expenses do not justify maintaining the dual listing of the common stock on the Amex and the NYSE.

2. This application relates solely to withdrawal of the common stock from listing and registration on the Amex and shall have no effect upon the continued listing of such stock on the NYSE. The Amex has posed no objection to this matter.

Any interested person may, on or before February 14, 1984, submit by letter to the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-2433 Filed 1-27-84; 8:45 am]
BILLING CODE 8010-01-M

[Rel. No. 13734; 811-3533]

Rodger and Sparks General Investments Inc.; Application

January 23, 1984.

Notice is hereby given that Rodger and Sparks General Investments Inc. ("Applicant") 150 Diana Street, Placerville, California, registered under the Investment Company Act of 1940 ("Act"), as a closed-end, diversified management investment company, filed an application on December 2, 1983, for an order of the Commission pursuant to Section 8(f) of the Act, declaring that Applicant has ceased to be an investment company. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the text of the relevant provisions thereof.

Applicant states that it filed its notification of registration under the Act on July 30, 1982, but did not subsequently file any registration statement pursuant to Section 8(b) of the Act. Applicant represents that it has not filed any registration statement, with respect to securities issued by Applicant, pursuant to the Securities Act of 1933. Applicant further states that there have been no distributions to securityholders of Applicant in connection with the winding-up of Applicant's affairs pursuant to its deregistration.

Applicant represents that it has no debts or other outstanding liabilities; it has no assets or securityholders; and it is not a party to any litigation or administrative proceedings. Applicant states that within the last 18 months it has not for any reason transferred any of its assets to a separate trust. Finally, Applicant states that it currently exists as a corporation in the State of Oregon and will continue as such, but will change its name to Rodger and Sparks, Inc., and will trade in commodities futures contracts only.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than February 17, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for the request, and the specific issues of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,
Secretary.

[FR Doc. 84-2469 Filed 1-27-84; 8:45 am]
BILLING CODE 8010-01-M

[Rel. No. 13735; 812-5722]

Sundsvallsbanken and Sundsvallsbanken North America, Inc., Filing of Application

January 23, 1984.

Notice is hereby given that Sundsvallsbanken ("Bank"), a Swedish commercial bank, and Sundsvallsbanken North America, Inc., ("SNA") c/o Robert W. Cleveland, Esq., Sullivan & Cromwell, 125 Broad Street, New York, NY 10004, it wholly-owned United States subsidiary (collectively "Applicants"), filed an application on December 12, 1983, for an order of the Commission pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act") exempting Applicants from all provisions of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the text of all applicable sections.

According to the application, the Bank is the fifth largest commercial bank in Sweden. Applicants state that as of December 31, 1982, the Bank's total assets were approximately $1,218 million (at the rate of exchange prevailing on December 7, 1983); its deposits were approximately $734 million; and its equity capital was approximately $22 million. The Bank states that its structure is similar to that of international banks in the United States and that its principal business consists of making loans and receiving deposits. The application states that as of December 31, 1982, loans represented approximately 56% of the Bank's assets and provided approximately 64% of interest earned. The application also states that deposits represent 60% of the Bank's total liabilities.

Applicants represent that the Bank is regulated by the Swedish Bank Inspection Board ("Inspection Board") and the Swedish Central Bank, Sveriges Riksbank. Applicants represent that the Bank's business is subject to inspection and supervision by the Inspection Board under the Swedish Bank Companies Act ("Bank Act"). Applicants state that the Inspection Board prescribes accounting principles to be followed by banks, requires monthly financial statements and conducts periodic inspections to ensure compliance with the Bank Act. The Inspection Board has various enforcement powers under the Bank Act and may in exceptional cases actively intervene in management decisions to ensure compliance or to preserve the solvency of a bank. Applicants state that the Bank Act requires each bank to maintain a capital base in an amount which is not less than the total specified percentages of the book value of various types of assets and the face amount of certain guarantees issued by that bank. Assets (other than cash, government securities and certain low-risk assets) and guarantees must be matched by capital in amounts ranging form 1% to 8% of their book or face value, depending on specified risk criteria. According to the application, the Bank is also subject to the equivalent of reserve requirements in the form of cash deposits maintained with Sveriges Riksbank. This deposit requirement is currently set at 1% of total deposits, but may be raised to a maximum of 15%.

The Bank proposed to cause SNA to issue and sell unsecured prime quality commercial paper notes ("Notes") in bearer form, denominated in United States dollars and in an amount not intended to exceed an aggregate of $50 million at any one time outstanding. Applicants propose to issue and sell the Notes for the purpose of providing supplemental United States dollars for use in their current transactions. Applicants represent that the Notes will contain no provisions for payment on demand, extension, renewal or automatic rollover at the option of either the Bank, SNA or the holder. Applicants state that the Notes will be issued and sold to a commercial paper dealer in the United States which will reoffer the Notes as principal to institutional and other sophisticated investors who ordinarily buy commercial paper. Applicants represent that the offering of the Notes will not be advertised or otherwise offered for sale to the general public. Applicants state that they will undertake to ensure that the dealer will provide each offeree who has indicated an interest in the Notes with a memorandum prior to purchase, which describes the business of the Bank and contains its most recent audited public annual financial statements, including a balance sheet and profit and loss statement. The memorandum will also describe the material differences, if any, between the accounting principles applied in the preparation of the Bank's financial statements and generally accepted accounting principles applicable to United States banks. Applicants state that the memorandum will be at least as comprehensive as those customarily used by United States bank holding companies in offering commercial paper in the United States, and will be undated periodically to reflect material changes in Applicant's business and financial condition.

According to the application, payment of the principal, interest and premium, if any, on the Notes will be unconditionally guaranteed by the Bank. The proceeds of the Notes which are not used for the repayment of maturing Notes or the payment of minimal current expenses, will be placed on short-term deposit with, or loaned to, the Bank and will be withdrawn by, or repaid to, SNA on terms which will allow SNA to make timely payments on the Notes.

Applicants state that the Notes will rank *pari passu* among themselves, prior to equity securities of SNA and equally with all other unsecured indebtedness of SNA. Applicants also state that the Bank's guarantees of the Notes will rank *pari passu* among themselves, prior to equity securities of the Bank and equally with all other unsecured indebtedness of the Bank, including liabilities to depositors. Applicants represent that the terms and manner of offering the Notes will be such that the Notes will qualify for the exemption from registration under the Securities Act of 1933 ("1933 Act") provided by Section 3(a)(3) of the 1933 Act. Applicants further represent that SNA will not offer, issue or sell the Notes until it has received an opinion of its United States counsel to the effect that the Notes would be entitled to exemption under Section 3(a)(3) of the 1933 Act. Applicants do not request Commission review or approval of the opinion letter and the Commission expresses no opinion concerning availability of any such exemption.

Applicants represent that the proposed issue of Notes and any future issuance of Notes by Applicants in the United States shall have received, prior to issuance, one of the three highest investment grade ratings from at least one nationally recognized statistical rating organization and that its United States legal counsel will certify that such rating has been received.

Applicants state that SNA may appoint a bank or other financial institution in the United States as its authorized agent to issue its Notes from time to time. The Bank will appoint either that financial institution, SNA or some other United States person which normally acts in such capacity to accept any process which may be served in any action based on a Note and instituted by a holder thereof in any state or Federal Court. Applicants further state that the Bank will expressly accept the jurisdiction of any State or Federal Court in the City and State of New York in respect of any such action, and that this appointment and consent will be irrevocable until all amounts due and to become due in respect of the Notes have been paid by the Bank. Applicants state that they will also be subject to suit in any other court in the United States which would have jurisdiction.

Applicants state that the Bank and SNA may, from time to time, offer other debt securities for sale in the United States. Applicants represent that any such future offering will be accompanied by disclosure documents at least as comprehensive in their description of the Bank's business and its financial condition as those disclosure documents customarily used by United States bank holding companies in offerings of similar securities in the United States. Applicants represent that they will undertake to ensure that each offeree will be provided with the disclosure documents prior to sale. In connection with any future offering in the United States of its debt securities, Applicants make the same representations with regard to appointment of an authorized agent to accept service of process and consent to jurisdiction that Applicants make with regard to their proposed commercial paper offerings. Applicants also consent to having an order pursuant to Section 6(C) of the Act being expressly conditioned on its compliance with the undertakings and representations set forth in its application.

Applicants request an order pursuant to Section 6(c) of the Act exempting them from all provisions of the Act. Applicants contend that the Bank would be effectively precluded from selling securities in the United States through a financing subsidiary if it or the financing subsidiary were required to register as an investment company and comply with the provisions of the Act. Applicants assert that the Bank is extensively regulated by Swedish governmental authorities under a regulatory structure comparable to that imposed on United States banks. Applicants also assert that the Bank and SNA, like United States commercial banks which do not have to register under the Act, are not the type of entities which Congress intended to regulate under the Act.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than February 17, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service [by affidavit or, in the case of an attorney-at-law, by certificate] shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-2493 Filed 1-27-84; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 23205; 70-6911]

Vermont Yankee Nuclear Power Corp.; Proposal To Enter Into Revolving Credit Agreement; Exception From Competitive Bidding

January 20, 1984.

Vermont Yankee Nuclear Power Corporation ("Company"), R.D. 5, Ferry Road, Box 169, Brattleboro, Vermont 05301, a subsidiary of New England Electric System ("NEES") and Northeast Utilities ("NU"), registered holding companies, have filed an application-declaration with this Commission pursuant to Section 6(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 50(a)(5) thereunder.

The Company operates a 540 MW nuclear powered generating plant which has been in commercial operation since November 30, 1972. Outstanding shares of its common stock are owned by ten companies ("Sponsors") including NEES and NU.

The Company proposes to establish an intermediate term revolving credit facility of up to $50 million to meet its short term financing needs and for general corporate purposes. The notes issued under the revolving credit facility may be secured by a lien on the Company's nuclear fuel at the plant site.

The Company states that it may need to retain an experienced investment banking firm to negotiate the terms of a borrowing which would not require that Sponsors guarantee the Company's obligations. Further, the Company states the Eurodollar market may offer the type of arrangement needed. Insofar as it is unknown in the Eurodollar market, the Company believes that an investment banking firm could be of material assistance in facilitating negotiations with that market. Thus, the Company proposes to solicit proposals from potential from potential lenders willing to provide, and from firms willing to act as agent in negotiating, available facilities meeting the Company's requirements. The Company requests and is hereby granted an exception pursuant to Rule 50(a)(5) from the competitive bidding requirement of Rule 50(b) in order to solicit proposals from lenders and two or more investment banking firms.

The application-declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by February 13, 1984 to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicant-declarant at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-2491 Filed 1-27-84; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 20586; File No. SR-MSRB-84]

Municipal Securities Rulemaking Board; Filing and Order Granting Accelerated Approval of Proposed Rule Change

Janaury 23, 1984.

The Municipal Securities Rulemaking Board ("MSRB") 1150 Connecticut Avenue, NW., Washington, D.C. 20036, on January 12, 1984 filed with the Securities and Exchange Commission a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act ("Act") and Rule 19(b)(4) thereunder. The Commission is soliciting comments on the proposed rule change.

The proposed rule change amends MSRB Rule G-12(e)(xiv)(H) by changing the reference to securities "traded flat" to securities "in default," and by stating that "in default" means failing to make payments of principal as well as of interest. Rule G-12(e)(xiv)(H) governs the payment of interest checks on deliveries between dealers of registered securities in default. The provision specifies that deliveries in transactions in such securities, in which the recipient will be unable to have the securities transferred prior to the record date and an interest payment is due on or after the trade date, must be accompanied by a draft or bank check for the amount of interest due, unless the securities are traded "ex-interest."

As currently written, Rule G-12(e)(xiv(H), equates the term "traded flat" with "in default." The MSRB states that the term "traded flat" is broader in meaning than "in default." While securities in default are traded flat, *i.e.*, without accrued interest, bonds not in default also are "traded flat" on the last day of a month prior to an interest payment. The proposed rule change amends Rule G-12(e)(xiv)(H) to refer only to the narrower "in default" situation. It also conforms the terminology used in this provision of Rule G-12 with the terminology used in the confirmation disclosure requirements of Rules G-12(c)(vi)(E) and G-12(a)(iii)(F).

Persons desiring to make written comment should file six written copies with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549, within 21 days of publication of this proposal in the Federal Register. Comments should refer to File No. SR-MSRB-84-1.

Copies of the submission and any related documents, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of the filing and of any subsequent amendments also will be available for inspection and copying at the principal office of the MSRB.

The Commission finds that the propsed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB and, in particular, the requirements of Section 15B and the rules and regulations thereunder. Section 15B(b)(2)(C) of the Act states that rules promulgated by the MSRB should facilitate transactions in municipal securities, and help perfect the mechanism of a free open market in municipal securities. By making the language of MSRB Rule G-12(e)(xiv)(H) more precise and consistent with related provisions of the MSRB rules, the proposed rule change furthers these statutory goals. Specifically, the Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing in order to clarify the scope of the delivery provision at the earliest date possible.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change by, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[1]

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-2495 Filed 1-27-84; 8:45 am]

BILLING CODE 8010-01-M

Midwest Stock Exchange, Inc.; Applications for Unlisted Trading Privileges and of Opportunity for Hearing

January 24, 1984.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

Echo Bay Mines
Common Stock, No Par Value (File No. 7-7329)

LaMaur Inc.
Common Stock, $.03 ⅓ Par Value (File No. 7-7330)

Shoe Town Inc.
Common Stock, $.01 Par Value (File No. 7-7331)

Bolt Beranek & Newman Inc.
Common Stock, $1 Par Value (File No. 7-7332)

Temple-Inland Inc.
Common Stock, No Par Value (File No. 7-7334)

Vishay Intertechnology
Common Stock, $.10 Par Value (File No. 7-7335)

J.M. Tull Industries, Inc.
Common Stock, $1 Par Value (File No. 7-7336)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before February 14, 1984 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 24-2489 Filed 1-27-84; 8:45 am]

BILLING CODE 8010-01-M

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[1] 17 CFR 200.30-3(a)(12).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE-84-2]

Petitions for Exemption; Summary of Petitions Received and Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the

application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before: February 20, 1984.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No.———, 800 Independence Avenue, SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination of the Rules Docket (AGC-204), Room 916, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426-3644.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on January 24, 1984.

Richard C. Beitel,

Acting Assistant Chief Counsel, Regulations and Enforcement Division.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought
23801	Globe Air, Inc	14 CFR 135.159(a) (b) and (c)	To permit petitioner to operate its helicopters, which weigh in excess of 6,000 pounds, under VFR day and night, without a gyroscopic rate-of-turn indicator, combined with a slip skid indicator, a gyroscopic bank-and-pitch indicator, and a gyroscopic direction indicator.
18864	Continental Helicopters Inc	14 CFR 135.261(b)	Extension of Exemption 2701A to permit petitioner to operate a helicopter in a hospital emergency service without meeting the flight and duty time limitations of this section, subject to conditions and limitations.
23752	Mall Airways	14 CFR 135.225(e)(1)	To permit petitioner to takeoff at Canadian airports using minima set by Canadian authorities rather than the 1-mile visibility requirement.
23875	Beech Aircraft Corp	14 CFR 45.25(b)(2)	To permit petitioner to display registration marks on its new 300 A model aircraft on the engine nacelles which are attached to the wing rather than the fuselage.
22576	Ray's Flight Systems	14 CFR 61.157(d)(1), and 61.63(d)(2)	To amend Exemption 3544 to allow trainees to complete a practical test for issuance of a type rating to be added to any grade airplane simulator as set forth in Appendix A of Part 61.
23880	Fritz Air Systems Transport, Inc	14 CFR 121.3	To permit petitioner to operate as a domestic all-cargo carrier without having its own FAA air carrier operating certificate when using aircraft wet-leased from Challenge Air Transport, Inc.
20314	Flight Training Device	14 CFR 61.157(e)	To permit petitioner to complete a practical test using FAA-approved Phase II simulators for issuance of an Airline Transport Pilot Certificate with a type rating or the addition of a type rating to an airline transport pilot certificate without meeting certain requirements of Appendix H of Part 121.
23869	Strong Enterprises and the Relative Workshop	14 CFR 105.43(a)	To permit the petitioner's employees and representatives and other volunteer experimental parachute test jumpers under their direction and control to make parachute jumps while wearing a dual harness dual parachute pack.

DISPOSITIONS OF PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought disposition
18920	Transamerican Airlines	14 CFR portions of Parts 65 and 121	To reconsider Partial Grant of Exemption 2947C to the extent necessary to permit petitioner to conduct scheduled passenger service for a 90-day period over certain routes, authorized by the CAB, utilizing the flight control/dispatch procedures, communication procedures, and enroute servicing and maintenance procedures of Part 121 that are applicable to supplemental air carriers. *Denied Nov. 21, 1983.*
23659	Ports of Call Travel Club	14 CFR 91.303	To allow petitioner to operate its Boeing 707 and Convair 990 aircraft until Jan. 10, 1985, in noncompliance with the operating noise limit requirements. *Denied Dec. 12, 1983.*
23666	Lockheed Aircraft Service Co	14 CFR portions of Part 121	To permit petitioner to become certificated without full aircraft proving tests, operating experience and certain crewmember qualifications. *Denied Nov. 25, 1983.*
22190	Vieques Air Link, Inc	14 CFR 135.243(a)	To extend exemption 3479, which expires Dec. 12, 1983, to allow petitioner's commuter air carrier operations to be conducted by pilots in command who are not holders of airline transport pilot certificates, Subject to certain limitations. *Denied Nov. 29, 1983.*
23191	Amerford Airways, Inc	14 CFR 135.5	To permit petitioner to engage in air transportation in accordance with a wet-lease agreement with Air Vectors. *Denied Nov. 29, 1983.*
23597	Action AIR Cargo Corp	14 CFR 121.3 (c) and (e)	To permit petitioner to operate as a flag air carrier and a supplemental air carrier without having its own air carrier opreating certificate when using aircraft wet leased from Trans Air Link Corp. (DC-6A certificated under Part 121), or Seagreen Air Transport (DC-7C and C7-880 under Part 129) both of Miami, FL. *Denied Nov. 22, 1983.*
23759	Edward M. Helsley	14 CFR 121.383(c)	To permit petitioner to continue to serve as a pilot under Part 121 operations beyond the date of his 60th birthday. *Denied Nov. 16, 1983.*
23658	Lansing Community College	14 CFR portions of Part 65, Subpart D	To permit petitioner to administer the FAA-required tests for general curriculum subjects separately from the airframe and powerplant curriculum testing. *Denied Nov. 18, 1983.*

DISPOSITIONS OF PETITIONS FOR EXEMPTION—Continued

Docket No.	Petitioner	Regulations affected	Description of relief sought disposition
23663	Embry-Riddle Aeronautical University	14 CFR 147.21, 147.38a, and 183.1	To permit petitioner to: (1) Develop and administer its own written, oral, and practical examinations; subject to FAA-approval; (2) specify required hours of instruction; (3) issue temporary A & P licences to students upon successful completion of the program; and (4) be designated as a maintenance examiner with responsibility for administering oral and practical examinations in accordance with designated maintenance examiner standards and criteria and with responsibility for administering FAA-approved written examinations. *Denied Dec. 28,1983.*
23743	Interstate Airlines, Inc	14 CFR 121.623 and 121.643	To permit petitioner, a supplemental air carrier, to operate its B-727 aircraft in accordance with the domestic air carrier alternate airport provisions of § 121.619 and fuel requirements of § 121.639. *Denied Jan. 3, 1984.*
23701	Harold's Air Service	14 CFR 121.1(a)(5)(ii), 135.1(a)(3), and 135.2	To permit petitioner to operate DC-3 Turbo Express aircraft under Part 135 with a payload exceeding 7,500 pounds. *Denied Dec. 29, 1983.*
8429	Northern Air Cargo, Inc	14 CFR 91.39 and 121.157	To amend and permanently extend Exemption 770M, which terminates on Dec. 31, 1983, and which permits petitioner to use its restricted category C-82 airplanes to carry only out-sized cargo for compensation or hire subject to certain other conditions and limitations. The petitioner requests relief from the out-size cargo conditions of the present exemption. *Denied Dec. 27, 1983.*
23574	Gordon Plaskett	14 CFR 45.22(b)	To permit petitioner to display 2-inch in place of 12-inch high nationality and registration marks (N-numbers) on a restored aircraft, Grumman TBM-E. *Denied Dec. 21, 1983.*
23548	Wesley Kyle	14 CFR 45.21(c)(3)	To permit display of low color contrast nationality and registration marks (N-numbers) on the Piper L-4J, N33576, that would not distract from the authentic World War II markings. *Denied Dec. 19, 1983.*
23427	Kitty Hawk Aero Tours	14 CFR 45.29	To allow operation of petitioner's Cessna 172 aircraft with 3-inch high nationality and registration marks (N-numbers) in place of 12-inch N numbers now required. *Denied Dec. 19, 1983.*
23433	Franklin T. Barker	14 CFR 45.29(b)(1)(i)	To permit petitioner to continue to display 3-inch high nationality and registration marks (N-numbers) in place of marks at least 12 inches high. *Denied Dec. 19, 1983.*
22356	ACM Aviation, Inc	14 CFR 135.89(b)(3)	To allow petitioner to operate Gates Learjet 36A aircraft up to flight level 410 without either pilot being required to wear his/her oxygen mask so long as there are two pilots at the controls, and each pilot has a quickdonning type of oxygen mask. *Granted Nov. 23, 1983.*
23872	Pacific Southwest	14 CFR portions of Part 121	To permit petitioner to utilize certain highly qualified British Aerospace (BAe) pilots for training and checking certain of petitioner's check airmen, flight instructors, and flight crewmembers in the BAe 146 aircraft, such training and checking to be conducted in the United Kingdom in UK-registered BAe 146 aircraft. *Granted Jan. 9, 1984.*
23750	Executive Helicopter, Inc	14 CFR 135.261(b)	To permit petitioner to operate its helicopters in a hospital emergency medical evacuation service without complying with the duty-time limitations of that section. *Granted Nov. 28, 1983.*
23775	Million Air, Inc	14 CFR 121.342	To permit petitioner to operate its Douglas DC-7C airplane in a Part 121 supplemental air carrier operation without the airplane being equipped with an operable pitot heat indication system that complies with § 25.1326 of the FAR's. *Granted Dec. 1, 1983.*
23745	Swiss Air Transport Co., LTD. (SWISSAIR)	14 CFR 21.181, 91.27(a)(1), 91.29, and 91.165.	To permit petitioner to obtain a supplemental type certificate covering the operation of two B-747 aircraft, N221GE and N221GF, in accordance with an FAA-approved minimum equipment list and an approved maintenance program. *Gamted Nov. 21, 1983.*
23186	Air Illinois, Inc	14 CFR 91.307	To amend Exemption No. 3576a to add 1 aircraft. The present exemption allows operation in the United States, under a service to small communities exemption, of specified two-engine airplanes, identified by registration and serial number, that have not been shown to comply with the applicable operating noise limits as follows: Until not later than January 1, 1988: 2 BAC-1-11-200 N1547, & N1542. *Granted Nov. 29, 1983.*
22845	American West Airlines	14 CFR 91.307	To allow operation in the United States, under a service to small communities exemption, of specified two-engine airplanes identified by registration and serial number, that have not been shown to comply with the applicable operating noise limits as follows: Until not later than January 1, 1985: 2 B-737, N135AW, & N136AW. *Granted Nov. 29, 1983.*
22473	Ransome Airlines	14 CFR 93.123, 93.125, and 93.129	To extend Exemption 3752 until June 1, 1985, in which scheduled air taxi operators are authorized a limited number of operations at Washington National Airport using portions of runways under certain conditions for the purpose of conducting operational evaluation flights. *Extension to July 1, 1984. Granted Nov. 28, 1983.*
23788	Continental Divide Helicopters, Inc	14 CFR 135.261(b)	To allow petitioner to operate its helicopters in a hospital emergency medical evacuation service without complying with the duty-time limitations of that section. *Granted Dec. 12, 1983.*
22703	Emerald Air, Inc	14 CFR 91.307	To amend Exemption No. 3470c to add 1 aircraft. The present exemption allows operation in the United States, under a service to small communities exemption, of specified two-engine airplanes, identified by registration and serial number, that have not been shown to comply with the applicable operating noise limits as follows: Until not later than January 1, 1988: 3 DC-9-15F: N50AF, N72AF and N66AF; and 3 DC-9-14: N38641, N826TX, and N930EA. *Granted Dec. 13, 1983.*
19911	Aerovias Nacionales de Colombia, S.A. (AVIANCA).	14 CFR portions of Parts 21 and 91	To permit petitioner to operate five U.S.-registered B-727-259 aircraft using an FAA-approved master minimum equipment list and a continuous airworthiness maintenance and inspection program, and a Boeing 727 Master Minimum Equipment List. *Granted Dec. 9, 1983.*
23749	Dow Corning Corp	14 CFR portions of Parts 21 and 91	To permit petitioner to operate its Falcon 10-026, Falcon 10-180, and King Air 200-BB547 in accordance with a minimum equipment list. *Granted Dec. 16, 1983.*
23768	Mountain West Helicopters	14 CFR 135.261(b)	To permit petitioner to operate its helicopters in a hospital emergency medical evacuation service without complying with the duty time limitations. *Granted Dec. 9, 1983.*

DISPOSITIONS OF PETITIONS FOR EXEMPTION—Continued

Docket No.	Petitioner	Regulations affected	Description of relief sought disposition
18920	Transamerica Airlines	14 CFR portions of Parts 65 and 121	To permit petitioner to conduct scheduled passenger service over certain routes, authorized by the Civil Aeronautics Board utilizing the flight control/dispatch procedures, and communication procedures of Part 121 that are applicable to supplemental air carriers while it makes the adjustments to its operations necessary to bring it into full compliance with the Part 121 rules applicable to domestic and flag operators. *Granted Dec. 27, 1983.*
21792	Aeronaves de Mexico, S. A. (AM)	14 CFR portions of Parts 21 and 91	Amendment to Exemption No. 3266A to permit petitioner to operate four new DC-9-80 U.S.—registered aircraft using an FAA-approved master minimum equipment list and an FAA-approved continuous airworthiness maintenance program. *Granted Dec. 22, 1983.*
22770	HCI Helicopters, Inc.	14 CFR 43.3(h)	To amend Exemption 3570, issued on July 2, 1982, which permitted pilots of petitioner to remove, check, reinstall, and safety wire magnetic chip detector plugs on Allison 250C series engines. This amendment is to reflect the recent change in the petitioner's name to HCI Helicopters, Inc., in lieu of Helicopter Charter, Inc. *Granted Dec. 27, 1983.*
23789	Prince Corp	14 CFR 21.181	To allow petitioner to operate two Dassault DA-10 aircraft, N654PC and N656PC, using an FAA-approved minimum equipment list. *Granted Dec. 23, 1983.*
22506	Guyana Airways Corp	14 CFR portions of Parts 21 and 91	To amend Exemption 3434B to include a leased U.S.-registered B-707-3121BB advanced aircraft, N495PA. The exemption permits GAC to operate certin aircraft using an FAA-approved minimum equipment list. *Granted Dec.51983.*
23452	Alitalia Airlines	14 CFR 21.181	To amend Exemptions 3675 and 3675A by adding two additional Douglas DC-9-30 aircraft, serial numbers 47225 and 47128. These exemptions allow petitioner and its two subsidaries, Aero Transporti Italiani and Aermediterranea-Linee Aeree Mediterranee, S.P.A., to operate nine leased U.S.-registered DC-9-30 aircraft, utilizing an FAA-approved minimum equipment list. *Granted Dec. 9, 1983.*
23748	Airpac, Inc	14 CFR portions of Parts 61 and 121	To extend Exemption 3858, which terminates on Dec. 31, 1983, and which permits foreign airmen to train certain pilot employees in certain UK-registered BAe 146 aircraft operated in the United Kingdom. *Granted Dec. 30, 1983.*
12638	Capital Air, Inc	14 CFR 121.99 and 121.351.(a)	To amend Exemption 2081F to include Capital Air, Inc., in the provisions of the exemption to operate turbojet airplanes on certain routes between certain New York oceanic control area reporting points and San Juan with one of two installed high frequency communications systems inoperative at the time of departure and without maintaining two-way radio communications between each airplane, and the dispatch office along with named routes subject to certain conditions. *Granted Dec. 29, 1983.*
15194	Compania Mexicana de Aviacion, S.A. (CMA)	14 CFR Parts 61.63 and 91	To extend the expiration date of Exemption 2195, as amended, to allow petitioner to continue to operate two leased, U.S.-registered B-727-2J7 aircraft, N127NA and N129NA, using an FAA-approved continuous airworthiness maintenance program and an FAA-approved minimum equipment list. *Granted Dec. 29, 1983.*
23707	Ford Motor Co	14 CFR 21.181	To permit petitioner to operate four Convair 580 aircraft using an FAA-approved minimum equipment list. *Granted Dec. 28, 1983.*
22457	American Airlines Flight Safety	14 CFR portions of Part 121	To extend Exemption 3462, which expires Jan. 31, 1984, to permit petitioner to operate its airplanes in extended overwater operations over the Gulf of Mexico to the Yucatan Peninsula with one of two installed high frequency communication radio systems inoperative at the time of departure and with only one long-range navigational radio system as the primary means of navigation for the extended overwater operations, subject to certain limitations. *Granted Jan. 6, 1983.*
23728	Houston Helicopters, Inc.	14 CFR para. 5(a) of SFAR 29-4	To allow petitioner to operate three newly acquired helicopters, which are not otherwise certified for IFR operations, in a limited IFR configuration under SFAR 29. *Granted Jan. 6, 1984.*

[FR Doc. 84-2419 Filed 1-27-84; 8:45 am]
BILLING CODE 4910-13-M

Sunshine Act Meetings

Federal Register
Vol. 49, No. 20
Monday, January 30, 1984

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).

CONTENTS

	Items
Federal Mine Safety and Health Review Commission	1
Federal Reserve System	2, 3, 4
Federal Trade Commission	5, 6
Legal Services Corporation	7
Pacific Northwest Electric Power and Conservation Planning Council	8
Parole Commission	9

1

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

January 25, 1984.

TIME AND DATE: 10 a.m., Wednesday, February 1, 1984.

PLACE: Room 600, 1730 K Street, NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. Secretary of Labor, MSHA v. U.S. Steel Mining Co., Inc., Docket Nos. PENN 82-218, PENN 82-219; Petition for Discretionary Review. (Issues include whether the judge erred in finding violations of 30 CFR 75.1405 and 75.1725(a)).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653-5632.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 84-2535 Filed 1-26-84; 11:44 am]

BILLING CODE 6820-12-M

2

FEDERAL RESERVE SYSTEM

TIME AND DATE: 10 a.m., Thursday, February 2, 1984.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 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 response to the Securities and Exchange Commission on its proposal to require banks that conduct certain securities activities to register as broker/dealers.

Discussion Agenda:

2. Proposed Federal Reserve cash service standards and prices.

3. Proposals with respect to Regulation K (International Banking Operations): (A) Final amendments requiring banking institutions to establish and maintain reserves against certain international assets (proposed earlier for public comment; Docket No. R-0498); and (B) Publication for comment of proposed amendments prescribing (1) uniform rules for the accounting of fees associated with international lending by banking institutions, and (2) reporting and disclosure requirements concerning international assets subject to transfer risk.

4. Relevance of capital adequacy considerations in foreign bank acquisitions of domestic banks.

5. 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, D.C. 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board (202) 452-3204.

Dated: January 26, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-2574 Filed 1-26-84; 1:08 pm]

BILLING CODE 6210-01-M

3

FEDERAL RESERVE SYSTEM

TIME AND DATE: Approximately 12 noon, Thursday, February 2, 1984, following a recess at the conclusion of the open meeting.

PLACE: 20th Street and Constitution Avenue, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Issues relating to Federal Reserve notes.

2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

3. Any times carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board (202) 452-3204.

Dated: January 26, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-2575 Filed 1-26-84; 1:07 pm]

BILLING CODE 6210-01-M

4

FEDERAL RESERVE SYSTEM

TIME AND DATE: 2:30 p.m., Friday, February 3, 1984.

PLACE: 20th Street and Constitution Avenue, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any item carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board (202) 452-3204.

Dated: January 26, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-2576 Filed 1-26-84; 1:08 pm]

BILLING CODE 6210-01-M

5

FEDERAL TRADE COMMISSION

TIME AND DATE: 2 p.m., Thursday, February 2, 1984.

PLACE: Room 532, (open); room 540 (closed) Federal Trade Commission Building, Sixth Street and Pennsylvania Avenue, NW., Washington, D.C. 20580.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the Public.

MATTERS TO BE CONSIDERED: Portions Open to the Public:

(1) Oral Argument in Rentacolor, Inc., Docket 9163.

Portions closed to the Public:

(2) Executive Session to follow Oral Argument in Rentacolor, Inc., Docket 9163.

CONTACT PERSON FOR MORE INFORMATION: Susan B. Ticknor, Office

of Public Information (202) 523–1892; Recorded Message: (202) 523–3806.

Emily H. Rock,

Secretary.

[FR Doc. 84-2584 Filed 1-26-84; 1:23 pm]

BILLING CODE 6760-01-M

6

FEDERAL TRADE COMMISSION

TIME AND DATE: 2 p.m., Wednesday, February 15, 1984.

PLACE: Room 532, (open); room 540 (closed) Federal Trade Commission Building, Sixth Street and Pennsylvania Avenue, NW., Washington, D.C. 20580.

STATUS: Parts of this meetings will be open to the public. The rest of the meeting will be closed to the Public.

MATTERS TO BE CONSIDERED: Portions Open to Public:

(1) Oral Argument in American Medical International, Inc., Docket 9158.

Portions closed to the Public:

(2) Executive Session to follow Oral Argument in American Medical International Docket 9158.

CONTACT PERSON FOR MORE INFOMATION: Susan B. Ticknor, Office of Public Information (202) 523–1892; Recorded Message: (202) 523–3806.

Emily H. Rock,

Secretary.

[FR Doc. 84-2585 Filed 1-26-84; 1:23 pm]

BILLING CODE 6750-01-M

7

LEGAL SERVICES CORPORATION

Board of Directors Meeting

TIME AND DATE: It will commence at 10 a.m. and continue until all official business is completed; Monday, February 6, 1984.

PLACE: Hilton Inn Orlando, LaBodega Room, 3200 West Colonial Drive, Orlando, Florida.

STATUS OF MEETING: Open (Portion of Meeting is to be closed to discuss personnel, personal, criminal, litigation, and investigatory matters under 45 CFR 1622.5 (a), (d), (e), (f), and (h)).

MATTERS TO BE CONSIDERED:

1. Approval of Agenda
3. Approval of Draft Minutes of January 6, 1984 Board Meeting
4. Election of Chairman and Vice Chairman
5. Report from the President
   —Report of Executive Session of January 6, 1984
   —Update on Legal Needs Study
6. Report from Appropriations and Audit Committee
   —Acceptance of Audit
   —Allocation of 1983 Carryover Funds
   —Final Fiscal Year 1983 Consolidated Operating Budget
   —Proposed Fiscal Year 1984 Consolidated Operating Budget Including Carryover
   —Selection of Auditor for 1984
7. Report from the Office of General Counsel
   —Final Publication of 45 CFR 1600.2(a)—Definition of Termination
   —Proposed Regulations 1600.1—Definitions 1612—Lobbying 1619—Disclosure of Information
9. Report from the Office of Program Development
   —IOLTA Grants
   —Law School Clinics
   —Legal Clinics
   —NORC Report
10. Report from the Office of Government Relations

CONTACT PERSON FOR MORE INFORMATION: LeaAnne Berstein, Office of the President (202) 272-4010.

Dated: January 25, 1984.

Donald P. Bogard,

President.

[FR Doc. 84-2700 Filed 1-25-84; 4:25 pm]

BILLING CODE 6820-35-M

8

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

(Northwest Power Planning Council)

TIME AND DATE: 10 a.m., February 1–2, 1984.

PLACE: North Shore Resort Hotel, North Shore Plaza, Coeur d'Alene, Idaho.

STATUS OF MEETING: Open. A portion of this meeting will be closed to the public to discuss pending litigation and other legal matters.

MATTERS TO BE CONSIDERED:

Presentation on Federal Energy Regulatory Commissions' Salmon River Basin Ruling
Status Report on Section 200 Goals Study of the Columbia River Basin Fish and Wildlife Program
Presentation on Willamette River Basin Plan
Status Report on the Amendment Schedule for the Columbia River Basin Fish and Wildlife Program
Model Conservation Standards
Status Report on Northwest-Southwest Intertie Access Policy
Public Comment on Proposed Amendments to the Council's Study of Large Thermal Plant Planning and Conservation Schedules
Council Business
Public Comment will follow each item

CONTACT PERSON FOR MORE INFORMATION: Ms. Bess Wong (503) 222–5161.

Edward Sheets,

Executive Director.

[FR Doc. 84-2699 Filed 1-26-84; 1:03 pm]

BILLING CODE 6560-50-M

2

PAROLE COMMISSION

The Commissioners presently maintaining offices at Chevy Chase, Maryland Headquarters.

TIME AND DATE: 2 p.m., Thursday, January 26, 1984.

PLACE: Room 420–F, One North Park Building, 5550 Friendship Boulevard, Chevy Chase, Maryland 20315.

STATUS: Closed pursuant to a vote to be taken at the beginning of the meeting.

MATTERS TO BE CONSIDERED: Referrals from Regional Commissioners of approximately 3 cases in which inmates of Federal prisons have applied for parole or are contesting revocation of parole or mandatory release.

CONTACT PERSON FOR MORE INFORMATION: Linda Wines Marble, Chief Case Analyst, National Appeals Board, United States Parole Commission, (301) 492–5937.

Dated: January 25, 1984.

Joseph A. Barry,

General Counsel, United States Parole Commission.

[FR Doc. 84-2709 Filed 1-26-84; 11:22 am]

BILLING CODE 4410-01-M

Federal Register

Monday
January 30, 1984

Part II

Department of Agriculture

Farmers Home Administration

7 CFR Parts 1901, 1924, 1940, 1941, 1942, 1943, 1944, 1945, 1948, and 1980

Revision of Policies and Procedures for Considering the Environmental Impacts of Proposed Agency Actions; Final Rule

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

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Revision of Policies and Procedures for Considering the Environmental Impacts of Proposed Agency Actions

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulation for implementing the National Environmental Policy Act. These amendments are necessary in order to comply with the Council on Environmental Quality's (CEQ) "Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act." The intended effect of these amendments is to make FmHA's regulation consistent with CEQ's regulation as well as serve as a reference point for those environmental laws, Executive Orders and regulations applicable to FmHA programs.

EFFECTIVE DATE: This regulation is effective as follows: Its requirements must be met for those applications for financial assistance, requests for subdivision approval, and other covered actions that are not approved (i.e. Form FmHA 1940–1 has not been issued for an application for financial assistance) on or before March 30, 1984. However, all applicants filing pre-applications, applications, and requests for subdivision approvals after January 30, 1984, must provide the environmental information required by this regulation.

FOR FURTHER INFORMATION CONTACT: John Hansel, Environmental Protection Specialist, telephone (202) 382–9626, Farmers Home Administration, U.S. Department of Agriculture, Room 6305, South Agriculture Building, Washington, D.C. 20250.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA procedures established in Secretary's Memorandum No. 1512–1 which implements Executive Order 12291 and has been determined to be non-major. The rule will not result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The FmHA programs and projects which are affected by this rule are subject to intergovernmental consultation in the manner delineated in 7 CFR Part 3015. The affected programs are as follows: CFDA Nos. 10.404, Emergency Loans; 10.405, Farm Labor Housing Loans and Grants; 10.406, Farm Operating Loans; 10.407, Farm Ownership Loans; 10.408, Grazing Association Loans; 10.409, Irrigation, Drainage, and other Soil and Water Conservation Loans; 10.411, Rural Housing Site Loans; 10.413, Recreation Facility Loans; 10.414, Resource Conservation and Development Loans; 10.415, Rural Rental Housing Loans; 10.416, Soil and Water Loans; 10.418, Water and Waste Disposal Systems for Rural Communities; 10.419, Watershed Protection and Flood Prevention Loans; 10.420, Rural Self-Help Housing Technical Assistance; 10.422, Business and Industrial Loans; 10.423, Community Facility Loans; 10.424, Industrial Development Grants; 10,426, Area Development Assistance Planning Grants; 10.427, Rural Rental Assistance Programs; 10.430, Energy Impacted Area Development Assistance Programs; 10.431, Technical and Supervisory Assistance Grants; and 10.432, Biomass Energy and Alcohol Fuels Loans and Loan Guarantees.

This document has been reviewed in accordance with 7 CFR Part 1901, Subpart G, "Environmental Impact Statements." It is the determination of FmHA that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354), Mr. Charles W. Shuman, Administrator of the Farmers Home Administration, has determined that this action will not have a significant economic impact on a substantial number of small entities because in terms of the Agency's grant programs, less than 30 grants will be affected annually.

These amendments are necessary in order to comply with the Council on Environmental Quality's (CEQ) "Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act." A basic objective of this rule, then, is to update FmHA's environmental review requirements in order to conform to the CEQ Regulations. Like FmHA's existing requirements, this rule affects all of the Agency's financial assistance programs but it provides more specific guidance in how to complete environmental reviews than previous regulations.

This rule also incorporates the concept of using the environmental impact assessment, and, when necessary, the environmental impact statement (EIS) as the basic mechanism for completing and demonstrating compliance with other major Federal environmental laws, regulations and policies. This concept is utilized by other Federal agencies and encouraged by CEQ. Additionally, the rule provides specific procedures for implementing Departmental Regulation 9500–3, "Land Use Policy."

The major element of this rule is the provision of specific guidance for the preparation of environmental assessments and impact statements, including formats for preparing assessments. Those actions undertaken by the Agency that do not require an environmental assessment are specifically defined under the heading of categorical exclusions. For those actions subject to environmental assessments, two levels or degrees of assessment have been established. Therefore, this procedure differs from the former requirements. The first level of assessment consists of a minimal checklist type review and is done for smaller scale construction projects which are specifically defined under the heading, Class I actions. A more detailed narrative assessment is done for larger construction projects defined as Class II actions. Within this review structure, housing projects of less than 25 units, which were not covered by the former regulation, will now undergo the minimal assessment for a Class I action. Additional major elements include guidance on how the Agency's compliance with environmental laws will be documented in the environmental assessment, or, if necessary, the EIS for the project.

The responsible officials for carrying out the requirements of this rule are identified and each State Director is required to designate a staff member as the State Environmental Coordinator who thereafter will be directly responsible to the State Director for the effective implementation of this rule at the State and field office level. Several other major elements of the rule are discussed in the paragraphs below that address the responses to comments received on the proposed rule.

The Office of Management and Budget's (OMB) clearance has been obtained for the reporting and record

keeping requirement which this rule places on the public. This requirement stems from Form FmHA 1940–20, "Request for Environmental Information". As indicated in Section 1940.309, certain applicants must complete this Form as part of their application for financial assistance. The OMB approval number is 0575–0094.

In considering alternatives to the promulgation of this rule, initial consideration was given to whether or not there was a need to change our existing rule on preparing environmental assessments and EISs. Since that rule does not conform to the CEQ Regulations issued subsequent to it, and it must so conform, FmHA had no choice but to prepare a revision. In completing this revision, FmHA faced two major sub-options. The first was to promulgate a rule that dealt only with implementing the National Environmental Policy Act (NEPA). The second option was to address not only the requirements of NEPA but also those of the other major environmental laws and regulations that apply to Federal financial assistance programs. FmHA chose the second option because of its management advantages and related cost-effectiveness. Since an environmental assessment can be used as the vehicle for considering and documenting compliance with other applicable environmental laws, the incorporation of these laws into this rule and the assessment process mandated under it eliminate the need for separate rules for these other requirements. Such incorporation also vividly demonstrates the relationship of these other environmental requirements to the NEPA process. Also, this method of incorporation provides both Agency staff and the public with a centralized reference document for these requirements.

This type of broader rule, then, becomes a statement of the Agency's environmental program. Compliance with it early in the processing of an application will minimize potential delays in project approval and construction that can result from piecemeal review of environmental requirements at random points in the application process. Also, the selected alternative avoids duplicative and recurring requests for environmental information from applicants since the rule contains a uniform data request that covers all major environmental mandates, not just NEPA. For these reasons, FmHA decided to broaden the rule beyond just NEPA compliance.

The selected alternative has the potential for both cost increases and cost savings with the net effect determinable only on a project-by-project basis. With respect to applicants who seek assistance to build residential, commercial, or industrial facilities, land acquisition costs will be somewhat higher in some instances. This rule increases the Agency's emphasis on the utilization of adequate sites for construction projects. Applicants who plan to use sites for non-farm purposes that are located in floodplains, wetlands, or outside of rural settlement patterns will be discouraged from doing so unless there is no practicable alternative to such a location. Since these types of sites are generally less attractive for construction projects, they are normally cheaper. Land costs, therefore, should increase as fewer of these unattractive sites are used. Higher land costs, however, can be offset by lower development costs. For example, floodplain sites require special construction and protective features. FmHA will participate in increased land costs as permitted by program regulations. This increased cost, however, is often short-term when compared to the useful life of the project. Certainly reducing the potential for flood damage over useful life of a project can result in a cost savings. Also, by locating projects and public facilities within established communities, there is a reduction in public service costs and transportation costs and an increase in the positive economic impact on the community. From another perspective, some applicants will have their costs increased because the environmental review will disclose the need for environmental mitigation measures which the applicant did not originally foresee. Such measures could include establishing a vegetative buffer strip or erosion control measures, for example.

As a result of the more specific guidance provided in this rule and the revised CEQ Regulations, FmHA may prepare more environmental impact statements than in the past. The cost of these statements, however, will not be borne by the applicant. The EIS often pays for itself by identifying potentially serious site problems or health and safety problems and providing methods to avoid them. The EIS may also show that a smaller scale project is adequate to meet the applicant's needs, thereby greatly reducing project costs.

All applicants will generally benefit from the cost savings associated with completing comprehensive environmental reviews early in the application review process. This procedure prevents delays in project approval and construction since environmental issues are less likely to surface in these later stages or affected citizens raise unaddressed issues. Such delays can result in both escalated costs or even major project revisions. The occurrence of such delays are minimized by this rule.

On January 12, 1981, a proposed rule was published in the Federal Register (46 FR 2900) for a 60-day review and comment period. On February 19, 1981, a public information meeting was held in Washington, D.C. for the purposes of discussing the proposed rule as well as considering comments and questions of interested parties. Following is a summary of the comments received from this public review process and FmHA's responses.

a. The Department of the Interior requested several changes and clarifications in the rule were particular laws under its jurisdiction are discussed, such as the Endangered Species Act. The proposed rule failed to address the legislative requirements that exist for proposed species and critical habitats as opposed to listed species and critical habitats. These changes have been made in the appropriate sections.

b. Several commenters suggested that the proposed thresholds for categorical exclusions be increased. Categorical exclusions, Section 1940.310, are those types of Agency actions or projects that do not require an environmental assessment because, either individually or commulatively, they do not have the potential to significantly affect the quality of the human environment. The thresholds relating to the housing programs and farm programs were referenced in these comments. Several changes have been made to the categorical exclusions for the Farm Programs and they are discussed below in paragraph d. With regard to housing, CEQ has worked with FmHA, the Veterans Administration and the Department of Housing and Urban Development and determined that housing projects of one to four units can be categorically excluded. Therefore, we have not increased this threshold. The proposed and final rule, however, recognizes that small housing projects above four units do not normally require either detailed environmental assessments or the submission of extensive environmental data from applicants. Therefore, a minimal, checklist-type assessment is required for smaller housing projects, 5 to 25 units, for which applicants need only furnish basic site descriptive materials. The final rule also broadens the use of this checklist type assessment to a greater

variety of applications under the Farm Programs and the Community and Business Programs.

c. One State agency, a national farm organization and two of its State-level affiliates objected to the proposed requirement that FmHA State Directors prepare natural resource management guides for their respective States. These commenters believe this requirement amounts to Federal land use planning. This is not the case. As can be seen in Section 1940.305(b), the guide will consist of two major elements; (1) a location inventory of designated, important land uses and environmental resources within the State; and (2) a policy statement listing the existing standards and regulations that protect these resources. FmHA officials play no role in designating the resources on the inventory. Designation is accomplished by the Agency having jurisdiction over the resource. For example, in the case of critical habitats for endangered species, the Department of Interior (DOI) is the designating agency. FmHA State Offices must simply maintain up-to-date listings for their States as periodically published in the Federal Register by DOI. This is not land use planning on FmHA's part. In some cases, maintaining a current listing of an important resource is required by Federal regulation. The Advisory Council on Historic Preservation requires in its regulations for implementing Section 106 of the National Historic Presevation Act that every Federal agency review the National Register of Historic Places as a first step in considering a project's potential impacts. This review is necessary to determine if any listed historic properties are within the project's area of environmental impact. The reviewer, consequently, must have a current copy of the National Register to do this. In all cases, FmHA staff must have an inventory of designated, sensitive environmental areas within the State in order to prepare environmental assessments.

The second major aspect of the natural resource management guide is a brief document that enumerates the standards and review requirements, if any, that apply to the land uses and resources that make up the inventory. This document is available to the public and includes those major environmental standards and review requirements that have been promulgated at the Federal level as well as those that are particular to the State. This document is intended to served two purposes. First, it provides FmHA State Office staff with a concise listing of the environmental and land use considerations and constraints that they must address in the review and approval of applications for funding assistance. Second, it serves as a useful planning tool for prospective applicants. CEQ's Regulations require that all Federal agencies integrate the environmental impact review process with other planning at the earliest possible time to insure that planning and decisions reflect environmental values, to avoid delays later in the process, and to head off potential conflicts. The CEQ Regulations go on to stipulate that where projects are planned by private applicants or other non-federal entities before Federal involvement, which is the case for FmHA, that such entities be made aware of what environmental requirements will have to be met to gain Federal approval of the project. (See Section 1501.2 of CEQ's Regulations.) The natural resource management guide provides these entities with this information for use in their project planning process and minimizes the potential for applicants expending energy and local funds on projects that are either not fundable or require substantial redesign and resultant processing delays.

Because the preparation of the natural resource management guide is not Federal land use planning and the guide provides the benefits described above, the requirement has been maintained in the final rule. This position conicides with that of seven commenters on the proposed rule which included two Federal agencies, four State-level agencies, and two national organizations. All of these comments strongly endorsed the national resource management guide because of the further interaction, coordination and communication that it would promote between FmHA State Offices and State governments. A national organization representing county governments was supportive as long as it was clearly spelled out in the rule that FmHA shall not exercise land use powers traditionally reserved to local governments. Since this was never FmHA's intent nor is it within our jurisdiction, we have added this clarification to § 1940.305(b). We have also attempted to clarify in that same Section the responsibilities of FmHA approving officials in reviewing the acceptability of sites for FmHA funded projects as opposed to the land use powers of local and State governments.

d. Two Federal agencies believed that modifications could be made to the thresholds that apply to applications under the Farm Programs without increasing the potential for adverse environmental impacts. Accordingly, some actions have been exempted from review that originally were subject to environmental assessments. For example, any applications that involve changes in land use from an intensive use such as crop production to a less intensive use such as pastures or forestland are now exempt from review regardless of the amount of acreage. Additionally, proposals for creating farm ponds of less than five acres in size are normally exempt from review. The previous threshold was two acres.

Also, a concern was raised that there could be a duplication of environmental reviews between FmHA and the Soil Conservation Service (SCS) for applications under the Farm Programs. Section 1940.311 has been revised to emphasize that if an application under the Farm Programs has initially received technical assistance from SCS or any other Federal agency with respect to the elements of the application, FmHA will review any environmental analysis conducted by the other Federal agency and will adopt it as FmHA's assessment if the requirements of Section 1940.324 are met. If these requirements are not met, FmHA will work with the other Federal agency to supplement the initial environmental review as necessary. For large scale farm projects for which the applicant has not requested SCS's technical assistance before filing an application with FmHA, the Agency will request the applicant to seek SCS assistance. If the applicant does seek such assistance, FmHA will work with SCS to adopt the environmental review conducted as part of the assistance and to incorporate SCS's conservation plan for the application within the loan approval requirements.

A final major change in the manner that applications under the Farm Programs will be processed relates to environmental data submission requirements. FmHA recognizes that any burden that these requirements may cause will fall most seriously upon these applicants. Therefore, this rule contains the provision that no environmental information need be submitted as part of an application meeting the definitions of a Class I action under the Farm Programs (see Section 1940.311(c)) when, as an alternative, a site visit by the FmHA official preparing the environmental assessment suffices. Since for almost all of these actions this official will be the County Supervisor, site visits should be the norm and not the exception. Also, the applicant need not submit any environmental information whenever another Federal agency's environmental assessment is adopted by FmHA.

e. Several commenters raised the concern that FmHA was proposing to do too much in the area of environmental impact review given budget and manpower constraints. Other commenters welcomed the changes over present procedures. FmHA recognizes that this rule increases its workload with respect to environmental matters. It also recognizes that FmHA's existing procedures must be changed thereby ensuring that FmHA's financial assistance programs meet rural America's economic and housing needs while providing a safe and healthy environment. We believe this regulation strikes an effective balance between providing an effective environmental review process and tailoring this process to fit our management system, thereby minimizing workload implications.

f. A national housing organization criticized the proposed rule's policy for indicating that in certain circumstances rehabilitation of housing would be favored over new construction of housing. FmHA has decided not to take a position on rehabilitation versus new construction except on a project by project basis. Therefore, this policy has been deleted from the final rule.

g. The policy contained in the proposed rule regarding financial assistance for projects located on barrier islands has been modified in light of the passage of the Coastal Barrier Resources Act, Pub. L. 97-348. The draft language has been replaced with a brief summary of the Act's requirements along with implementation guidance.

h. Finally, the organization of the final regulation has been modified. Most of the guidance material contained in the proposed rule has been slightly expanded and removed and segregated into appropriately titled exhibits.

List of Subjects for Subpart G of Part 1940

Endangered and threatened wildlife, Environmental protection, Floodplains, National wild and scenic river system, Natural resources, Recreation, Water supply.

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

PART 1901—PROGRAM RELATED INSTRUCTIONS

Subpart G—Environmental Impact Statements [Removed and Reserved]

1. Subpart G [§§ 1901.301—1901.309 and Exhibits A–D] of Part 1901 is removed and reserved.

PART 1924—CONSTRUCTION AND REPAIR

Subpart O—Planning and Performing Construction and Other Development

§ 1924.6 [Amended]

2. In § 1924.6, paragraph (a)(9) is revised to read as follows:

§ 1924.6 Performing development work.

* * * * *

(a) * * *

(9) The provisions of Subpart G of Part 1940 of this chapter concerning environmental requirements will apply to all loans and grants including those being assisted under the HUD Section 8 housing assistance payment program for new construction.

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PART 1940—GENERAL

3. Subpart G is added to Part 1940 to read as follows:

Subpart G—Environmental Program

Sec.

1940.301 Purpose.
1940.302 Definitions.
1940.303 General Policy.
1940.304 Special Policy.
1940.305 Policy Implementation.
1940.306 Environmental responsibilities within the National Office.
1940.307 Environmental responsibilities within the State Office.
1940.308 Environmental responsibilities at the District and County Office levels.
1940.309 Responsibilities of the prospective applicant.
1940.310 Categorical exclusions from National Environmental Policy Act (NEPA) reviews.
1940.311 Environmental assessments for Class I actions.
1940.312 Environmental Assessments for Class II actions.
1940.313 Actions that normally require the preparation of an Environmental Impact Statement (EIS).
1940.314 Criteria for determining a significant enviromental impact.
1940.315 Timing of the environmental review process.
1940.316 Responsible officials for the environmental review process.
1940.317 Methods for ensuring proper implementation of categorical exclusions.
1940.318 Completing environmental assessments for Class II actions.
1940.319 Completing environmental assessments for Class I actions.
1940.320 Preparing EIS's.
1940.321 Use of completed EIS.
1940.322 Record of decision.
1940.323 Preparing supplements to EIS's.
1940.324 Adoption of EIS or environmental assessment prepared by other Federal Agency.
1940.325 FmHA as a cooperating Agency.
1940.326 FmHA as a lead Agency.
1940.327 Tiering.
1940.328 State Environmental Policy Acts.
1940.329 Commenting on other agencies' EIS's.
1940.330 Monitoring.
1940.331 Public involvement.
1940.332 Emergencies.
1940.333 Applicability to planning assistance.
1940.334 Direct participation of State agencies in the preparation of FmHA EIS's.
1940.335 Environmental review of FmHA proposals for legislation.
1940.336 Contracting for professional services.
1940.337—1940.349 [Reserved]
1940.350 Office of Management and Budget (OMB) control number.

Exhibits

A—Departmental Regulation 9500-3, Land Use Policy.
B—Development and Implementation of National Resource Management Guide.
C—Implementation Procedures for the Farmland Protection Policy Act; Executive Order 11988, Floodplain Management; Executive Order 11990, Protection of Wetlands; and Departmental Regulation 9500-3, Land Use Policy.
D—Implementation Procedures for the Endangered Species Act.
E—Implementation Procedures for the Wild and Scenic Rivers Act.
F—Implementation Procedures for the Coastal Barrier Resources Act.
G—Timing of FmHA Environmental Impact Review Process.
H—Enviromental Assessment for Class II Actions.
I—Finding of No Significant Environmental Impact.
J—Locations and Telephone Number of Federal Emergency Management Administration's Regional Offices.
K—Locations and Telephone Numbers of U.S Fish and Wildlife Service's Wetland Coordinators.
L—Exceptions to Restrictions of Coastal Barrier Resources Act.

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

Subpart G—Environmental Program

§ 1940.301 Purpose.

(a) This subpart contains the major environmental policies of the Farmers Home Administration (FmHA). It also provides the procedures and guidelines for preparing the environmental impact analyses required for a series of Federal laws, regulations, and Executive orders within one environmental document. The timing and use of this environmental document within the FmHA decisionmaking process is also outlined.

(b) This subpart is intended to be consistent with the Council on Environmental Quality's (CEQ) Regulations for Implementing the

Procedural Provisions of the National Environmental Policy Act (NEPA), 40 CFR Parts 1500–1508. CEQ's regulations are incorporated by reference as part of this subpart. CEQ's regulations will not be repeated in this subpart except when essential for clarification of important procedural or substantive points. Otherwise, citations to applicable sections of the regulations will be provided. The CEQ regulations will be available at all FmHA offices.

(c) This subpart is designed to integrate the requirements of NEPA with other planning and environmental review procedures required by law, or by Agency practice, so that all such procedures run concurrently rather than consecutively. The environmental document, which results from the implementation of this subpart, provides on a project basis a single reference point for the Agency's compliance and/or implementation of the following requirements and policies:

(1) The National Environmental Policy Act, 42 U.S.C. 4321.

(2) Safe Drinking Water Act—Section 142 (e), 42 U.S.C. 300h.

(3) Endangered Species Act, 16 U.S.C. 1531.

(4) Wild and Scenic Rivers Act, 16 U.S.C. 1271.

(5) The National Historic Preservation Act, 16 U.S.C 470 (See Subpart F of Part 1901 of this Chapter for more specific implementation procedures).

(6) Archaeological and Historic Preservation Act, 16 U.S.C. 469 (See Subpart F of Part 1901 of this Chapter for more specific implementation procedures).

(7) Coastal Zone Management Act—Section 307(c) (1) and (2), 16 U.S.C. 1456.

(8) Farmland Protection Policy Act, Subtitle I, Pub. L. 97–98.

(9) Coastal Barrier Resources Act, Pub. L. 97–348.

(10) Executive Order 11593, Protection and Enhancement of the Cultural Environment (See Subpart F of Part 1901 of this Chapter for more specific implementation procedures).

(11) Executive Order 11514, Protection and Enhancement of Environmental Quality.

(12) Executive Order 11988, Floodplain Management.

(13) Executive Order 11990, Protection of Wetlands.

(14) Title 7, Part 1b and 1c, Code of Federal Regulations, Department of Agriculture's National Environmental Policy Act; Final Policies and Procedures.

(15) Title 7, Part 3100, Code of Federal Regulations, Department of Agriculture's Enhancement, Protection, and Management of the Cultural Environment (See Subpart F of Part 1901 of this Chapter for more specific implementation procedures).

(16) Departmental Regulation 9500–3, Land Use Policy (See Exhibit A).

(17) Secretary of Agriculture's Memorandum 9500–3, Policy on Fish and Wildlife.

(d) The primary objectives of this subpart are for the Agency to make better decisions by taking into account potential environmental impacts of proposed projects and by working with FmHA applicants, other Federal agencies, Indian tribes, State and local governments, and interested citizens and organizations in order to formulate actions that advance the program goals in a manner that will protect, enhance, and restore environmental quality. To accomplish these objectives, the identification of potentially significant impacts on the human environment is mandated to occur early in the Agency's planning and decisionmaking processes. Important decision points are identified. The completion of the environmental review process is coordinated with these decision points, and this review must be completed prior to the Agency's first major decision on whether or not to participate in the proposal. This early availability of the results of the environmental review process is intended to ensure that Agency decisions are based on an understanding of their environmental consequences, as well as the consequences of alternative courses of action.

(e) Reducing delays, duplication of effort, and superfluous analyses are provided for in this Subpart. FmHA environmental documents are to be supported by accurate analyses and will concentrate on the issues that are timely and relevant to the action in question, rather than amassing needless detail. Such documents and their preparation and review will be coordinated with other Federal or State agencies jointly participating in proposed actions or related actions, in order to avoid duplication of effort, and to achieve a coordinated and timely response.

(f) Public involvement is desirable, and to facilitate public involvement, environmental documents will be available to interested citizens as early in the decisionmaking process as possible and before decisions are made. Provisions are included for citizens or interested parties to express their views and any concerns.

(g) The FmHA officials responsible for the environmental review process are identified.

§ 1940.302 Definitions.

Following is a list of definitions that apply to the implementation of this Subpart. Please note that § 1940.301(b) incorporates by reference the Council on Environmental Quality's Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act, 40 CFR Parts 1500 through 1508. Consequently, the definitions contained in Part 1508 of the Council's regulations apply to this subpart, as well as those listed below.

(a) *Emergency circumstance.* One involving an immediate or imminent danger to public health or safety.

(b) *Evironmental reviewer.* The FmHA official who is primarily responsible for reviewing the potential environmental impacts of the proposed action, and for completing the appropriate environmental review document, i.e., Environmental Checklist For Categorical Exclusions, environmental assessment or Environmental Impact Statement (EIS). Under the circumstances indicated, the following Agency positions and divisions shall act as the environmental reviewer for the actions and documents covered by this Subpart.

(1) County Supervisor or District Director—Checklists and assessments for actions for which this position is the approving official, and the concurrence of the next higher Agency level is not required.

(2) State Office Program Chief or Loan Specialist—Checklists and assessments for actions approved within the State Office or concurred in by the State Office.

(3) State Environmental Coordinator—EISs for actions within the approval authority of County Supervisors, District Directors, and State Office officials.

(4) Assistant Administrators for Programs—Checklists, assessments, and EISs for all actions initiated within their program office.

(5) Program Support Staff—Checklists, assessments, and EISs that the Deputy Administrator for Program Operations requests be done.

(c) *Flood or flooding.* A general and temporary condition of partial or complete inundation of land areas, from the overflow of inland and/or tidal waters, and/or the rapid accumulation or runoff of surface waters from any source. Two important classifications of floods are as follows.

(1) A 1-percent chance flood or base flood—A flood of a magnitude that occurs once every 100 years on the average. Within any 1-year period there is one chance in 100 of the occurrence of such a flood. Most importantly,

however, the cumulative risk of flooding increases with time. Statistically, there is about one chance in five that a flood of this magnitude will occur within a 20-year period, the length of time commonly defined as the useful life of a facility. Over a 30-year period, the life of a typical mortgage, the probability of such a flood occurring increases to greater than one chance in four.

(2) A 0.2-percent chance flood—A flood of a magnitude that occurs once every 500 years on the average. (Within any 1-year period there is one chance in 500 of the occurrence of such a flood.) As with the 1-percent chance flood, the cumulative risk of this flood occurring also increases with time.

(d) *Floodplains.* Lowland and relatively flat areas adjoining inland and coastal waters, including flood-prone areas of offshore islands. At a minimum, floodplains, consist of those areas subject to a 1 percent or greater chance of flooding in any given year. The term floodplain shall be taken to mean the base floodplain, unless the action involves a critical action, in which case the critical action floodplain is the minimum floodplain of concern.

(1) Base floodplain (or 100-year floodplain)—The area subject to inundation from a flood of a magnitude that occurs once every 100 years on the average (the flood having a 1-percent chance of being equalled or exceeded in any given year).

(2) Critical action floodplain (or 500-year floodplain)—The area subject to inundation from a flood of a magnitude that occurs once every 500 years on the average (the flood having a 0.2-percent chance of being equalled or exceeded in any given year).

(e) *Indirect impacts.* Those reasonably foreseeable environmental impacts that result from the additional public facility, residential, commercial, or industrial development or growth that a federally financed project may cause, induce or accommodate. Consequently, indirect impacts often occur later in time than the construction of the Federal project and can be removed in distance from the construction site. For example, a water transmission line may be designed to serve additional residential development. The environmental impacts of that residential development represent an indirect impact of the federally funded water line. Those indirect impacts which deserve the greatest consideration include changes in the patterns of land use, population density or growth rate, and the corresponding changes to air and water quality and other natural systems.

(f) *Mitigation measure.* A measure(s) included in a project or application for the purpose of avoiding, minimizing, reducing or rectifying identified, adverse environmental impacts. Examples of such measures include (1) the deletion, relocation, redesign or other modifications of the project's elements; (2) the dedication to open space of environmentally sensitive areas of the project site, which would otherwise be adversely affected by the action or its indirect impacts; (3) soil erosion and sedimentation plans to control runoff during land-disturbing activities; (4) the establishment of vegetative buffer zones between project sites and adjacent land uses; (5) protective measures recommended by environmental agencies having jurisdiction or special expertise regarding the project's impacts; (6) storm water management plans to control potential downstream flooding effects that would result from a project; (7) zoning; and (8) reuse of existing facilities as opposed to new construction.

(g) *No-action alternative.* The alternative of not approving an application for financial assistance, a subdivision feasibility analysis, or an Agency proposal.

(h) *Practicable alternative.* An alternative that is capable of attainment within the confines or relevant constraints. The test of practicability, therefore, depends upon the particulars of the situation under consideration and those constraints imposed by environmental, economic, legal, social and technological parameters. This test, however, is not limited by the temporary unavailability of sufficient financial resources to implement an alternative. That is, alternatives cannot be rejected solely on the basis of moderately increased costs. The range of alternatives that must be analyzed to determine if a practicable alternative exists includes the following three categories of alternatives:

(1) Alternative project sites or designs,

(2) Alternative projects with similar benefits as the proposed action, and

(3) The no-action alternative.

(i) *Water resource project.* Includes any type of construction which would result in any change in the free-flowing characteristics of a particular river to include physical, chemical, and biological characteristics of the waterway. This definition encompasses construction projects within and along the banks of rivers, as well as projects involving withdrawals from, and discharges into such rivers. Projects which require Corps of Engineers dredge and fill permits are also water resource projects.

§ 1940.303 General policy.

(a) FmHA shall consider environmental quality as equal with economic, social, and other relevant factors in program development and decisionmaking processes.

(b) In assessing the potential environmental impacts of its actions, FmHA shall consult early with appropriate Federal, State, and local agencies and other organizations to provide decisionmakers with both the technical and human aspects of environmental planning.

(c) When adverse environmental impacts are identified, either direct or indirect, an examination shall be made of alternative courses of action, including their potential environmental impacts. The objective of the environmental review shall be to develop a feasible alternative with the least adverse environmental impact. The alternative of not proceeding with the proposal shall also be considered particularly with respect to the need for the proposal.

(d) If no feasible alternative exists, including the no-action alternative, measures to mitigate the identified adverse environmental impacts shall be included in the proposal.

(e) The performance of environmental reviews and the consideration of alternatives shall occur as early as possible in the FmHA decisionmaking process so that the Agency will be in the most flexible and objective position to deal with these considerations.

§ 1940.304 Special policy.

(a) *Important land resources.* (1) FmHA recognizes that its specific mission of assisting rural areas, composed of farms and rural towns, goes hand-in-hand with protecting the environmental resources upon which these systems are dependent. Basic resources necessary to both farm and rural settlements include important farmlands and forestlands, prime rangelands, wetlands, and floodplains. The definitions of these areas are contained in the Appendix to Departmental Regulation 9500-3, Land Use Policy, which is included as Exhibit A. For assistance in locating and defining floodplains and wetlands, the locations and telephone numbers of the Federal Emergency Management Administration's regional offices have been included as Exhibit J, and similar information for the U.S. Fish and Wildlife Service's Wetland Coordinators has been included as Exhibit K. Given the importance of these resources, as emphasized in the Departmental Regulation, Executive Order 11988,

"Floodplain Management," and Executive Order 11990, "Protection of Wetlands," it is FmHA's policy not to approve or fund any proposals that, as a result of their identifiable impacts, direct or indirect, would lead to or accommodate either the conversion of these land uses or encroachment upon them. The only exception to this policy is if the approving official determines that (i) there is no practicable alternative to the proposed action, (ii) the proposal conforms to the planning criteria identified in Paragraph (a)(2) of this section, and (iii) the proposal includes all practicable measures for reducing the adverse impacts and the amount of conversion/encroachment.

(2) It is also recognized that unless carefully reviewed, some proposals designed to serve the needs of rural communities can adversely affect the existing economic base and settlement patterns of the community, as well as create development pressures on land and environmental resources essential to farm economies. An example of such a proposal might be the extension of utilities and other types of infrastructure beyond a community's existing settlement pattern and into important farmlands for the purpose of commercial or residential expansion, even though there is available space within the existing settlement pattern for such expansion. Not only may the loss of important farmlands unnecessarily result, but the community may be faced with the economic costs of providing public services to outlying areas, as well as the deterioration of its cental business or commercial area; the latter may not be able to compete with the newer, outlying commercial establishments. These results are undesirable, and to avoid their occurrence, projects designed to meet rural community needs (i.e., residential, industrial, commercial, and public facilities) will not be approved unless the following conditions are met.

(i) The project is planned and sited in a manner consistent with the policies of this section, the Farmland Protection Policy Act, and Departmental Regulation 9500-3. (Exhibit A)

(ii) The project is not inconsistent with an existing comprehensive and enforceable plan that guides growth and reflects a realistic strategy for protecting natural resources, and the project is compatible, to the extent practicable, with State, unit of local government, and private programs and policies to protect farmland. (If no such plan or policies exist, there is no FmHA requirement that either be prepared and adopted, as further specified in paragraph (a)(3) of this section.)

(iii) The project will encourage long-term, economically viable public investment by fostering or promoting development patterns that ensure compact community development, that is, development that is limited to serving existing settlement patterns or is located in existing settlement patterns, e.g., the rehabilitation and renovation of existing structures, systems and neighborhoods; infilling of development; the provision of a range of moderate-to-high residential densities appropriate to local and regional needs. When these development patterns or types are not practicable, the development must be contiguous with the existing settlement pattern and provide for a range of moderate-to-high residential densities appropriate to local and regional needs. It is recognized that some FmHA Community Programs projects are designed to serve rural residents, such as rural water and waste disposal systems and, therefore, cannot be limited in service area to those areas contiguous with existing settlement patterns. These types of projects will be designed to primarily serve existing structures and rural residents in noncontiguous areas. Any additional capacity within the system will be limited to meet reasonable growth needs and, to the extent practicable, be designed to meet such needs within existing settlements and areas contiguous to them.

(3) The conditions specified in paragraph (a)(2) of this section should not be construed as advocating excessive densities, congestion, or loss of open space amenities within rural communities. Desirable living conditions can be obtained under these objectives, along with economic and social benefits for the community and the surrounding farm operations. Additionally, these conditions should not be construed as requiring localities to develop plans which contain the conditions or to so amend existing plans to incorporate the conditions. In any instance in which these planning conditions or criteria do not exist within the project area, project reviews will not be postponed until the criteria are adopted. Rather, projects shall be reviewed and funding decisions made in light of a project's consistency with the contents of this subpart (excluding Item (ii) of paragraph (a)(2) of this section, which would not be applicable).

(b) *Endangered species.* FmHA shall not authorize, fund, or carry out any proposal or project that is likely to (1) jeopardize the continued existence of any plant or wildlife species listed by the Secretary of the Interior or Commerce as endangered or threatened; or (2) destroy or adversely modify the habitats of listed species when such habitats have been determined critical to the species' existence by the Secretary of the Interior or Commerce, unless FmHA has been granted an exemption for such proposal by the Endangered Species Committee pursuant to subsection (h) of Section 7 of the Endangered Species Act.

(c) *Wild and scenic rivers.* FmHA shall not provide financial assistance or plan approval for any water resource project that would have a direct and adverse effect on the values for which a river has been either included in the National Wild and Scenic Rivers System or is designated for potential addition. Additionally, FmHA shall not approve or assist developments (commercial, industrial, residential, farming or community facilities) located below or above a wild, scenic or recreational river area, or on any stream tributary thereto which will invade the area or unreasonably diminish the scenic, recreational, and fish and wildlife values present in the area.

(d) *Historic and cultural properties.* At the earliest stages of consideration of an application, FmHA shall identify any properties that are listed in, or may be eligible for, listing in the National Register of Historic Places, and are located within the project's area of potential environmental impacts. Consultations will be undertaken with State Historic Preservation Officers and the Advisory Council on Historic Preservation, through the implementation of Subpart F of Part 1901 of this chapter, in order to determine the most appropriate course of action for protecting such identified properties or mitigating potential adverse impacts to them.

(e) *Coastal Barriers.* Under the requirements of the Coastal Barrier Resources Act, FmHA shall not provide financial assistance for any activity to be located within the Coastal Barrier Resources System unless (1) such activity meets the criteria for an exception, as defined in Section 6 of the Act, and (2) consultation regarding the activity has been completed with the Secretary of the Interior.

(f) *Water and energy conservation.* FmHA shall encourage the conservation of water and energy in the development of its programs and policies and shall encourage applicants to incorporate all economically feasible water and energy-saving features and designs within their proposals.

(g) *Intergovernmental initiatives on important land resources.* On a broader scale, FmHA shall advocate, in coordination with other USDA agencies (through the USDA State-level committee system), the retention of important farmlands and forestlands, prime rangeland, wetlands and floodplains whenever proposed conversions to other uses (1) are caused or encouraged by actions or programs of a Federal Agency, or (2) require licensing or approval by a Federal Agency, unless other needs clearly override the benefits derived from retention of such lands.

§ 1940.305 Policy implementation.

(a) *Environmental impact analysis.* The implementation of the environmental impact analysis requirements described in this Subpart serves as the primary mechanism for FmHA (1) incorporating environmental quality considerations into FmHA program and decisionmaking processes, (2) obtaining the views of the public and government agencies on potential environmental impacts associated with FmHA projects, and (3) using all practicable means to avoid or minimize any possible adverse environmental effects of FmHA actions.

(b) *Natural resource management.* The State Director shall develop a natural resource management guide. This guide will serve as an essential mechanism for implementing § 1940.304 of this Subpart; and, therefore, the guide must be consistent with and reflect the objectives and policies contained in § 1940.304. At the same time, however, it must be tailored to take into account important State, regional, and local natural resource management objectives. The guide shall be issued as a State Supplement for prior approval. The basic content, purposes, and uses of the guide are enumerated in Exhibit B and can be summarized as follows:

(1) The guide shall serve as a mechanism for assembling an inventory of the locations within the State of those natural resources, land uses, and environmental factors that have been specified by Federal, State and local authorities as deserving some degree of protection or special consideration;

(2) The guide shall summarize the various standards or types of Federal, State, or local protection that apply to the natural resources, land uses, and environmental factors listed in the inventory;

(3) The contents of the guide, particularly the inventory, shall be considered by the State Director in deciding how FmHA's various program funds will be generally allocated across the State, on a fiscal year basis; and

(4) Applications for individual projects must be reviewed for consistency with the guide.

(c) *Intergovernmental initiatives.* When commenting on proposed Federal actions subject to environmental impact statements, FmHA commentors will focus on the consistency of these actions with the appropriate State natural resource management guide. A similar focus or element shall be addressed in FmHA's review of the Environmental Protection Agency's 201 Wastewater Management Plans.

(d) *Farmland Protection Policy Act and Departmental Regulation 9500-3, Land Use Policy.* The natural resource management guide serves as a tool for implementing the requirements of the Act and the Departmental Regulation at the broad level of implementing the Agency's programs at the State level. These requirements must also be followed in the review of applications for financial assistance or subdivision approval, as well as the disposal of real property. FmHA's implementation procedures for the project review process are contained in Exhibit C.

(e) *Endangered species.* FmHA shall implement the consultation procedures required under Section 7 of the Endangered Species Act as specified in 50 CFR 402. It is important to note that these consultation procedures apply to the disposal of real property and all FmHA applications for financial assistance and subdivision approval, including those applicants which are exempt from environmental assessments. FmHA's implementation procedures are contained in exhibit D of this Subpart.

(f) *Wild and scenic rivers.* Each application for financial assistance or subdivision approval and the proposed disposal of real property shall be reviewed to determine if it will affect a river or portion of it, which is either included in the National Wild and Scenic Rivers System, designated for potential addition to the system, or identified in the Nationwide Inventory prepared by the National Park Service (NPS) in the Department of the Interior (DOI). FmHA's procedures for completing this review are contained in Exhibit E of this subpart.

(g) *Historic and cultural properties.* (1) At the earliest stages of consideration of an application, FmHA shall identify any properties that are listed in or may be eligible for listing in the National Register of Historic Places, and located within the area of potential environmental impact. Identification shall consist of consulting the published lists of the National Register and formally contacting and seeking the comments of the appropriate State Historic Preservation Officer (SHPO). Since it is not always possible from the consultation with the SHPO to determine whether historic and cultural properties are present within the project's area of environmental impact, it may be necessary for FmHA to consult public records and other individuals and organizations, such as university archeologists, local historical societies, etc. These latter discussions should take place before initiating a detailed site survey since they may provide reliable information that obviates the need for a survey. However, whenever insufficient information exists to document the presence or absence of potentially eligible National Register properties and where the potential for previously unidentified properties is recognized by FmHA, the SHPO, or other interested parties, FmHA shall conduct the necessary investigations to determine if such properties are present within the area of potential environmental impact. FmHA will involve the SHPO in the planning and formulation of any historic, cultural, architectural or archeological testing, studies or surveys conducted to investigate the presence of such properties and will utilize persons with appropriate knowledge and experience.

(2) If the information obtained, as a result of the consultation and investigations conducted by FmHA, indicates the presence of historic and cultural properties within the area of potential environmental impact that, in the opinion of the SHPO or FmHA, appear to meet the National Register Criteria (36 CFR 1202.6), FmHA shall request a determination of eligibility from the keeper of the National Register in accordance with 36 CFR 1204. Consultations shall be initiated with the SHPO and the Advisory Council on Historic Preservation in accordance with 36 CFR 800, through the implementation of Subpart F of Part 1901 of this chapter, to determine the most appropriate course of action to protect all National Register and eligible properties within the area of potential environmental impact.

(3) Further instructions detailing the procedures to be followed in considering and protecting historic and cultural properties and the responsible Agency officials are contained in Subpart F of Part 1901 of this Chapter. These procedures shall be followed whenever a proposal, considered by FmHA, has

the potential to affect National Register or eligible properties.

(h) *Coastal barriers.* In those States having coastal barriers within the Coastal Barrier Resources System, each application for financial assistance or subdivision approval, as well as the proposed disposal of real property, shall be reviewed to determine if it would be located within the system and, if so, whether the action must be denied on this basis or meets the Act's criteria for an exception. To accomplish the review, all affected State, District and County Offices shall maintain a current set of maps, as issued by DOI, which depict those coastal barriers within their jurisdiction that have been included in the system. FmHA's implementation procedures for accomplishing this review requirement and for consulting as necessary with DOI are contained in exhibit F. The exceptions to the restrictions of the Coastal Barrier Resources Act are contained in Exhibit L.

(i) *Water and energy conservation.* Water and energy conservation measures will be considered at both the program and project level in a manner consistent with program regulations.

§ 1940.306 Environmental responsibilities within the National Office.

(a) *Administrator.* The Administrator of FmHA has the direct responsibility for Agency compliance with all environmental laws, Executive orders, and regulations that apply to FmHA's program and administrative actions. As such, the Administrator ensures that this responsibility is adequately delegated to Agency staff and remains informed on the general status of Agency compliance, as well as the need for any necessary improvements. The Administrator is also responsible for ensuring that the Agency's manpower and financial needs for accomplishing adequate compliance with this Subpart are reflected and documented in budget requests for departmental consideration.

(b) *Deputy Administrator for Program Operations.* (1) The Deputy Administrator for Program Operations has the delegated overall Agency responsibility for developing and implementing environmental policies and compliance procedures, monitoring their effectiveness, and advising the Administrator on the status of compliance, to include recommendations for any necessary changes in this Subpart. The incumbent is also responsible for developing and documenting, as part of the Agency's budget formulation process, the manpower and financial needs necessary to implement this Subpart.

(2) The specific responsibilities of the Deputy Administrator Program Operations are as follows:

(i) Provide for the Agency an interdisciplinary approach to environmental impact analysis and problem resolution, as required by the CEQ regulations;

(ii) Provide the leadership and technical expertise for the implementation of the Agency's environmental policies with special emphasis being placed on those policies relating to natural resource management, energy conservation, and orderly community development;

(iii) Coordinate the implementation of this Subpart with affected program offices;

(iv) Provide policy direction and advice on the implementation of this Subpart to Agency staff, particularly to State Environmental Coordinators and technical support personnel within State Offices;

(v) Consult and coordinate, as needed or upon request, with the Department's interagency committees dealing with environmental, land use, and historic preservation matters;

(vi) Monitor the Agency's record in complying with this Subpart;

(vii) Provide training programs and materials for the Agency staff assigned the functions identified in this Subpart;

(viii) Review, as necessary, applications for funding assistance, proposed policies and regulations, and recommend their approval, disapproval, or modification after analyzing and considering their anticipated adverse environmental impacts, their benefits, and their consistency with the requirements of this Subpart;

(ix) Develop and direct Agency procedures for complying with environmental legislation, Executive orders, and regulations, including, but not limited to, those listed in § 1940.301(c) of this subpart;

(x) Maintain a position identified as the Senior Environmental Specialist (hereafter called the Environmental Specialist), who shall serve as the responsible Agency official under the National Environmental Policy Act and the National Historic Preservation Act, maintain liaison on environmental matters with interested public groups and Federal agencies, and serve as the focal point for developing and coordinating the Agency's procedures for the requirements listed in § 1940.301(c) of this subpart; and

(xi) Review and evaluate legislative and administrative proposals in terms of their environmental impact.

(c) *Assistant Administrators for Programs.* The Assistant Administrators for Programs shall:

(1) Ensure, as necessary, that environmental assessments and EIS's for proposed program regulations are prepared by their staff;

(2) Ensure that all proposed actions that fall under the requirements of this subpart, and that are submitted to the National Office, contain adequate analyses and documentation of their potential environmental impacts;

(3) Consider and include in the development of program regulations feasible policies and mechanisms that promote program goals in a manner that either enhances environmental quality or reduces unnecessary adverse environmental impacts; and

(4) Designate one or more staff members to serve as a program environmental coordinator, having generally the same duties and responsibilities within the program office as the State Environmental Coordinator has within the State Office (See § 1940.307(b) of this Subpart).

§ 1940.307 Environmental responsibilities within the State Office.

(a) *State Director.* The State Director shall:

(1) Serve as the responsible FmHA official at the State Office level for ensuring compliance with the requirements of this subpart; and

(2) Appoint one individual to serve as the State Environmental Coordinator (SEC). Thereafter, the SEC shall report directly to the State Director on the environmental matters contained in this Subpart.

(b) *State Environmental Coordinator (SEC)* The SEC shall:

(1) Act as advisor to the State Director on environmental matters and coordinate the requirements of this Subpart;

(2) Review those Agency actions which are not categorically excluded from this subpart (see §§ 1940.311 and 1940.312) and which require the approval and/or clearance of the State Office and recommend to the approving official either project approval, disapproval, or modification after analyzing and considering the

(i) Anticipated adverse environmental impacts,

(ii) The anticipated benefits, and

(iii) The action's consistency with this Subpart's requirements;

(3) Represent the State Director at conferences and meetings dealing with environmental matters of a State Office nature;

(4) Maintain liaison on State Office environmental matters with interested public groups and local, State, and other Federal agencies;

(5) Serve as the State Director's alternate on State-level USDA committees dealing with environmental, land use and historic preservation matters;

(6) Solicit, whenever necessary, the expert advice and assistance of other professional staff members within the State Office in order to adequately implement this Subpart;

(7) Provide technical assistance as needed on a project-by-project basis to State, District, and County Office staffs;

(8) Develop controls for avoiding or mitigating adverse environmental impacts and monitor their implementation;

(9) Provide assistance in resolving post-approval environmental matters at the State Office level;

(10) Maintain records for those actions required by this Subpart;

(11) Coordinate for the State Director the development of the State Office natural resource management guide; and

(12) Provide direction and training to State, District, and County Office staffs on the requirements of this Subpart.

(c) *Program Chiefs.* State Office Program Chiefs shall:

(1) Be responsible for preparing the environmental impact reviews required by this Subpart for all program actions to be approved at the State Office level or concurred in at that level;

(2) Coordinate the above reviews as early as possible with the SEC, so that the latter can assist in addressing the resolution of any unresolved or difficult environmental issues in a timely manner; and

(3) Incorporate into projects and actions measures to avoid or reduce potential adverse environmental impacts identified in environmental reviews.

§ 1940.308 Environmental responsibilities at the District and County Office levels.

(a) The District Director shall be responsible for carrying out the actions required by this Subpart to be completed at the District Office level.

(b) The County Supervisor shall be responsible for carrying out the actions required by this Subpart to be completed at the County Office level.

(c) In discussing FmHA assistance programs with potential applicants, District Directors and County Supervisors shall inform them of the Agency's environmental requirements, as well as the environmental information needs and responsibilities that FmHA applicants are expected to address. (See § 1940.309.)

§ 1940.309 Responsibilities of the prospective applicant.

(a) FmHA expects prospective applicants (*and in the case of the loan guarantee programs, prospective borrowers and transferees*) to consider the potential environmental impacts of their requests at the earliest planning stages and to develop proposals that minimize the potential to adversely impact the environment. Prospective applicants should contact County Supervisors or District Directors, as appropriate, to determine FmHA's environmental requirements as soon as possible after they decide to pursue FmHA financial assistance.

(b) As specified in paragraph (c) of this section, applicants for FmHA assistance shall be required to provide information necessary to FmHA to evaluate their proposal's potential environmental impacts and alternatives to them. For example, the applicant shall be required to provide a complete description of the project elements and the proposed site(s) to include location maps, topographic maps, and photographs when needed. The applicant shall also be required to provide data on any expected gaseous, liquid, and solid wastes to be produced and all permits and/or correspondence issued by the appropriate local, State, and Federal agencies which regulate such disposal practices.

(c) Form FmHA 1940-20, "Request for Environmental Information," shall be used for obtaining environmental information from applicants whose proposals require an environmental assessment under the requirements of this Subpart. These same applicants must notify the appropriate State Historic Preservation Officer of the filing of the application and provide a detailed project description as specified in Item 2 of Form FmHA 1940-20 and the FMI. If the applicant's proposal meets the definition of a Class II action as defined in § 1940.312, all of Form FmHA 1940-20 must be completed. If the applicant's proposal meets the definition of a Class I action as defined in § 1940.311, the entire form need not be completed, but just the face of the form and categories (1), (2), (13), (15), (16), and (17) of Item 1b of the FMI. Additionally, for Class I actions within the Farm Programs, a site visit by the FmHA official completing the environmental assessment obviates the need for the applicant to complete any of the form and the adoption by FmHA of a Soil Conservation Service (SCS) environmental assessment or evaluation for the action obviates the need to complete the form for either a Class I or Class II action.

(d) Applicants shall ensure that all required materials are current, sufficiently detailed and complete, and are submitted directly to the FmHA office processing the application. Incomplete materials or delayed submittals may seriously jeopardize consideration or postponement of a proposed action by FmHA.

(e) During the period of application review and processing, applicants shall not take any actions with respect to their proposed undertakings which are the subject of the application and which would have an adverse impact on the environment or limit the range of alternatives. This requirement does not preclude development by applicants of preliminary plans or designs or performance of other work necessary to support an application for Federal, State, or local permits or assistance. However, the development of detailed plans and specifications is discouraged when the costs involved inhibit the realistic consideration of alternative proposals.

(f) Applicants are required to provide public notification and to fully cooperate in holding public information meetings as described in § 1940.318(e), § 1940.320 (c) and (g), and § 1940.331 (c) and (e) of this subpart.

(g) Any applicant that is directly and adversely affected by an administrative decision made by FmHA under this Subpart may appeal that decision under the provisions of Subpart B of Part 1900 of this chapter.

§ 1940.310 Categorical exclusions from National Environmental Policy Act (NEPA) reviews.

(a) *General guidelines.* The following actions have been determined not to have a significant impact on the quality of the human environment, either individually or cumulatively. They will not be subject to environmental assessments or impact statements. It must be emphasized that even though these actions are excluded from further environmental reviews under NEPA, they are not excluded from either the policy considerations contained in § 1940.303 through § 1940.305 or from compliance with other applicable local, State, or Federal environmental laws. Also, the actions preceded by an asterisk (*) are not excluded from environmental reviews when located in, or potentially affecting, (1) a floodplain, (2) a wetland, (3) important farmlands, or prime forestlands or rangelands, (4) a listed species or critical habitat for an endangered species, (5) a property that

is listed on or may be eligible for listing on the National Register of Historic Places, (6) an area within an approved state coastal zone management program, (7) a coastal barrier or a portion of a barrier within the Coastal Barrier Resources System, (8) a river or portion of a river included in, or designated for, potential addition to the Wild and Scenic Rivers System, or (9) a sole source aquifer recharge area. When one or more of these conditions is present, the action must be reviewed under the requirements of § 1940.311. This requirement serves to implement Section 1508.4 of the CEQ regulations which requires Federal agencies to detect extraordinary circumstances in which a normally excluded action may have a significant environmental effect. Further guidance on the use of these exclusions is contained in § 1940.317.

(b) *Housing assistance.* *(1) The provision of financial assistance for construction of a single family dwelling or a multifamily project serving no more than four families, i.e. units;

*(2) The approval of an individual building lot that is located on a scattered site and not part of a subdivision;

*(3) Rehabilitation and renovation of any existing housing units, with no expansion in the number of units;

(4) Self-Help Technical Assistance Grants;

*(5) The approval of a subdivision that consists of four or fewer lots and is not part of, or associated with, building lots or subdivisions;

(6) Techical Supervisory Assistance Loans and Grants;

(7) Weatherization of any existing housing unit(s), unless the property is listed in the National Register of Historic Places or may be eligible for listing, or is located either within the Coastal Barriers Resources System or in a listed or potentially eligible historic district, in which case the application shall fall under Class I as defined in § 1940.311;

(8) The financing of housing construction or the approval of lots in a previously approved FmHA subdivision provided that (i) the action is consistent with all previously adopted stipulations for the multifamily housing project or subdivision, and (ii) the environmental impact review that was previously completed for the original application is still current with respect to applicable environmental requirements and conditions present at the site, and it assessed the lots or expansion for which approval is being requested; and

(9) Appraisals of nonfarm tracts and small farms for rural housing loans.

(c) *Community and business programs.* *(1) Financial assistance directed to existing businesses, facilities, and/or structures that does not involve new construction or large increases in employment, and does not result in the increased production of gaseous, liquid, or solid wastes, or a change in the type or content of such wastes;

*(2) Projects that solely involve the acquisition, construction, reconstruction, renovation, or installation of facilities, structures or businesses, for replacement or restoration purposes, with minimal change in use, size, capacity, purpose or location from the original facility (e.g., replacement in-kind of utilities such as water or sewer lines and appurtenances, reconstruction of curbs and sidewalks, street repaving, and building modifications, renovations, and improvements);

(3) Project management actions relating to invitation for bids, contract award, and the actual physical commencement of construction activities;

(4) Projects that solely involve the purchase and installation of office equipment, health care equipment, public safety equipment, or motor vehicles; and

(5) Amendments to approved projects meeting the criteria of paragraph (e)(2) of this section.

(d) *Farm programs.* (1) Financial assistance for the purchase of an existing farm, or an enlargement to one, provided no shifts in land use are proposed beyond the limits stated in paragraphs (d) (9) and (10) of this section;

(2) Financial assistance for the purchase of livestock and essential farm equipment, including crop storing and drying equipment, provided such equipment is not to be used to accommodate shifts in land use beyond the limits stated in paragraphs (d) (9) and (10) of this section;

(3) Financial assistance for (i) the payment of annual operating expenses, which does not cover activities specifically addressed in this section or § 1940.311 or 1940.312; (ii) family living expenses, and (iii) refinancing debts;

*(4) Financial assistance for the construction of essential farm dwellings and service buildings of modest design and cost, as well as repairs and improvements to them;

(5) Financial assistance for on site water supply facilities to serve a farm dwelling, farm buildings, and livestock needs;

(6) Financial assistance for the installation, rehabilitation or enlargement of irrigation facilities, including storage reservoirs, diversion dams, wells, pumping plants, canals, pipelines, and sprinklers designed to irrigate less than 80 acres, provided that neither a property listed or potentially eligible for listing on the National Register of Historic Places, a river or portion of a river included in, or designated for, potential addition to the Wild and Scenic Rivers System, nor a wetland is affected. (If a wetland is affected, the application shall fall under Class II as defined in § 1940.312. Potential effects to an historic property or the Wild and Scenic Rivers System require that a review be initiated under a Class I action as defined in § 1940.311.);

(7) Financial assistance for the development of farm ponds or lakes of no more than 5 acres in size, provided that, neither a property listed or potentially eligible for listing on the National Register of Historic Places, a river or portion of a river included in or designated for potential addition to the Wild and Scenic Rivers System, nor a wetland is affected. If a wetland is affected, the application shall fall under Class II as defined in § 1940.312. Potential effects on a historic property or the Wild and Scenic Rivers System require that a review be initiated under a Class I action as defined in § 1940.311.);

(8) Financial assistance for the conversion of (i) land in agricultural production to pastures or forest, or (ii) pastures to forests;

*(9) Financial assistance for land-clearing operations of no more than 15 acres, and financial assistance for any amount of land involved in tree harvesting conducted on a sustained yield basis and according to a Federal, State or other governmental unit approved forestry management and marketing plan; and

(10) Financial assistance for the conversion of no more than 160 acres of pasture to agricultural production, provided that in a conversion to agricultural production no wetlands are affected, in which case the application shall fall under Class II as defined in § 1940.312.

(e) *General exclusions.* (1) The award of financial assistance for planning purposes, management and feasibility studies, or environmental impact analyses;

(2) Loan-closing and servicing activities, transfers, assumptions, subordinations, and amendments and revisions to approved projects, including the provision of additional financial assistance or their approval documents, that do not alter the purpose, operation,

location, or design of the project as originally approved;

(3) The issuance of regulations and instructions, as well as amendments to them, describing administrative and financial procedures for processing, approving, and implementing the Agency's financial assistance programs;

(4) Procurement activities for goods and services, routine facility operations, personnel actions, and other such management activities related to the operation of the Agency;

(5) Reduction in force or employee transfers resulting from workload adjustments, reduced personnel or funding levels, skill imbalances, or other similar circumstances; and

*(6) The disposal of real property by FmHA whenever the conveyance is either not controversial for environmental reasons or will not result in a change in use of the real property within the reasonably foreseeable future.

§ 1940.311 Environmental assessments for Class I actions.

The Agency's proposals and projects that are not identified in § 1940.310 of this Subpart as categorical exclusions require the preparation of an environmental assessment in order to determine if the proposal will have a significant impact on the environment. For purposes of implementing NEPA, the actions listed in this section are presumed to be major Federal actions. If an action has a potential to create a significant environmental impact, an EIS must be prepared. (In situations when there is clearly a potential for a significant impact, the EIS may be initiated directly without the preparation of an assessment.) It is recognized that many of the applications funded annually by FmHA involve small-scale projects having limited environmental impacts. However, because on occasion they have the potential to create a significant impact, each must be assessed to determine the degree of impact. The scope and level of detail of an assessment for a small-scale action, though, need only be sufficient to determine whether the potential impacts are minimal and no further study is required or the potential impacts are substantial and further analysis is necessary. Therefore, for the purpose of implementing NEPA, FmHA has classified its smaller scale approval actions as Class I actions. The format which shall be used for accomplishing the environmental assessment of a Class I action is provided in Form FmHA 1940-21, "Environmental Assessment for Class I Actions." An important aspect of this classification method is that it allows FmHA's environmental review staff to concentrate most of its time and efforts on those actions having the potential for more serious or complex environmental impacts. Following is a listing of Class I actions. Additional guidance on the application of NEPA to Class I actions is provided in § 1940.319.

(a) *Housing assistance.* If either of the following actions is an expansion of a previously approved FmHA housing project, see § 1940.310(b)(8) to determine if it meets the requirements for a categorical exclusion. In the case of an expansion for which an environmental assessment was not done for the original FmHA project, the size of the proposal for assessment purposes is determined by adding the number of units in the original project(s) to those presently being requested.

(1) Financial assistance for a multifamily housing project, including labor housing which comprises at least 5 units, but no more than 25 units; and

(2) Financial assistance for or the approval of a subdivision, as well as the expansion of an existing one which involves at least 5 lots but no more than 25 lots.

(b) *Community and business programs.* Class I assessments will be prepared for the following categories:

(1) Financial assistance for water and waste disposal facilities and natural gas facilities that meet all of the following criteria:

(i) There will not be a new discharge to surface or ground waters, or a substantial increase in the volume of discharge or the loading of pollutants from any existing or expanded sewage treatment facilities, or a new water withdrawal from surface or ground water or a substantial increase from an existing withdrawal. A substantial increase may be evidenced by an increase in hydraulic capacity or the need to obtain a new or amended discharge or withdrawal permit. In making this determination, cluster facilities serving 15 or so existing homes or adjacent lots would not be considered a new discharge or withdrawal.

(ii) There is no extension, enlargement or construction of interceptors, collection, transmission, or distribution lines beyond either (A) the corporate limits of a community, or (B) the developed areas immediately contiguous to the corporate limits, or (C) if an unincorporated area, beyond the developed areas.

(iii) The proposal is designed for predominantly residential use with other new or expanded users being small-scale, commercial enterprises having limited secondary impacts.

(iv) For towns with populations of less than 10,000, a proposed expansion of sewage treatment or water supply facilities that would serve a population that is no more than 20 percent greater than the existing population.

(v) The service area for any new or enlarged collection, transmission, or distribution lines is composed of largely built-up, nonfloodplain areas, and the undeveloped portions of the service area do not contain a sensitive environmental land use as listed in Item 2 of the Class I assessment.

(vi) The proposal is not controversial for environmental reasons, nor have relevant questions been raised regarding its environmental impact which cannot be addressed in a Class I assessment.

(2) Financial assistance for group homes, detention facilities, nursing homes, or hospitals, providing a net increase in beds of not more than 25 percent or 25 beds, whichever is greater; and

(3) Financial assistance for the construction or expansion of facilities, such as fire stations, retail stores, libraries, outpatient medical facilities, service industries, additions to manufacturing plants, office buildings, and wholesale industries, that:

(i) Are confined to single, small sites;

(ii) Are not a source of substantial traffic generation; and

(iii) Do not produce unusual types or amounts of gaseous, liquid or solid wastes.

(c) *Farm programs.* In completing environmental assessments for the following Class I actions and the Class II actions listed in § 1940.312(d), special attention will be given to avoiding a duplication of effort with other Department agencies, particularly SCS. For applications in which the applicant is receiving assistance from other agencies, technical assistance from SCS, for example, FmHA shall request from that Agency a copy of any applicable environmental review conducted by it and shall adopt that review if the requirements of § 1940.324 are met. FmHA shall work closely with the other Federal Agencies to supplement previous or ongoing reviews whenever they cannot be readily adopted.

(1) Financial assistance for the installation, rehabilitation or enlargement of irrigation facilities including storage reservoirs, diversion dams, wells, pumping plants, canals, pipelines, and sprinklers designed to irrigate at least 80 acres, but no more than 160 acres and provided that no wetlands are to be drained, in which case the application shall fall under Class II as defined in § 1940.312;

(2) Financial assistance for the development of farm ponds or lakes of more than 5 acres in size, but no more than 10 acres, provided that no wetlands are inundated. If wetlands are inundated, the application shall fall under Class II as defined in § 1940.312;

(3) Financial assistance for land-clearing operations encompassing over 15 acres, but no more than 35 acres;

(4) Financial assistance for the construction of energy producing facilities designed for on-farm needs such as methane digestors and fuel alcohol production facilities;

(5) Financial assistance for the conversion of more than 160 acres of pasture to agricultural production, but no more than 320 acres, provided that in a conversion to agricultural production no wetlands are affected, in which case the application shall fall under Class II as defined in § 1940.312;

(6) Financial assistance to grazing associations;

(7) Financial assistance for the use of a farm or portion of a farm for recreational purposes or nonfarm enterprises utilizing no more than 10 acres; and

(8) Financial assistance for a livestock-holding facility or feedlot having a capacity of at least one-half of those listed in § 1940.312(c)(9). (If the facility is located near a populated area, it shall be treated as a Class II action as required by § 1940.312(c)(10).)

(d) *General.* (1) Any action which is defined in § 1940.310 as a categorical exclusion, but which is controversial for environmental reasons, or which is the subject of an environmental complaint raised by a government agency, interested group, or citizen;

(2) Loan-closing and servicing activities, transfers, assumptions, subordinations, and amendments and revisions to all approved actions listed in this section which do not meet the criteria for a categorical exclusion pertaining to amendments as defined in § 1940.310 (e)(2) or (e)(3); and

(3) The disposal of real property by FmHA which meets either of the following criteria:

(i) The disposal may result in a change in use of the real property in the reasonably foreseeable future, and such change is equivalent in magnitude or type to the Class I actions defined in this section, or

(ii) The disposal is controversial for environmental reasons, and the real property is equivalent in size or type to the Class I actions defined in this section.

§ 1940.312 Environmental assessments for Class II actions.

Class II actions are basically those which exceed the thresholds established for Class I actions and, consequently, have the potential for resulting in more varied and substantial environmental impacts. A more detailed environmental assessment is, therefore, required for Class II actions in order to determine if the action requires an EIS. The format that shall be used for completing this assessment is included as Exhibit H. Further guidance on Class II actions is contained in § 1940.318. Class II actions are presumed to be major Federal actions and are defined as follows:

(a) *Housing assistance.* If either of the following actions is an expansion of a previously approved FmHA housing project, see § 1940.310(b)(8) to determine if it meets the requirements for a categorical exclusion, otherwise it is a Class II action.

(1) Financial assistance for a multifamily housing project, including labor housing, which comprises more than 25 units; and

(2) Financial assistance for, or the approval of, a subdivision as well as the expansion of an existing one, which involves more than 25 lots.

(b) *Community and business programs.* Class II actions will be taken for any request for financial assistance which either does not meet the criteria for a categorical exclusion as stated in § 1940.310, a Class I action as stated in § 1940.311, or does not involve a livestock-holding facility or feedlot meeting the criteria for a Class I action as defined in § 1940.311(c)(8).

(c) *Farm programs.* In completing environmental assessments for the following actions, FmHA shall first determine if the applicant has sought technical assistance from SCS. If not, the applicant shall be requested to do so. Subsequently, an approved loan shall be structured so as to be consistent with any conservation plan developed with the applicant by SCS. However, the FmHA approving official need not include an element of the conservation plan within the loan agreement if that official determines that the element is both nonessential to the accomplishment of the plan's objectives and so costly as to prevent the borrower from being able to repay the loan. The SCS environmental review shall be adopted by FmHA if the requirements of § 1940.324 are met.

(1) Financial assistance for the installation, rehabilitation, or enlargement of irrigation facilities including storage reservoirs, diversion dams, wells, pumping plants, canals, pipelines, and sprinklers either designed to irrigate more than 160 acres or serving any amount of acreage that involves the drainage of or withdrawal from a wetland for irrigation purposes;

(2) Financial assistance for the development of farm ponds or lakes either larger than 10 acres in size or for any smaller size that would inundate a wetland;

(3) Financial assistance for land-clearing operations encompassing more than 35 acres;

(4) Financial assistance for the construction or enlargement of aquaculture facilities;

(5) Financial assistance for the conversion of more than 320 acres of pasture to agricultural production or for any smaller conversion of pasture to agricultural production that affects a wetland;

(6) Financial assistance to an individual farmer or an association of farmers for water control facilities such as dikes, detention reservoirs, stream channels, and ditches;

(7) Financial assistance for the use of a farm or portion of a farm for recreational purposes or nonfarm enterprises utilizing more than 10 acres;

(8) Financial assistance for alteration of a wetland;

(9) Financial assistance for a livestock-holding facility or feedlot located in a sparsely populated farming area having a capacity as large or larger than one of the following capacities: 1,000 slaughter steers and heifers; 700 mature dairy cattle (whether milkers or dry cows); 2,500 swine; 10,000 sheep; 55,000 turkeys; 100,000 laying hens or broilers when facility has unlimited continuous flow watering systems; 30,000 laying hens or broilers when facility has liquid manure handling system; 500 horses; and 1,000 animal units from a combination of slaughter steers and heifers, mature dairy cattle, swine and sheep; and

(10) Financial assistance for a livestock-holding facility or feedlot located near a town or collection of rural homes which could be impacted by the facility, particularly with respect to noise, odor, water quality, visual, or transportation impacts and having a capacity of at least one-half of those listed in paragraph (c)(9) of this section.

(d) *General.* (1) Any action which meets the numerical criteria or other restriction for a Class I action contained in § 1940.311, but is controversial for environmental reasons. If the action is the subject of isolated environmental complaints or any questions/concerns that focus on a single impact, air quality, for example, the analysis of such a complaint or questions can be handled

under the assessment format for a Class I action, Form FmHA 1940–21, as explained in § 1940.319. When several potential impacts are questioned, however, the assessment format (Exhibit H) for a Class II action must be used to address these questions;

(2) Loan-closing and servicing activities, transfers, assumptions, subordinations and amendments and revisions to all approved actions listed in this Section that alter the purposes, operation, location, or design of the project as originally approved;

(3) The approval of plans and State Investment Strategies for Energy Impacted Areas, designated under Section 601 Energy Impacted Areas Development Assistance Program, as well as the applications for financial assistance (excluding the award of planning funds) for Energy Impact Areas;

(4) Proposals for legislation as defined in CEQ's regulations, §.1508.17;

(5) The issuance of regulations and instructions, as well as amendments to these, that describe either the entities, proposals and activities eligible for FmHA financial assistance, or the manner in which such proposals and activities must be located, constructed, or implemented; and

(6) The disposal of any real property by FmHA which either does not meet the criteria for a categorical exclusion as stated in § 1940.310(e)(6) or a Class I action as stated in § 1940.311(d)(3).

§ 1940.313 Actions that normally require the preparation of an Environmental Impact Statement (EIS).

The environmental assessment process will be used, as defined in this subpart, to identify on a case-by-case basis those actions for which the preparation of an EIS is necessary. Given the variability of the types and locations of actions taken by FmHA, no groups or set of actions can be identified which in almost every case would require the preparation of an EIS.

§ 1940.314 Criteria for determining a significant environmental impact.

(a) EISs shall be done for those Class I and Class II actions that are determined to have a significant impact on the quality of the human environment. The criteria for determining significant impacts are contained in section 1508.27 of the CEQ regulations.

(b) In utilizing the criteria for a significant impact, the cumulative impacts of other FmHA actions planned or recently approved in the proposal's area of environmental impact, other related or similarly located Federal actions, and non-federal related actions must be given consideration. This is particularly relevant for frequently recurring FmHA actions that on an individual basis may have relatively few environmental impacts but create a potential for significant impacts on a cumulative basis. Housing assistance is one such example. Consequently, in reviewing proposals for subdivisions and multifamily housing sites, consideration must be given to the cumulative impacts of other federally assisted housing in the area, including FmHA's. The boundaries of the area to be considered should be based upon such factors as common utility or public service districts, common watersheds, and common commuting patterns to central employment or commercial areas. Additionally, the criteria for significant impacts utilized by the other involved housing agency(s) (VA and HUD, for example) must be reviewed when there is a potential for cumulative impacts. FmHA shall consult with HUD for determining a significant impact whenever the total of HUD and FmHA housing units being planned within a common area of environmental impact exceeds the HUD thresholds listed in its NEPA regulations. (See 47 FR 56273.)

(c) Because the environmental values and functions of floodplains and wetlands are of critical importance to man, and because these areas are often extremely sensitive to man-induced disturbances, actions which affect wetlands and floodplains will be considered to have a significant environmental impact whenever one or more of the following criteria are met:

(1) The public health and safety are identifiably affected, that is, whenever the proposed action may potentially result in a change in stream classification or affect any standards promulgated under the Safe Drinking Water Act (42 U.S.C. 300f et seq.) or similar State authority.

(2) The preservation of natural systems is identifiably affected, that is, whenever the proposed action or related activities may potentially create or induce changes in the existing habitat that may affect species diversity and stability (both flora and fauna and over the short and long term) or affect ecosystem productivity over the long term.

(3) The proposal, if located or carried out within a floodplain, poses a greater than normal risk for flood-caused loss of life or property. Examples of such actions include facilities which produce, use, or store highly volatile, toxic, or water-reactive materials or facilities which contain occupants who may not be sufficiently mobile to avoid the loss of life or injury during flood and storm events (i.e., hospitals, nursing homes, schools).

§ 1940.315 Timing of the environmental review process.

(a) The FmHA office to which a potential applicant would go to seek program information and request application materials shall notify the applicant of the major environmental requirements applicable to the type of assistance being sought. Emphasis should be placed on describing FmHA's natural resource management policies, the nature and purpose of the environmental impact assessment process, and the permissible actions of the applicant during this process.

(b) When a preapplication is either filed by the applicant or required by FmHA, a formal application to FmHA will not be invited until (1) the applicant has properly completed Form FmHA 1940.20, and (2) the environmental impact review (whether an environmental assessment or EIS) is completed by FmHA. In this manner, there will be as much flexibility as possible to consider alternatives to the project and to develop methods for mitigating identified adverse environmental impacts. Exhibit G, Item I, contains the list of those programs or actions to be processed in this manner.

(c) When a preapplication is not filed, the prospective applicant shall be required to complete Form FmHA 1940–20 at the earliest possible time after FmHA is contacted for assistance but no later than when the application is filed with the appropriate FmHA office. (For the exception to this statement as regards Farm Programs' Class I actions, see § 1940.309(c) of this Subpart.) FmHA shall not consider the application to be complete, until FmHA staff have completed the environmental impact review, whether an assessment or EIS. Exhibit G, Item II, lists programs and actions to be processed in this manner.

(d) For those applications that meet the requirements of a categorical exclusion, Form FmHA 1940–22, "Environmental Checklist for Categorical Exclusions," shall be completed by FmHA as early as possible after receipt of the application. The application shall not be considered complete until either the checklist is successfully completed or the need for any further environmental review is identified and completed.

§ 1940.316 Responsible officials for the environmental review process.

(a) *Approving official.* The FmHA official responsible for executing the environmental impact determination

and environmental findings for a Class I or Class II action shall be the official having approval authority for the action as specified in Subpart A of Part 1901 of this chapter (available in FmHA office).

(b) *State Office level.* (1) When the approving official is at the State Office level, the responsible Program Chief or Loan Specialist shall complete the environmental assessment and execute the recommendations contained in either Form FmHA 1940–21 or Exhibit H, depending on whether the action is Class I or II. Before the assessment is submitted to the approving official for final determinations, it must be provided to the SEC for review. The SEC shall review the assessment and provide recommendations to the State Director.

(2) Whenever the assessment is completed at the State Office level and the preparer and the SEC do not concur on either the adequacy of the assessment or the recommendations reached, the State Director, whether or not the approving official, shall make the final decision on the matter or matters in disagreement. The State Director shall also make the final decision whenever a State Office approving official disagrees with the joint recommendations of the preparer and the SEC. In either case, should the State Director desire, the matter may be forwarded to the National Office for resolution. The Program Support Staff shall coordinate its resolution with the appropriate Assistant Administrator. Failure of these parties to resolve the matter shall require a final decision by the Administrator. The State Director should also request the assistance of the National Office on actions that are too difficult to analyze at the State Office level.

(c) *District or County Office level.* When the District Director is the approving official, the District Director shall normally perform both the tasks of preparing the assessment and completing the environmental findings and impact determination, except for the circumstances outlined in paragraph (d) of this section. The County Supervisor shall have the same responsibilities as the District Director when the County Supervisor is an approving official. Both District Directors and County Supervisors shall contact, as needed, the SEC for technical assistance in preparing specific assessments.

(d) *Multilevel review.* When either (1) the approving official is the County Supervisor or the District Director but the project must be forwarded to the State Office for concurrence or (2) the application process is initiated at the County or District Office but the approving official is at the State Office level, a preliminary or draft assessment shall be prepared by the District Director. The approrpriate State Office Program Chief or Loan Specialist, however, shall be responsible for the completion and content of the assessments sent to the State Office, and the SEC shall review the assessment in a similar manner as indicated in paragraph (b) of this section. The District Director shall also ensure that the applicant properly completes Form FmHA 1940–20, and shall assist, upon request, the State Office in assembling additional information and performing coordination at the local level. Similar responsibilities and working relationships shall exist between the County Supervisor and District Director when the former forwards a project to the District Director for either concurrence or approval.

(e) *Reservation of authority.* The Administrator reserves the right to request a State Director to forward to the National Office for review and approval any action which is highly controversial for environmental reasons, involves the potential for unique or extremely complex environmental impacts or is of national, regional, or great local significance. State Directors have a similar right with respect to District and County Offices.

§ 1940.317 Methods for ensuring proper implementation of categorical exclusions.

(a) The use of categorical exclusions exempts properly defined actions or proposals from the review requirements of NEPA. It does not exempt proposals from the requirements of other environmental laws, regulations or Executive orders. Each proposal must be reviewed to determine the applicability of other environmental requirements. Extraordinary circumstances may cause an application to lose its categorical exclusion and require a Class I environmental assessment. Section 1508.4 of CEQ's regulations state that "any procedures under this section shall provide for extraordinary circumstances in which a normally excluded action may have a significant environmental effect." For example, an application for approval of a subdivision of four lots is normally excluded from a NEPA review (see § 1940.310(b)(5)) but is not exempt from the requirements of Executive Order 11990, "Protection of Wetlands." In the processing of this application, FmHA must determine if a wetland is to be impacted. Assuming that the development of the proposed subdivision site necessitates the filing of 2 acres of wetland, such a potential wetland impact, under the requirements of Section 1940.310(a), represents an extraordinary circumstance that causes the application to lose its categorical exclusion. An environmental assessment for a Class I action must then be initiated. This assessment serves the purposes of providing for the extraordinary circumstance by analyzing the degree of potential impact and the need for further study as well as completing and documenting FmHA's compliance with the Executive order. In this particular example, unless an alternative site could not be readily located and the approving official wanted to further pursue consideration of the application, the environmental assessment would determine that there was a significant impact and an EIS would be required. (See § 1940.314.)

(b) The approving official for an action shall be responsible for ensuring that no action which requires an environmental assessment is processed as a categorical exclusion. In order to fulfill this responsibility, Form FmHA 1940–22 shall be completed for those actions that would normally be categorically excluded and as further defined in paragraph (c) of this section. In completing this checklist, if any block is checked "yes," an environmental assessment for a Class I action must be prepared. If all blocks are checked "no," the checklist is filed with the application and serves as FmHA's documentation of compliance with the environmental laws, regulations and Executive orders listed on the checklist. The checklist shall be completed by the person who is responsible for completing environmental reviews within the County, District, or program approving office. If the approving official is within the State Office or is the Administrator, the FmHA office where the processing of the application was initiated is responsible for providing sufficient site and project information in order to complete the checklist.

(c) Form FmHA 1940–22 shall be used for all categorical exclusions, e.g., the disposal of real property and the approval of financial assistance, subdivisions, or amendments to these which meet the requirements of § 1940.310. The checklist shall not be completed for loan-closing and servicing activities, construction management activities, or the general exclusions listed in § 1940.310(e), except for real property disposal.

(d) In applying the definition of a categorical exclusion to a project activity, the reviewer must consider the following two elements in addition to the specific project elements for which approval is requested.

(1) If the application represents one of several phases of a larger proposal, the application shall undergo the environmental review required for the elements or the size of the total proposal. For example, if approval of a 4-lot subdivision is requested and the application evidences of the reviewer knows that additional phases are planned and will culminate in a 16-lot subdivision, the categorical exclusion does not apply and an environmental assessment for a Class I action must be initiated and must address the impact of developing 16 lots. Should the applicant subsequently apply for approval of any of these additional phases, no further environmental assessment shall be required as long as the original assessment still accurately reflects the environmental conditions found at the project site and the surrounding areas.

(2) If the application represents one segment of a larger project being funded by private parties or other government agencies, the size and elements of the entire project are used in determining the proper level of environmental assessment to be conducted by FmHA. If an environmental assessment is required, it shall address the environmental impacts of the entire project.

§ 1940.318 Completing environmental assessments for Class II actions.

(a) The first step for the environmental reviewer (as defined in § 1940.302(a) and § 1940.316) is to examine Form FmHA 1940–20 submitted by the applicant to determine if it is complete, consistent, fully responsive to the items, signed, and dated. If not, it shall be returned to the applicant with a request for necessary clarifications or additional data.

(b) Once adequate data has been obtained, the assessment shall be initiated in the format and manner described in Exhibit H. In so doing, appropriate experts from State and Federal agencies, universities, local and private groups shall be contacted for their views. The environmental reviewer should communicate with these agencies or parties in the most appropriate and expeditious manner possible, depending upon the seriousness of the potential impacts and the need for formal documentation. When correspondence is exchanged, it shall be appended to the assessment. Oral discussions should be documented in the manner indicated in Exhibit H.

(c) At the earliest possible stage in the assessment process, the environmental reviewer shall identify the Federal, State, and local parties which are carrying out related activities, either planned or under way. Discussions with the applicant and FmHA staff familiar with the project area should assist in this identification effort. If there is a potential for cumulative impacts, the reviewer shall consult with the involved Federal agencies to determine the nature, timing and results of their environmental analysis. These consultations shall be documented in the assessment and considered or adopted when making the environmental impact determination. (See § 1940.324 of this Subpart concerning adoption of assessments.) If it is determined that the cumulative impacts are significant, the environmental reviewer shall further contact the involved Federal agencies and attempt to determine the lead Federal Agency as discussed in §§ 1940.320(b) and 1940.326.

(d) Consultations similar to those discussed in paragraph (c) of this section shall also be undertaken with those Federal and State agencies which are directly involved in the FmHA action, either through the provision of financial assistance or the review and approval of a necessary plan or permit. For example, a construction permit from the U.S. Army Corps of Engineers may be required for a project. In such an instance, the environmental assessment cannot be completed until the environmental reviewer has either reviewed the other Agency's completed environmental analysis or consulted with the other Agency and is reasonably sure of the scope, content, and expected environmental impact determination of the forthcoming analysis and has so documented for the FmHA assessment this understanding. If the other Agency believes that the project will have a significant impact, a joint or lead impact statement shall be prepared. If the other agency does not believe a significant impact will occur, the environmental reviewer shall consider this finding and its supporting analysis in completing the FmHA environmental impact determination. Guidance in adoping an environmental assessment prepared by another Federal Agency is provided in § 1940.324.

(e) For actions having a variety of complex or interrelated impacts that are difficult for the environmental reviewer to assess, consideration should be given to holding a public meeting in the manner described in § 1940.331(e). Such meetings should not be assumed as being limited to projects for which EISs are being prepared. Such a meeting can serve a useful purpose in better defining and identifying complex impacts, as well as locating expertise with respect to them. The results of a public meeting and the followup from it can also serve as a valuable tool in reaching an early understanding on the potential need for an EIS. When identified impacts are difficult to quantify (such as odor and visual and community impacts) or controversial, a public information meeting should be held near the project site in order to reach a better understanding of the magnitude of the impact and the local area's concern about it. Whenever held, it should be announced and organized in the manner described in Section 1940.331(e). However, a transcript of the meeting need not be prepared, but the environmental reviewer shall make detailed notes for incorporation in the assessment. (See § 1940.331(e).)

(f) Throughout this assessment process, the enviromental reviewer shall keep in mind the criteria for determining a significant environmental impact. If at any time in this process it is determined that a significant impact would result, the reviewer shall so notify the approving official. Those actions specified in § 1940.320 shall then be initiated, unless the approving official disagrees with the reviewer's recommended determination, in which case further review of the determination may be required as explained in § 1940.316(e) of this Subpart. As soon as possible after the need for an EIS is determined, the applicant shall also be advised of this in writing, as well as reinformed of the limitations on its actions during the period that the EIS is being completed. (See § 1940.309(e).) The applicant's failure to comply with these limitations shall be considered as grounds for postponement of further consideration of the application until such problem is alleviated.

(g) Similarly, throughout the assessment process, consideration shall be given to incorporating mechanisms into the proposed action for reducing, mitigating or avoiding adverse impacts. Examples of such mechanisms which are commonly referred to as mitigation measures include (1) the deletion, relocation, redesign or other modifications of the project elements, (2) the dedication of environmentally sensitive areas which would otherwise be adversely affected by the action or its indirect impacts, (3) soil erosion and sedimentation plans to control runoff during land-disturbing activities, (4) the establishment of vegetative buffer zones between project sites and adjacent land uses, (5) protective measures recommended by environmental agencies having jurisdiction or special expertise regarding the action's impacts, and (6) zoning. Mitigation measures

must be tailored to fit the specific needs of the action, and they must also be practical and enforceable. Mitigation measures which will be taken must be documented in the assessment (Item XIX of Exhibit H) and placed in the offer of financial assistance as special conditions or in the implementation requirements when the action does not involve financial assistance. These measures shall be consistent with the basic goal of the proposed action and developed in consultation with the appropriate program office.

(h) As part of the assessment process, the reviewer shall initiate the consultation and compliance requirements for the environmental laws, regulations, and Executive orders specified in the assessment format. The assessment cannot be completed until compliance with these laws and regulations is appropriately documented. The project's failure to meet the requirements specified in Item 9b of Form FmHA 1940–21 for a Class I action and Item XXIb of Exhibit H for a Class II action shall result in postponement of further consideration of the application until such problem is alleviated.

(i) When the environmental reviewer has completed the assessment, the related materials and correspondence utilized shall be attached. The environmental reviewer shall then either recommend to the approving official that the action has the potential for significantly affecting the quality of the human environment or shall recommend that the action does not have this potential and, therefore, the preparation of an EIS is not necessary. (Item 9a of Form FmHA 1940–21 for Class I action and Item XXIa of Exhibit H for a Class II action.) The recommended environmental findings shall also be completed. (Item 9b of Form FmHA 1940–21 for a Class I action and Item XXIb of Exhibit H for a Class II action.) In those instances specified in § 1940.316, the assessment shall then be forwarded to the SEC for review. The SEC shall coordinate, as necessary, with the environmental reviewer any questions, concerns or clarifications and complete and document the review prior to the assessment being submitted to the approving official.

(j) The approving official shall review the environmental file and recommendations. The official shall then execute the environmental impact determination and findings. If the conclusions reached are that there is no significant impact and there is compliance with the listed requierments, the format contained in Exhibit I will be used. If a significant impact is determined, the steps specified in § 1940.320 shall be initiated for the preparation of the EIS. If a determination is made that the proposed action does not comply with the environmental requirements that are explained in this Subpart and listed in Item 9b of Form FmHA 1940–21 for a Class I action or Item XXIb of Exhibit H for a Class II action and there are no feasible alternatives or modifications which could comply, the action shall be denied or disapproved. If the approving official's determination or findings differ from the recommendations of the environmental reviewer or the SEC, this difference shall be addressed in the manner specified in § 1940.316.

(k) When there is no need for further review as discussed in paragraph (j) of this section and findings of compliance and a determination of no significant impact are reached, the assessment process is conditionally concluded. The applicant shall then be requested to provide public notification of these results as indicated in § 1940.331(c). The approving official shall not approve the pending application for at least 15 days from the date the notification is last published. If comments are received as a result of the notification, they shall be included in the environmental assessment and considered. Any necessary changes resulting from this consideration shall be made in the assessment, impact determinations, and findings. If the changes require further implementation steps, such as the preparation of an EIS, they shall be undertaken. If there are no changes in the findings and determinations, the approving official may continue to process the application. The environmental documents, i.e., the assessment, related correspondence, Form FmHA 1940–20, and the finding of no significant impact shall be included with the approval documents which are assembled for review and clearance within the approving office.

(l) When comments are received after the action has been approved, the approving official will consider the environmental importance of the comments and the necessity and ability to amend both the action, with respect to the issue raised and the action's stage of implementation. The National Office may be consulted to assist in determining whether there are any remaining environmental requirements which need to be met under the specific circumstances. A similar procedure shall be followed when new or changed information is received after project approval. Amendments and revisions to actions will be handled as specified in §§ 1940.310 to 1940.313.

§ 1940.319 Completing environmental assessments for Class I actions.

(a) As stated in this Subpart, a main purpose of Form FmHA 1940–21, is to provide a mechanism for reviewing actions with normally minimal impacts and for documenting a finding of no significant impact, as well as compliance determinations for other applicable environmental laws, regulations, and policies. The second major purpose is to serve as a screening tool for identifying those Class I actions which have more than minimal impacts and which, therefore, require a more detailed environmental review.

(b) The approach to reviewing a Class I action under the assessment format of Form FmHA 1940–21 is exactly the same as for a Class II action. The environmental reviewer (as defined in §§ 1940.302(a) and 1940.316) must become familiar with the elements of the action, the nature of the environment to be affected, the relationship to any other Federal actions or related nonfederal actions, and the applicable environmental laws and regulations.

(c) The data submission requirements placed on the applicant for a Class I action are not as extensive as for a Class II action. The requirements are limited to completing the face of Form FmHA 1940–21, as well as categories (1), (2), (13), (15), (16), and (17) of Item 1b of the FMI, whenever a previously completed environmental analysis covering these categories is not available. Should it later be determined that the magnitude of the Class I action's impact warrants a more detailed assessment, the applicant shall be required to submit the remaining items of the data request.

(d) The environmental reviewer must ensure that the data received from the applicant is complete, consistent, signed and dated before initiating the assessment. If it is not, the applicant shall be required to make the necessary changes and clarification. The reviewer must also ensure that the application properly meets the definition of a Class I action. Phased or segmented projects, as discussed in §1940.317(d), shall be identified and the elements and the size of the entire project used to classify the action.

(e) An important element of this assessment is to determine if the action affects an environmental resource which is the subject of a special Federal consultation or coordination requirement. Such resources are listed in the assessment format, Form FmHA

1940–21, and include wetlands, floodplains, and historic properties, for example. If one of the listed resources is to be affected, the reviewer must demonstrate the required compliance by accomplishing the review and coordination requirements for that resource. Documentation of the steps taken and coordination achieved shall be attached. However, if more than one listed resource is to be affected, this shall be viewed as the action having more than minimal impacts and the environmental assessment format for a Class II action shall be initiated.

(f) Similarly in completing item 3, General Impacts of Form FmHA 1940–21, the assessment format for a Class II action must be initiated if more than one category of impacts cannot be checked as minimal. If there is a single category which needs analysis, this can be accomplished by attaching an appropriate exhibit addressing the questions and issues for that impact, as specified in the environmental assessment format for a Class II action.

(g) The comments of State, regional, and local agencies obtained through applicable permit reviews or the implementation of Executive Order 12372, Intergovernmental Review of Federal Programs, shall be incorporated into the assessment, if this review applies to the action. The receipt of negative comments of an environmental nature shall warrant the initiation of a more detailed assessment under the format for a Class II action, Exhibit H. Also, the issue of controversy must be addressed, and if the action is controversial for environmental reasons, the environmental assessment format for a Class II action, Exhibit H, shall be completed. However, if the action is the subject of isolated environmental complaints or any questions or concerns that focus on a single impact, air quality, for example, the analysis of such complaints or questions can be handled under the assessment format for a Class I action. This analysis shall then be provided by the approving official to the party or parties which raised the matter with FmHA. When several potential impacts are questioned, however, the more detailed assessment format shall be accomplished to address these questions.

(h) The potential cumulative impacts of this action, particularly as it relates to other FmHA actions recently approved in the area or planned, shall be analyzed. If the cumulative impact is not minimal and, for example, cumulatively exceeds the criteria and thresholds discussed in paragraphs (e), (f), and (g) of this section, the environmental assessment format for a Class II action shall be completed. The actions of other Federal agencies and related nonfederal actions must also be assessed on this basis. When there is a Federal action involved, the environmental review conducted by that Agency shall be requested and, if it sufficiently addresses the cumulative impact, can be utilized by the environmental reviewer as the FmHA assessment, assuming the impacts are not significant. (See § 1940.324 of this Subpart.) If the other Agency is doing or planning an EIS, the environmental reviewer shall inform that Agency of our action and request to be a cooperating agency.

(i) The environmental reviewer shall have the responsibility of initiating the assessment format for a Class II action, Exhibit H, whenever the need is identified. This should be done as early as possible in the review process. the reviewer should not complete the assessment for a Class I action when it is obvious that the assessment format for a Class II action will be needed. The reviewer shall simply start the more detailed assessment and inform the applicant of the additional data requirements.

(j) Public notification of the environmental finding completed as part of a Class I assessment shall not be required. All other procedural requirements of the assessment process, such as the timing of the assessment and the limitations on the applicant's actions, do apply, however.

§ 1940.320 Preparing EISs.

(a) *Responsibility.* Whenever the District Director or County Supervisor determines there is a need to prepare an EIS, the State Director shall be notified. The EIS will be prepared at the State Office and the State Director shall assume the responsibility for preparing it. The State shall in turn notify the Administrator of these EISs, as well as those needed EISs identified by a State Office review. EISs will be prepared according to this section. The State Director shall be responsible for actions initiated within the State. However, in so doing, the State Director shall consult with the National Office to determine that the document meets the requirements of NEPA. State Directors shall be responsible for issuing such EISs. However, unless delegated authority by the Administrator, based upon a demonstrated capability and experience in preparing EISs, the State Director shall not issue the EIS until reviewed and approved by the Administrator.

(b) *Organizing the EIS process.* Prior to initiating the scoping process outlined below, the environmental reviewer shall take several organizational steps to ensure that the EIS is properly coordinated and completed as efficiently as possible. To accomplish this, the below-listed parties need to be identified in advance; the list should be expanded as familiarity with the project increases. Those parties falling within the first four groups should be formally requested to serve as cooperating agencies. If any of these agencies appear to be a more appropriate lead Agency than FmHA (using the criteria contained in § 1501.5(c) of the CEQ regulations), consultations should be initiated with that agency to determine the lead Agency. If difficulties arise in completing this determination, the National Office shall be consulted for assistance. All of the parties identified below shall be sent a copy of the notice of intent to prepare the EIS and an invitation to the scoping meeting, as discussed in paragraph (c) of this section.

(1) All Federal and State agencies that are being requested to provide financial assistance for the project or related projects;

(2) All Federal agencies that must provide a permit for the project should it be approved;

(3) All Federal agencies that have a specific environmental expertise in the major environmental issues identified to date;

(4) The Agency responsible for the implementation of the state's environmental impact analysis requirement, if one has been enacted or promulgated by the State;

(5) All Federal, State and local agencies that will be requested to comment on the draft EIS;

(6) All individuals and organizations that have expressed an interest in the project; and

(7) National, regional, or local environmental organizations whose particular area of interest corresponds to the major impacts identified to date.

(c) *Scoping process.* As soon as possible after a decision has been made to prepare an EIS, the following process shall be initiated by the State Director for identifying the major issues to be addressed in the EIS and for developing a coordinated government approach to the preparation and review of the EIS.

(1) The first step in this process shall be the publication of a notice of intent to prepare the EIS. The notice will indicate that an EIS will be prepared and will briefly describe the proposed action and possible alternatives; state the name, address, and phone number of the environmental reviewer, indicating that

this person can answer questions about the proposed action and the EIS; list any cooperating agencies, and include the date and time of the scoping meeting. If the latter information is not known at the time the notice of intent is prepared, it shall be incorporated into a special notice, when available, and published and distributed in the same manner as the notice of intent. It shall be the responsibility of the environmental reviewer to inform the National Office of the need to publish a notice of intent which will coordinate the publication of the notice in the Federal Register. For requirements relating to the timing and publication of the notice of intent within the project area, as well as the applicant's responsibilities for the notice, see § 1940.331(b).

(2) A scoping meeting will be held. To the extent possible, the scoping meeting should be integrated with any other early planning meetings of the Agency or other involved agencies. The scoping meeting shall be chaired by the environmental reviewer and shall be organized to accomplish the following major purposes (as well as other purposes listed in Part 1501.7 of the CEQ regulations).

(i) Invite the participation of affected Federal, State, and local agencies, any affected Indian Tribe, the proponent of the action, and any interested parties including those who may disagree with the action for environmental reasons;

(ii) Determine the scope and the significant issues to be analyzed in depth in the environmental impact statement;

(iii) Identify and eliminate, from detailed study, the issues which are not significant or which have been covered by prior environmental review, narrowing the discussion of these issues in the statement to a brief presentation of why they will not have a significant effect on the human environment or providing a reference to their coverage elsewhere;

(iv) Allocate assignments for preparation of the environmental impact statement among the lead and cooperating agencies, with the lead Agency retaining responsibility for the statement;

(v) Indicate any public environmental assessments and other EISs which are being or will be prepared that are related to, but are not part of, the scope of the impact statement under consideration;

(vi) Identify other environmental review and consultation requirements so the lead and cooperating agencies may prepare other required analyses and studies concurrently with, and integrated with, the environmental impact statement; and

(vii) Indicate the relationship between the timing of the preparation of environmental analyses and the Agency's tentative planning and decisionmaking schedule;

(3) Minutes of the scoping meeting, including the major points discussed and decisions made, shall be prepared and retained by the environmental reviewer as part of the environmental file. The environmental reviewer shall offer, during the scoping meeting, to send copies of the minutes to any interested party upon written request.

(d) *Interdisciplinary approach.* The EIS shall be prepared using an interdisciplinary approach that will ensure the integrated use of the natural and social sciences and the environmental design arts. The disciplines of the preparers shall be appropriate to address the potential environmental impact associated with the project. This can be accomplished both in the information collection stage and the analysis stage by communication and coordination with environmental experts at local, State, and Federal agencies (particularly cooperating agencies) and universities near the project site. When needed information or expertise is not readily available, these needs should be met through procurement contracts with qualified consulting firms. Consulting firms can be utilized to prepare the entire EIS or portions of it as specified in § 1940.336.

(e) *Content and format of EIS.* The EIS shall be prepared in the format and manner described in Part 1502 of the CEQ regulations. There is a great deal of specific guidance in that Part which will not be repeated here.

(f) *Circulation of the EIS.* FmHA shall circulate for review and comment the draft and final EIS as broadly as possible. Therefore, it will be necessary for the environmental reviewer to have sufficient copies printed or reproduced for this purpose. In identifying the parties to receive a draft EIS, the same process should be utilized as is employed for inviting participants to the scoping meeting. (See paragraph (b) of this section.) Special emphasis should be given to transmitting the draft to those agencies with jurisdiction or expertise on the proposed action's major impacts, as well as those parties who have expressed an interest in the action. The final EIS shall be provided to all parties that commented on the draft EIS.

(g) *Public information meetings.* A public information meeting, as specified in § 1940.331(e)(1), shall be held near the project site to discuss and receive comments on the draft EIS.

(h) *Response to comments.* The environmental reviewer shall respond to comments on the draft EIS as required by Part 1503.4 of the CEQ regulations. The major and most frequently raised issues during the public information meeting shall also be identified and addressed.

(i) *Timing of review.* The environmental reviewer shall be responsible for ensuring that the timing requirements for FmHA actions and the review periods for draft and final EISs are fully met (Part 1506.10 of CEQ regulations).

§ 1940.321 Use of completed EIS.

(a) The final EIS shall be a major factor in the Agency's decisionmaking process. Agency staff making recommendations on the action and the approving official shall be familiar with the contents of the EIS and its conclusions and shall consider these in formulating their respective positions with respect to the action. The final EIS and all comments received on the draft shall accompany the proposal through the FmHA decisionmaking and clearance process. The alternatives considered by the approving official shall be those addressed in the final EIS.

(b) As part of this review process, the environmental reviewer shall complete the recommendations listed in Item XXI b and c of Exhibit H and provide them to the approving official prior to a final decision.

§ 1940.322 Record of decision.

Upon completion of the EIS and its review within FmHA and before any action is taken on the decision reached on the proposal, the approving official shall prepare, in consultation with the environmental reviewer, a concise record of the decision which will be available for public review. The record shall:

(a) State the decision reached;

(b) Certify that the timing requirements for the EIS process have been fully met;

(c) Identify all alternatives considered in reaching the decision specifying the alternative or alternatives that were considered to be environmentally preferable and discuss the relevant factors (environmental, economic, technical, statutory mission and, if applicable, national policy) that were considered in the decision;

(d) State whether all practicable means to avoid or minimize environmental harm from the alternative

selected have been adopted, and if not, why not; and

(e) If any mitigation measures have been adopted, specify the monitoring and enforcement program that will be utilized.

§ 1940.323 Preparing supplements to EIS's.

(a) Either the State Office or the National Office as appropriate shall prepare supplements to either draft or final EIS's if:

(1) A substantial change or changes occur in the proposed action and such changes are relevant to the environmental impacts previously presented; and

(2) Significant new circumstances or information arise which are relevant to environmental concerns and bear on the proposed action or its impacts.

(b) If the environmental reviewer determines that the changes or new circumstances referenced in paragraph (a) of this section do not require the preparation of a supplemental EIS, the reviewer shall prepare an environmental assessment for a Class II action which shall document the reasons for this determination.

(c) The environmental reviewer shall be responsible for advising the approving official of the need for a supplement. The latter shall make the Agency's formal determination in a manner consistent with § 1940.316.

(d) All of the requirements of this Subpart that apply to the completion of an initial EIS apply to the completion of a supplement with the exception of the scoping process, which is optional. Additionally, if the approving official believes that there is a need for expedited or special procedures in the completion of a supplement, the approval of CEQ must first be obtained for any alternative procedures. The final supplement shall be included in the project file or docket and shall be used in the Agency's decisionmaking process in the same manner as a final EIS. (See § 1940.321.)

§ 1940.324 Adoption of EIS or environmental assessment prepared by another Federal Agency.

(a) FmHA may adopt an EIS or portion thereof prepared by another Federal Agency after completion if:

(1) An independent review of the document is conducted by the environmental reviewer and it is concluded that the document meets the requirements of this Subpart; or

(2) If the actions covered in the EIS are substantially the same as those proposed by FmHA and the environmental conditions in the project area have not substantially changed since its publication, FmHA will recirculate the EIS as a "final." The final EIS will contain an appropriate explanation of the the FmHA involvement and will be sent to all parties who would typically receive a draft EIS published by FmHA. If there are differences between the actions or the environmental conditions as discussed in the original EIS, that EIS shall be updated to cover these differences and recirculated as a draft EIS. From that point, it shall be reviewed and processed in the same manner as any other FmHA EIS.

(b) If the adopted EIS is not final within the agency that prepared it, or if the action it assesses is the subject of a referral under Part 1504 of the CEQ regulations, or if the statement's adequacy is the subject of a judicial action which is not final, FmHA must so specify and provide an explanation in the recirculated EIS.

(c) After recirculation (whether as a draft or final), the EIS shall be reviewed and processed in the same manner as any other FmHA EIS.

(d) FmHA may also adopt all or part of environmental assessments or environmental reviews prepared by other Federal agencies. In this case, only paragraph (a)(1) of this section applies.

§ 1940.325 FmHA as a cooperating Agency.

(a) FmHA shall serve as a cooperating Agency when requested to do so by the lead Agency for an action in which FmHA is directly involved or for an action which is directly related to a proposed FmHA action. An example of the latter would be a request from EPA to participate in an EIS covering its sewage treatment plans for a community, as well as the community's water system plans pending before FmHA. The State Director shall coordinate FmHA's participation as a cooperating Agency for an action at the State Office level. The Administrator shall have the same responsibility at the National Office level.

(b) When requested to be a cooperating Agency on a basis other than that discussed above, the environmental reviewer at the level receiving the request shall consider the expertise which FmHA could add to the particular EIS process in question and existing workload commitments. If a decision is made on either of these two bases not to participate as a cooperating Agency, a copy of the letter signed by the State Director or Administrator and so informing the lead Agency shall be sent to CEQ.

(c) As a cooperating Agency, FmHA shall participate in the development and implementation of the scoping process period. If requested by the lead Agency, provide the lead Agency with staff support and descriptive materials with respect to the analyses of the FmHA portion of the action(s) to be covered, review and comment on all preliminary draft materials prior to their circulation for public review and comment, and attend and participate in public meetings called by the lead Agency concerning the EIS.

(d) The State Director shall request the lead Agency to fully identify the Agency's involvement in all public documents and notifications.

(e) FmHA shall use the EIS as its own as long as (1) FmHA's comments and concerns are adequately addressed by the lead Agency and (2) the final EIS is considered to meet the requirement of this Subpart. It shall be the responsibility of the environmental reviewer to formally advise the approving official on these two points. The failure of the lead Agency's EIS to meet either of these stipulations shall require FmHA to follow the steps outlined in § 1940.324 prior to the approving official's decision on the FmHA action.

§ 1940.326 FmHA as a lead Agency.

(a) When other Federal agencies are involved in an FmHA action or related actions that require the preparation of an EIS, the environmental reviewer shall consult with these agencies to determine a lead Agency for preparing the EIS. The criteria for making this determination shall be those contained in Part 1505.5 of the CEQ regulations. If there is a failure to reach a determination within a reasonably short time after consultation is initiated, the National Office shall be contacted. The assistance of CEQ shall then be requested by the Administrator in order to conclude the determination of a lead Agency.

(b) When acting as lead Agency, the FmHA environmental reviewer shall request other Federal and State agencies to serve as cooperating agencies on the basis of the guidance provided in § 1940.320(b).

§ 1940.327 Tiering.

To the extent possible, FmHA may consider the concept of tiering in the preparation of environmental assessments and EISs. Tiering refers to the coverage of general matters in broader environmental impact statements, such as one done for a national program or regulation, with subsequent narrower statements or

environmental analyses incorporating by reference the broader matters and concentrating on the issues specific to the action under consideration. Tiering can be used when the sequence of analysis is from the program level to site-specific actions taken under that program or from an initial EIS to a supplement which discusses the issues requiring supplementation.

§ 1940.328 State Environmental Policy Acts.

(a) Numerous States have enacted environmental policy acts or regulations similar to NEPA, hereafter referred to as State NEPA's. It is important that FmHA staff have an understanding of which States have such requirements and how they apply to applicant's proposals. It shall be the responsibility of each State Director to determine the applicable State requirements and to establish a working relationship with the State personnel responsible for their implementation.

(b) In processing projects located within States having State NEPA's, the environmental reviewer shall determine as early as possible in the assessment process whether the project falls under the requirements of the State NEPA. If it does, one of the following cases will exist and the appropriate actions specified shall be taken.

(1) The applicant has complied with the State's NEPA, and it was determined under the State's requirements that the proposed project would not result in sufficient potential impacts to warrant the preparation of an impact statement or other detailed environmental report required by the State NEPA. This finding or conclusion by the State shall be considered in the FmHA's review, and any supporting information used by the State shall be requested. However, the State's finding can never be the total basis for FmHA's environmental impact determination. An independent and thorough review in accordance with the requirements of this Subpart must be conducted by the environmental reviewer.

(2) The applicant has complied with the State NEPA, and it was determined under its implementing guidelines that a significant impact will result. This fact shall be given great weight in the Agency's environmental determination. However, the State's definition of significant environmental impact may encompass a much lower threshold of impacts compared to FmHA's. In such a case, if the environmental reviewer does not believe that a significant impact will result under Agency guidelines for determining significant impacts, the environmental assessment should be prepared and include a detailed discussion with supporting information as to why the environmental reviewer's recommendation differs from that of the State's. However, the assessment cannot be completed until the State's impact statement requirements have been fulfilled by the applicant and the resulting impact statement has been reviewed by the environmental reviewer. An environmental impact determination shall then be executed based upon the assessment and the statement.

(c) It should be emphasized that at no time does the completion of an impact statement under the requirements of a State NEPA obviate the requirement for FmHA to prepare an impact statement. Consequently, as soon as it is clear to the environmental reviewer that the Agency will have to prepare a statement, every attempt should be made to accomplish the statement simultaneously with the State's. Coordination with State personnel is necessary so that data and expertise can be shared. In this manner, duplication of effort and of the review periods for the separate statements can be minimized. This process clearly requires a close working relationship with the appropriate state personnel.

§ 1940.329 Commenting on other Agencies' EIS's.

(a) State Directors are authorized to comment directly on EIS's prepared by other Federal agencies. In so doing, comments should be as specified as possible. Any recommendations for the development of additional information or analyses should indicate why there is a need for the material.

(b) Comments should concentrate on those matters of primary importance to FmHA and on areas of Agency expertise, such as rural planning and development. Any potential conflicts with FmHA programs, plans, or actions should be clearly identified. Special attention should be given to the relationship of the alternatives under study to the State Office's natural resource management guide and the objectives of the Department's land use regulation, Exhibit A. Copies of comments addressing land use questions should be provided to the appropriate chairman of the USDA State-level committee dealing with land use matters.

(c) Whenever a State Director has serious concerns over the acceptability of the anticipated environmental impacts, the State Director shall notify the Administrator.

§ 1940.330 Monitoring.

(a) FmHA staff who normally have responsibility for the postapproval inspection and monitoring of approved projects shall ensure that those measures which were identified in the preapproval stage and required to be undertaken in order to reduce adverse environmental impacts are effectively implemented.

(b) This staff, as identified in paragraph (a) of this section, shall review the action's approval documents and consult with the environmental reviewer prior to making site visits or requesting project status reports in order to determine if there are environmental requirements to be monitored.

(c) The environmental reviewer should directly monitor actions containing difficult or complex environmental special conditions.

(d) Before certifying that conditions contained within offers of financial assistance have been fully met, the responsible monitoring staff shall obtain the position of the environmental reviewer for those conditions developed as a result of the environmental review.

(e) Whenever noncompliance with an environmental special condition is detected by FmHA staff, the environmental reviewer shall be immediately informed. The approving official shall then take appropriate steps, in consultation with the responsible program office and environmental reviewer, to bring the action into compliance.

§ 1940.331 Public involvement.

(a) The basic objective of FmHA's public involvement process is threefold. It is to ensure that interested citizens (1) can readily obtain knowledge of the environmental review status of FmHA's funding applications, (2) have the opportunity to input into this review process before decisions are made, and (3) have access to the environmental documents supporting FmHA decisions.

(b) For projects that undergo the preparation of an environmental impact statement, the first element of formal public participation in the EIS process involves the publication of the notice of intent to prepare an EIS. The content of the notice of intent and its publication by FmHA in the Federal Register are explained in § 1940.320. With respect to notification within the project area, the applicant shall be requested to publish a copy of the notice of intent and the date of the scoping meeting in the newspaper of general circulation in the vicinity of the proposed action and in any local or community-oriented newspapers within the proposed action's area of

environmental impact. The notice shall be published in easily readable type in the nonlegal section of the newspaper(s). It shall also be bilingual if the affected area is largely non-English speaking or bilingual. Individual copies of the notice shall be sent by the applicant to the appropriate regional EPA office, any State and regional review agencies established under Executive Order 12372; the State Historic Preservation Officer; local radio stations and other news media; any State or Federal agencies planning to provide financial assistance to this or related actions or required to review permit applications for this action, any potentially affected Indian Tribe; any individuals, groups, local, State, and Federal agencies known to be interested in the project; owners and occupants of nearby or affected property; and to any other parties that the environmental reviewer has identified to be so notified. It shall also be posted at a readable location on the project site. The applicant shall provide FmHA with a copy of the notice as it appeared in the newspaper(s), the date(s) published, and a list of all parties receiving an individual notice. Publication and individual transmittal of the notice for the scoping meeting shall be accomplished at least 14 days prior to the date of the meeting.

(c) For projects that are determined not to have a significant environmental impact, the Agency will require the applicant to publish a notification of this determination. This notice shall be published in the same manner as a notice of intent to prepare an EIS but shall appear for at least 3 consecutive days if published in a daily newspaper or otherwise in two consecutive publications. Individual copies shall be sent to the same parties as specified in a notice of intent with the exception of local radio stations and other news media. Also, there is no requirement to post this notice on the project site. The applicant shall provide FmHA with a copy of this notice, the dates the notice was published, and a list of all parties receiving an individual notice.

(d) The above notification procedure will not apply to actions reviewed solely on the basis of a Class I assessment.

(e) Public information meetings shall be held for an action undergoing environmental impact statements as specified in § 1940.320. Such meetings may also be held in the completion of environmental assessments as indicated in § 1940.318.

(1) As part of the EIS process, a public information meeting shall be held near the project site to discuss and receive comments on the draft EIS. It shall be scheduled no sooner than 15 days after the release of the draft EIS. It shall be announced in the same manner as the scoping meeting, and the list of parties receiving an individual notification should also be developed in the same manner. The meeting shall be chaired by the State Director or a designee and shall be fully recorded so that a transcript can be produced. The applicant shall be requested to assist in obtaining a facility for holding the meeting. To the extent possible, this meeting shall be combined with public meetings required by other involved agencies.

(2) Whenever a public information meeting is held as part of the competition of an environmental assessment, it shall be scheduled, announced, and held in generally the same manner as a public information meeting for an EIS. However, a minimum of 7 days advance notice of the meeting is sufficient, and a transcript of the meeting shall not be required. Rather, a summary of the meeting to include the major issues raised shall be prepared by the environmental reviewer.

(f) FmHA Officials shall promptly provide to interested parties, upon request, copies of environmental documents, including environmental assessments, draft and final environmental impact statements, and records of decision. Interested parties can request these materials from the appropriate State Director for project activities and from the Administrator on other activities subject to environmental review.

(g) The public notification procedures for actions that will affect floodplains, wetlands, important farmlands, prime rangelands or prime forest lands are contained in Exhibit C of this Subpart.

§ 1940.332 Emergencies.

When an emergency circumstance makes it necessary to take an action with significant environmental impact without observing the provisions of this Subpart or the CEQ regulations, the Administrator shall be so notified. If possible, the Administrator shall consult with CEQ about alternative arrangements before the proposed action is taken. It must be recognized that CEQ's regulations limit such arrangements to actions necessary to control the immediate impacts of the emergency. Other actions remain subject to NEPA review. For purposes of this Subpart, an emergency circumstance is defined as one involving an immediate of imminent danger to public health or safety.

§ 1940.333 Applicability to planning assistance.

The award of FmHA funds for the purpose of providing technical assistance or planning assistance shall not be subject to any environmental review. However, applicants shall be expected to consider in the development of their plans and to generally document within their plans:

(a) The existing environmental quality and the important environmental factors within the planning area, and

(b) The potential environmental impacts on the planning area of the plan as well as the alternative planning strategies that were reviewed.

§ 1940.334 Direct participation of State Agencies in the preparation of FmHA EISs

FmHA may be assisted by a State Agency in the preparation of an EIS subject to the conditions indicated below. At no time, however, is FmHA relieved of its responsibilities for the scope, objectivity, and content of the entire statement or any other responsibility under NEPA.

(a) The FmHA applicant for financial assistance is a State Agency having statewide jurisdiction and responsibility for the proposed action;

(b) FmHA furnishes guidance to the State Agency as to the scope and content of the impact statement and participates in the preparation;

(c) FmHA independently evaluates the statement and rectifies any major deficiencies prior to its circulation by the Agency as an EIS;

(d) FmHA provides, early in the planning stages of the project, notification to and solicits the views of any land management entity (State or Federal Agncy responsible for the management or control of public lands) concerning any portion of the project and its alternatives which may have significant impacts upon such land management entities; and

(e) If there is any disagreement on the impacts addressed by the review process outlined in paragraph (d) of this section, FmHA prepares a written assessment of these impacts and the views of the land management entities for incorporation into the draft impact statement.

§ 1940.335 Environmental review of FmHA proposals for legislation.

(a) As stated in § 1940.312(d)(4), all FmHA proposals for legislation shall receive an environmental assessment. The definition of such a proposal is contained in § 1508.17 of the CEQ regulations.

(b) The environmental assessment and, when necessary, the EIS shall be prepared by the responsible Agency staff that is developing the legislation.

(c) If an EIS is required, it shall be prepared according to the requirements of § 1506.8 of the CEQ Regulations.

§ 1940.336 Contracting for professional services.

(a) Assistance from outside experts and professionals can be secured for the purpose of completing EISs, assessments, or portions of them. Such assistance shall be secured according to the Federal and Agriculture Procurement Regulations contained in Chapters 1 and 4 of Title 41 of the Code of Federal Regulations.

(b) The contractor shall be selected by FmHA in consultation with any cooperating agencies. In order to avoid any conflict of interest, contractors competing for the work shall be required to execute a disclosure statement specifying that they have no financial or other interest in the outcome of the project.

(c) The Administrator shall provide the State Director with a proposed scope of work for use in securing such professional services.

(d) Applicants shall not be required to pay the costs of these professional services.

§§ 1940.337—1940.349 [Reserved]

§ 1940.350 Office of Management and Budget (OMB) control number.

The collection of information requirements in this regulation have been approved by the Office of Management and Budget and have been assigned OMB control number 0575–0094.

Exhibit A to Subpart G

Departmental Regulation

Number: 9500–3.
Subject: Land Use Policy.
Date: March 22, 1983.
OPI: Land Use Staff, Soil Conservation Service.

Section

1 Purpose
2 Cancellation
3 Policy
4 Abbreviations
5 Definitions
6 Responsibilities
7 Appendix A

1 Purpose

The Nation's farmlands, forest lands, rangelands, flood plains, and wetlands are unique natural resources providing food, fiber, wood, and water necessary for the continued welfare of the people of the United States and protection from floods. Each year, large amounts of these lands are converted to other uses. Continued conversion of the Nation's farmlands, forest lands, and rangelands may impair the ability of the United States to produce sufficient food, fiber, and wood to meet domestic needs and the demands of export markets. Continued conversion of the Nation's wetlands may reduce the availability of adequate supplies of suitable-quality water, indigenous wildlife species, and the productive capacity of the Nation's fisheries. Continued encroachments on flood plains decrease the natural flood-control capacity of these land areas, create needs for expensive manmade flood-control measures and disaster-relief activities, and endanger both lives and property.

Land use allocation decisions are matters of concern to USDA. Decisions concerning land use arise from needs to accommodate needed growth and development; prevent unwarranted and costly sprawl; avoid unwarranted conversion of farm, range, and forest lands and wetlands from existing uses and unwarranted encroachment on flood plains; maintain and enhance agricultural and forest production capabilities; maintain wildlife, fish, and seafood habitat; provide or improve community services and facilities; assure appropriate environmental quality; and assure adequate supplies of suitable-quality water. These needs are highly interdependent and often compete with each other for the limited supply of available land and water.

It is Departmental policy to promote land use objectives responsive to current and long-term economic, social, and environmental needs. This policy recognizes the rights and responsibilities of State and local governments for regulating the uses of land under their jurisdiction. It also reflects the Department's responsibility to (a) assure that the United States retains a farm, range, and forest land base sufficient to produce adequate supplies, at reasonable production costs of high-quality food, fiber, wood, and other agricultural products that may be needed; (b) assist individual landholders and State and local governments in defining and meeting needs for growth and development in such ways that the most productive farm, range, and forest lands are protected from unwarranted conversion to other uses; and (c) assure appropriate levels of environmental quality.

In accordance with the authority contained in 7 U.S.C. 1010 and 7 U.S.C. 2204 and consistent with 7 CFR 2.19(f) and provisions of the Farmland Protection Policy Act, Subtitle I, Title XV, Pub. L. 97–98, the Department sets forth this statement of policy on land use.

2 Cancellations

This regulation supersedes Secretary's Memorandum 9500–2 dated March 10, 1982.

3 Policy

Federal agencies, in implementing programs, make decisions that affect current and potential uses of land. The Department will:

a. Promote and support planning procedures that allow landholders, interest groups, and State and local governments to have input at all appropriate stages of the decisionmaking process for public projects, programs, or activities; that recognize the rights and responsibilities of landholders in making private land use decisions; and that recognize the responsibility of governments in influencing how land may be used to meet public needs.

b. Assure that programs of the agencies within the Department discourage the unwarranted conversion to other uses of prime and unique farmlands, farmlands of statewide or local importance, and prime rangelands, as defined in appendix A; the unwarranted alteration of wetlands or flood plains; or the unwarranted expansion of the peripheral boundaries of existing settlements.

c. Manage both its land use-related programs and USDA-administered land in such manner as to (1) demonstrate leadership in meeting short- and long-term needs for growth and development, while assuring adequate supplies of needed food, fiber, and forest products; (2) assure appropriate levels of environmental quality and adequate supplies of water; and (3) discourage unwarranted expansion of peripheral boundaries of existing settlements. Whenever practicable, management of USDA-administered lands shall be coordinated with the management of adjacent private and other public lands.

d. Conduct multidisciplinary land use research and education programs responsive to identified State, local, and national needs and, when requested, assist State and local governments, citizens groups, and individual landholders in determining a alternative land use values, thereby enabling local officials to make judicious choices to meet growth and development needs and to protect the community's farm- and forest-related economic base.

e. Assist landowners and State and Federal agencies in the reclamation of abandoned surface-mined lands. This reclamation will help eliminate safety, health, and environmental problems.

f. Assist in planning for the extraction of coal and other nonrenewable resources in such manner as to facilitate restoration. This restoration would reestablish or enhance food, fiber, or forest productivity or contribute to other beneficial uses of the land as mining is completed in defined areas as sites.

g. Advocate among Federal agencies:

(1) The retention of important farmlands, rangelands, forest lands, and wetlands, whenever proposed conversions to other uses (a) are caused or encouraged by actions or programs of a Federal agency or (b) require licensing or approval by a Federal agency, unless other needs clearly override the benefits derived from retention of such lands; and

(2) Actions that reduce the risk of flood loss and soil erosion; that minimize impacts of floods on human safety, health, and welfare; that preserve natural flood-control and other beneficial functions and values of wetlands and flood plains; and that reduce future need for expensive manmade flood-control systems, disaster-relief assistance, or Federal rehabilitation assistance in the event of flooding.

4 Abbreviations

USDA—U.S. Department of Agriculture.

NRE—Natural Resources and Environment Committee.

5 Definitions

Complete definitions for the terms "farmlands," "forest lands," "rangelands," "wetlands," and "flood plains" are found in appendix A.

6 Responsibilities

a. The Office of the Secretary is responsible for (1) encouraging, assisting, and coordinating efforts of other Federal departments and agencies to implement policies and procedures supportive of the objectives of this regulation; (2) resolving issues and acting on recommendations raised to the Secretary's Policy and Coordination Council by the Departmental committees; and (3) raising unresolved issues and recommending actions to the appropriate Cabinet Council.

b. The NRE Committee, created under the Secretary's memorandum dated July 22, 1981, will provide departmentwide leadership for the implementation of this policy statement. In implementing this policy, the NRE Committee will:

(1) Recommend Departmental guidelines to the Secretary and schedule reviews of each agency's procedures for implementation;

(2) Monitor implementation of this policy;

(3) Encourage, support, and provide guidance to State- and local-level USDA committees in implementing this policy;

(4) Coordinate the work of USDA agencies in carrying out the provisions of this regulation; and

(5) Advise the Secretary annually as to progress and problems encountered.

c. Each USDA agency will review and make the necessary administrative changes in existing and proposed rules, regulations, guides, practices, or policies and propose needed legislative changes to bring agency programs into compliance with the provisions of this regulation.

d. Each USDA agency having programs that will be affected by this regulation shall develop implementing procedures, consistent with the guidelines provided by the NRE Committee, and shall provide to all offices of the agency copies of this policy statement, Departmental guidelines, and agency procedures to implement this policy.

e. USDA agencies will encourage State and local governments and individual landholders to retain important farmlands, rangelands, forest lands, and wetlands and to avoid encroachments on flood plains when practicable alternatives exist to meet developmental needs. Appropriate agencies will assist State and local governments, citizens groups, and individual landholders in identifying options and determining alternative land use values as the basis for making judicious choices in meeting growth and development needs.

f. USDA agencies will encourage other Federal, State, and local government agencies to exchange information on plans or projects that may impact on important farmlands, rangelands, forest lands, wetlands, or flood plains and to involve appropriate USDA agencies early in the planning process. USDA agencies will participate in a timely manner at appropriate stages in the planning process on Federal or federally assisted projects or activities when requested. Where opportunity for such participation is not forthcoming, the Department may intercede, consistent with policy contained in this regulation, at appropriate stages in the decisionmaking process through review and comments on plans, as provided for in authorized administrative review procedures for such projects, activities, or actions.

g. When land held either in public or private ownership will be directly affected by USDA actions, the implementing agency will notify the affected landholders at the earliest time practicable of the proposed action and provide such landholders an opportunity to review the elements of the action and to comment on the action's feasibility and alternatives to it.

h. Agencies of USDA will assure that their actions, investments, and programs on nonfederal lands will conform, to the extent practicable, with the uses permitted under land use regulations adopted by State or local governments.

i. When land use regulations or decisions are inconsistent with USDA policies and procedures for the protection of important farmlands, rangelands, forest lands, wetlands, or flood plains, USDA agencies shall not assist in actions that would convert these lands to other uses or encroach upon flood plains, unless (1) there is a demonstrated, significant need for the project, program, or facility, and (2) there are no practicable alternative actions or sites that would avoid the conversion of these lands or, if conversion is unavoidable, reduce the number of acres to be converted or encroached upon directly and indirectly.

Appendix A.—Definitions

The following definitions apply to this Departmental Regulation.

1 Important Farmlands [1]

a. Prime Farmlands [1]

(1) *General Criteria.* Prime farmland is land that has the best combination of physical and chemical characteristics for producing food, feed, forage, fiber, and oilseed crops and is also available for these uses (the land could be cropland, pastureland, rangeland, forest land, or otherland, but not urban built-up land or water). It has the soil quality, growing season, and moisture supply needed to produce, economically, sustained high yields of crops when treated and managed, including water management, according to acceptable farming methods. In general, prime farmlands have an adequate and dependable water supply from precipitation or irrigation, a favorable temperature and growing season, acceptable acidity or alkalinity, acceptable salt and sodium content, and few or no rocks. They are permeable to water and air. Prime farmlands are not excessively erodible or saturated with water for a long period of time, and they either do not flood frequently or are protected from flooding. Examples of soils that qualify as prime farmland are Palouse silt loam, 0- to 7-percent slopes; Brookston silty clay loam, drained; and Tama silty clay loam, 0- to 5-percent slopes.

(2) *Specific Criteria.* Prime farmlands must meet all the following criteria. Terms used in this section are defined in these USDA publications: "Soil Taxonomy, Agriculture Handbook 436," "Soil Survey Manual, Agriculture Handbook 18," "Rainfall-Erosion Losses from Cropland, Agriculture Handbook 282," "Wind Erosion Forces in the United States and Their Use in Predicting Soil Loss, Agriculture Handbook 346," and "Saline and Alkali Soils, Agriculture Handbook 60."

(a) The soils have:

1. Aquic, udic, ustic, or xeric moisture regimes and sufficient available water capacity within a depth of 40 inches, or in the root zone (root zone is the part of the soil that is penetrated by plant roots) if the root zone is less than 40 inches deep, to produce the commonly grown cultivated crops (cultivated crops include but are not limited to grain, forage, fiber, oilseed, sugar beets, sugarcane, vegetables, tobacco, orchard, vineyard, and bush fruit crops) adapted to the region in 7 or more years out of 10; or

2. Xeric or ustic moisture regimes in which the available water capacity is limited, but the area has a developed irrigation water supply that is dependable (a dependable water supply is one in which enough water is available for irrigation in 8 out of 10 years for the crops commonly grown) and of adequate quality; or

3. Aridic or torric moisture regimes, and the area has a developed irrigation water supply that is dependable and of adequate quality; and

(b) The soils have a temperature regime that is frigid, mesic, thermic, or hyperthermic (pergelic and cryic regimes are excluded). These are soils that, at a depth of 20 inches, have a mean annual temperature higher than 32 degrees Fahrenheit. In addition, the mean summer temperature at this depth in soils with an O horizon is higher than 47 degrees Fahrenheit; in soils that have no O horizon, the mean summer temperature is higher than 59 degrees Fahrenheit; and

(c) The soils have a pH between 4.5 and 8.4 in all horizons within a depth of 40 inches or in the root zone if the root zone is less than 40 inches deep; and

(d) The soils either have no water table or have a water table that is maintained at a sufficient depth during the cropping season to allow cultivated crops common to the area to be grown; and

(e) The soils can be managed so that in all horizons within a depth of 40 inches or in the root zone if the root zone is less than 40 inches deep, during part of each year the conductivity of the saturation extract is less than 4 mmhoc/cm and the exchangeable sodium percentage is less than 15; and

(f) The soils are not flooded frequently during the growing season (less often than once in 2 years); and

(g) The product of K (erodibility factor) times the percent slope is less than 2.0, and the product of I (soils erodibility) times C (climatic factor) does not exceed 60; and

[1] 7 CFR 657.5.

(h) The soils have a permeability rate of at least 0.06 inch per hour in the upper 20 inches, and the mean annual soil temperature at a depth of 20 inches is less than 59 degrees Fahrenheit or higher; and

(i) Less that 10 percent of the surface layer (upper 6 inches) in these soils consists of rock fragments coarser than 3 inches.

b. Unique Farmland [1]

(1) *General Criteria.* Unique farmland is land other than prime farmland that is used for the production of specific high-value food and fiber crops. It has the special combination of soil quality, location, growing season, and moisture supply needed to produce, economically, sustained high-quality and/or high yields of a specific crop when treated and managed according to acceptable farming methods. Examples of such crops are citrus, tree nuts, olives, cranberries, fruit, and vegetables.

(2) *Specific Characteristics.* Unique farmland is used for a specific high-value food or fiber crop. It has a moisture supply that is adequate for the specific crop; the supply is from stored moisture, precipitation, or a developed irrigation system. It combines favorable factors of soil quality, growing season, temperature, humidity, air drainage, elevation, aspect, or other conditions, such as nearness to market, that favor the growth of a specific food or fiber crop.

c. Additional Farmland of Statewide Importance [1]

This is land, in addition to prime and unique farmlands, that is of statewide importance for the production of food, feed, fiber, forage, and oilseed crops. Criteria for defining and delineating this land are to be determined by the appropriate State agency or agencies. Generally, additional farmlands of statewide importance include those that are nearly prime farmland and that economically produce high yields of crops when treated and managed according to acceptable farming methods. Some may produce as high a yield as prime farmlands if conditions are favorable. In some States, additional farmlands of statewide importance may include tracts of land that have been designated for agriculture by State law.

d. Additional Farmland of Local Importance [1]

In some local areas, there is concern for certain additional farmlands for the production of food, feed, fiber, forage, and oilseed crops, even though these lands are not identified as having national or statewide importance. Where appropriate, these lands are to be identified by the local agency or agencies concerned.

2 Prime Forest Lands [2]

Because of the multiple use of forested lands, several categories, e.g., timber, wildlife, and recreation, may be developed. For purposes of this regulation only, the following timberland definitions will apply.

a. Prime Timberland [2]

Prime timberland is land that has soil capable of growing wood at the rate of 85 cubic feet or more/acre/year (at culmination of mean annual increment) in natural stands and is not in urban or built-up land uses or water. Generally speaking, this is land currently in forest, but does not exclude qualifying lands that could realistically be returned to forest. Delineation of these lands will be in accordance with national criteria.

b. Unique Timberland [2]

Unique timberlands are lands that do not qualify as prime timberland on the basis of producing less than 85 cubic feet/acre/year, but are growing sustained yields of specific high-value species or species capable of producing specialized wood products under a silvicultural system that maintains soil productivity and protects water quality. Delineation of these lands will be in accordance with national criteria.

c. Timberland of Statewide Importance [2]

This is land, in addition to prime and unique timberlands, that is of statewide importance for the growing of wood. Criteria for defining and delineating these lands are to be determined by State forestry planning committees or appropriate State organizations.

d. Timberlands of Local Importance [2]

In some local areas, there is concern for certain additional forest lands for the growing of wood, even though these lands are not identified as having national or statewide importance. Where appropriate, these lands are to be identified by a local agency or agencies concerned.

3 Wetlands [3]

Wetlands are those areas that are inundated by surface or ground water with a frequency sufficient to support and, under normal circumstances, do or would support a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction. Wetlands generally include swamps, marshes, bogs, and similar areas, such as sloughs, potholes, wet meadows, river overflows, mudflats, and natural ponds.

4 Flood Plains [3]

The term "flood plain" means the lowland and relatively flat areas adjoining inland and coastal waters, including floodprone areas of offshore islands, including, at a minimum, those that are subject to a 1-percent or greater chance of flooding in any given year.

4 Prime Rangeland [4]

Prime rangeland is rangeland which, because of its soil, climate, topography, vegetation, and location, has the highest quality or value for grazing animals. The (potential) natural vegetation is palatable, nutritious, and available to the kinds of herbivores common to the area.

[2] Prime Forest Land Definition and Criteria, U.S. Forest Service, May 26, 1977.

[3] Definitions contained in Executive Orders 11988 and 11990.

[4] USDA proposed definition for intradepartmental use only.

Exhibit B to Subpart G.—Development and Implementation of Natural Resource Management Guide

1. The State Director shall complete the natural resource management guide within 12 months from the effective date of this Subpart and issue the guide as a State supplement after prior approval by the Administrator. A summary of the basic content, purposes, and uses of the guide is contained in § 1940.305 of this Subpart. The guide shall be prepared in draft form and be provided for review and comment to USDA agencies, appropriate Federal and State agencies, State and regional review agencies assigned the consulation requirements of Executive Order 12372, as well as interested localities, groups, and citizens. Also at least one public information meeting shall be held on the draft which shall be followed by a 30-day period for the submission of public comments. Public notification of this meeting shall be made in the same manner as the notification process for a scoping meeting. (See § 1940.320(c) of this Subpart). Additionally, the public shall be informed that copies of the draft guide will be made available from the State Office upon request. After completion of this public review, the draft will be revised as necessary in light of the comments received and provided as a final draft State Supplement to the Administrator for review and approval. Any concerns and comments of the Administrator will be addressed by the State Director and the guide completed. Upon the Administrator's approval and the fulfillment of the requirements of paragraph 4. of this Exhibit, the natural resource management guide shall then become part of any program investment strategies developed by the State Director for the purpose of addressing the rural needs of the State. Although a 12-month period has been established for the completion of a natural resource management guide, this deadline is not to be construed as curtailing or postponing the implementation of existing environmental laws, regulations, Executive orders or the Departmental Regulation 9500-3, Land Use Policy, with respect to individual project reviews, nor giving anyone any rights or claims with respect to the completion or content of the guide.

2. The natural resource management guide needs to be developed in full recognition of its role as an internal Agency planning tool and with sensitivity to the Agency's mission.

3. After the Administrator approves the natural resource management guide, it will become effective 4 months from that date. This interim period shall be used to inform local, State, and Federal agencies, localities, organizations, and interested citizens of the content of the guide. In this manner, those parties intending to seek FmHA assistance or to coordinate FmHA assistance programs with their own programs will be able to gain for their planning needs an understanding of our guide.

4. Completed natural resource management guides shall be reviewed every 2 years and updated by the State Director to reflect newly identified geographical areas of concern or policy revisions at the national, State, regional or local level. They will also be

revised, as necessary, through appropriate guidance from the Administrator. Revisions shall be transmitted to the Administrator for postapproval and shall be considered approved if either no comments are raised by the Administrator within 30 days of receipt of the State Director's transmittal letter or the administrator specifically approves them before the 30 days expire. Public review of a revision will not be required. However, if in the opinion of the State Director the proposed revision will substantially change the previously adopted natural resource management guide, a public review shall be conducted of the revision in the same manner as that described in paragraph 1 of this Exhibit for the development of the original guide. Such review shall occur prior to the transmittal of the revision to the Administrator. If the State Director believes that at the expiration of any 2-year review period there is need to update the guide, a statement to this effect shall be filed with the Administrator.

5. The foundation for the natural resource management guide is the identification of the types of land uses or environmental factors deserving attention and their geographical location within the State. An inventory or listing shall be developed, therefore, of the important land uses within the State. This inventory will be accomplished by assembling existing data and information compiled by those Federal, State, and local agencies that have jurisdiction or expertise regarding the land uses or environmental factors. At a minimum, the inventory shall consist of available documents, listings, maps, or graphic materials describing the location of the following:

a. National Register of Historic Places to include monthly supplements as designated by the Department of the Interior (DOI), and the State Historic Preservation Plans. This list is issued as a State supplement to Subpart F or Part 1901 of this Chapter;

b. Rivers designated as part of the Wild and Scenic Rivers System and rivers under study for inclusion in the system, as published by DOI;

c. Important farmlands;

d. Prime rangelands.

e. Prime forestlands;

f. Wetland inventory;

g. Floodplain inventory as issued by the Federal Emergency Management Administration;

h. Endangered Species and Critical Habitats as listed or proposed for listing by the Department of Commerce (DOC) and DOI;

i. Sole source aquifer recharge areas as designated by the Environmental Protection Agency (EPA);

j. Air Quality Control Regions as designated by EPA;

k. National Registry of Natural Landmarks at published by DOI;

l. Coastal Barrier Resources System;

m. State inventories or planning documents identifying important land uses, particularly those not covered by the above items, such as wildlife refuges, important habitats, and areas of high water quality, or scenic or recreational value;

n. Agricultural districts or other similar zoning classifications for agricultural land protection; and

o. Coastal Zone Management Areas.

6. The Administrator shall be responsible for assisting State Directors in obtaining listings and inventories of resources protected by Federal statutes and regulations. The State Director has the responsibility for assembling documents on important environmental resources or areas identified in State and substate laws, regulations, plans, and policies.

7. Development of the inventory by the State Director will require consultation and assistance from a variety of agencies and experts. This consultation should begin with Department agencies and be accomplished through appropriate, State-level USDA committees. The objective should be to determine the land classification data that has been compiled and that which is in the process of being compiled either by USDA agencies or their counterparts at the state level. The Memorandum of Understanding executed in May 1979 between the Soil Conservation Service (SCS) and FmHA should be utilized as the basis for seeking SCS's assistance in this data collection effort. (See FmHA Instruction 2000-D, Exhibit A, which is available in any FmHA Office.) Direct contacts should then be made with State agencies, in particular with the appropriate office of State planning, to determine the availability of State inventories and State land use policies and priorities. Similar discussions should be held with substate regional planning agencies and clearinghouses with assistance being provided in this effort by District Directors. County Supervisors shall contact local officials and shall be responsible for being familiar with and for assembling similar inventories, land use policies, or protective requirements developed by the local government agencies within the supervisor's territorial jurisdiction.

8. Another important element of the natural resource management guide shall be the examination of any major environmental impacts on the State or a substate area resulting from the cumulative effects of FmHA-assisted project over the last several years. In this examination, particular emphasis should be given to the cumulative impacts of water resource projects such as irrigation systems. This should be done in consultation with experts within the appropriate State agencies and the U.S. Geological Survey. The housing programs should also be given a particular emphasis with respect to their cumulative impacts. More detailed guidance on the accomplishment of this cumulative impact section of the natural resource management guide, as well as the overall content of the guide, shall be provided by the Administrator. In preparing the State's natural resource management guide and in assembling inventories of critical resources, Agency staff should not lose sight of the basic purposes of this effort. The development of lengthy and complex guides and the amassing of huge inventories is not our goal. In the end, the material must be useable and serve as a tool for better decisionmaking. The basic purposes of this guide and inventory, then, are to provide a basis for developing comprehensive, statewide, rural development investment strategies that (i) do not conflict with Federal, State, and local mandates to preserve and protect important land and environmental resources, (ii) that do not create short- or long-term development pressures which would lead to the unnecessary conversion of these resources, and (iii) which effectively support and enhance Federal, State, and local plans to preserve these resources.

Exhibit C.—Implementation Procedures for the Farmland Protection Policy Act; Executive Order 11988, Floodplain Management; Executive Order 11990, Protection of Wetlands; and Departmental Regulation 9500-3, Land Use Policy

1. *Background.* The Subtitle I of the Agriculture and Food Act of 1981, Pub. L. 97-98, created the Farmland Protection Policy Act. The Act requires the consideration of alternatives when an applicant's proposal would result in the conversion of important farmland to nonagricultural uses. The Act also requires that Federal programs, to the extent practicable, be compatible with State, local government, and private programs and policies to protect farmland. The Departmental Regulation 9500-3, Land Use Policy (the Departmental Regulation), also requires the consideration of alternatives but is much broader than the Act in that it addresses the conversion of land resources other than farmland. The Departmental Regulation is included as Exhibit A to this Subpart.

2. *Implementation.* Each proposed disposal of real property by FmHA and application for financial assistance or subdivision approval shall be reviewed to determine if it would result in the conversion of a land resource addressed in the Act, Executive Orders, or Departmental Regulation and as further specified below. Those actions that are determined to result in the disposal or financing of an existing farm, residential, commercial or industrial property with no reasonably foreseeable change in land use and those actions that solely involve the renovation of existing structures or facilities would require no further review.* Since these actions have no potential to convert land uses, this finding would simply be made by the environmental reviewer in completing the environmental assessment for the action. For other actions, the following implementation steps must be taken.

a. Determine whether important land resources are involved. The Act comes into play whenever there is a potential to affect important farmland. The Departmental Regulation covers important farmland as well as the following land resources: prime forest land, prime rangeland, wetlands and floodplains. Hereafter, these land resources are referred to collectively as important land resources. Definitions for these land resources are contained in the Appendix to the Departmental Regulation. It is important

*See special procedures in item 3. of this Exhibit if the existing structure is located in a floodplain or wetland.

to note the definition of important farmland because it includes not only prime and unique farmland but additional farmland that has been designated by a unit of State or local government of statewide or local importance and such designation has been concurred in by the Secretary acting through SCS. In completing the environmental assessment or Form FmHA 1940–22, "Environmental Checklist For Categorical Exclusions," the environmental reviewer must determine if the project is either located in or will affect one or more of the land resources covered by the Act or the Departmental Regulation. Methods for determining the location of important land resources on a project-by-project basis are discussed immediately below. As reflected several times in this discussion, SCS personnel can be of great assistance in making agricultural land and natural resource evaluation, particularly when there is no readily available documentation of important land resources within the project's area of environmental impact. It should be remembered that FmHA and SCS have executed a Memorandum of Understanding in order to facilitate site review assistance. (See FmHA Instruction 2000–D, Exhibit A, available in any FmHA office.) Many local units of government, with technical assistance from SCS, have or will be developing Agricultural Land Evaluation and Site Assessment (LESA) systems. The LESA systems are designed for two purposes: (i) to evaluate the agricultural lands in a local area by placing each soil in one of about 10 groups, assigning a numerical value to each group, and indicating the important farmland category into which the soils have been placed; and (ii) to assess sites by determining the agricultural viability of the site based on community development apart from soils. Factors considered in the site assessment part of the system include location, land use surrounding the site, existence of agricultural and urban support systems, present land use plans and regulations, effects that land use changes would have on agriculture in the area, plus any other factors that may be selected by local officials. Points are assigned to both the land evaluation and site assessment parts of the system. The higher the points for any given site, the more viable the site is for agriculture. The LESA system can be used in evaluating alternative sites that would involve conversion in order to determine which site has the least negative impact on agriculture. Assistance for the development and use of LESA is available from SCS.

(1) *Important Farmland, Prime Forest Land, Prime Rangeland.*—Review available SCS important farmland maps to determine if the general area within which the project is located contains important farmland. If the general area has important farmland, consult with the SCS field office having jurisdiction over the project area and obtain a detailed copy of the SCS soil survey for the site and a list of the important farmland soils for the area. Because of the large scale of the important farmland maps, the maps should be used for general review purposes only and not to determine if sites of 40 acres or less contain important farmland. For this reason and the fact that important farmland can lose its designation as a result of previous urbanization, direct consultation with SCS personnel is always recommended.

(2) *Floodplain.*—Review the most current Flood Insurance Rate Map or Flood Insurance Study issued for the project area by the Federal Emergency Management Agency (FEMA). Information on the most current map available or how to obtain a map free of charge is available by calling FEMA's toll free number 800–638–6620. When more specific information is needed on the location of a floodplain, for example, the project site may be near the boundary of a floodplain; or for assistance in analyzing floodplain impacts, it is often helpful to contact FEMA's regional office staff. Exhibit J contains a listing of these regional offices and the appropriate telephone numbers.

If a FEMA floodplain map has not been prepared for a project area, detailed assistance is normally available from the following agencies: SCS, Corps of Engineers, U.S. Geological Survey (USGS), or appropriate regional or State agencies established for flood prevention purposes.

(3) *Wetlands.*—There is no central data source or inventory for determining the location of wetlands. Many government agencies are in the process of completing wetland surveys. The U.S. Fish and Wildlife Service (FWS) is presently preparing the National Wetlands Inventory. Each FWS regional office has a staff member called a Wetland Coordinator. These individuals can provide updated information concerning existing State and local wetland surveys and Federal inventories. Exhibit K contains a listing of Wetland Coordinators arranged by FWS regional office and geographical area of jurisdiction. If the proposed project area has not been inventoried, information is available from other sources. Topographic maps prepared by USGS often depict the general existence of wetlands. A site visit can disclose evidence of vegetation typically associated with wetland areas. Also, the assistance of SCS field staff in reviewing the site can often be the most effective means.

b. Findings.

(1) *Scope.*—Although information on the location and the classification of important land resources should be gathered from appropriate expert sources, as well as their views on possible ways to avoid or reduce the adverse effects of a proposed conversion, it must be remembered that it is FmHA's responsibility to weigh and judge the feasibility of alternatives and to determine whether any proposed land use change is in accordance with the policies of the Act and the Departmental Regulation. Consequently, after reviewing as necessary, the project site, applicable land classification data, or the results of consultations with appropriate expert agencies, the FmHA reviewer must determine, as the second implementation step, whether the applicant's proposal:

(a) Is compatible with State, unit of local government, and private programs and policies to protect farmland; and

(b) Either will have no effect on important land resources; or

(c) If there will be a direct or indirect conversion of such a resource, (i) whether practicable alternatives exist to avoid the conversion; and

(d) If there are no alternatives, whether there are practicable measures to reduce the amount of the conversion.

(2) *Determination of No Effect.*—If the environmental reviewer determines that there is no potential for conversion and that the proposal is compatible, this determination must be so documented in the environmental assessment for a Class II action or the appropriate compliance blocks checked in the Class I assessment or Checklist for Categorical Exclusion based on whichever document is applicable to the action being reviewed.

(3) *Determination of Effect or Incompatibility.*—Whenever the reviewer determines that an applicant's proposal may result in the direct or indirect conversion of an important land resource or may be incompatible with State, unit of local government, or private programs and policies to protect farmland, the following further steps must be taken:

(a) *Search for Practicable Alternatives* *—In consultation with the applicant and the interested public, the environmental reviewer shall carefully analyze the availability of practicable alternatives that avoid the conversion or incompatibility. Possible alternatives include:

(i) The selection of an alternative site;

(ii) The selection of an alternative means to meet the applicant's objectives; or

(iii) The denial of the application, i.e., the no-action alternative.

When the resource that may be converted is important farmland, the environmental reviewer shall contact SCS to determine if the LESA system can be used to examine alternatives.

(b) *Inform the Public.*—The Departmental Regulation requires us in Section 6, Responsibilities, to notify the affected landholders at the earliest time practicable of the proposed action and to provide them an opportunity to review the elements of the action and to comment on the action's feasibility and alternatives to it. This notification requirement only applies to Class I and Class II actions and not to categorical exclusions that may convert an important land resource. The notification shall be published and documented in the manner specified in § 1940.331 of this Subpart and shall contain the following information:

(i) A brief description of the application or proposal and its location;

(ii) The type(s) and amount of important land resources to be affected;

(iii) A statement that the application or proposal is available for review at an FmHA field office (specify the one having jurisdiction over the project area); and

(iv) A statement that any person interested in commenting on the application or proposal's feasibility and alternatives to it may do so by providing such comments to FmHA within 30 days following the date of

* When the action involves the disposal of real property determined not suitable for disposition to persons eligible for FmHA's financial assistance programs, the consideration of alternatives is limited to those that would result in the best price.

publication. (Specify the FmHA office processing the application or proposal for receipt of comments.)

Further consideration of the application or proposal must be delayed until expiration of the public comment period. Consequently, publication of the notice as early as possible in the review process is both in the public's and the applicant's interest. Any comments received must be considered and addressed in the subsequent Agency analysis of alternatives and mitigation measures. It should be understood that scheduling a public information meeting is not required but may be helpful based on the number of comments received and types of issues raised.

(c) *Determine Whether Practicable Alternative Exists.*—

(i) Alternative Exists—If the environmental reviewer concludes that a practicable alternative exists, the reviewer shall complete step (3)(e)(ii) immediately below and provide the assessment for the approving official's review in the manner specified in § 1940.316 of this subpart. If the findings of this review are similar to the environmental reviewer's recommendation, FmHA shall inform the applicant of such findings and processing of the application shall be discontinued. Should the applicant still desire to pursue the proposal, the applicant is certainly free to do so but not with the further assistance of FmHA. Should the applicant be interested in amending the application to reflect the results of the alternative analysis, the reviewer shall work closely with the applicant to this end. Upon receipt of the amended application, the reviewer must reinstitute this implementation process at that point which avoids the duplication of analysis and data collection undertaken in the original review process.

If the results of the approving official(s) review differs from the environmental reviewer's recommendations, the former shall ensure that the findings are appropriately documented in step (e)(ii) and any remaining consideration given to mitigation measures, step (d).

(ii) No Practicable Alternative Exists—On the other hand, if the environmental reviewer concludes that there is no practicable alternative to the conversion, the reviewer must then continue with step (d) immediately below.

(d) *Search for Mitigation Measures.*—Once the reviewer determines that there is no practicable alternative to avoiding the conversion of incompatibility, including the no-action alternative, all practicable measures for reducing the direct and indirect amount of the conversion must be included in the application. Some examples of mitigation measures would include reducing the size of the project which thereby reduces the amount of the important land resource to be converted. This is a particularly effective mitigation measure when the resource is present in a small area, as is often the case with wetlands or floodplains. A corresponding method of mitigation would be to maintain the project size or number of units but decrease the amount of land affected by increasing the density of use. Finally, mitigation can go as far as the selection of an alternative site. For example, in a housing market area composed almost entirely of important farmland, any new proposed subdivision site would result in conversion. However, a proposed site within or contiguous to an existing community has much less conversion potential, especially indirect potential, than a site a mile or two from the community. The LESA system can also be used to identify mitigation measures when the conversion of important farmland cannot be avoided.

(e) *Document Findings.*—Upon completion of the above steps, a written summary of the steps taken and the reasons for the recommendations reached shall be included in the environmental assessment along with either one of the following recommendations as applicable. The following example assumes that important farmland is the affected resource and that the inappropriate phrase within the brackets would be deleted.

(i) The application would result in the direct or indirect conversion of important farmland and [is/is not] compatible with State, unit of local government, or private programs and policies to protect farmland. It is recommended that FmHA determine, based upon the attached analysis, that there is no practicable alternative to this and that the application contains all practicable measures for reducing the amount of conversion (or limiting the extent of any identified incompatibility.)

(ii) The application would result in direct or indirect conversion of important farmland and [is/is not] incompatible with State, unit of local government, or private programs and policies to protect farmland. It is recommended that FmHA determine, based upon the attached analysis, that there is a practicable alternative to this action, and that processing of this application be discontinued.

(f) *Implement Findings.*—The completed environmental assessments and the Agency's determination of compliance with the Act, the Departmental Regulation and Executive orders shall be processed and made according to § 1940.316 of this Subpart. Whenever this determination is as stated in step (e)(i) above, the action shall be so structured as to ensure that any recommended mitigation measures are accomplished. See § 1940.316(g) of this Subpart. Whenever the determination is as stated in step (e)(ii) above, the applicant shall be so informed and processing of the application discontinued. Any further FmHA involvement shall be as specified in Item (c)(i) above.

3. *Special Procedures and Considerations When a Floodplain or Wetland Is The Affected Resource Under Executive Order 11988 and 11990.*

a. *Scope.*

(1) Geographical Area.—The geographical area that must be considered when a floodplain is affected varies with the type of action under consideration. Normally the implementation procedures beginning in Item 2a of this Exhibit are required when the action will impact, directly or indirectly, the 100-year floodplain. However, when the action is determined by the environmental reviewer to be a critical action, the minimum floodplain of concern is the 500-year floodplain. A critical action is an action which, if located or carried out within a floodplain, poses a greater than normal risk for flood-caused loss of life or property. Critical actions include but are not limited to actions which create or extend the useful life of the following facilities:

(a) Those facilities which produce, use, or store highly volatile, flammable, explosive, toxic or water-reactive materials;

(b) Schools, hospitals, and nursing homes which are likely to contain occupants who may not be sufficiently mobile to avoid the loss of life or injury during flood and storm events;

(c) Emergency operation centers or data storage centers which contain records or services that may become lost or inoperative during flood and storm events; and

(d) Multifamily housing facilities designed primarily (over 50 percent) for handicapped individuals.

(2) Threshold of Impact.—The Executive orders differ from the Act and the Departmental Regulation in that the Executive orders' requirements apply not only to the conversion of floodplains or wetlands but to any impacts upon them. Impacts are defined as changes in the natural values and functions of a wetland or floodplain. Therefore, should any portion of an action or its related activities require construction activities in a floodplain, for example, there would be an impact to a floodplain. The only exception to this statement is when the reviewer determines that the locational impact is minor to the extent that the floodplain's or wetland's natural values and functions are not effected.

b. *Treatment of Existing Structures.*

(1) Non-FmHA-Owned Properties.—The Executive orders can apply to actions that are already located in floodplains or wetlands; that is, where the conversion has already occurred. The implementation procedures beginning in item 2a of this Exhibit must be accomplished for any action involving the rehabilitation, renovation, or adaptive reuse of an existing structure or facility when the work to be done amounts to a substantial improvement. A substantial improvement means any repair, reconstruction, or improvement of a structure the cost of which equals or exceeds 50 percent of the market value of the structure either (a) before the improvement or repair is started, or (b) if the structure has been damaged, and is being restored, before the damage occurred. The term does not include (a) any project for improvement of a structure to comply with existing State or local health, sanitary or safety code specifications which are solely necessary to assure safe living conditions or (b) any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

(2) FmHA-Owned Real Property.—The requirement in paragraph (1) immediately above also applies to any substantial improvements made to FmHA-owned real property. Irrespective of any improvements, whenever FmHA real property located in a floodplain or wetland is proposed for lease or sale, the official responsible for the

conveyance must determine if the property can be safely used. If not, the property should not be sold or leased. Otherwise, the conveyance must specify those uses that are restricted under identified Federal, State, and local floodplains or wetlands regulations as well as other appropriate restrictions, as determined by the FmHA official responsible for the conveyance, to the uses of the property by the lessee or purchaser and any successors, except where prohibited by law. Applicable restrictions shall be incorporated into quitclaim deeds with the consent and approval of the Regional Attorney, Office of the General Counsel. Upon application by the owner of any property so affected and upon determination by the appropriate FmHA official that the condition for which a deed restriction was imposed no longer exists, the restriction clause may be released. A listing of any restrictions shall be included in any notices announcing the proposed sale or lease of the property. At the time of first inquiry, prospective purchasers must be informed of the property's location in a floodplain or wetland and the use restrictions that will apply. A written notification to this effect must be provided to the prospective purchaser who must acknowledge the receipt of the notice. See Item 3d below and Subpart C of Part 1955 of this Chapter for guidance on the proper formats to be used with respect to notices and deed restrictions.

c. *Mitigation measures.*

(1) Alternative Sites.—As with the Act and the Departmental Regulation, the main focus of the review process must be to locate an alternative that avoids the impact to a floodplain or wetland. When this is not practicable, mitigation measures must be developed to reduce the impact which in the case of a floodplain or wetland can include finding another site, i.e., a safer site. The latter would be a site at a higher elevation within the floodplain and/or exposed to lower velocity floodflows.

(2) Nonstructural Mitigation Measures.—Mitigation measures under the Executive orders are intended to serve the following three purposes: reduce the risks to human safety, reduce the possible damage to structures, and reduce the disruption to the natural values and functions of floodplains and wetlands. More traditional structural measures, such as filling in the floodplain, cannot accomplish these three purposes and, in fact, conflict with the third purpose. Nonstructural flood protection methods, consequently, must be given priority consideration. These methods are intended to preserve, restore, or imitate natural hydrologic conditions and, thereby, eliminate or reduce the need for structural alteration of water bodies or their associated floodplains and wetlands. Such methods may be either physical or managerial in character. Nonstructural flood protection methods are measures which:

(a) Control the uses and occupancy of floodplains and wetlands, e.g., floodplain zoning and subdivision regulation;

(b) Preserve floodplain and wetland values and functions through public ownership, e.g., fee title, easements and development rights;

(c) Delay or reduce the amount of runoff from paved surfaces and roofed structures discharged into a floodway; e.g., construction of detention basins and use of flow restricting barriers on roofs;

(d) Maintain natural rates of infiltration in developed or developing areas, e.g., construction of seepage or recharge basins and minimization of paved areas;

(e) Protect streambanks and shorelines with vegetative and other natural cover, e.g., use of aquatic and water-loving woody plants;

(f) Restore and preserve floodplain and wetland values and functions and protect life and property through regulation, e.g., flood-proofing building codes which require all structures and installations to be elevated on stilts above the level of the base flood; and

(g) Control soil erosion and sedimentation, e.g., construction of sediment basins, stabilization of exposed soils with sod and minimization of exposed soil.

(3) Avoid Filling in Floodplains.—As indicated above, the Executive orders place a major emphasis on not filling in floodplains in order to protect their natural values and functions. Executive Order 11988 states "agencies shall, wherever practicable, elevate structures above the base flood level rather than filling in land."

d. *Additional Notification Requirement.*

(1) Final Notice.—Where it is not possible to avoid an impact to a floodplain or wetland and after all practicable mitigation measures have been identified and agreed to by the prospective applicant, a final notice of the proposed action must be published. This notice will either be part of the notice required for the completion of a Class II assessment or a separate notice if a Class I assessment or an EIS has been completed for the action. The notice shall be published and distributed in the manner specified in § 1940.331 of this Subpart and contain the following information.

(a) A description of the proposed action, its location, and the surrounding area;

(b) A description of the floodplain or wetland impacts and the mechanisms to be used to mitigte them;

(c) A statement of why the proposed action must be located in a floodplain or a wetland;

(d) A description of all significant facts considered in making this determination;

(e) A statement indicating whether the actions conform to applicable State or local floodplain protection standards; and

(f) A statement listing other involved agencies and individuals.

(2) Private Party Notification.—For all actions to be located in floodplains or wetlands in which a private party is participating as an applicant, purchaser, or financier, it shall be the responsibility of the approving official to inform in writing all such parties of the hazards associated with such locations.

4. *The Relationship of the Executive Orders to the National Flood Insurance Program.*

The National Flood Insurance Program establishes the flood plain management criteria for participating communities as well as the performance standards for building in floodplains so that the structure is protected against flood risks. As such, flood insurance should be viewed only as a financial mitigation measure that must be utilized only after FmHA determines that there is no practicable alternative for avoiding construction in the floodplain and that all practicable mitigation measures have been included in the proposal. That is, for a proposal to be located in the floodplain, it is not sufficient simply to require insurance. The Agency's flood insurance requirements are explained in Subpart B or Part 1806 of this chapter (FmHA Instruction 426.2) It should be understood that an applicant proposing to build in the floodplain is not even eligible for FmHA financial assistance unless the project area is participating in the National Flood Insurance Program.

Exhibit D.—Implementation Procedures for the Endangered Species Act

1. FmHA shall implement the consultation procedures required under Section 7 of the Endangered Species Act as specified in 50 CFR 402. It is important to note that these consultation procedures apply to the disposal of real property by FmHA and to all FmHA applications for financial assistance and subdivision approval, including those applications which are exempt from environmental assessments. (See § 1940.310.) Unless repeated in this paragraph, the definitions for the terms utilized are found in 50 CFR 402.02.

2. State Directors shall ensure that State, District, and County Offices maintain current publications of listed and proposed species as well as critical habitats found in their respective jurisdictions.

3. When an application to FmHA involves financial assistance or permit approval from another Federal agency(s), the FmHA reviewer shall work with the other Agency to determine a lead Agency for the consultation process. When FmHA is not the lead Agency, the reviewer shall ensure that the lead Agency informs the appropriate Area Manager, U.S. Fish and Wildlife Service (FWS), or Regional Director, National Marine Fisheries Service (NMFS), of FmHA's involvement.

4. Each disposal action, application for financial assistance or subdivision approval shall be reviewed by the FmHA official responsible for completing environmental assessments in order to determine if the proposal either may affect a listed species or critical habitat or is likely to jeopardize the continued existence of a proposed species or result in the destruction or adverse modification of a proposed critical habitat.

a. For applications subject to environmental assessments, this review shall be accomplished as part of the assessment.

b. For those applications that are excluded from an environmental assessment, this review shall be documented as part of Form FmHA 1940-22, "Environmental Checklist For Categorical Exclusions," and shall be accomplished as early as possible after receipt of the application and prior to approval of the application.

c. For applications subject to an environmental impact statement, FmHA shall request from the Area Manager, FWS, and the Regional Director, NMFS, a list of the proposed and listed species that may be in

the area of the proposal. Within 30 days, the FWS and NMFS will respond to FmHA with this list. FmHA shall then conduct, as part of the process of preparing the draft environmental impact statement, a biological assessment of these species to determine which species are in the area of the proposal and how they may be affected. This biological assessment should be completed within 180 days or a time mutually agreed upon between FmHA and FWS or NMFS. Upon completion of the biological assessment, if FmHA determines either that the proposal may affect a listed species or critical habitat or is likely to jeopardize the continued existence of proposed species or result in the destruction or adverse modification of proposed critical habitat, the formal consultation procedures shall be initiated as specified in paragraph 7b below. To the extent practical, these procedures shall be concluded and their results reflected in the draft EIS. For all draft EISs in which FmHA determines there will be no effect upon a listed or proposed species or critical habitat and FWS or NMFS indicated the presence of such species upon the initial inquiry, a copy of the draft shall be provided to that agency for review and comment.

5. As indicated in paragraph 4 above, the focus of this review process is to determine if the proposal will affect a listed species or critical habitat or is likely to jeopardize the continued existence of a proposed species or result in the destruction or adverse modification of a proposed critical habitat. Because this impact terminology is specific to the Act, it is important to understand its meaning.

a. To jeopardize the continued existence of a species means to engage in a project which reasonably would be expected to reduce the reproduction, numbers, or distribution of a listed species to such an extent as to appreciably reduce the likelihood of the survival and recovery of that species in the wild. The level of reduction necessary to constitute jeopardy would be expected to vary among listed species.

b. The destruction or adverse modification of a critical habitat means a direct or indirect alteration of critical habitat which appreciably diminishes the value of that habitat for survival and recovery of a listed species. Such alterations include but are not limited to those diminishing the following requirements for:

(i) Space for individual and population growth and for normal behavior;

(ii) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(iii) Cover or shelter;

(iv) Sites for breeding, reproduction, or rearing of offspring; and

(v) Habitats that are protected from disturbances or are representative of the geographical distribution of listed species.

6. It is also important to note that the consultation procedures differ when the subject of the consultation is a listed species or critical habitat as opposed to a proposed species or critical habitat. The latter are defined as those that the Secretary of Interior or Commerce are considering for listing and have so proposed through notification in the Federal Register. When listed species or critical habitats are involved, FmHA shall initiate formal consultation procedures whenever it determines that a proposed project may affect them, either beneficially or adversely. For proposed species or critical habitats, FmHA shall first determine if the proposed project is likely to jeopardize the continued existence of proposed species or result in the destruction or adverse modification of proposed critical habitat. Whenever this determination is made, FmHA shall confer with the appropriate agency identified in paragraph 7 of this Exhibit and, in so doing, shall focus on (i) determining the status of the listing process, and (ii) attempting to cooperatively develop alternatives or measures for inclusion in the project that avoid or mitigate the identified adverse impacts. The results of this process shall be documented in the environmental review being done for the proposed project and, if this review is an environmental assessment, shall be an important factor in determining the need for an environmental impact statement. No action shall be taken by the approving official on the application until the requirement to confer on proposed species or critical habitat has been completed. Paragraphs 7 through 9 of this Exhibit outline the formal consultation procedure for listed species or critical habitats.

7. In initiating the review process for a project, the list of species and critical habitats, including proposed, shall be examined to determine the potential for impacts. Projects planned within established communities are less likely to affect listed or proposed species or their critical habitat. Projects to be located in remote areas, heavily forested areas and/or previously undisturbed areas are more likely to affect these species. For projects located in such areas, the reviewer shall, at a minimum, discuss the project's potential impact on listed or proposed species with officials of the appropriate State wildlife protection agency or the Area Manager, FWS, or the Regional Director, NMFS, as appropriate. The latter organization generally has responsibility for marine species. The specific list of species under NMFS's jurisdiction can be found at 50 CFR 222.23(a) and 227.4. Such discussions shall be considered as informal consultations and are not a substitute for the required consultation process outlined below.

a. Whenever the reviewer, after reviewing the list and contacting appropriate experts, formally determines that the proposal will have no effect on a listed or proposed species or its critical habitat, these review procedures are completed, unless new information comes to light as discussed in paragraph 9 of this Exhibit, or consultation is requested by the appropriate Area Manager, FWS, or Regional Director, NMFS.

b. If the reviewer determines there may be an effect on a listed species or a critical habitat or is unable to make a clear determination, the reviewer shall so inform the SEC (assuming the reviewer is not the SEC). The latter shall either (i) convey a written request for consultation, along with available information to the appropriate Area Manager, FWS or Regional Director, NMFS, for the Federal region where the proposal will be carried out, or (ii) request Program Support Staff (PSS) to perform such consultation. FmHA shall initiate this formal consultation process and not the applicant. See paragraph 4.c. of this Exhibit for initiating consultation where an environmental impact statement is being done for the application. Until the consultation process is completed, as outlined in 50 CFR 402.04, FmHA shall not approve the application. Should the need for consultation be identified after application approval, FmHA shall refrain from making any irreversible or irretrievable commitment of resources which would foreclose the consideration of modifications or alternatives to the identified activity or program.

8. Several possible responses may result from initiation of the formal consultation process with each requiring further specific actions.

a. Whenever the Area Manager, FWS, or Regional Director, NMFS, informs FmHA that insufficient information exists to conclude the consultation process, the SEC with assistance as feasible from the FWS or NMFS and State sources of expertise shall then obtain additional information and conduct, as needed, biological surveys or studies to determine how the proposal may affect listed species or their critical habitat. The cost and performance of such studies shall be handled in the same manner as in the preparation of an Environmental Impact Statement. (See § 1940.336 of this Subpart.)

b. Whenever the Area Manager, FWS, or Regional Director, NMFS, responds that the proposal will either promote the conservation of a listed species or is not likely to jeopardize the continued existence of a listed or proposed species or result in the destruction or adverse modification of its critical habitat, the FmHA reviewer shall formally make a similar determination, attaching the response as documentation. This concludes the formal consultation process unless new information comes to light as discussed in paragraph 9 of this Exhibit.

c. Whenever the results of the consultation process include recommendations by the Area Manager, FWS, or Regional Director, NMFS, for modifications to the project which would enhance the conservation and protection of a listed species or its critical habitat, the State Director shall review these recommendations and require that they be incorporated into the project as either design changes or special conditions to the offer of assistance. If the State Director does not believe the recommendations can be so adopted, the Administrator shall be requested to review the recommendations and to assist in the further resolution of the matter.

d. Whenever the appropriate Area Manager, FWS, or Regional Director, NMFS, determines that the proposal is likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of its critical habitat, the FmHA applicant shall be so informed and the project denied on this basis. However, if the State Director believes that funding or approval of the application is (i) of national,

regional, or great local significance, and (ii) that there are no reasonable and prudent alternatives to avoiding the listed species impact, the State Director can request the Administrator, through PSS, to review the proposal and the results of the consultation process. Based upon this review, the Administrator shall either inform the State Director that a request for an exemption from Section 7 of the Endangered Species Act is not warranted and the application shall be denied or, if the Administrator believes it is warranted, shall request an exemption from the Endangered Species Committee established by Section 7(e) of the Act. No action shall be taken by the State Director on the application until the Administrator informs the State Director of the results of the exemption request.

9. Once completed, the consultation process shall be reinitiated by FmHA or upon request of the appropriate Area Manager, FWS, or Regional Director, NMFS, if:

a. New information or modification of the proposal reveals impacts that may affect listed or proposed species or their habitats; or

b. A new species is listed that may be affected by the proposal.

Exhibit E.—Implementation Procedures for the Wild and Scenic Rivers Act

1. Each application for financial assistance or subdivision approval as well as the proposed disposal of real property by FmHA shall be reviewed to determine if it will affect a river or portion of it which is either included in the National Wild and Scenic Rivers System, designated for potential addition to the system, or identified in the Nationwide Inventory prepared by the National Park Service (NPS) in the Department of the Interior. The Nationwide Inventory identifies those river segments that, after preliminary review, appear to qualify for inclusion in the system. (For purposes of this Subpart, river segments in the Nationwide Inventory shall be treated the same as segments within the system with the exception of paragraph 8.) For applications subject to environmental assessments, the review shall be accomplished as part of the assessment. For applications that are excluded from an environmental assessment, this review shall be documented as part of Form FmHA 1940–22, "Environmental Checklist For Categorical Exclusions," within the reviewing office and shall be accomplished as early as possible after receipt of the application and prior to approval of the application. The FmHA official responsible for completing the environmental assessment shall accomplish this review. (See § 1940.316 of this Subpart.)

2. In order to effectively implement this review, State Directors shall ensure that State, District and County Offices maintain current listings of rivers within their respective States that are included in or designated for potential addition to the system as well as those identified in the Nationwide Inventory prepared by NPS.

3. For applications for water resources projects, as defined in § 1940.302(i) of this Subpart, the purpose of this review shall be to determine whether the proposal would have a direct and adverse effect on the values which served as the basis for the river's inclusion in the system or designation for potential addition. For other applications, the purpose of the review shall be to determine if the proposal would invade the river area or unreasonably diminish the scenic, recreational, and fish and wildlife values present in the area. To make these determinations, the reviewer shall consult with the appropriate regional office of NPS if the proposal (i) would be located within one-quarter mile of the banks of the river, (ii) involves withdrawing water from the river or discharging water to the river via a point source, or (iii) would be visible from the river. The appropriate regional office of the Forest Service (FS) shall be contacted under similar circumstances when the effected river is on FS lands. Consultation shall be initiated by a written request for comments on the potential impacts accompanied by a description of the project and its location. The reviewer shall consult in other instances when the likelihood of an impact on a river in the system is identified as part of the environmental review. When the reviewer determines there is no potential impact on such a river, the documentation of this determination concludes the review process, unless reinitiation is required under paragraph 10 of this Exhibit. In all other cases, the review is completed as specified below in paragraphs 4 through 9 of this Exhibit.

4. If the review is at the County or District Office level, the reviewer can request the State Director (see § 1940.307 of this subpart) to perform the above consultation. The State Director can in turn make a similar request of the National Office. If not requested to perform the consultation for applications approvable at the County and District Office levels, the SEC shall be informed whenever NPS or FS advises that there is a potential for an adverse impact on a river within the system or that protective measures need to be included or designed into the proposal. In all cases, consultation shall be initiated by FmHA and not the applicant. Until consultation is complete, FmHA shall not approve the application. Should the need for consultation be identified after application approval, FmHA shall, if still within its power at the time of identification, refrain from making any irreversible or irretrievable commitments of resources which would foreclose the consideration of modifications or alternatives to the project.

5. If NPS or FS advises there is no potential for an adverse effect as described in paragraph 3 of this Exhibit, this review process is concluded, unless the need to reinitiate arises. (See paragraph 10 of this Exhibit.)

6. Whenever the results of the consultation process include recommendations by NPS or FS to modify the proposal in order to avoid an adverse effect, as described in paragraph 3 above, the State Director shall review these recommendations and require that they be incorporated into the project as either design changes or special conditions to the offer of assistance. If the State Director does not believe that the Regional Director's recommendations can be so adopted, the Administrator shall be requested to review the recommendations and to assist in the further resolution of the matter.

7. If NPS or FS advises that the proposal will have an unavoidable adverse effect, as described in paragraph 3 of this Exhibit, on a river segment which is either included in the National Wild and Scenic Rivers System or designated for potential addition to the system, the FmHA applicant will be informed by the reviewing office and the application denied on this basis. However, if the State Director disagrees with this determination, the State Director can request the Administrator to review the proposal and attempt to further resolve the matter. The specific reasons for disagreement along with supporting documentation must be included in such a request. Based upon a review of this request, the Administrator shall either inform the State Director that no further consultation is warranted and the application shall be denied or shall request the headquarters staff of NPS or FS to further review the matter. No action shall be taken by the State Director on the application until the Administrator informs the State Director of the results of this further review and consultation.

8. If NPS or FS advises that the proposal will have an adverse effect, as described in paragraph 3 of this Exhibit, on a river segment identified in the Nationwide Inventory, the reviewer shall further consult with NPS or FS in order to formulate adequate measures or modification to avoid or mitigate the potential adverse effect. The purposes of such measures or modifications is to ensure that the proposal does not effectively foreclose the designation of a wild, scenic, or recreational river segment. Once concurrence is reached and documented with NPS or FS regarding modifications, the State Director shall require that they be incorporated into the proposal as either design changes or special conditions to the offer of assistance. If the State Director is not able to reach an agrement with NPS or FS on appropriate modifications, the Administrator shall be requested to assist in the further resolution of the matter.

9. If an application involves financial assistance or permit approval from another Federal Agency, the FmHA reviewer shall work with the other agency(s) to determine a lead Agency for the consultation process. When FmHA is not the lead Agency, the reviewer shall ensure that the lead Agency informs NPS or FS of FmHA's involvement.

10. Once completed, the consultation process shall be reinitiated by FmHA if new information or modification of the proposal reveals impacts to a river within the System or Nationwide Inventory.

Exhibit F.—Implementation Procedures for the Coastal Barrier Resources Act

1. The Act applies to barrier islands that Congress has designated for inclusion in the Coastal Barrier Resources System. Since coastal barriers are only found in East and Gulf Coast States, no other State Offices fall under the requirements of the Act and, therefore, need be concerned with these implementation procedures.

2. On coastal barriers that are included in the system, the Act prohibits any new

expenditures or new financial assistance by the Federal Government. There are some limited exceptions that are contained in Section 6 of the Act and listed in Exhibit L of this Subpart. Consequently, all of the following actions must be reviewed by the environmental reviewer to determine if they would be located within the System: any application for financial assistance, any proposed direct expenditure of FmHA funds for construction or maintenance purposes, any request for subdivision approval, and any proposed disposal of real property that includes any form of financial assistance or subsidy to the purchaser. The boundaries of the system can be determined by reviewing a series of maps passed with the legislation and distributed by the Department of the Interior. Each State Director is responsible for ensuring that those field offices having components of the system within their jurisdictions are aware of the system's boundaries therein.

3. Exhibit L lists the six categories of exceptions, that is, those actions that may be taken within the system. No exception may be implemented, however, without first consulting with the Secretary of the Interior. It should also be noted that the sixth category is more limited than the first five. Besides meeting the consultation requirement for this sixth category, the sponsoring Agency must also determine whether the proposed exception is consistent with the purposes of the Act.

4. For those actions that are reviewed and determined not to be within the System, the environmental reviewer must document this result by checking the appropriate compliance blocks on either Form FmHA 1940-22, "Environmental Checklist for Categorical Exclusions," or Form FmHA 1940-21, "Environmental Assessment for Class I actions," or by so stating this result in the environmental assessment for Class II Actions (Exhibit H), depending upon whichever format is applicable to the action under review.

5. For those actions that would be located within the system, one of the following two steps must be taken:

a. If the environmental reviewer concludes that the action does not meet the criteria for an exception, as listed in Exhibit L, the reviewer shall so inform the approving official and a final determination made in the manner indicated in § 1940.316 of this Subpart. If this determination is consistent with the environmental reviewer's conclusion, the action must be denied by the approving official and the affected applicant or party informed of the reason for denial. If it is determined that the action may qualify for an exception, the steps identified in Item b immediately below must be implemented prior to a decision on this question.

b. If the environmental reviewer concludes that the proposed action may meet the exception criteria, the approving official must be so informed. Whenever the approving official agrees or makes a similar determination as a result of the review conducted in Item a immediately above, consultation shall be initiated with the Secretary of the Interior by either the State Director or the Administrator for a National Office activity. FmHA shall request the Secretary's views as to whether the exception criteria are met and shall provide the Secretary with the following information:

(1) A detailed description of the action and its location;

(2) A description of the affected environment within the System and the impacts of the proposed action;

(3) The applicable exception criteria and FmHA's reasons for believing they apply to this action; and

(4) If a Section 6(a)(6) exception is claimed, FmHA's reasons for believing the action to be consistent with the purposes of the Act.

Should the Secretary concur in the exception criteria being met, that portion of the environmental assessment relating to compliance with the Act shall be completed and the corresponding documentation attached. Should the Secretary not concur, a final decision on the approval or denial of the action must be made by the Administrator.

Exhibit G.—Timing of FmHA Environmental Impact Review Process

Item I.—Whenever a preapplication is either filed or required under the following programs, completion of the environmental impact review process shall be required prior to the authorization of an application.

Business and Industry Guaranteed and Insured Loans.
Multi-Family Housing Programs.
Water and Waste Disposal Loan and Grant Program.
Community Facilities Loan Program.
Industrial Development Grant Program.
Watershed Loan Program.
Resource, Conservation and Development Loan Program.
Financial Assistance for Energy Impact Areas (excluding the award of planning funds).

Item II.—For the following programs and actions, completion of the environmental impact review process shall be required prior to the application being considered complete.

Farm Programs.
Single Family Housing Financial Assistance.
Request for Subdivision Feasibility Analysis.

Exhibit H.—Environmental Assessment for Class II Actions

In completing this assessment, it is important to understand the comprehensive nature of the impacts which must be analyzed. Consideration must be given to all potential impacts associated with the construction of the project, its operation and maintenance, the operation of all identified primary beneficiaries, and the attainment of the project's major objectives, whether they be an increased housing stock, community improvement, economic development, or greater agricultural productivity. This last category, the attainment of the project's major objectives, often induces or supports changes in population densities, land uses, community services, transportation systems and resource consumption. The scope of the assessment is broadened even further when there are related activities involved. The impacts of these activities must also be assessed.

The environmental reviewer shall consult with appropriate experts from Federal, State, and local agencies, universities, and other organizations or groups whose views could be helpful in the assessment of potential impacts. In so doing, each discussion which is utilized in reaching a conclusion with respect to the degree of an impact shall be summarized in the assessment as accurately as possible and include the name, title, phone number, and organization of the individual contacted, plus the date of contact. Related correspondence should be attached to the assessment.

The FmHA environmental assessment shall be prepared in the following format. It shall address the listed items and questions and contain as attachments the indicated descriptive materials, as well as the environmental information submitted by the applicant, Form FmHA 1940-20, "Request for Environmental Information."

The assessment has been designed to cover the wide variety of projects and environments with which the Agency deals. Consequently, not every issue or potential impact raised in the assessment may be relevant to each project. The purpose of the format is to give the preparer an understanding of a standard range of impacts, environmental factors, and issues which may be encountered. In preparing an assessment, each topic heading identified by a Roman numeral and each environmental factor listed under topic heading IV, such as air quality, for example, must be addressed.

The amount of analysis and material that must be provided will depend upon the type and size of the project, the environment in which it is located, and the range and complexity of the potential impacts. The amount of analysis and detail provided, therefore, must be commensurate with the magnitude of the expected impact. The analysis of each environmental factor (i.e., water quality) must be taken to the point that a conclusion can be reached and supported concerning the degree of the expected impact with respect to that factor.

For example, a small community center may not require detailed information on air emissions or solid waste management, but an industrial facility would. Similarly, an irrigation project for a farming operation would concentrate on such factors as water quality and fish and wildlife, rather than land use changes. The extension of a water or sewer system or the approval of a subdivision, on the other hand, would have to give close attention to all factors, with potential land use changes being a particularly important one.

I. Project Description and Need

Identify the name, project number, location, and specific elements of the project along with their sizes, and, when applicable, their design capacities. Indicate the purpose of the project, FmHA's position regarding the need for it, and the extent or area of land to be considered as the project site.

II. Primary Beneficiaries and Related Activities

Identify any existing businesses or major developments that will benefit from the project and those which will expand or locate in the area because of the project. Specify by

name, product, service, and operations involved.

Identify any related activities which are defined as interdependent parts of a FmHA action. Such undertakings are considered interdependent parts whenever they either make possible or support the FmHA action or are themselves induced or supported by the FmHA action or another related activity. These activities may have been completed in the very recent past and are now operational, or they may reasonably be expected to be accomplished in the near future. Related activities may or may not be federally permitted or assisted. When they are, identify the involved Federal Agency(s).

In completing the remainder of the assessment, it must be remembered that the impacts to be addressed are those which stem from the project, the primary beneficiaries, and the related activities.

III. Description of Project Area

Describe the project site and its present use. Describe the surrounding land uses; indicate the directions and distances involved. The extent of the surrounding land to be considered depends on the extent of the impacts of the project, its related activities, and the primary beneficiaries. Unique or sensitive areas must be pointed out. These include residential, schools, hospitals, recreational, historical sites, beaches, lakes, rivers, parks, floodplains, wetlands, dunes, estuaries, barrier islands, natural landmarks, unstable soils, steep slopes, aquifer recharge areas, important farmlands and forestlands, prime rangelands, endangered species habitats or other delicate or rare ecosystems.

Attach adequate location maps of the project area, as well as (1) a U.S. Geological Survey "15 minute" ("7½ minute," if available,) topographic map which clearly delineates the area and the location of the project elements, (2) the Department of Housing and Urban Development's floodplain map(s) for the project area, (3) site photos, (4), if completed, a standard soil survey for the project, and (5), if available, an aerial photograph of the site. When necessary for descriptive purposes or environmental analysis, include land use maps or other graphic information. All graphic materials shall be of high quality resolution.

IV. Environmental Impact

1. Air Quality.—Discuss, in terms of the amounts and types of emissions to be produced, all aspects of the project including beneficiaries' operations and known indirect effects (such as increased motor vehicle traffic) which will affect air quality. Indicate the existing air quality in the area. Indicate if topographical or meteorological conditions hinder or affect the dispersal of air emissions. Evaluate the impact on air quality given the types and amounts of projected emissions, the existing air quality, and topographical and meterological conditions. Discuss the project's consistency with the State's air quality implementation plan for the area, the classification of the air quality control region within which the project is located, and the status of compliance with air quality standards within that region. Cite any contacts with appropriate experts and agencies which must issue necessary permits.

2. Water Quality.—Discuss, in terms of amounts and types of effluents, all aspects of the project including primary beneficiaries' operations and known indirect effects which will affect water quality. Indicate the existing water quality of surface and/or underground water to be affected. Evalute the impacts of the project on this existing water quality. Indicate if an aquifer recharge area is to be adversely affected. If the project lies within or will affect a sole source aquifer recharge area as designated by EPA, contact the appropriate EPA regional office to determine if its review is necessary. If it is, attach the results of its review.

Indicate the source and available supply of raw water and the extent to which the additional demand will affect the raw water supply. Describe the wastewater treatment system(s) to be used and indicate their capacity and their adequacy in terms of the degree of treatment provided. Discuss the characteristics and uses of the receiving waters for any sources of discharge. If the treatment systems are or will be inadequate or overloaded, describe the steps being taken for necessary improvements and their completion dates. Compare such dates to the completion date of the FmHA project. Analyze the impacts on the receiving water during any estimated period of inadequate treatment.

Discuss the project's consistency with the water quality planning for the area, such as EPA's Section 208 areawide waste treatment management plan. Describe how surface runoff is to be handled and the effect of erosion on streams.

Evaluate the extent to which the project may create shortages for or otherwise adversely affect the withdrawal capabilities of other present users of the raw water supply, particularly in terms of possible human health, safety, or welfare problems.

For projects utilizing a groundwater supply, evaluate the potential for the project to exceed the safe pumping rate for the aquifer to the extent that it would (1) adversely affect the pumping capability of present users, (2) increase the likelihood of brackish or saltwater intrusion, thereby decreasing water quality, or (3) substantially increase surface subsidence risks.

For projects utilizing a surface water supply, evaluate the potential for the project to (1) reduce flows below the minimum required for the protection of fish and wildlife or (2) reduce water quality standards below those established for the stream classification at the point of withdrawal or the adjacent downstream section.

Cite contacts with appropriate experts and agencies that must issue necessary permits.

3. Solid Waste Management.—Indicate all aspects of the project including primary beneficiaries' operations, and known indirect effects which will necessitate the disposal of solid wastes. Indicate the kinds and expected quantities of solid wastes involved and the disposal techniques to be used. Evaluate the adequacy of these techniques especially in relationship to air and water quality. Indicate if recycling or resource recovery programs are or will be used. Cite any contacts with appropriate experts and agencies that must issue necessary permits.

4. Land Use.—Given the description of land uses as previously indicated, evaluate (a) the effect of changing the land use of the project site and (b) how this change in land use will affect the surrounding land uses and those within the project's area of environmental impact. Particularly address the potential impacts to those unique or sensitive areas discussed under Section III, Description of Project Area, which are not covered by the specific analyses required in Sections V–XI. Describe the existing land use plan and zoning restrictions for the project area. Evaluate the consistency of the project and its impacts with these plans.

5. Transportation.—Describe available facilities such as highways and rail. Discuss whether the project will result in an increase in motor vehicle traffic and the existing roads' ability to safely accommodate this increase. Indicate if additional traffic control devices are to be installed. Describe new traffic patterns which will arise because of the project. Discuss how these new traffic patterns will affect the land uses described above, especially residential, hospitals, schools, and recreational. Describe the consistency of the project's transportation impacts with the transportation plans for the area and any air quality control plans. Cite any contact with appropriate experts.

6. Natural Environment.—Indicate all aspects of the project including construction, beneficiaries' operations, and known indirect effects which will affect the natural environment including wildlife, their habitats, and unique natural features. Cite contacts with appropriate experts. If an area listed on the National Registry of Natural Landmarks may be affected, consult with the Department of Interior and document these consultations and any agreements reached regarding avoidance or mitigation of potential adverse impacts.

7. Human Population.—Indicate the number of people to be relocated and arrangements being made for this relocation. Discuss how impacts resulting from the project such as changes in land use, transportation changes, air emissions, noise, odor, etc. will affect nearby residents and users of the project area and surrounding areas. Discuss whether the proposal will accommodate any population increases and, if so, describe the potential impacts of these increases on the area's public and community services such as schools, health care, social services, and fire protection. Cite contacts with appropriate experts.

8. Construction.—Indicate the potential effects of construction of the project on air quality, water quality, noise levels, solid waste disposal, soil erosion and siltation. Describe the measures that will be employed to limit adverse effects. Give particular consideration to erosion, stream siltation, and clearing operations.

9. Energy Impacts.—Indicate the project's and its primary beneficiaries' effects on the area's existing energy supplies. This discussion should address not only the direct energy utilization, but any major indirect utilization resulting from the siting of the project. Describe the availability of these supplies to the project site. Discuss whether

the project will utilize a large share of the remaining capacity of an energy supply or will create a shortage of such supply. Discuss any steps to be taken to conserve energy.

10. Discuss any of the following areas which may be relevant: noise, vibrations, safety, seismic conditions, fire-prone locations, radiation, and aesthetic considerations. Cite any disucssion with appropriate experts.

V. Coastal Zone Management Act*

Indicate if the project is within or will impact a coastal area defined as such by the State's approved Coastal Zone Management Program. If so, consult with the State agency responsible for the Program to determine the project's consistency with it. The results of this coordination shall be included in the assessment and considered in completing the environmental impact determination and environmental findings (Item XXI below).

VI. Compliance With Advisory Council on Historic Preservation's Regulations

In this Section, the environmental reviewer shall detail the steps taken to comply with the above regulations as specified in Subpart F of Part 1901 of this Chapter. First, indicate that the National Register of Historic Places, including its monthly supplements, has been reviewed and whether there are any listed properties located within the area to be affected by the project. Second, indicate the steps taken such as historical/archeological surveys to determine if there are any properties eligible for listing located within the affected area. Summarize the results of the consultation with the State Historic Preservation Officer (SHPO) and attach appropriate documentation of the SHPO's views. Discuss the views of any other experts contacted. Based upon the above review process and the views of the SHPO, state whether or not an eligible or listed property will be affected.

If there will be an effect, discuss all of the steps and protective measures taken to complete the advisory Council's regulations. Describe the affected property and the nature of the effect. Attach to the assessment the results of the coordination process with the Advisory Council on Historic Preservation.

VII. Compliance With the Wild and Scenic Rivers Act

Indicate whether the project will affect a river or portion of it which is either included in the National Wild and Scenic Rivers System or designated for potential addition to the system. This analysis shall be conducted through discussions with the appropriate regional office of the National Park Service or the Forest Service when its lands are involved, as well as the appropriate State agencies having implementation authorities. See Exhibit E for specific implementation instructions for this Act. A summary of discussions held or any required formal coordination shall be included in the assessment and considered in completing the environmental impact determination and environmental findings (Item XXI below).

* Complete only if coastal or Great Lakes State.

VIII. Compliance With the Endangered Species Act

Indicate whether the project will either (1) affect a listed endangered or threatened species or critical habitat or (2) adversely affect a proposed critical habitat for an endangered or threatened species or jeopardize the continued existence of a proposed endangered or threatened species. This analysis shall be conducted in consultation with the Fish and Wildlife Service and the National Marine Fisheries Service, when appropriate. See Exhibit D for specific implementation instructions for this Act.

The results of any required coordination shall be included in the assessment along with any completed biological opinion and mitigation measures to be required for the project. These factors shall be considered in completing the environmental impact determination.

IX. Compliance With Farmland Protection Policy Act and Departmental Regulation 9500-3, Land Use Policy

Indicate whether the project will either directly or indirectly convert an important land resource(s) identified in the Memorandum other than floodplains or wetlands which should be addressed below in Item X. If a conversion may result, determine if there is a practicable alternative to avoiding it. If there is no such alternative, determine whether all practicable mitigation measures are included in the project. Document as an attachment these determinations and the steps taken to inform the public, locate alternatives, and mitigate potential adverse impacts. See Exhibit C of this Subpart for specific implementation guidance.

X. Compliance With Executive Order 11988, Floodplain Management, and Executive Order 11990, Protection of Wetlands

Indicate whether the project is either located within a 100-year floodplain (500-year floodplain for a critical action) or a wetland or will impact a floodplain or wetland. If so, determine if there is a practicable alternative project or location. If there is no such alternative, determine whether all practicable mitigation measures are included in the project and document as an attachment these determinations and the steps taken to inform the public, locate alternatives, and mitigate potential adverse impacts. See the U.S. Water Resources Council's *Floodplain Management Guidelines* for more specific guidance as well as Exhibit C of this Subpart.

XI. Compliance With Coastal Barrier Resources Act

Indicate whether the project is located within the Coastal Barrier Resources System. If so, indicate whether or not the project meets an exception criteria under the Act and the results of any consultation with the Secretary of the Interior regarding its qualification as an exception. See Exhibit F of this Subpart for specific implementation instructions as well as Exhibit L for a listing of the exception criteria. (Those States not having any components of the system within their jurisdiction need not reference this item in their assessments.)

XII. State Environmental Policy Act

Indicate if the proposed project is subject to a State environmental policy act or similar regulation. Summarize the results of compliance with these requirements and attach available documentation. (See § 1940.328 of this Subpart for further guidance.)

XIII. Consultation Requirements of Executive Order 12372, Intergovernmental Review of Federal Programs

Attach the comments of State, regional, or local agencies (if this review process is required for the project) and respond to all comments that deal with the subject matters discussed in this assessment format or are otherwise of an environmental nature.

XIV. Environmental Analysis of Participating Federal Agency

Indicate if another Federal Agency is participating in the project either through the provision of additional funds, a companion project, or a permit review authority. Summarize the results of the involved Agency's environmental impact analysis and attach available documentation. (See § 1940.310(d) of this Subpart for further guidance.)

XV. Reaction to Project

Discuss any negative comments or public views raised about the project and the consideration given to these comments. Indicate whether a public hearing or public information meeting has been held either by the applicant or FmHA to include a summary of the results and any objections raised. Indicate any other examples of the community's awareness of the project, such as newspaper articles or public notifications.

XVI. Cumulative Impacts

Summarize the cumulative impacts of this project and the related activities. Give particular attention to land use changes and air and water quality impacts. Summarize the results of the environmental impact analysis done for any of these related activities and/or your discussion with the sponsoring agencies. Attach available documentation of the analysis.

XVII. Adverse Impact

Summarize the potential adverse impacts of the proposal as pointed out in the above analysis.

XVIII. Alternatives

Discuss the feasibility of alternatives to the project and their environmental impacts. These alternatives should include (a) alternative locations, (b) alternative designs, (c) alternative projects having similar benefits, and (d) no project. If alternatives have been fully discussed above in any of Items VI through X, simply reference that discussion.

XIX. Mitigation Measures

Describe any measures which will be taken or required by FmHA to avoid or mitigate the identified adverse impacts. Such measures shall be included as special requirements or provisions to the offer of financial assistance.

XX. Consistency With FmHA Environmental Policies

Discuss the project's consistencies and inconsistencies with the Agency's environmental policies and the State Office's Natural Resource Management Guide. See §§ 1940.304 and 1940.305 for a discussion of these policies and Exhibit B for a discussion of the guide.

XXI. Environmental Determinations

The following recommendations shall be completed:

a. Based on an examination and review of the foregoing information and such supplemental information attached hereto, I recommend that the approving official determine that this project will have (#) a significant effect on the quality of the human environment and an Environmental Impact Statement must be prepared; will not have (#) a significant effect on the quality of the human environment.

b. I recommend that the approving official make the following compliance determinations for the below-listed environmental requirements.

Not in compliance	In compliance	
.....	.....	Clean Air Act.
.....	.....	Federal Water Pollution Control Act.
.....	.....	Safe Drinking Water Act—Section 1424(e).
.....	.....	Endangered Species Act.
.....	.....	Coastal Barrier Resources Act.
.....	.....	Coastal Zone Management Act—Section 307(c) (1) and (2).
.....	.....	Wild and Scenic Rivers Act.
.....	.....	National Historic Preservation Act.
.....	.....	Archeological and Historic Preservation Act.
.....	.....	Executive Order 11988, Floodplain Management.
.....	.....	Executive Order 11990, Protection of Wetlands.
.....	.....	Farmland Protection Policy Act.
.....	.....	Departmental Regulation 9500-3, Land Use Policy.
.....	.....	State Office Natural Resource Management Guide.

c. I have reviewed and considered the types and degrees of adverse environmental impacts identified by this assessment. I have also analyzed the proposal for its consistency with FmHA environmental policies, particularly those related to important farmland protection, and have considered the potential benefits of the proposal. Based upon a consideration and balancing of these factors, I recommend from an environmental standpoint that the project

——— be approved.

——— not be approved because of the attached reasons.

Signature of preparer* ———

Date ———

Title ———

*See § 1940.316 of this Subpart for listing of officials responsible for preparing assessment.

State Environmental Coordinator's Review (When required by § 1940.316 of this Subpart)

I have reviewed this environmental assessment and supporting documentation. Following are my positions regarding its adequacy and the recommendations reached by the preparer. For any matter in which I do not concur, my reasons are attached as Exhibit ——.

Do not concur	Concur	
.....	.....	Adequate Assessment.
.....	.....	Environmental Impact Determination.
.....	.....	Compliance Determinations.
.....	.....	Project Recommendation.

Signature of State Environmental Coordinator

Date ———

Exhibit I

SUBJECT: Finding of No Significant Environmental Impact and Necessary Environmental Findings for (insert name, location, and any identification number of project).

TO: Project File.

The attached environmental assessment has been completed for the subject proposal by the FmHA environmental reviewer. After reviewing the assessment and the supporting materials attached to it, I find that the subject proposal will not significantly affect the quality of the human environment. Therefore, the preparation of an environmental impact statement is not necessary.

I also find that the assessment properly documents the proposal's status of compliance with the environmental laws and requirements listed therein.

Insert signature and title of approving official as specified in § 1940.316 of this Subpart.

Exhibit J

LOCATIONS AND TELEPHONE NUMBERS OF FEDERAL EMERGENCY MANAGEMENT ADMINISTRATION'S REGIONAL OFFICES

Federal region	Location	FTS No.*	Commercial No.
I	Boston, MA	223-4741	(617) 223-4741
II	New York, NY	264-8980	(212) 264-8930
III	Philadelphia, PA	597-9416	(215) 597-9416
IV	Atlanta, GA	257-2400	(404) 881-2400
V	Chicago, IL	353-1500	(312) 353-1500
VI	Dallas, TX	749-9201	(817) 387-5811
VII	Kansas City, MO	758-5912	(816) 374-5912
VIII	Denver, CO	234-2553	(303) 234-2553
IX	San Francisco, CA	556-8794	(415) 556-8794
X	Seattle, WA	396-0284	(206) 481-8800

*This is the main number for the regional office. For floodplain information, ask for the Natural and Technological Hazards Division.

Exhibit K.—Locations and Telephone Numbers of U.S. Fish and Wildlife Service's Wetland Coordinators

The U.S. Fish and Wildlife Service (FWS) is presently preparing the National Wetlands Inventory. Each regional office of the FWS has named a staff member as a Wetland Coordinator. These individuals can provide updated information concerning existing State and local wetland surveys and Federal inventories. Listed below are the FWS regional offices and their areas of responsibility.

Region I

Portland, OR—FTS 429-6154; Commercial (503) 231-6154.

Areas Covered: California, Hawaii, Idaho, Nevada, Oregon, Washington, U.S. Pacific Trust, Territories and Possessions.

Region II

Albuquerque, NM—FTS 474-3152; Commercial (505) 766-2914.

Areas Covered: Arizona, New Mexico, Oklahoma, Texas.

Region III

Twin Cities, MN—FTS 725-3593; Commercial (612) 725-3593.

Areas Covered: Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin.

Region IV

Atlanta, GA—FTS 242-6343; Commercial (404) 221-6343.

Areas Covered: Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Panama Canal Zone, Puerto Rico, South Carolina, Tennessee, Virgin Islands.

Region V

Newton Corner, MA—FTS 829-9379; Commercial (617) 965-5100, Ext. 379.

Areas Covered: Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia.

Region VI

Denver, CO—FTS 234-5586; Commercial (303) 234-5586.

Areas Covered: Colorado, Iowa, Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah, Wyoming.

Alaska Area Office

Anchorage, AK—Commercial (907) 263-3403.

National Office

St. Petersburg, FL—FTS 826-3624; Commercial (813) 893-3624.

Exhibit L.—Exceptions to Restrictions of Coastal Barrier Resources Act

*Section 6 Exceptions**

(a) Notwithstanding Section 5, the appropriate Federal officer, after consultation with the Secretary, may make Federal expenditures or financial assistance available within the Coastal Barrier Resources System for—

(1) Any use or facility necessary for the exploration, extraction, or transportation of energy resources which can be carried out only on, in, or adjacent to coastal water areas because the use or facility requires access to the coastal water body;

*Quoted from Section 6 of the Act, Pub. L. 97-348.

(2) The maintenance of existing channel improvements and related structures, such as jetties, and including the disposal of dredge materials related to such improvements;

(3) The maintenance, replacement, reconstruction, or repair, but not the expansion, of publicly owned or publicly operated roads, structures, or facilities that are essential links in a larger network or system;

(4) Military activities essential to national security;

(5) The construction, operation, maintenance, and rehabilitation of Coast Guard facilities and access thereto; and

(6) Any of the following actions or projects, but only if the making available of expenditures or assistance therefor is consistent with the purposes of this Act:

(A) Projects for the study, management, protection and enhancement of fish and wildlife resources and habitats, including, but not limited to, acquisition of fish and wildlife habitats and related lands, stabilization projects for fish and wildlife habitats, and recreational projects.

(B) The establishment, operation, and maintenance of air and water navigation aids and devices, and for access thereto.

(C) Projects under the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601–4 through 11) and the Coastal Zone Management Act of 1972 (16 U.S.C. 1452 et seq.).

(D) Scientific research, including but not limited to aeronautical, atmospheric, space, geologic, marine, fish and wildlife and other research, development and applications.

(E) Assistance for emergency actions essential to the saving of lives and the protection of property and the public health and safety, if such actions are performed pursuant to Sections 305 and 306 of the Disaster Relief Act of 1974 (42 U.S.C. 5145 and 5146) and Section 1362 of the National Flood Insurance Act of 1968 (42 U.S.C. 4103) and are limited to actions that are necessary to alleviate the emergency.

(F) The maintenance, replacement, reconstruction, or repair, but not the expansion, of publicly owned or publicly operated roads, structures, or facilities.

(G) Nonstructural projects for shoreline stabilization that are designed to mimic, enhance, or restore natural stabilization systems.

(b) For purposes of Subsection (a)(2), a channel improvement or a related structure shall be treated as an existing improvement or an existing related structure only if all, or a portion, of the moneys for such improvement or structure was appropriated before the date of the enactment of this Act.

PART 1941—OPERATING LOANS

Subpart A—Operating Loan Policies, Procedures, and Authorizations

4. In § 1941.23, paragraph (a)(1) is revised to read as follows:

§ 1941.23 General provisions.

(a) *Compliance requirements.* * * *

(1) *Environmental assessments and statements.* Subpart G of Part 1940 of this Chapter should be referred to for these requirements. The State Environmental Coordinator should be consulted for assistance in preparing any required statements.

* * * * *

5. In Exhibit A, paragraph C, the list of forms under "Docket preparation" is revised to read as follows:

Exhibit A—Processing Guido—Insured Operating Loans

* * * * *

C. Eligibility Determination.

* * * * *

Docket Preparation.

* * * * *

Form No.	Name	
400-4	Assurance Agreement	O
427-8	Agreement with Prior Lienholder	O
1940-1	Request for Obligation of Funds	O
440-4	Security Agreement (Chattels and Crops).	O
440-4A	Security Agreement (Crops)	O
440-6	Severance Agreement	O
440-9	Supplementary Payment Agreement	O
1940-20	Request For Environmental Information.	O
440-25/ 440A25.	Financing Statement	O
440-26	Consent and Subordination Agreement.	O
1940-21, 1940-22, or Exhibit H, Subpart G of Part 1940.	Environmental Review	O
441-5	Subordination Agreement	O
1941-7	Oil and Other Credit Analysis	O
441-8	Assignment of Proceeds from the Sale of Products.	O
441-10	Nondisturbance Agreement	O
441-12	Agreement for Disposition of Jointly Owned Property.	O
441-13	Division of Income and Nondisturbance Agreement.	O
441-17	Certification of Obligation to Landlord	O
441-18	Consent to Payment of Proceeds from Sale of Farm Products.	O
441-25	Assignment of Proceeds from the Sale of Dairy Products and Release of Security Interest.	O
492-19	Characteristics of Approved Applicants.	O

* * * * *

PART 1942—ASSOCIATIONS

Subpart A—Community Facility Loans

6. In § 1942.2, paragraph (d) is removed; paragraphs (b) and (c) are redesignated as paragraphs (c) and (d) respectively; paragraphs (a)(3), (4) and (b) are added and paragraphs (a)(1), (a)(2)(iii) and (c) are revised, to read as follows:

§ 1942.2 Processing preapplications.

(a) Preapplications. (1) The County Office may handle initial inquiries and provide basic information about the program. They are to provide the preapplication, Form AD–621, "Preapplication for Federal Assistance." The County Supervisor will assist applicants as needed in completing Form AD–621, and in filing written notice of intent and request for priority recommendation with the appropriate clearinghouse (except Federally recognized Indian tribes which will be dealt with in accordance with § 1901.352(c) of Subpart H of Part 1901 of this chapter). The County Supervisor will inform the applicant that it may be necessary to apply for credit from commercial sources. It will be explained that if credit for the project is available from commercial sources at reasonable rates and terms that applicant is not eligible for FmHA financing. Preapplications will be filed in the County Office and forwarded immediately to the District Office. The applicant will be informed that further processing will be handled by the District Office. An information folder will be established and maintained by the County Office once a preapplication is received. In the event the preapplication is filed in the District Office, the District Director may assist the applicant in completing the preapplication requirements. The District Director will meet with the applicant whenever appropriate to discuss FmHA preapplication processing. The appropriate information to set up the County Office information file will be sent to the County Supervisor by the District Director. Guidance and assistance will be provided by the State Director, as needed, for orderly application processing. The District Director will determine that the preapplication is properly completed and fully review it. The District Director will then forward to the State Director:

(i) Eligibility determination and recommendations.

(ii) One copy of Form AD–621.

(iii) Clearinghouse comments.

(iv) Priority recommendations.

(2) * * *

(iii) The State Director will review the District Director's eligibility determination and recommendations in sufficient time for the District Director's use in preparing and issuing Form AD–622 "Notice of Preapplication Review Action."

* * * * *

(3) The following statement must be added to Form AD–622 when notifying preapplicants who are eligible and can compete with similar applications from other applicants:

You are advised against taking any actions or incurring any obligations which would either limit the range of alternatives to be considered or which would have an adverse effect on the environment. You will be

notified whether or not to proceed with a full application after you have provided the following materials to this office and FmHA has completed its review.

(i) Form FmHA 1940–20, "Request for Environmental Information."

(ii) Preliminary Engineering or Architectural Report.

(iii) Professional services agreement for engineering or architectural services.

(4) The following statement must be added to Form AD–622 when notifying preapplicants who are eligible but do not have the priority necessary for further consideration at this time.

You are advised against incurring obligations which would limit the range of alternatives to be considered or which cannot be fulfilled without FmHA funds until the funds are actually made available. Therefore, you should refrain from such actions as initiating engineering and legal work; taking actions which would have an adverse effect on the environment, taking options on land rights, developing detailed plans and specifications; or inviting construction bids until notified by Farmers Home Administration (FmHA) to proceed.

(b) *Environmental review.* Environmental requirements will be documented in accordance with Subpart G of Part 1940 of this chapter and submitted to the State Director. Prior to requesting an application, the State Director will ensure that the appropriate environmental review is completed. Preapplicants must submit the following additional information:

(1) Form FmHA 1940–20.

(2) Preliminary engineering or architectural report.

(3) Professional services agreement for engineering or architectural services.

(c) *Applications.* The District Director should assist the applicant in application assembly and processing.

(1) State Directors should have applications in process representing approximately 150 percent of the current State allocation.

(2) The application docket will include Form AD–624, "Application for Federal Assistance" (for construction programs), and other related forms, materials, and information. The application will be assembled in accordance with Guide 15 of this Subpart or appropriate State guides developed in accordance with § 1942.16 of this subpart.

(3) When an applicant is notified to proceed with an application, the District Director should arrange for a conference with the applicant to provide copies of appropriate appendices and forms; furnish guidance necessary for orderly application processing; and to initiate a processing checklist for establishing a time schedule for completion of items using Form FmHA 442–39, "Processing Check List (Other Than Public Bodies)," or Form FmHA 442–40, "Processing Check List (Public Bodies)," or other checklist adopted for use in the State. The District Director will confirm decisions made at this conference by letter to the applicant and by a copy of the processing checklist. The original and a copy of the processing checklist will be retained in the District Office and a copy will be forwarded to the State Office. The original and copy of the checklist retained in the District Office will be kept current as application processing actions are taken. The copy will be sent to the State Office to use in updating its copy of this form. The State Office will then return the District Office's copy. As the application is being processed, and the need develops for additional conferences, the District Director will arrange with the applicant for such conferences to extend and update the processing checklist.

* * * * *

7. In § 1942.17, paragraphs (j)(7) and (m)(1) are revised to read as follows:

§ 1942.17 Appendix A—Community facilities.

* * * * *

(j) * * *

(7) *Environmental requirements.* Environmental requirements will be documented by FmHA in accordance with Subpart G of Part 1940 of this chapter. The applicant will provide any information required.

* * * * *

(m) * * *

(1) *Preapplications.* Applicants desiring loans will file Form AD–621, "Preapplication for Federal Assistance," and comments from the appropriate A–95 clearinghouse agency normally with the appropriate FmHA County Office. The County Supervisor will immediately forward all documents to the District Office. The District Director has prime responsibility for all community program loan making and servicing activities within the District.

* * * * *

Subpart G—Industrial Development Grants

8. In § 1942.310, paragraph (b) is revised to read as follows:

§ 1942.310 Other considerations.

* * * * *

(b) *Environmental requirements.* Environmental assessments and statements will be prepared in accordance with Subpart G of Part 1940 of this chapter.

* * * * *

Subpart I—Resource Conservation and Development (RCD) Loans and Watershed (WS) Loans and Watershed Advances

9. In § 1942.411, paragraph (g) is revised to read as follows:

§ 1942.411 Other considerations.

* * * * *

(g) *Environmental requirements.* Actions will be taken to comply with the National Environmental Policy Act in accordance with Subpart G of Part 1940 of this chapter. When environmental assessments and environmental impact statements have been prepared on WS plans or RCD area plans by SCS, a separate environmental impact statement or assessment on WS works of improvement or RCD measures for which a WS loan, WS advance, or RCD loan is requested will not be necessary unless the SCS environmental review fails to meet the requirements of Subpart G of Part 1940 of this chapter. The FmHA State Director should document the action taken by SCS in compliance with the requirements of the National Environmental Policy Act and fomally adopt the impact statement or assessment, if satisfactory. If a determination is made that a further analysis of the environmental impact is needed, the FmHA State Director will make necessary arrangements with the State SCS Conservationist for such action to be taken before a loan is made.

* * * * *

PART 1943—FARM OWNERSHIP, SOIL AND WATER AND RECREATION

Subpart A—Insured Farm Ownership Loan Policies, Procedures, and Authorizations

10. In § 1943.23, paragraphs (d)(1), (d)(2) and (d)(3) are removed and introductory paragraph (a) and paragraphs (a)(2), and (d) are revised to read as follows:

§ 1943.23 General provisions.

(a) *Flood or mudslide hazard areas.* Flood or mudslide hazards will be evaluated whenever the farm to be financed is located in special flood or mudslide prone areas as designated by the Federal Emergency Management Administration (FEMA). Subpart B of Part 1806 of this Chapter (FmHA Instruction 426.2) as well as Subpart G of Part 1940 of this chapter will be complied with when loan funds are used to construct or improve buildings located in such areas. This will not prevent making loans on farms if the farmstead is located in a flood or

mudslide prone area and funds are not included for building improvements. However, buildings will need to meet the standards set out in § 1943.24 of this Subpart. The flood or mudslide hazard will be recognized in the appraisal report. When land development or improvements such as dikes, terraces, fences, and intake structures are planned to be located in special flood or mudslide prone areas, loan funds may be used subject to the following:

* * * * *

(2) FmHA representatives will evaluate the proposal and record the decision in the loan docket in accordance with Subpart G, Part 1940 of this chapter.

* * * * *

(d) *Environmental requirements.* See Subpart G of Part 1940 of this chapter for applicable environmental requirements.

* * * * *

§ 1943.32 [Amended]

11. In § 1943.32 the table of forms in paragraph (a) is amended as follows: In the entry for FmHA Form number 400–4, by changing the name of the form from "Nondiscrimination Agreement" to " Assurance Agreement"; In the entry for FmHA Form number 440–1, by changing the form number from "440–1" to "1940–1";

In the entry for FmHA form number 440–46, by changing the form number from "440–46" to "1940–21, 1940–22," or Exhibit H, Subpart G, Part 1940, and changing the form name from "Environmental Impact Assessment" to "Environmental Review";

In the entry for FmHA form number 449–10, by changing the form number from "449–10" to "1940–20" and changing the form name from "Applicants Environmental Impact Evaluation" to "Request for Environmental Information."

Subpart B—Insured Soil and Water Loan Policies, Procedures, and Authorizations

12. In § 1943.73, paragraphs (d)(1), (d)(2) and (d)(3) are removed and the introductory text of paragraph (a), and paragraphs (a)(2), and (d), are revised to read as follows:

§ 1943.73 General provisions.

(a) *Flood and mudslide hazard areas.* Flood and mudslide hazards will be evaluated whenever the farm to be financed is located in special flood or mudslide prone areas as designated by the Federal Emergency Management Administration (FEMA). Subpart B of Part 1806 of this chapter (FmHA Instruction 426.2) as well as Subpart G of Part 1940 of chapter will be complied with when loan funds are used to construct, modify, or relocate buildings in such areas. This will not prevent making loans on farms when the farmstead is located in a flood or mudslide prone area and if funds are not included in the loan for building improvements. However, the hazard will need to be noted in the appraisal report. When land development or improvements such as dikes, terraces, fences, and intake structures are planned to be located in special flood or mudslide prone areas, loan funds may be used subject to the following:

* * * * *

(2) FmHA representatives will evaluate the proposal and record the decision in the loan docket in accordance with Subpart G of Part 1940 of this chapter.

* * * * *

(d) *Environmental requirements.* See Subpart G of Part 1940 of this chapter for applicable environmental requirements.

* * * * *

§ 1943.82 [Amended]

13. In § 1943.82 the table of forms in paragraph (a) is amended as follows:

In the entry for FmHA form number 400–4, by changing the name of the form from "Nondiscrimination Agreement" to "Assurance Agreement";

In the entry for FmHA Form number 440–1, by changing the form number from "440–1" to "1940–1";

In the entry for FmHA form number 440–46, by changing the form number from "440–46" to "1940–21, 1940–22, or Exhibit H, Subpart G, Part 1940" and changing the form name from "Environmental Impact Assessment" to "Environmental Review";

In the entry for FmHA form number 449–10, by changing the form number from "449–10" to "1940–20" and changing the form name from "Applicants Environmental Impact Evaluation" to "Request for Environmental Information."

Subpart C—Insured Recreation Loan Policies, Procedures and Authorizations

14. In § 1943.123, paragraphs (d)(1), (d)(2) and (d)(3) are removed and the introductory text of paragraph (a) and paragraphs (a)(2) and (d) are revised to read as follows:

§ 1943.123 General provisions.

(a) *Flood and mudslide hazard areas.* Flood and mudslide hazards will be evaluated whenever the farm to be financed is located in special flood or mudslide prone areas as designated by the Federal Emergency Management Administration (FEMA). Subpart B of Part 1806 of this chapter (FmHA Instruction 426.2) as well as Subpart G of Part 1940 of this chapter will be complied with when loan funds are used to construct or improve buildings located in such areas. This will not prevent making loans on farms if the farmstead is located in a flood or mudslide prone area and funds are not included for building improvements. The hazard will be noted in the appraisal report. When land development or improvements such as dikes, terraces, fences, and intake structures are planned to be located in special flood or mudslide prone areas, loan funds may be used subject to the following:

* * * * *

(2) FmHA representatives will evaluate the proposal and record the decision in the loan docket in accordance with Subpart G of Part 1940 of this chapter.

* * * * *

(d) *Environmental requirements.* See Subpart G of Part 1940 of this chapter for applicable environmental requirements.

* * * * *

§ 1943.132 [Amended]

15. In § 1943.132, the table of forms in paragraph (a) is amended as follows:

In the entry for FmHA form number 400–4, by changing the name of the form from "Nondiscrimination Agreement" to "Assurance Agreement";

In the entry for FmHA form number 440–1, by changing the form number from "440–1," to "1940–1";

In the entry for FmHA form number 440–46, by changing the form number from "440–46" to "1940–21, 1940–22, or Exhibit H, Subpart G, Part 1940" and changing the form name from "Environmental Impact Assessment" to "Environmental Review";

In the entry for FmHA form number 449–10, by changing the form number from "449–10," to "1940–20" and changing the form name from "Applicants Environmental Impact Evaluation" to "Request for Environmental Information."

PART 1944—HOUSING

Subpart D—Farm Labor Housing Loan and Grant Policies, Procedures, and Authorizations

16. In § 1944.164, paragraphs (l), and (m) are revised to read as follows:

§ 1944.164 Limitations and conditions.

* * * * *

(l) *Guidelines for preparing environmental assessments and environmental impact statements.* All projects shall comply with Subpart G of Part 1940 of this chapter.

(m) *Guidelines for projects affecting floodplains.* The provisions of the National Flood Insurance Act of 1968 as amended by the Flood Disaster Protection Act of 1973 apply to FmHA authorities permitting financing of LH now located in or to be located in special flood or mudslide prone areas as designated by the Federal Emergency Management Agency. Subpart B of Part 1806 of this chapter (FmHA Instruction 426.2) applies. It should be emphasized, however, that FmHA's response to floodplain development is not limited to the Flood Insurance Program. Pursuant to Executive Order 11988, "Floodplain Management," FmHA shall not fund any housing projects which impact a floodplain unless there is no practicable alternative siting of the project. Applicants, therefore, should concentrate in the early planning stages of this proposal to locating sites which do not impact floodplains. See Subpart G of Part 1940 of this chapter for applicable environmental requirements.

* * * * *

17. In § 1944.171, the table in paragraph (d) is revised to read as follows:

§ 1944.171 Preparation of completed loan and/or grant docket.

* * * * *

(d) * * *

Form No.	Name of form or document	Total No. of copies	Signed by borrower	Number for docket	Copy for borrower
AD-621	Preapplication for Federal Assistance	3	1	2-O and 1C	1-C.
Exhibit A-1 (or Exhibit A-2) [2]	Information to be Submitted for Labor Housing (LH) Loan or Grant	2	0	1-O	1-C.
	Memorandum from the National Office authorizing development of loan docket and loan or grant approval if required by § 1944.170(c).[2]	1		1-O	
AD-622	Notice or Preapplication Review Action	3		2-C	1-O.
AD-625	Application for Federal Assistance (Short Form)	3	1	2-O and 1C	1-C.
Exhibit A-1 (or Exhibit A-2) [2]	Information to be Submitted for an LH Loan or Grant	2	0	1-O	1-C.
FmHA 444-5	Multiple Family Housing Fund Analysis	4		4-O and 3C	1q
FmHA 1940-1	Request for Obligation of Funds	4	2-O and 1C	3-O and 2C	1.
FmHA 400-1	Equal Opportunity Agreement	2		1-O	1-C.
FmHA 400-3 [2]	Notice to Contractors and Applicants	3		2-O and 1C	1-C.
FmHA 400-4	Assurance Agreement	2	1	1	1.
FmHA 400-6 [2]	Compliance Statement	3		2-O and 1C	1-C.
HUD 935.2	Affirmative Fair Housing Marketing Plan	2		2-O and 1C	
	Evidence of Legal Authority (copies or citation of specific provisions of State constitution and statutory authority).[2]	2	1	1-O	1-C.
FmHA 1940-20 [2]	Appraisal report with attachments	1		1-O	
FmHA 1940-21	Request for Environmental Information	1	1	1-O	
FmHA 1940-22 [2]	Environmental Assessment For Class I Actions	1		1-O	
Exhibit H Subpart G of Part 1940 [2]	Environmental Checklist For Categorical Exclusions	1		1-O	1.
FmHA 426-1	Class II Environmental Assessment	1		1-O	1.
FmHA 440-9 [2]	Valuation of Buildings	1		1-O	
	Supplementary Payment Agreement	2	1	1-O	1-C.
Other Loan Docket Items. Preliminary Title Opinion or a title insurance binder, and a copy of deed, purchase contract, or other instrument of ownership, or an option.					
	Proof of Organization (certified copy of charter or articles of incorporation) [1]	2	1	1-O	1-C.
	Certified copies of bylaws or regulations [1]	2	1	1-O	1-C.
	List of names and addresses of officers, directors, and members and membership interest held by each.[1]	2	1	1-O	1-C.
	Certified copy of Loan Resolution [1]	1	1	1-O	1-C.
	Loan Agreement [2]	2	1	1-O	1-C.
	Survey of land given as security, plans, specifications, cost estimates, and proposed manner of construction.[2]	2	1	1-O	1-C.
Exhibit A-5 [2]	Statement of Budget and cash flow	2	1	1-O	1-C.
FmHA 431-2 [2]	Farm and Home Plan	2	1	1-O	1-C.
When applicable, include copy of lease or occupancy agreement to be used, report of lien search, option or foreclosure notice agreement, and items of information concern prior mortgage(s).					

[1] When applicant is an organization.
[2] When applicable.

Exhibit A-1—[Amended]

18. In Exhibit A-1, paragraph I.C. is revised to read as follows:

Exhibit A-1—Information To Be Submitted by Organizations and Associations of Farmers for Labor Housing Loan or Grant

I. * * *

C. *Environmental Information.* The applicant will complete Form FmHA 1940-20, "Request for Environmental Information," as required by Subpart G of Part 1940 of this chapter. The applicant shall provide all information requested; the District Office will provide any assistance necessary in completing this form.

* * * * *

Exhibit A-2—[Amended]

19. In Exhibit A-2, paragraph I.I. is revised to read as follows:

Exhibit A-2—Information To Be Submitted by Individuals, Farmowners and Family Farm Corporations or Partnerships for Labor Housing Loans

I. * * *

I. *Environmental Information.* The District Office will advise the applicant of the applicability of FmHA's environmental requirements under Subpart G of Part 1940 of this chapter, which are primarily based on the size of the proposed project. If applicable, the applicant will complete Form FmHA 1940-20, "Request for Environmental Information." The District Office will provide assistance and guidance to the applicant in completing this form.

* * * * *

Subpart E—Rural Rental Housing Loan Policies, Procedures, and Authorizations

20. In § 1944.215, paragraphs (o) and (p) are revised to read as follows:

§ 1944.215 Special conditions.

* * * * *

(o) *Guidelines for preparing environmental assessments and environmental impact statements.* All projects shall comply with Subpart G of Part 1940 of this chapter. Projects involving Section 8/515 loans shall also comply with Exhibit H of this Subpart.

(p) *National flood insurance.* The provisions of the National Flood Insurance Act of 1968 as amended by the Flood Disaster Protection Act of 1973 and Executive Order 11988 are applicable to FmHA authorities permitting financing of rental housing now located in or to be located in, special flood or mudslide-prone areas as designated by the Federal Emergency Management Administration (FEMA).

Subpart B of Part 1806 of this Chapter (FmHA Instruction 426.2) will apply as well as the review and implementation requirements of E.O. 11988 as specified in Subpart G of Part 1940 of this chapter.

* * * * *

Exhibit A–6—[Amended]

21. In Exhibit A–6, paragraph 5 is revised to read as follows:

Exhibit A–6—Information To Be Submitted With Preapplication for Rural Rental Housing (RRH) Loans

* * * * *

5. *Form FmHA 1940–20, "Request for Environmental Information."*

22. In Exhibit H, paragraph V.E.1. is revised to read as follows:

Exhibit H—RRH Loans and the HUD Section 8 Housing Assistance Payments Program (New Construction)

* * * * *

V. * * *

E. *Environmental Standards.* 1. Subpart G of Part 1940 of this chapter outlines the program actions requiring environmental assessment and, if found necessary, an environmental impact statement. Consideration must also be given to the effects of the environment and neighborhood activity on the project. The proposal will be rejected if, after appropriate modifications, there would remain environmental impacts which are unacceptable under FmHA policies.

* * * * *

Subpart K—Technical and Supervisory Assistance Grants

23. In § 1944.523, paragraph (b) is revised to read as follows:

§ 1944.523 Other administrative requirements.

* * * * *

(b) The policies and regulations contained in Subpart G of Part 1940 of this chapter regarding Environmental Assessments.

24. In § 1944.526, paragraphs (a)(5), (b)(1)(i), and (c)(1)(i) are revised to read as follows:

§ 1944.526. Preapplication procedure.

(a) * * *

(5) An original and one copy of Form FmHA 1940–20, "Request for Environmental Information."

(b) * * *

(1) * * *

(i) Complete any required environmental review procedures as specified in Subpart G of Part 1940 of this chapter and attach to the application.

* * * * *

(c) * * *

(1) * * *

(i) Make a determination on Form FmHA 1940–21, Form FmHA 1940–22 or Class II Environmental Assessment in accordance with Subpart G of Part 1940 of this chapter.

* * * * *

25. In § 1944.531, paragraphs (c)(10) and (c)(11) are revised to read as follows:

§ 1944.531 Application submission.

* * * * *

(c) * * *

(10) Form FmHA 1940–20, "Request for Environmental Information."

(11) Form FmHA 1940–22, "Environmental Checklist for Categorical Exclusions," Form FmHA 1940–21, "Environmental Assessment for Class I Actions" or Exhibit H, Subpart G of Part 1940 entitled, Environmental Assessment for Class II Actions.

* * * * *

26. In Exhibit B, paragraph A–4 is revised to read as follows:

Exhibit B—Administrative Instructions for State Offices Regarding Their Responsibilities in the Administration of the Technical and Supervisory Assistance Grant Program

A. * * *

4. Form FmHA 1940–20, "Request for Environmental Information."

* * * * *

27. In Exhibit C, paragraph A–4 is revised to read as follows:

Exhibit C—Instructions for District Offices Regarding Their Responsibilities in the Administration of the Technical and Supervisory Assistance Grant Program

A. * * *

4. Form FmHA 1940–20, "Request for Environmental Information."

* * * * *

PART 1945—EMERGENCY

Subpart D—Emergency Loan Policies, Procedures and Authorizations

28. In § 1945.173, paragraphs (e)(1), (e)(2) and (e)(3) are removed and the introductory text of paragraph (b), and paragraphs (b)(2)(ii), and (e) are revised to read as follows:

§ 1945.173 General provisions-compliance requirements.

* * * * *

(b) *Flood or mudslide hazard areas.* Flood or mudslide hazards will be evaluated whenever the farm to be financed is located in special flood or mudslide prone areas as designated by the Federal Emergency Management Agency (FEMA). Supart B of Part 1806 of this chapter (FmHA Instruction 426.2) and Subpart G of Part 1940 of this chapter will be complied with when loan funds are used to construct or improve buildings located in such areas. This will not prevent making loans on farms if the farmstead is located in a flood or mudslide prone area and funds are not included for building improvements. The flood or mudslide hazard will be recognized in the appraisal report.

* * * * *

(2) * * *

(ii) FmHA representatives will evaluate the proposal and record the decision in the loan docket in accordance with the requirements of Subpart G of Part 1940 of this chapter.

* * * * *

(e) *Environmental requirements.* See Subpart G of Part 1940 of this chapter for applicable requirements.

* * * * *

29. In Exhibit A, paragraph IV, D. is revised to read as follows:

Exhibit A—Processing Guide—Insured Emergency (EM) Loans

* * * * *

IV. * * *

D. Use the following FmHA Forms as appropriate:

Form No.	Name	Use
426–4	Assurance Agreement	(X)
427–8	Agreement With Prior Lienholder	(*)
440–4	Security Agreement (Chattels and Crops).	(*)
440–4A	Security Agreement (Crops)	(*)
440–6	Severance Agreement	(*)
440–15	Security Agreement (Insured Loans to Individuals).	(*)
1940–20	Request for Environmental Information.	(*)
440–25	Financing Statement	(*)
440–A25	Financing Statement (Carbon-Interleaved).	(*)
440–28	Consent and Subordination Agreement.	(*)
1940–21, 1940–22, or Exhibit H, Subpart G, Part 1940	Environmental Review	(*)
441–5	Subordination Agreement	(*)
441–8	Assignment of Proceeds From the Sale of Products.	(*)
441–10	Nondisturbance Agreement	(*)
441–12	Agreement for Disposition of Jointly-Owned Property.	(*)
441–13	Division of Income and Nondisturbance Agreement.	(*)
441–17	Certification of Obligation to Landlord	(*)
441–18	Consent to Payment of Proceeds From Sale of Farm Products.	(*)
441–25	Assignment of Proceeds From the Sale of Dairy Products and Release of Security Interest.	(*)
443–16	Assignment of Income From Real Estate Security.	(*)
443–17	Agreement To Sell Nonessential Real Estate.	(*)
1940–1	Request for Obligation of Funds	(*)

* * * * *

PART 1948—RURAL DEVELOPMENT

Subpart A—Area Development Assistance Planning Grants

30. Section 1948.23 is revised to read as follows:

§ 1948.23 Environmental requirements.

The policies and regulations contained in Part 1940, Subpart G of this chapter apply to grants made under this part.

31. Section 1948.29 is amended by removing paragraph (d)(4); redesignating paragraph (d)(5) as (d)(4); removing paragraphs (j)(12) and (j)(13); redesignating paragraph (j)(14) as (j)(12) and revising paragraph (e)(2) as follows:

§ 1948.29 Application procedure.

* * * * *

(e) * * *

(2) Complete environmental review as required by Subpart G of Part 1940 of this chapter.

* * * * *

Exhibit B—[Amended]

32. Exhibit B is amended by removing the fourth item under Paragraph I. 2 copies of Form FmHA 449–10, "Applicants Environmental Impact Evaluation."

33. In Exhibit B, the material titled "Administrative Instructions for FmHA State Offices Regarding Their Responsibilities in the Administration of the Area Development Assistance Planning Grant Program" is amended by removing in the first undesignated paragraph, first sentence, the phrase "Form FmHA 449–10, 'Applicant's Environmental Impact Evaluation,' "; in the third undesignated paragraph by removing the second sentence; in the ninth undesignated paragraph, item number 3, and renumbering items 4. and 5. to 3. and 4. respectively.

34. In Exhibit B, the material titled "Instructions for FmHA County Offices Regarding Their Responsibilities in the Administration of the Area Development Assistance Planning Grant Program" is amended by removing from the first undesignated paragraph, first sentence, the phrase "Form FmHA 449–10, 'Applicant's Environmental Impact Evaluation' ", and removing the last sentence in the second undesignated paragraph.

PART 1948—RURAL DEVELOPMENT

Subpart B—Section 601—Energy Impacted Area Development Assistance Program

35. In § 1948.62, paragraph (a) is revised to read as follows:

§ 1948.62 Environmental requirements.

(a) The policies and regulations contained in Subpart G of Part 1940 of this chapter apply to grants made and other actions under this program.

* * * * *

§ 1948.79 [Amended]

36. In § 1948.79, paragraphs (d)(4), (k)(11) and (k)(12) are removed and the remaining paragraphs under paragraphs (d) and (k) renumbered accordingly.

37. In § 1948.84, paragraphs (d), (e), and (i) are amended by removing paragraphs (d)(11) and (e)(5) and renumbering the remaining paragraphs in paragraph (d) accordingly and revising paragraphs (d)(8), (e)(2), (i)(13), and (i)(14) as follows:

§ 1948.84 Application procedure for site development and acquisition grants.

* * * * *

(d) * * *

(8) An original and one copy of Form FmHA 1940–20;

* * * * *

(e) * * *

(2) Comply with environmental requirements set forth in Subpart G of Part 1940 of this chapter;

* * * * *

(i) * * *

(13) Form FmHA 1940–20, if required by Subpart G of Part 1940 of this chapter;

(14) A copy of the appropriate FmHA environmental review required by Subpart G of Part 1940 of this chapter;

* * * * *

PART 1980—GENERAL

Subpart A—General

38. Section 1980.40 is revised to read as follows:

§ 1980.40 Environmental requirements.

The need for an Environmental Impact Statement (EIS) will be determined by the FmHA State Director. The determination will be based upon FmHA's review of Form FmHA 1940–20, "Request for Environmental Information." If an EIS is necessary, applicants and lenders will be required to provide essential data for use in its preparation. The FmHA State Director will coordinate preparation and processing of any required EIS. If joint agency financing for the proposal is involved, the lead agency will be responsible for preparation of the EIS. In all cases FmHA is responsible for assuring that the requirement of Section 102(2)(c) of the National Environmental Policy Act of 1969 (NEPA), and 7 CFR Subpart G of Part 1940 of this chapter are met.

39. In § 1980.42(a), paragraph (3) is added to read as follows:

§ 1980.42 Flood or mudslide hazard area precautions.

(a) * * *

(3) The requirements of Subpart G of Part 1940 of this chapter have been met.

* * * * *

PART 1980—GENERAL

Subpart B—Farmer Program Loans

40. In § 1980.114, paragraph C. under the heading "Administrative" is revised to read as follows:

§ 1980.114 FmHA evaluation of applications.

* * * * *

Administrative:

* * * * *

C. When Form FmHA 1940–20, "Request for Environmental Information" is required, follow the requirements of Subpart G of Part 1940 of this chapter.

Subpart E—Business and Industrial Loan Program

41. Section 1980.432 is revised to read as follows:

§ 1980.432 Environmental requirements.

(See Subpart A, § 1980.40 and Subpart G of Part 1940 of this chapter)

Administrative:

When required by Subpart G of Part 1940 of this chapter, the approving official will review Form FmHA 1940–20, "Request for Environmental Information," submitted by the applicant and the environmental impact assessment prepared by the environmental reviewer. The approving official will indicate his/her decision as part of the assessment, when required. If the approving official determines that an EIS is required, he/she will notify the applicant and lender in writing.

42. In § 1980.451, paragraph (i)(3) is revised to read as follows:

§ 1980.451 Filing and processing applications.

* * * * *

(i) * * *

(3) Form FmHA 1940–20, "Request for Environmental Information," when

required by Subpart G of Part 1940 of this chapter.

* * * * *

43. In § 1980.451, the table entitled, "Description of Record or Form Number and Title," following Administrative paragraph C.7 is amended as follows: by changing the number for Form FmHA "440–1" to "1940–1"; by adding immediately below the entry for Form FmHA 1940–1 the following entry:

"FmHA 1940–22 Environmental Checklist for Categorical Exclusions by changing the entry for Form FmHA "440–46" to read	3";
"FmHA 1940–21 Environmental Assessment for Class I Action by adding immediately below the entry for Form FmHA 1940–21 the following entry:	3";
"Exhibit H, Subpart G, of Part 1940 Environmental Assessment for Class II Action	3";
by changing the entry for Form FmHA "449–10" to read as follows: "FmHA 1940–20 Request for Environmental Information	3".

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; Sec. 10 P.L. 93–357, 88 Stat. 392; 7 CFR 2.23; 7 CFR 2.70.

Dated: October 5, 1983.

Charles W. Shuman,

Administrator, Farmers Home Administration.

[FR Doc. 84–1849 Filed 1–27–84; 8:45 am]

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Federal Register

Monday
January 30, 1984

Part III

Department of Commerce

Patent and Trademark Office

37 CFR Part 1

Patent Interference Proceedings; Proposed Rule

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No. 40104-03]

Patent Interference Proceedings

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: This Administration on July 18, 1983, forwarded to the Congress a legislative proposal to combine the Board of Appeals and the Board of Patent Interferences into a single Board of Appeals and Interferences. This legislation is now being considered in the House (H.R. 4462) and Senate (S. 1538, as amended and reported by the Subcommittee on Patents, Copyrights and Trademarks of the Senate Committee on the Judiciary). In order to afford the public the maximum time for studying and comment, this proposed notice of rulemaking sets forth changes that the Patent and Trademark Office (PTO) is proposing to the rules governing interferences should the legislation be enacted. The proposing of rule changes on the assumption that the legislation will be passed is not in any way intended to usurp the prerogatives of the Congress to act as it wishes in regard to the proposed legislation. Should the Congress amend the proposed legislation, this notice of proposed rulemaking will be revised to satisfy Congressional intent. Should Congress fail to enact the proposed legislation, this notice will likewise be revised to streamline interference proceedings without the merger of the two Boards. Interested persons are invited to comment on the proposed rules.

DATES: Comments must be submitted on or before May 7, 1984; a public hearing will be held on May 15, 1984, at 9:30 A.M.; requests to present oral testimony should be received on or before May 7, 1984.

ADDRESS: Address written comments and requests to present oral testimony to Box 8, Commissioner of Patents and Trademarks, Washington, D.C. 20231, Attention: Fred E. McKelvey. The hearing will be held in the Commissioner's Conference Room, 11th Floor, Crystal Plaza Building 3, Room 11-C-10, 2021 Jefferson Davis Highway, Arlington, Virginia. Written comments and a transcript of the public hearing will be available for public inspection in Room 12B10, Crystal Gateway II, 1225 Jefferson Davis Highway, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Fred E. McKelvey by telephone at (703) 557-4025 (if no answer, message may be left at 703-557-4103) or by mail marked to his attention and addressed to Box 8, Commissioner of Patents and Trademarks, Washington, D.C. 20231.

SUPPLEMENTARY INFORMATION: The Patent and Trademark Office (PTO) conducts interference proceedings to determine who as between two or more applicants for patent or one or more applicants and a patentee is the first inventor of a patentable invention. Currently, the determination is made by a Board of Patent Interferences. Proposed legislation to combine the Board of Appeals and the Board of Patent Interferences into a single Board of Appeals and Interferences (Board) and to give the Board authority to consider patentability in an interference is pending before the Congress. See H.R. 4462 and S. 1538, as amended and reported out by the Subcommittee on Patents, Copyrights and Trademarks of the Senate Committee on the Judiciary (reprinted in BNA's Patent, Trademark & Copyright Journal, Vol. 27, No. 656, pp. 94 to 97 (November 24, 1983)). Should the proposed legislation not be enacted, it will be necessary to revise this notice of proposed rulemaking and to hold further hearings. The proposed rules presuppose that the proposed legislation will be enacted.

Through the proposed rules the PTO seeks to improve interference procedure so that the rights of parties in interferences may be settled at an early date and the overall process of examing patent applications which become involved in interferences may be simplified.

In order to obtain maximum input from the public prior to formally proposing these regulations, on August 1, 1983, the PTO published in the Federal Register an advanced notice of proposed rulemaking for interference rules, 48 FR 34836-34855. The advanced notice was not published in the *Official Gazette.* Twenty-one written comments were received. All comments were thoroughly analyzed and are available for public inspection in room 12B10, Crystal Gateway II, 1225 Jefferson Davis Highway, Arlington, Virginia.

The proposed rules for interferences are set forth herein in §§ 1.601 through 1.688. The proposed rules would replace entirely the present interference rules (37 CFR 1.201 through 1.288). A "six hundred" number series is used for the proposed rules. If adopted, the use of a six hundred number series for the rules would permit interested individuals to research published decisions (e.g., F.2d, USPQ) or computerized legal research services (e.g., LEXIS) citing the rules.

An index of the headings of proposed §§ 1.601-1.688 and a table correlating the present rules (37 CFR 1.201 through 1.288) to the proposed rules (CFR 1.601 through 1.688) appear below.

Under the proposed rules, interferences would be decided by the Board. The Board would have jurisdiction to determine (1) priority of invention, (2) patentability of any claim corresponding to a count both as to applicants and patentees, (3) any issue of interference-in-fact as to any count, and (4) any other issue necessary to resolve the interference. The proposed rules would permit an interference to be declared on the basis of a single count defining one patentable invention in interferences involving patents as well as applications. The Board would also have jurisdiction to determine whether counts are patentably distinct.

When an interference is declared, an examiner-in-chief would be assigned to handle the interlocutory stages of the interference. An examiner having full signatory authority would determine when one or more applications or one or more applications and a patent claim the same patentable invention. When the examiner makes such determination, the examiner would forward any involved applications or patents to the Board. The examiner would designate, at the time the involved applications or patents are sent to the Board, the claims of any application and patent which correspond to each count. The examiner-in-chief could subsequently designate additional claims to correspond to a count. The examiner-in-chief assigned to handle the interference would issue a notice to the parties declaring the interference.

The object of the interference would be to resolve all controversies as to all interfering subject matter defined by one or more counts. A final decision in the interference would determine who, if anyone, is entitled to claims which correspond to a count. Any decision adverse to an applicant by the Board would be a final refusal by the PTO to that applicant of the claims involved. Any decision adverse to a patentee would constitute cancellation from the patent of the claims involved.

Any decision by the Board on any issue would be binding on the examiner and would govern further proceedings in the PTO.

The appointment of a single examiner-in-chief to handle the interlocutory phases of an interference would permit better management of, and control over, interference proceedings. The proposed

rules would provide that times be set and the examiner-in-chief exercise control over proceedings in the interference such that pendency of the interference before the Board from declaration to final decision does not normally exceed 24 months. The examiner-in-chief would be familiar with the history of the interference and would be accessible to counsel for the parties. For example, an examiner-in-chief, where appropriate, would be able to conduct telephone conference calls to obtain agreement of the parties on the setting of schedules. The proposed rules would also permit the examiner-in-chief to hold hearings in the PTO or by conference telephone call in order to expedite or settle interlocutory issues in interference. Any hearing could be transcribed by a court reporter under such conditions as an examiner-in-chief or the Board deems appropriate. The examiner-in-chief, where appropriate, would be available by phone to rule on the admissibility of evidence in the event parties encounter unusual problems during the taking of depositions. The examiner-in-chief would also be available to rule on requests for production of documents which take place during cross-examination. Oral orders given by phone would be followed by written orders.

At the time an interference is declared, the examiner-in-chief would set a time for filing preliminary motions. The preliminary motions would include:

(1) A motion for judgment on the ground that a claim corresponding to the count is not patentable to an opponent under 35 U.S.C. 102, 103, 112, or any other provision of law.

(2) A motion for judgment on the ground that there is no interference-in-fact between the claims of the opponents in the interference.

(3) A motion to add or to substitute new counts, amend a claim corresponding to a count, designate an application or patent claim to correspond to a count, or designate an application or patent claim as not corresponding to a count.

(4) A motion to substitute another application for the application involved in the interference or to add an application for reissue to the interference.

(5) A motion to declare another interference.

(6) A motion to be accorded the benefit of an earlier application or to attack the benefit of an earlier application which has been accorded to an opponent.

Other motions would be permitted as necessary, such as a motion to amend the count and/or a claim corresponding to the count in response to a motion for judgement.

Oppositions to motions would be permitted if filed within a time set by the examiner-in-chief. Replies would be permitted for some motions. Papers which are not authorized by the rules or requested by the examiner-in-chief could be returned unfiled.

A preliminary statement would be filed prior to or concurrently with the preliminary motions outlined above.

Motions would be decided by an examiner-in-chief, who could consult with an examiner on questions of patentability which has not previously been decided by the examiner. The examiner-in-chief would be authorized to grant a motion, deny a motion, defer consideration on the merits of a motion to final hearing, or take such other action with respect to a motion as may be appropriate, e.g., dismiss an entirely inappropriate motion.

At the time preliminary motions are decided, the examiner-in-chief would open any preliminary statement. If a decision on a motion or inspection of the preliminary statement results in entry of an order to show cause why a judgement should not be entered, the party against whom judgement might be entered could request a hearing before the examiner-in-chief and two additional examiners-in-chief. The decision would govern further proceedings. If adverse, the decision would constitute a final agency action. If favorable, the interference would again proceed before the examiner-in-chief.

After preliminary motions are decided and assuming judgement does not result, a period would be set for the parties to file motions for discovery. The scope of the discovery would be the same as under current practice.

When a time period is set for filing discovery motions, or after discovery has closed, the examiner-in-chief would set a period for taking testimony. Any party wishing to take the testimony of a witness could elect to have the testimony of the witness taken by deposition or presented by affidavit. A transcript of an *ex parte* deposition could be used as an affidavit. If an affidavit is presented, the opposing party could then cross-examine on oral deposition. Any redirect would take place at the deposition. The party calling the witness would be responsible for securing a court reporter and filing the transcript and record associated with cross-examination of its witness.

In the event a party would need testimony from a third-party who would not appear unless a subpoena is issued, including a hostile witness, direct and cross-examination testimony would be taken on oral deposition. The proposed rules provide that prior authorization of an examiner-in-chief would be required before a party could seek testimony by issuance of a subpoena under 35 U.S.C 24. The proposed rule being considered thus adopts the policy of *Sheehan* v. *Doyle*, 513 F.2d 895, 898, 185 USPQ 489, 492 (1st Cir.), *cert. denied*, 423 U.S. 874 (1975), and *Sheehan* v. *Doyle*, 529 F.2d 38, 40, 188 USPQ 545, 546 (1st Cir.), *cert. denied*, 429 U.S. 870 (1976), *rehearing denied*, 429 U.S. 937 (1976), while rejecting the policy announced in *Brown* v. *Braddick*, 595 F.2d 961, 967, 203 USPQ 95, 101–102 (5th Cir. 1979). Testimony obtained in other proceedings, e.g., another interference or an infringement action, would continue to be used if otherwise admissible.

Under the proposed rules, the Federal Rules of Evidence would be applicable to interferences, except for those portions which relate to criminal actions, juries, and other matters not relevant to interferences. Those portions include:

(1) Rule 103(c).

(2) Rule 104 (c), (d), and (e).

(3) The language in Rule 105 which reads "and instruct the jury accordingly."

(4) Rule 201(g).

(5) The language in Rule 403 which reads "or misleading the jury."

(6) Rule (4)(a) (1) and (2).

(7) The word "charge" in Rule 405(b).

(8) The language "or criminal" and proviso (ii) in Rule 410.

(9) Rule 412.

(10) Rule 606.

(11) The language "whether by an accused" and "other" in the last sentence of Rule 607.

(12) The provisions of the first sentence of Rule 611(c) relating to leading questions on direct examination shall not apply to statements made in an affidavit authorized to be filed under this subpart.

(13) The language "Except as otherwise provided in criminal proceedings by section 3500 of title 18, United States Code" and "except that in criminal cases when the prosecution elects not to comply, the order shall be one striking the testimony or, if the court in its discretion determines that the interests of justice so require, declaring a mistrial" in Rule 612.

(14) Rule 614.

(15) Rule 706.

(16) The language "excluding, however, in criminal cases matters observed by police officers and other law enforcement personnel" and "and

against the Government in criminal cases" in Rule 803(8).

(17) The language "but not including, when offered by the Government in a criminal prosecution for purposes other than impeachment, judgments against persons other than the second" in Rule 803(22).

(18) The language "prosecution for homicide or in a" in Rule 804(b)(2).

(19) The language "A statement tending to expose the declarant to criminal liability and offered to exculpate the accused is not admissible unless corroborating circumstance clearly indicate the trustworthiness of the statement" in Rule 804(b)(3).

(20) Rule 1101 (a), (b), (d)(2), (d)(3), and (e).

The examiner-in-chief would set a period for filing the record and briefs. Oral hearing normally would be held before a panel consisting of the examiner-in-chief assigned to the interference and two other examiners-in-chief. The panel would render a final decision in the interference. Requests for reconsideration would continue to be permitted.

A final decision of the Board would be reviewable in the U.S. Court of Appeals for the Federal Circuit or an appropriate U.S. district court. Any reviewing court could review all aspects of the decision including patentability, priority, and all relevant interlocutory orders, such as denials of discovery.

The proposed rules, if adopted, would be applicable to interferences declared thereafter. Interferences declared prior thereto would continue to be governed by the present rules and would be handled by personnel of the Board of Appeals and Interferences. Actions presently taken by a patent interference examiner would be taken by an examiner-in-chief.

A proposed time schedule for a two-party interference follows.

The procedures discussed above and being proposed in §§ 1.601 through 1.688 would introduce new concepts in interference practice. Some of the more significant aspects of the proposed rules, as well as some of the new concepts, include the following.

Section 1.1, as proposed to be amended, codifies a practice announced in a Commissioner's Notice of November 28, 1983, "Mailing of Papers to the PTO in Patent Interference Proceedings," 1037 *Official Gazette* 25 (December 27, 1983) and authorizes a party in an interference to direct mail to the PTO intended for an interference to a special box in the Mail Room for interference papers. Amendments copying claims which are filed prior to the time an interference is declared would continue to be addressed to Commissioner of Patents and Trademarks, Washington, D.C. 20231.

Section 1.5, as proposed to be amended, provides that when a paper filed in the PTO concerns an interference which has been declared, it should state the names of the parties (e.g., Smith v. Jones) and the number of the interference. The name of the examiner-in-chief assigned to the interference under proposed § 1.610 and the name of the party filing the paper should also appear conspicuously on the first page of the paper. Identification of the examiner-in-chief assigned to the interference and the name of the party filing the paper would greatly assist the Board in its administration of interference cases.

Section 1.8, as proposed to be amended, excludes from the certificate of mailing practice any paper in an interference which an examiner-in-chief orders filed by hand or "Express Mail." Papers filed by "Express Mail" in an interference case would be addressed as set forth in § 1.1(d) as proposed to be amended.

Section 1.11, as proposed to be amended, sets forth when decisions of the Board would become available to the public without a petition for access.

Section 1.48, as proposed to be amended, provides that when a request is filed to correct inventorship of an application involved in an interference, the request shall comply with the requirements of § 1.48 and shall be accompanied by a motion under proposed § 634. The request would be placed in the file of the application and the motion would be placed in the file of the interference. The request would be decided as part of the interference.

Section 1.138, as proposed to be amended, would permit an attorney or agent to sign and file a paper abandoning an application involved in an interference.

Section 1.196, as proposed to be amended, more clearly sets forth the options to an applicant when the Board makes a new ground of rejection under § 196(b). The last sentence of paragraph (b)(1), as proposed to be amended, is intended to clarify practice in certain situations. One situation involves a case where (1) the Board affirms an examiner's rejection of a "first" claim and makes a new ground of rejection under § 1.196(b) of a "second" claim, (2) the applicant elects to have further proceedings before the examiner on the new ground of rejection on the second claim, and (3) those proceedings do not result in a further appeal (i.e., the second claim is allowed or is cancelled). The last sentence of proposed § 1.196(b) would permit the Board to make its decision final on the first claim. By making its decision final on the first claim, the time period under § 1.304 for seeking judicial review would start. Another situation involves a case where (1) the Board affirms an examiner's rejection of a claim over reference A, (2) the Board also enters a new ground of rejection of the claim over reference B, (3) the applicant elects to have further proceedings before the examiner on the new ground of rejection, and (4) those proceedings result in applicant overcoming the new ground of rejection based on reference B. The last sentence of proposed § 1.196(b) would permit the Board to make its decision final as to its affirmance of the rejection over reference A. Entry of an order making its decision final would start the period under § 1.304 for seeking judicial review. Thus, an applicant would not forego possible judicial review by electing further prosecution before the examiner when a new ground of rejection is made by the Board. Under paragraph (d), as proposed to be amended, a recommendation by the Board that an allowed claim be rejected is binding on the examiner (rather than being a mere recommendation as is now the case) in the absence of (1) an amendment, (2) showing of facts by affidavit or other appropriate evidence, or (3) both. The last sentence of paragraph (d), as proposed to be amended, is intended to clarify that the Board may enter a final decision in certain circumstances. When the Board affirms an examiner's rejection of a "first" claim and makes a recommendation under paragraph (d) as to a "second" claim, the application is remanded to the examiner and the Board's decision affirming the rejection of the first claim is not a final decision. If proceedings before the examiner on remand do not result in a further appeal (i.e., the second claim is allowed or is cancelled), the Board may make its decision final as to the first claim. By making its decision final as to the first claim, the time period under § 1.304 for seeking judicial review would start. Thus, an applicant would not forego judicial review on the first claim merely because of the remand proceedings with respect to the second claim.

While it is proposed to remove most of the current interference rules (§§ 1.201 through 1.247 and 1.251 through 1.288), it is proposed to retain § 1.248 as the rule governing service of papers in all patent cases except interference proceedings. Section 1.646, as proposed, would govern service of papers in interference proceedings.

Under § 1.292, as proposed to be amended, it is intended to modify public use proceedings only to the extent that public use and on sale issues which arise during an interference shall be raised by a preliminary motion under proposed § 1.633(a). There would be no fee for filing the motion in the interference, but a fee would continue to be necessary when a petition is filed for institution of a public use proceeding apart from an interference. When a public use proceeding is instituted apart from an interference, the Commissioner would designate an appropriate official to conduct the proceeding including the setting of times for taking testimony under proposed §§ 1.671 through 1.685.

Section 1.304, as proposed to be amended, would make it clear that the provisions of § 1.136 do not apply when judicial review is sought of a decision of the Board of Appeals and Interferences in (1) a reexamination proceeding or (2) an interference. An extension of time to seek judicial review of a decision of the Board in a reexamination proceeding may be obtained under § 1.550(c). An extension of time to seek judicial review of a decision of the Board in an interference proceeding may be obtained under § 1.645. Section 1.304, as proposed to be amended, would also establish a procedure and an "excusable neglect" standard for seeking judicial review when a notice of appeal is untimely filed or a civil action is not timely commenced. The excusable neglect standard is intended to be the same as the standard under Rule 4(a)(5) of the Federal Rules of Appellate Procedure.

Section 1.322, as proposed to be amended, provides that when a request for a certificate of correction under 35 U.S.C. 254 (PTO mistake) is filed to make a correction of a patent involved in an interference, the request shall comply with the requirements of § 1.322 and shall be accompanied by a motion under proposed § 1.635. The request would be placed in the file of the patent and the motion would be placed in the file of the interference. The request would be decided as part of the interference.

Section 1.323, as proposed to be amended, provides that when a request for a certificate of correction under 35 U.S.C. 255 (patentee's mistake) is filed to make a correction of a patent involved in an interference, the request shall comply with the requirements of § 1.323 and shall be accompanied by a motion under proposed § 1.635. The request would be placed in the file of the patent and the motion would be placed in the file of the interference. The request would be decided as part of the interference.

Section 1.324, as proposed to be amended, provides that when a request is filed to correct inventorship of a patent involved in an interference, the request shall comply with the requirements of § 1.324 and shall be accompanied by a motion under proposed § 1.634. The request would be placed in the file of the patent and the motion would be placed in the file of the interference. The request would be decided as part of the interference.

Section 1.565, as proposed to be amended, would provide that when a patent is involved in an interference proceeding and a reexamination proceeding, both the interference proceeding and the reexamination proceeding would continue unless one of the proceedings is stayed. A stay of a reexamination proceeding would be made by the Commissioner. A stay of an interference proceeding would be made by an examiner-in-chief, subject to review by the Commissioner. Section 1.565, as proposed to be amended, would continue the present practice of the Commissioner determining in every instance whether to stay a reexamination proceeding when the patent involved in the reexamination proceeding is sought to be reissued or becomes involved in litigation.

Under § 1.601, as proposed, the rules shall be construed to secure the just, speedy, and inexpensive determination of interferences. Section 1.601 defines various terms used in proposed Subpart E including "additional discovery," "affidavit," "case-in-chief," "case-in-rebuttal," "count," "effective filing date," "filing date," "interference," "interference-in-fact," "junior party," "lead attorney," "party," "phantom count," "same patentable invention," "separate patentable invention," "senior party," "sworn," and "United States." "Affidavits" include declarations under 35 U.S.C. 25 and 37 CFR 1.68 as well as statutory declarations under 28 U.S.C. 1746. The definition of "United States" is the same as the definition of United States in 35 U.S.C. 100(c).

The definition of "interference" permits an interference between one or more applications and one or more patents. In view of the statutory requirement for the presence of at least one application in an interference, if an applicant were to concede priority or otherwise be terminated from an interference involving only one application and more than one patent, the interference would have to be dissolved for lack of subject matter jurisdiction unless one or more of the patentees filed an application for reissue which could be added to the interference under proposed § 1.633(h). A "count" defines interfering subject matter. An interference would have two counts only if the second count defines a "separate patentable invention" from the first count. The reason the second count must define a separate patentable invention is to permit the PTO to lawfully issue separate patents to different parties in an interference when a single party does not prevail as to all counts. A "separate patentable invention" is defined in § 1.601(n): "Invention (A) is a 'separate patentable invention' with respect to invention (B) when invention (A) is new (35 U.S.C. 102) and non-obvious (35 U.S.C. 103) in view of invention (B) assuming invention (B) is prior art with respect to invention (A)."

Section 1.602(a), as proposed, would continue the present PTO practice (37 CFR 1.201(c)) of not declaring or continuing an interference between (1) two or more applications owned by the same party or (2) an application and a patent owned by a single party unless good cause is shown. A corporation and its wholly-owned subsidiary are considered a "single party" within the meaning of proposed § 1.602(a). Paragraphs (b) and (c) of § 1.602 would continue the present PTO practice (37 CFR 1.201(c)) of requiring a party to notify the PTO of any real party in interest not apparent on the face of the notice declaring the interference (see § 1.611) or of any change in the real party in interest after the interference is declared. The PTO needs to know the identity of any real party in interest to properly enforce § 1.602(a) and to enable an examiner-in-chief to determine whether recusal is necessary or appropriate. A new requirement in paragraphs (b) and (c), not present in 37 CFR 1.201(c), is a 20-day time period for advising the PTO of the identity of, or any change in, the real party in interest.

Under §§ 601(f), 1.603, and 1.606, as proposed, the interfering subject matter would be defined by one or more counts. All the claims in an application or a patent which define the same patentable invention as a count would be designated to correspond to the count. An interference would have two counts only if one count defines a separate patentable invention from another count. Under § 1.606, at the time an interference is declared between a patent an application, a count would not be narrower in scope than any patent claim which corresponds to the count. Thus, a patent claim would be presumed, subject to a motion under

§ 1.633(c), to define a single patentable invention. Some examples illustrate how the PTO would formulate counts and designate patent and application claims to correspond to counts.

Example 1

Application A contains patentable claim 1 (engine). Application B contains patentable claim 8 (engine). If an interference is declared, there would be one count (engine). Claim 1 of application A and claim 8 of application B would correspond to the count.

Example 2

Application C contains patentable claims 1 (engine) and 2 (6-cylinder engine). Application D contains patentable claim 8 (engine). An engine and 6-cylinder engine define the same patentable invention. If an interference is declared, there would be one count (engine). Claims 1 and 2 of application C and claim 8 of application D would be designated to correspond to the count.

Example 3

Application E contains patentable claims 1 (engine), 2 (6-cylinder engine), and 3 (engine with a platinum piston). Application F contains patentable claims 11 (engine) and 12 (8-cylinder engine). Claims 1 and 2 of application E and claims 11 and 12 of application F define the same patentable invention. Claim 3 of application E defines a separate patentable invention from claims 1 and 2 of application E and claims 11 and 12 of application F. If an interference is declared, there would be one count (engine). Claims 1 and 2 application E and claims 11 and 12 of application F would be designated to correspond to the count. Claim 3 of application E would not be designated to correspond to the count.

Example 4

Application G contains patentable claims 1 (engine), 2 (6-cylinder engine), and 3 (engine with a platinum piston). Application H contains patentable claims 11 (engine) and 15 (engine with a platinum piston). Claims 1 and 2 of application G and claim 11 of application H define the same patentable invention. Claim 3 of application G and claim 15 of application H define a separate patentable invention from claims 1 and 2 of application G and claim 11 of application H. If an interference is declared, there would be two counts: Count 1 (engine) and Count 2 (engine with a platinum piston). Claims 1 and 2 of application G and claim 11 of application H would be designated to correspond to Count 1. Claim 3 of application G and claim 15 of application H would be designated to correspond to Count 2.

Example 5

Application J contains patentable claims 1 (engine), 2 (combination of an engine and a carburetor) and 3 (combination of an engine, a carburetor, and a catalytic converter). Application K contains patentable claims 31 (engine), 32 (combination of an engine and a carburetor), and 33 (combination of an engine, a carburetor, and an air filter). The engine, combination of an engine and carburetor, and combination of an engine, carburetor, and air filter define the same patentable invention. The combination of an engine, carburetor, and catalytic converter define a separate patentable invention from engine. If an interference is declared, there would be one count (engine). Claims 1 and 2 of application J and claims 31, 32, and 33 of application K would be designated to correspond to the count. Claim 3 of application J would not be designated as corresponding to the count.

Example 6

Under the proposed rules, the PTO would continue to follow *Waldeck* v. *Lewis*, 120 USPQ 88 (Comm'r. Pat. 1955). Application L contains patentable claims 1 (Markush group of benzene or toluene), 2 (benzene), and 3 (toluene). Application M contains patentable claim 11 (benzene). Benzene and toluene define the same patentable invention. If an interference is declared, there would be one count (Markush group of benzene or toluene). Claims 1, 2, and 3 of application L and claim 11 of application M would be designated to correspond to the count.

Example 7

Application N contains patentable claim 1 (benzene). Application P contains patentable claim 11 (xylene). Benzene and xylene define the same patentable invention. If an interference is declared, there would be one count (benzene or xylene). Claim 1 of application N and claim 11 of application P would be designated to correspond to the count.

Example 8

Application Q contains patentable claims 1 (Markush group of benzene or chloroform), 2 (benzene), and 3 (chloroform). Application R contains patentable claim 33 (benzene). If benzene and chloroform define the same patentable invention and an interference is declared, there would be one count (Markush group of benzene or chloroform). Claims 1, 2, and 3 of application Q and claim 33 of application R would be designated to correspond to the count. If chloroform defines a separate patentable invention from benzene and an interference is declared, there would be one count (benzene). Claims 1 and 2 of application Q and claim 33 of application R would be designated to correspond to the count. Claim 3 of application Q would not be designated to correspond to the count.

Example 9

Application S contains patentable claims 1 (Markush group of benzene or chloroform), 2 (benzene), and 3 (chloroform). Application T contains patentable claims 11 (Markush group of benzene or chloroform), 12 (benzene), and 13 (chloroform). If benzene and chloroform define the same patentable invention and an interference is declared, there would be one count (Markush group of benzene or chloroform). Claims 1, 2, and 3 of application S and claims 11, 12, and 13 of application T would be designated to correspond to the count. Under the proposed rules, the PTO would adhere to *Becker* v. *Patrick*, 47 USPQ 314 (Comm'r. Pat. 1939). An interference would have two counts only if one count defines a separate patentable invention from another count. If chloroform defines a separate patentable invention from benzene and an interference is declared, there would be two counts: Count 1 (benzene) and Count 2 (chloroform). Claims 1 and 2 of application S and claims 11 and 12 of application T would be designated to correspond to Count 1. Claims 1 and 3 of application S and claims 11 and 13 of application T would be designated to correspond to Count 2.

Example 10

Patent A Contains claim 1 (engine). Application U contains patentable claim 11 (engine). If an interference is declared, there would be one count (engine). Claim 1 of patent A and claim 11 of application U would be designated to correspond to the count.

Example 11

Patent B contains claims 1 (engine) and 2 (6-cylinder engine). Application V contains patentable claim 8 (engine). An engine and a 6-cylinder engine define the same patentable invention. If an interference is declared, there would be one count (engine). Claims 1 and 2 of patent B and claim 8 of application V would be designated to correspond to the count.

Example 12

Patent C contains claims 1 (engine), 2 (6-cylinder engine). and 3 (engine with a platinum piston). Application W contains patentable claims 11 (engine) and 12 (8-cylinder engine). Claims 1 and 2 of patent C and claims 11 and 12 of application W define the same patentable invention. Claim 3 of patent C defines a separate patentable invention from claims 1 and 2 of patent C and claims 11 and 12 of application W. If an interference is declared, there would be one count (engine). Claims 1 and 2 of patent C and claims 11 and 12 of application W would be designated to correspond to the count. Claim 3 of patent C would not be designated to correspond to the count.

Example 13

Patent D contains claims 1 (engine), 2 (6-cylinder engine), and 3 (engine with a platimum piston). Application X contains patentable claims 11 (engine) and 15 (engine with a platinum piston). Claims 1 and 2 of patent D and claim 11 of appliction X define the same patentable invention. Claim 3 of patent D and claim 15 of application X define a separate patentable invention from claims 1 and 2 of patent D and claim 11 of application X. If an interference is declared, there would be two counts: Count 1 (engine) and Count 2 (engine with a platinum piston). Claims 1 and 2 of patent D and claim 11 of application X would be designated to correspond to Count 1. Claim 3 of patent D and claim 15 of application X would be designated to correspond to Count 2.

Example 14

Patent E contains claims 1 (Markush group of benzene or toluene), 2 (benzene), and 3 (toluene). Application Y contains patentable claim 11 (benzene). Benzene and toluene define the same patentable invention. If an interference is declared, there would be one count (Markush group of benzene or toluene). Claims 1, 2, and 3 of patent E and claim 11 of application Y would be designated to correspond to the count.

Example 15

In this example, the claims of patent E and application Y in Example 14 are reversed. Patent E contains claim 1 (benzene). Application Y contains patentable claims 11 (Markush group of benzene or toluene), 12 (benzene), and 13 (toluene). If an interference is declared, the count would be the same as the count in Example 14—(Markush group of benzene or toluene). Claim 1 of patent E and claims 11, 12, and 13 of application Y would be designated to correspond to the count.

Example 16

Under the proposed rules, the PTO would continue to follow cases such as *Aelony* v. *Arni*, 547 F.2d 566, 192 USPQ 486 (CCPA 1977), and declare interferences where interfering patent and application claims are mutually exclusive provided the claims define the same patentable invention. patent F contains claim 1 (benzene). Application Z contains patentable claim 11 (xylene). Benzene and xylene define the same patentable invention. If an interference is declared, there would be one count (benzene or xylene). Claim 1 of patent F and claim 11 of application Z would be designated to correspond to the count.

Example 17

It would be the practice of the PTO under proposed § 1.606 to initially declare interferences with counts which are indentical to or broader than patent claims which correspond to the counts. A single patent claim would be presumed, subject to a motion under proposed § 1.633(c), to define one patentable invention. Patent G contains claims 1 (Markush group of benzene or chloroform), 2 (benzene), and 3 (chloroform). Application AA contains patentable claim 33 (benzene). If an interference is declared, initially it would be presumed by the PTO, subject to a later motion under proposed § 1.633(c), that benzene and chloroform define the same patentable invention. There would be one count (Markush group of benzene or chloroform). Claims 1, 2, and 3 of patent G and claim 33 of application AA would be designated to correspond to the count. If a party believes benzene and chloroform define separate patentable inventions, that party could file a motion under proposed § 1.633(c) to redefine the count and the claims corresponding to the counts.

Example 18

Patent H contains claims 1 (Markush group of benzene or chloroform), 2 (benzene), and 3 (chloroform). Application AB contains patentable claims 11 (Markush group of benzene or chloroform), 12 (benzene), and 13 (chlorform). Benzene and chloroform initially would be presumed, subject to a motion under § 1.633(c), to define the same patentable invention, because they are recited as a Markush group in a single patent claim. If an interference is declared, there would be one count (Markush group of benzene or chloroform). Claims 1, 2, and 3 of patent H and claims 11, 12, and 13 of application AB would be designated to correspond to the count. If a party believes benzene and chlorform define separate patentable inventions, the party could move under proposed § 1.633(c) to substitute a count (benzene) for (Markush group of benzene or chloroform) and to add a second count (chloroform).

Example 19

Under proposed § 1.606, the PTO would continue to follow the practice announced in *Ex parte Card and Card*, 1904 C.D. 383 (Comm'r. Pat. 1904). Patent J contains claim 1 (method of mixing, grinding, and heating). Application AC contains patentable claim 8 (method of mixing and heating) and does not disclose or claim a grinding step. In the context of the inventions disclosed in patent J and application AC, a method of mixing, grinding, and heating is the same patentable invention as a method of mixing and heating. Under current practice, it would be said that "grinding" is an "immaterial" limitation in claim 1 of patent J. Under proposed § 1.606, the fact application AC does not disclose grinding would not preclude an interference. If an interference is declared, there would be one count (method of mixing and heating). Claim 1 of patent J and claim 8 of application AC would be designated to correspond to the count.

Under § 1.605, as proposed, timely filing of an amendment presenting a claim suggested by the examiner for purposes of an interference would stay *ex parte* proceedings in the application in which the claim is presented pending a determination by the examiner of whether an interference will be declared.

Under § 1.607(b), as proposed, when an applicant seeks an interference with a patent, e.g., by copying claims from the patent, examination of the application including any appeal would be handled with special dispatch within the PTO. "Special dispatch" would be construed to be the same as special dispatch in a reexamination proceeding.

Under § 1.608, as proposed, the PTO would continue current practice (37 CFR § 1.204(c)) of requiring an applicant seeking to provoke an interference with a patent to submit evidence which demonstrates that the applicant is *prima facie* entitled to a judgment relative to the patentee. Evidence would be submitted only when the earlier of the filing date or effective filing date of the application is more than three months after the earlier of the filing date or effective filing date under 35 U.S.C. 120 of the patent. The evidence may relate to patentability and need not be

restricted to priority. When the evidence (1) consists of prior printed publications and patents and (2) shows that the claims of the application are not patentable, the claims in the application would be rejected and the applicant could file a request for reexamination of the patent.

Section 1.609, as proposed, sets forth what an examiner shall forward to the Board when an interference is declared. For the most part, proposed § 1.609 continues current practice. However, under proposed § 1.609(b)(3), the examiner would identify all claims in an application which the examiner believes are patentable over the proposed counts. Thus, a claim in an application would either correspond to a count or would be indicated as being patentable over the count. For instance, in Example 3, *supra*, the examiner would indicate that (1) claims 1 and 2 of application E and claims 11 and 12 of application F correspond to the count and (2) claim 3 of application E defines a separate patentable invention from the count.

Under § 1.610, as proposed, each interference would be declared by an examiner-in-chief. The examiner-in-chief would enter all interlocutory orders in the interference. As necessary, another examiner-in-chief could act in place of the examiner-in-chief assigned to the interference. At the discretion of the examiner-in-chief assigned to the interference, a panel of two or more examiners-in-chief could enter an interlocutory order. The examiner-in-chief would set times and control proceedings such that pendency of the interference would not normally exceed 24 months. Under § 1.610(d), as proposed, the examiner-in-chief is authorized to hold conferences. Any conference could be by a telephone conference call. Under proposed § 1.610(e), an examiner-in-chief is authorized to determine a proper course of conduct for any situation not specifically covered by the rules.

Under § 1.611(a), as proposed, the PTO would normally notify each party at its correspondence address (37 CFR § 1.33(a)) that an interference is declared. This proposed practice would save the PTO the administrative burden of sending multiple notices as is required by the present rules. Under § 1.611(a), as proposed, the PTO could, in an appropriate circumstance, also send a notice to a patentee or an assignee. An appropriate circumstance for sending an additional notice would be a situation where a patent was issued on the basis of an application filed under 37 CFR § 1.47. The matters to be specified in a notice declaring an interference are set out in proposed § 1.611(c). One item to be set out is the "order of the parties," meaning the order in which the parties have the burden of proof. If Jones is the junior party and Smith is the senior party, the order of the parties is: Jones v. Smith. The order of the parties may change as a result of the granting of a motion under proposed § 1.633 (d), (f), or (g). Under § 1.611(d), as proposed, the notice declaring the interference may also set dates for filing preliminary statements, notices that preliminary statements have been filed, motions under proposed § 1.633, oppositions to those motions, and replies to the oppositions. Alternatively, an examiner-in-chief may set those times in a separate order before or after consultation with counsel for the parties. Under § 1.611(e), as proposed, the PTO would place a notice in the *Official Gazette* each time an interference is declared involving a patent. The notice would make it easier for patent practitioners throughout the country to determine whether a given patent is or has been involved in an interference.

Section 1.612, as proposed, differs considerably from § 1.612 as set out in the advanced notice. Under § 1.612(a), as proposed, parties would not be required to serve copies of their files. Except for affidavits under § 1.131 and any evidence and explanation under § 1.608(b) filed separate from an amendment, each party shall have access to the file of every other party after an interference is declared. The files of applications and patents involved in an interference would be maintained in the Service Branch of the Board of Appeals and Interferences for inspection and copying. Any explanation which is filed as part of an amendment or an amendment which discusses details contained in an affidavit under § 1.131 would not be sealed under § 1.612(a). Thus, § 1.612(a) proposes to continue the practice discussed in *Moorman* v. *Martin*, 103 USPQ 273 (Comm'r.Pat. 1950) and Calvert, *An Overview of Interference Practice*, 62 J. Pat. Off. Soc'y. 290, 293 (1980). Under § 1.612(b), as proposed, each party would have access to an opponent's affidavit under § 1.131 or an opponent's evidence and explanation under § 1.608(b) when a decision is rendered on motions under § 1.633. Under § 1.612(c), as proposed a party would be required to serve any evidence and explanation under § 1.608(b) if an order to show cause is issued under § 1.617(a) and the party responds to the order under § 1.617(b). Under § 1.612(d), the parties may agree to exchange copies of their respective files.

Under § 1.613(a), as proposed, when a party has appointed more than one attorney or agent of record, the party may be required to designate a "lead" attorney or agent. A lead attorney or agent would be a registered attorney or agent of record who is primarily responsible for prosecuting an interference on behalf of a party and is the individual whom an examiner-in-chief would contact to set times and take other action in the interference. Section 1.613(b), as proposed, would continue the practice of not permitting the same attorney or agent to represent two or more parties in an interference except as permitted by § 1.344. Under § 1.613(c), as proposed, an examiner-in-chief could make an appropriate inquiry to determine whether an attorney or agent should be disqualified from representing a party. A final decision to disqualify an attorney or agent would be made by the Commissioner under 35 U.S.C. 32.

Section 1.614, as proposed, specifies when the Board gains jurisdiction over an interference. The section also indicates when an interference becomes a contested case within the meaning of 35 U.S.C. 24. A remand to the examiner is authorized and may be useful in certain situations, such as, when a party moves under proposed § 1.633(c) to add a proposed count which is broader than any count in an interference. Alternatively, an examiner-in-chief would be able to obtain informal opinions from examiners during the course of an interference. Nothing in this proposed section is intended to authorize informal conferences between an examiner-in-chief and an examiner with respect to the merits of an application before the Board in an *ex parte* appeal from an adverse decision of the examiner.

Section 1.616, as proposed, would permit an examiner-in-chief or the Board to impose appropriate sanctions against a party who fails to comply with the rules or with an order entered in the interference. Paragraphs (a) through (e) set forth some of the possible sanctions which might be entered. The particular sanction to be entered would depend on the facts of a given case and ordinarily would not be entered prior to giving the affected Party an opportunity to present its views. An individual examiner-in-chief could not impose a sanction granting judgment inasmuch as entry of a judgment requires action by the Board. See proposed § 1.610(a). A party desiring sanctions imposed against an opponent could move under proposed

§ 1.635 for entry of an order imposing sanctions.

Section 1.617, as proposed, retains summary judgment proceedings in those cases where a junior party applicant would be required to file evidence and an explanation under proposed § 1.608(b). To avoid summary judgment, the junior party applicant must establish that it is *prima facie* entitled to judgment relative to the senior party patentee. For the most part, practice under proposed § 1.617 would be the same as the current practice under § 1.228. The major changes would be the following. (1) A *prima facie* case could be based on patentability as well as priority. (2) A stricter standard would be imposed for presenting additional evidence after entry of an order to show cause. Under current practice (37 CFR 1.228), additional evidence may be submitted with a response to an order to show cause "when a showing in excuse of their [its] omission from the original" showing is made. The "good cause" showing proposed in § 1.617(b) would impose a stricter standard. The stricter standard is believed to be necessary to encourage applicants copying claims from a patent to better prepare their initial showings under proposed § 1.608(b). Under current practice, the Board of Patent Interferences has found that substantial time is lost in issuing orders to show cause based on an inadequate initial showing only to have an adequate showing made with the response to the order to show cause. Under the proposed "good cause" standard, ignorance by a party or counsel of the provisions of the rules or the substantive requirements of the law would not constitute good cause. (3) When an interference involves more than two parties, all parties would be permitted to participate in summary judgment proceedings. (4) An applicant must file two copies of its initial showing under 37 CFR 1.204(c). Under proposed § 1.608(b), a party would have to file in the PTO only one copy of the showing. However, any party responding to an order to show cause would be required to serve a copy of its initial showing under § 1.608(b) with any response to the order to show cause.

Consideration was given to proposing expanding "summary judgment" proceedings to cases where a patentee is a junior party by more than three months. It has been decided not to propose expansion of summary judgment proceedings because (1) a patentee would be required to make its showing after an interference is declared, (2) considerable delay would occur while a patentee gathered and presented its evidence, and (3) currently very few summary judgments are entered against applicants who are junior party to a patentee by more than three months.

Under § 1.618, as proposed, the PTO would have authority to return to a party any paper presented in an interference which is not authorized by, or is not in compliance with the requirements of, proposed Subpart E. When an improper paper is filed, a party may be given an opportunity to file a proper paper under such conditions as an examiner-in-chief may deem appropriate. Two examples of improper papers are: (1) Replies to oppositions which are not authorized by the rules and (2) papers presented which have attached thereto a paper previously filed in the interference.

Proposed §§ 1.621 through 1.629 govern preliminary statements which would continue to be required in interference cases.

Under § 1.621, as proposed, a preliminary statement could be signed by any individual having knowledge of the facts (e.g., the inventor) or by an attorney or agent of record. Permitting an attorney or agent of record to sign a preliminary statement should eliminate unnecessary mailing of papers between parties and their attorney or agent.

Under § 1.622, as proposed, the preliminary statement would identify the inventor who made the invention defined by each count. If the inventor named in the application or patent involved in the interference and the inventor identified in the preliminary statement are not the same, a motion under proposed § 1.634 would have to be promptly filed to correct inventorship.

Sections 1.623, 1.624, and 1.625, as proposed, respectively set out the allegations which should be made in, and the attachments which should accompany, a preliminary statement when (1) the invention was made in the United States, (2) the invention was made abroad and was introduced into the United States, and (3) derivation by an opponent from a party is to be an issue.

Section 1.626, as proposed, would permit a party to file a preliminary statement which states that the party only intends to rely on the filing date of an earlier United States or foreign application. Ordinarily, a junior party who fails to file a preliminary statement would not be entitled to access to any other preliminary statement filed (see proposed § 1.631(b)). Proposed § 1.626 would permit a junior party who only intends to rely on an earlier application to have access to any opponent's preliminary statement.

Section 1.628, as proposed, sets out how an error in a preliminary statement may be corrected.

Section 1.629, as proposed, sets out the effect of a preliminary statement. A party who fails to file a preliminary statement would not be permitted to prove that the party made the invention defined by a count prior to the party's filing date or that an opponent derived the invention from the party.

Under § 1.631, as proposed, preliminary statements normally would be opened for inspection when an examiner-in-chief decides preliminary motions filed under proposed § 1.633. A junior party who does not file a preliminary statement would not be entitled to access to a preliminary statement of any other party. When an interference is terminated before preliminary statements are opened, any preliminary statement which has been filed would be returned unopened to the party who submitted the statement.

Under § 1.633, as proposed, a party could file preliminary motions for judgment, to redefine the interference, to substitute a different application in the interference, to declare an additional interference, to be accorded the benefit of an earlier application, to attack benefit previously accorded an opponent, or to add a reissue application to the interference. The motions are proposed to be called "preliminary motions" in order to distinguish the motions from other motions which might be filed during the course of an interference. The preliminary motions would replace motions currently authorized by 37 CFR 1.231.

Under § 1.633(a), as proposed, a motion to dissolve would be replaced with a motion for judgment. A party could file a motion for judgment on the ground that an opponent's *claim* corresponding to a count is unpatentable to the opponent. With two exceptions, unpatentability could be based on prior art (35 U.S.C. 102, 103), insufficiency of disclosure (35 U.S.C. 112, first paragraph), indefiniteness of claims (35 U.S.C. 112, second paragraph), double patenting, estoppel, or any other ground which would support a holding that claims corresponding to a count are not patentable. The two exceptions would be (1) priority of invention of the subject matter of a count by the moving party as against any opponent and (2) derivation of the subject matter of a count by the opponent from the moving party. The two exceptions are directed to issues which are traditional "priority" issues,

e.g., which inventor made the invention defined by a count first or, when derivation is an issue, who made the invention. Resolution of those "priority" issues almost always requires the taking of testimony. A motion for judgment, however, would be proper when a party believed an individual not involved in the interference made the invention defined by the count prior to an opponent in the interference, but subsequent to the moving party. Thus, a patentability issue, such as that raised under 35 U.S.C. 102(g) in *Sutter Products Co.* v. *Pettibone Mulliken Corp.*, 428 F. 2d 639, 166 USPQ 100 (7th Cir. 1970), properly could be raised with a motion for judgment under proposed § 1.633(a). Derivation by an opponent from an individual not involved in the interference could also be raised under proposed § 1.633(a).

Under § 1.633(b), as proposed, a party could move for a judgment when the party believed there is no interference-in-fact. A motion for judgment on the ground of no interference-in-fact is only proper under one of three conditions: (1) When an interference involves designs, (2) when the interference involves plant applications or a plant application and plant patent, or (3) when no claim of a party which corresponds to a count is identical to any claim of an opponent which corresponds to that count. An example illustrates when a motion under proposed § 1.636(b) is proper.

Example 20

Application AD contains patentable claim 1 (6-cylinder engine). Application AE contains patentable claim 3 (8-cylinder engine). An interference is declared with a single count (6- or 8-cylinder engine). Claim 1 of application AD and claim 3 of application AE are designated to correspond to the count. Applicant AD believes that a 6-cylinder engine is a "separate patentable invention" (see proposed § 1.601(n)) from an 8-cylinder engine. Applicant AD would file a motion under proposed § 1.633(b) for a judgment on the ground of no interference-in-fact stating why a 6-cylinder engine is patentably distinct from an 8-cylinder engine. If the Board ultimately agrees with applicant AD, a patent could issue to AD containing claim 1 of application AD and a second patent could issue to AE containing claim 3 of application AE.

Under § 1.633(c), as proposed, a party may move to redefine interfering subject matter. One way to redefine interfering subject matter would be to add a count. When a party seeks to add a count under the proposed rules, the party would be required to demonstrate that the proposed count to be added is directed to a "separate patentable invention" from every other count in the interference. Another way to redefine interfering subject matter would be to designate a claim as corresponding or not corresponding to a count. Examples 21 and 22 illustrate this latter point.

Example 21

Application AF contains patentable claim 1 (engine). Patent K contains claims 3 (engine) and 5 (6-cylinder engine). Claim 1 of application AF and claim 3 of patent K are designated to correspond to the count. Applicant AF believes a 6-cylinder engine is the "same patentable invention" (see proposed § 1.601(n)) as engine. Applicant AF would file a motion under proposed § 1.633(c)(3) to designate claim 5 of patent K as corresponding to the count. If the motion is granted and applicant AF prevails in the interference on the count, judgment would be entered against patentee K on the count and both claims 3 and 5 of patent K would be cancelled under 35 U.S.C. 135(a).

Example 22

Application AG contains patentable claim 1 (engine). Patent L contains claims 3 (engine) and 5 (8-cylinder engine). An interference is declared with one count (engine). Claim 1 of application AG and claims 3 and 5 of patent L are designated to correspond to the count. Patentee L believes that an 8-cylinder engine defines a "separate patentable invention" (see proposed § 1.601(n)) from engine. Patentee L should file a motion under proposed § 1.633(c)(4) to designate claim 5 of patent L as "not corresponding" to the count. If the motion is granted and an adverse judgment is entered against patentee L on the count, only claim 3 would be cancelled from the patent pursuant to 35 U.S.C. 135(a).

Section 1.633(i), as proposed, would continue present practice (37 CFR 1.231) of allowing a party to move to redefine the subject matter of the interference or substitute a different application when an opponent moves for judgment (see proposed § 1.633 (a) and (b)) or to attack benefit (see proposed § 1.633(g)).

Section 1.634, as proposed, authorizes a motion to correct inventorship in an application (see § 1.48) or a patent (see § 1.324) involved in an interference.

Section 1.635, as proposed, authorizes the filing of motions other than those specified in proposed § 1.634 or 1.635. Motions filed under proposed § 1.635 would be referred to as "miscellaneous motions" to distinguish from "preliminary motions" under proposed § 1.633. Instances where a miscellaneous motion would be filed include motions to correct an error in a preliminary statement, to extend time for taking action or to seek judicial review, to obtain permission to proceed under 35 U.S.C. 24, or to obtain additional discovery.

Section 1.636, as proposed, sets out the times within which a motion would be filed.

Section 1.637, as proposed, sets out the content of motions. In prior interference practice, parties and their attorneys or agents have had difficulty meeting all the "unwritten" requirements for motions under 37 CFR 1.231. Proposed § 1.637 is quite specific in setting out the requirements for each type of motion, particularly the preliminary motions. By setting out with specificity the requirements for each type of motion, it is intended to minimize disposition of motions on technicalities. A vast majority of the comments in response to the advanced notice commenting on proposed § 1.637 were in favor of the requirements for motions being specifically set out in the regulations.

Section 1.638, as proposed, would authorize oppositions to motions and replies to oppositions in some instances. Any oppositions would have to identify any material fact in dispute. A reply to an opposition would be authorized for motions filed under proposed §§ 1.633 and 1.634. If an unauthorized reply is submitted, it would be returned unfiled under proposed § 1.618.

Section 1.639, as proposed, sets forth the evidence which may accompany a motion, opposition, or reply (assuming a reply is authorized). Every material fact alleged in a motion, opposition, or an authorized reply would have to be supported by proof. Proposed § 1.639(b) authorizes affidavits to be used as proof for any motion. The affidavit may later be used by a party during the testimony period (see proposed §§ 1.671(e) and 1.672(b)). When a party believes that testimony is necessary to decide a preliminary motion under proposed § 1.633, the party would have to describe the nature of the testimony needed. If an examiner-in-chief agrees that testimony is needed, appropriate interlocutory relief would be granted and testimony would be ordered.

Example 23

An interference is declared with one count between application AH and application AJ. Applicant AH files a preliminary motion under proposed § 1.633(c)(1) to redefine the interference by adding a second count. In order to succeed, applicant AH must show that the proposed count to be added is

directed to a "separate patentable invention" (see proposed § 1.601(n)) from the count already in the interference. In the motion, applicant AH sets forth in detail the testimony which would be required to prove that the subject matter of the proposed count is to a separate patentable invention from the subject matter of the count in the interference. Applicant AJ opposes the motion on the ground that the proposed and present counts define the "same patentable invention" (see proposed § 1.601(n)). An examiner-in-chief determines that a material fact is in dispute and that applicant AH has established testimony is needed to properly rule on the motion. Under the circumstances, the motion would be granted without prejudice to applicant AJ renewing its opposition at final hearing and a testimony period would be ordered. The questions of (1) whether the proposed and present counts define the same patentable invention and (2) priority would be decided at final hearing.

Under § 1.640, as proposed, an examiner-in-chief would decide all motions. A hearing could be held on a motion in the discretion of an examiner-in-chief. Where appropriate, an examiner-in-chief could consult with an examiner on a question of patentability which arises in the first instance in the interference. Consultation would not be necessary where the examiner had already ruled on the patentability question which comes before the examiner-in-chief or the Board. Moreover, nothing in proposed § 1.640 authorizes conferences between examiners-in-chief and examiners in *ex parte* appeals under 35 U.S.C. 134 from an adverse decision of an examiner. A party is entitled to request reconsideration of a decision on a motion by a single examiner-in-chief. An opposition to a request for reconsideration could not be filed unless ordered by an examiner-in-chief or the Board, but a request for reconsideration would not normally be granted unless an opposition has been requested. The request for reconsideration would be decided by a panel of the Board consisting of at least three examiners-in-chief, one of which would normally be the examiner-in-chief who decided the motion. Several comments were received questioning why the examiner-in-chief who decided in the motion would form part of the panel deciding the request for reconsideration. The decision to propose a regulation which would permit the examiner-in-chief who decided the motion to participate in the decision on reconsideration was made after careful balancing of all the factors involved. It could have been proposed to permit the examiner-in-chief to individually decide the request for reconsideration. However, it is believed that parties in interference cases would feel that their requests for reconsideration are being more fully considered if more than one person considers their request. The two additional examiners-in-chief would be able to consult with the examiner-in-chief most familiar with the case, but would be able to control the decision on reconsideration by a majority vote. Use of the examiner-in-chief who decided the motion and two additional examiners-in-chief would (1) minimize delay which would occur if three new examiners-in-chief were used who were unfamiliar with the record and (2) minimize the possibility that reversible error occurred if only the examiner-in-chief who decided the motion also individually decided the request for reconsideration.

Under § 1.644, as proposed, petitions to the Commissioner would be authorized in interference cases under certain restricted conditions. Petitions in interferences have been the source of substantial delay. Proposed § 1.644 attempts to minimize those delays. Proposed § 1.644 authorizes a petition to the Commissioner from a decision of an examiner-in-chief or a panel when the examiner-in-chief or the panel shall be of the opinion (1) that the decision involves a controlling question of procedure or an interpretation of a rule as to which there is a substantial ground for a difference of opinion and (2) that an immediate decision on petition would materially advance the ultimate termination of the interference. The standard is intended to be analogous to that of a district court certifying a question to a court of appeals under 28 U.S.C. 1292(b). A petition could be filed seeking to invoke the supervisory authority of the Commissioner. However, the petition could not be filed prior to entry of judgment and could not relate to the merits of priority or patentability or the admissibility of evidence under the Federal Rules of Evidence. A petition could also be filed seeking waiver of a rule. A fee of $120 would be charged for each petition and for each request for reconsideration of a decision on petition. Any petition would be decided on the record made before the examiner-in-chief or the Board and additional evidence could not be submitted with the petition. An opposition could not be filed unless ordered by the Commissioner. Where reasonably possible, service of a petition would have to be such that delivery is accomplished within one day. Service by hand or "Express Mail" would comply with this requirement.

Section 1.645, as proposed, would permit a party to file a motion to seek an extension of time to take action in an interference or to seek judicial review. The motion would have to be filed within sufficient time to actually reach an examiner-in-chief prior to expiration of the time for taking action. Under § 1.645, as proposed, a moving party would not be able to assume that a motion for an extension of time would be granted. Under proposed § 1.610(d)(6), a request for an extension of time could be made orally and an appropriate order would then be entered thus eliminating considerable paper work. The order would be the written record of the request and decision. See § 1.2. Extensions of time have caused numerous delays in interference cases. Under present interference practice, some delays are caused because attorneys and agents on many occasions unexpectedly receive orders setting times. Under the practice as proposed, attorneys and agents can expect times to be set for filing preliminary statements, preliminary motions, motions for additional discovery, testimony, and briefs after a conference call. It would be expected that use of conference calls would permit an examiner-in-chief and attorneys or agents for parties to set a time schedule which is mutually satisfactory. A motion to extend time would not be granted unless a party shows good cause. The use of conference calls would allow schedules to be set before orders setting time are entered and therefore the press of other business which arises after the examiner-in-chief and attorneys and agents agree to times would not normally be considered good cause.

Under § 1.647, as proposed, when a party relies on a document in a foreign language, an English language translation of the document and an affidavit attesting to the accuracy of the translation would be required. The rule, as proposed, would apply to any document, including evidence submitted with motions, foreign applications for which a party seeks benefits, testimony, and exhibits introduced in evidence during testimony.

Under § 1.651, as proposed, after a decision is entered on preliminary motions, an examiner-in-chief would set times for filing motions for additional discovery and for taking testimony. Any motion for additional discovery would be to obtain documents and things

necessary for a party to prepare its case-in-chief.

Section 1.653, as proposed, sets out what shall be in the record to be considered by the Board at final hearing. The record would continue to be printed or typed on paper 8½" by 11" in size. Accordingly, when a party files an affidavit, the party may wish to use 8½" by 11" paper for the affidavit.

Section 1.654, as proposed, continues the practice of holding a final hearing where oral argument may be presented by all parties. No fee would be charged for appearing at oral argument at final hearing in an interference.

Section 1.655, as proposed, specifies the matters which would be considered in rendering a final decision. Patentability would be an issue which could be raised. The Board could also consider whether any interlocutory order was manifestly erroneous or an abuse of discretion, although any interlocutory order would be presumed to be correct and burden of showing error shall be on the party attacking the order. This last procedural provision would permit the Board to correct any manifest error before a party seeks judicial review of an interlocutory order along with judicial review of the Board's final decision.

Section 1.656, as proposed, sets forth the requirements for briefs for final hearing. In large measure, proposed § 1.656 follows the requirements of Rule 28 of the Federal Rules of Appellate Procedure. An original and three copies of a brief would be required. Under § 1.656(h), as proposed, if a party wants the Board in rendering its final decision to rule on the admissibility of any evidence, the party would file with its opening brief an original and three copies of a motion to suppress the evidence. Any previous objection to the admissibility of evidence would be waived unless the motion to suppress is filed. This procedural provision would make it clear that an objection to the admissibility of evidence must be renewed for final hearing and would be considered by the Board in rendering its final decision. When a junior party fails to file a brief, an order could be issued requiring the junior party to show cause why failure to file the brief should not be taken as a concession of priority.

Under § 1.658, as proposed, the Board would enter a final decision. The decision could (1) enter judgment, in whole or in part, (2) remand the interference to an examiner-in-chief, or (3) take further action not inconsistent with law. A judgment as to a count shall state whether or not each party is entitled to a patent containing claims which correspond to the count. When judgment is entered as to all counts, the decision of the Board would be considered final for the purpose of judicial review. Under § 1.658(c), as proposed, the PTO would expand the doctrine of estoppel as applied to interference proceedings. The purpose for expanding the applicability of estoppel is to encourage parties in interference cases to settle all issues in one proceeding. Proposed § 1.658(c) creates an estoppel both as to senior and junior parties unlike the present practice (37 CFR 1.257) which limits estoppel in some instances to junior parties. An estoppel would not apply against a party awarded a favorable judgment as to all counts. A few examples illustrate how estoppel would be applied.

Example 24

Junior party applicant AL and senior party applicant AK both disclose separate patentable inventions "A" and "B" and claim invention A in their respective applications. An interference is declared with a single count to invention A. Neither party files a preliminary motion (see proposed § 1.633(c)(1)) to add a count to invention B. Judgment as to the sole count is awarded to junior party applicant AL. Senior party applicant AK would be estopped to thereafter obtain a patent containing claims to invention B, because applicant AK failed to move to add a count to invention B in the interference. Junior party applicant AL would not be estopped to obtain a patent containing claims to invention B.

Example 25

In this example, the facts are the same as in Example 24 except that judgment is awarded to senior party applicant AK. Junior party applicant AL would be estopped to obtain a patent containing claims to invention B in the interference. Senior party applicant AK would not be estopped to obtain a patent containing claims to invention B.

Example 26

Junior party applicant AM and senior party applicant AP both disclose separate patentable inventions "C", "D", and "E" and claim inventions C and D in their respective applications. An interference is declared with two counts. Count 1 is to invention C and Count 2 is to invention D. Neither party files a preliminary motion to add a proposed Count 3 to invention E. Judgment as to Counts 1 and 2 is awarded to junior party applicant AM. Senior party applicant AP would be stopped to thereafter obtain a patent containing claims to invention E, because applicant AP failed to move to add a count to invention E in the interference. Junior party applicant AM would not be estopped to obtain a patent containing claim to invention E.

Example 27

In this example, the facts are the same as in Example 26 except that judgment is awarded on Counts 1 and 2 to senior party applicant AP. Junior party applicant AM would be estopped to obtain a patent containing claims to invention E, because applicant AM failed to move to add a count to invention E in the interference. Senior party applicant AP would not be estopped to obtain a patent containing claims to invention E.

Example 28

In this example, the facts are the same as in Example 26 except that judgment is awarded on Count 1 to junior party applicant AM and judgment is awarded on Count 2 to senior party applicant AP. Both parties would be estopped to obtain a patent containing claims to invention E, because neither moved to add a count to invention E during the interference.

Example 29

Applicant AQ discloses and claims invention "F." Applicant AR discloses and claims separate patentable inventions "F" and "G." The assignee of applicant AQ also owns an application AS which discloses and claims invention "G." An interference is declared between applicant AQ and applicant AR. The sole count is directed to invention F. No motion is filed by applicant AQ or its assignee to declare an additional interference between applicant AR and applicant AS with a count to invention G. A judgment as to the sole count is awarded to applicant AR. Applicant AS and the assignee would be estopped to obtain a patent containing claims to invention G, because applicant AR and the assignee failed to move to declare an additional interference with a count to invention G.

Example 30

The facts in this example are the same as the facts in Example 29 except that judgment as to the sole count is awarded to applicant AQ. Applicant AS and the assignee would not be estopped, because applicant AQ was awarded a judgment as to all counts.

Example 31

Applicant AT discloses a generic invention to "solvent" and a species to "benzene." Application AT contains a

patentable claim 1 (solvent) and no other claims. Applicant AU discloses the generic invention to "solvent" and species to "benzene" and "toluene." Application AU contains patentable claim 3 (solvent) and no other claims. An interference is declared with a single count (solvent). Claim 1 of application AT and claim 3 of application AU are designated to correspond to the count. No preliminary motions are filed. A judgment is entered in favor of applicant AT on the sole count. Applicant AU would be estopped to obtain a patent containing a claim to benzene, because applicant AU failed to file a preliminary motion seeking to add a count to benzene. Applicant AU would not be estopped to obtain a patent containing claims to toluene, because applicant AU could not have properly moved to add a count to toluene (toluene was not disclosed by applicant AT). However, to obtain a patent containing claims to toluene, applicant AU would have to establish that toluene is a separate patentable invention from solvent. See *Smith* v. *Watson*, 95 U.S. App. D.C. 52, 218 F.2d 863, 104 USPQ 160 (1955).

Under § 1.659, as proposed, the Board would be able to make recommendations to examiners and the Commissioner, including recommendations that application claims not involved in the interference be rejected and that a patent be reexamined as to patent claims not involved in the interference.

Under § 1.660, as proposed, a party would be required to notify the Board when the party's patent or application becomes involved in other PTO proceedings (reexamination, reissue, or protest) or litigation.

Section 1.661, as proposed, sets forth when an interference is considered terminated after a judgment is entered in the interference.

Section 1.662, as proposed, provides that a party may request that an adverse judgment be entered. The section, as proposed, also provides that when a written disclaimer (not a statutory disclaimer), concession of priority or unpatentability, abandonment of the invention, abandonment of an application, or abandonment of the contest is filed, the disclaimer, concession, or abandonment would be construed as a request for entry of an adverse judgment. Section 1.662(b), as proposed, provides that when a patentee files a reissue and omits all claims of a patent corresponding to the counts of an interference for the purpose of avoiding the interference, judgment would be entered against the patentee. Under § 1.662(c), as proposed, the filing of a statutory disclaimer would not be construed as a request for entry of an adverse judgment. However, the filing of a statutory disclaimer would, in subsequent proceedings, have the same effect with respect to the patentee filing the statutory disclaimer as an adverse judgment. Under § 1.662(d), as proposed, if after entry of a judgment or after filing of a statutory disclaimer no interference exists, the interference would be dissolved as to any party against whom judgment has not been entered and any further prosecution of any application involved in the interference would be *ex parte* before the examiner.

Section 1.666, as proposed, sets out the procedure for filing settlement agreements in interference cases.

Section 1.671, as proposed, sets out what would be considered evidence. The Federal Rules of Evidence, with certain exceptions, would be applicable to interference cases. Under § 1.671(e), as proposed, a party could not rely on a previously filed affidavit unless the affidavit is served and notice is given that the party intends to rely on the affidavit. The purpose for the notice is to permit an opponent to determine whether a deposition for cross-examination is necessary (see proposed §§ 1.672(b) and 1.673(e)). Under § 1.671(f), as proposed, the significance of documentary and other exhibits would have to be discussed with particularity by a witness during oral deposition or in an affidavit. Proposed § 1.671(f) would set out in the regulations an evidentiary requirement imposed by precedent. See *Popoff* v. *Ochin*, 144 USPQ 762 (Bd.Pat.Int. 1963) (unexplained experimental data should not be considered); *Chandler* v. *Mock*, 150 F.2d 563, 66 USPQ 209 (CCPA 1945) (records standing alone were held to be meaningless), and *Smith* v. *Bousquet*, 111 F.2d 157, 45 USPQ 347 (CCPA 1940) (unexplained tests in stipulated testimony are entitled to little weight). See also *In re Borkowski*, 505 F.2d 713, 184 USPQ 29 (CCPA 1974) and *Triplett* v. *Steinmayer*, 129 F.2d 869, 54 USPQ 409 (CCPA 1942). Under § 1.671(g), as proposed, a party would be required to obtain permission from an examiner-in-chief prior to proceeding under 35 U.S.C. § 24. This requirement would insure that a subpoena is necessary (e.g., a subpoena ordinarily should not be necessary where testimony of an opponent is sought) and that testimony sought through a 24 subpoena is relevant before a subpoena is issued. The motion seeking permission to proceed under § 24, any opposition thereto, and the order of an examiner-in-chief authorizing the moving party to proceed under § 24 would be of assistance to a federal court in the event a party is required to resort to a court to enforce the subpoena or to compel answers to questions propounded at any deposition where a witness is appearing pursuant to a subpoena. See *Sheehan* v. *Doyle*, 529 F.2d 38, 188 USPQ 545 (1st Cir.), *cert. denied*, 429 U.S. 870 (1976), *rehearing denied*, 429 U.S. 937 (1976). Under § 1.671(h), as proposed, any evidence which is not taken or sought and filed in accordance with the regulations would not be admissible.

Section 1.672, as proposed, sets forth the manner in which testimony shall be taken. Testimony would be taken by deposition or affidavit at the election of the party presenting the testimony. If the party presents testimony by affidavit and an opponent elects to cross-examine the affiant, the party would be required to notice a deposition for the purpose of cross-examination. Re-direct and re-cross would take place at the deposition. Where the parties agree, testimony would be presented by affidavit without opportunity for cross-examination (see proposed § 1.672(e)) or by an agreed statement of facts (see proposed § 1.672(f)).

Section 1.673, as proposed, sets out how a deposition would be noticed. A deposition could be noticed for any reasonable place in the United States. The extent to which parties, witnesses, and attorneys or agents would have to travel would be considered in determining whether a place is reasonable. Prior to serving a notice for a deposition, a party would be required to take two procedural steps. Under proposed § 1.673(b), a party would be required to serve a copy of the documents and a list of the things in its possession, custody, and control upon which it intended to rely. Under proposed § 1.673(g), at least three days after service of documents and lists (an examiner-in-chief could require service by "Express Mail"—see proposed § 1.646(d)), the party would be required to have an oral conference (in person or by telephone) with all opponents to attempt to agree on a mutually acceptable time and place for taking the deposition. An examiner-in-chief would set the time and place if agreement is not reached. A single notice listing all the witnesses and the general nature of their expected testimony would then be served. Under proposed § 1.673(c) and except as provided, a party would not be able to rely on any witness not mentioned in the notice, any document not served, or any thing not listed. Under proposed § 1.673(h), a copy of any notice would be attached to the certified transcript of each deposition filed.

Section 1.674, as proposed, sets out the persons before whom depositions would be taken.

Section 1.675, as proposed, sets out how a deposition would be taken.

Section 1.676, as proposed, sets out how a court reporter would prepare and file a certified transcript of a deposition. Section 1.676(d), as proposed, sets out how exhibits may be marked for identification, used at depositions, and filed. Provisions similar to those of Rule 30(f)(1) (A) and (B) of the Federal Rules of Civil Procedure would be applicable to interferences.

Section 1.677, as proposed, sets out the form of a transcript of a deposition.

Under § 1.678, as proposed, a transcript of a deposition would have to be filed in the PTO within 45 days of the date of the deposition.

Section 1.682, as proposed, sets out how a party may introduce in evidence, if otherwise admissible, official records or printed publications. When a notice is served, a party would also be required to serve (but not file) copies of the official records and printed publications. Any objection to the notice or to the admissibility of any official record or publication would have to be filed within 15 days of the date of service of the notice.

Section 1.683, as proposed, sets out how a party may use testimony from another interference or proceeding.

Section 1.684, as proposed, sets out how a party may take testimony in a foreign country.

Section 1.685, as proposed, set out how objections during the taking of depositions would be raised. Under § 1.685(a), as proposed, an error in a notice of deposition would be waived unless a motion to quash the notice is filed as soon as the error is, or could have been, discovered. Under § 1.685(b), as proposed, any objection to the qualifications of an officer would be waived unless (1) the objection is noted on the record of the deposition before a witness begins to testify or (2) if discovered after the deposition, a motion to suppress is filed as soon as the objection is, or could have been, discovered. Under § 1.685(c), as proposed, any error in the manner in which testimony is transcribed, the transcript is signed by a witness, or the transcript is prepared or otherwise handled by the court reporter is waived unless a motion to suppress is filed as soon as the error is, or could have been, discovered. Under § 1.685(d), as proposed, any objection on the merits to the admissibility of evidence (e.g., under the Federal Rules of Evidence) is wavied unless an objection is made on the record at the deposition stating the specific ground of objection. Often objections are cured by subsequent testimony. Accordingly, any objection which a party wants the Board to consider at final hearing must also be made the subject of a motion under proposed § 1.656(h).

Section 1.687, as proposed, sets out how a party could seek and obtain additional discovery. "Additional discovery" is defined in proposed § 1.601(a). As proposed, section 1.687 would not change the standard ("interest of justice") for obtaining discovery. Accordingly, precedent interpreting the present additional discovery rule (37 CFR 1.287(c)) would still be viable.

Section 1.688, as proposed, sets out how a party could introduce into evidence admissions and answers to interrogatories obtained as a result of additional discovery.

The following is a proposed time schedule for a two-party interference:

[In months]

Event in interference	Time from last event in the interference	Total time in interference
Interference declared (1.611)		
Filing of preliminary statements (1.621) and preliminary motions (1.633)	3	3
Filing oppositions to preliminary motions (1.638(a))	⅔	3⅔
Filing replies to oppositions (1.638(b))	⅔	4⅓
Decision on preliminary motions (1.640(b)(1)), open preliminary statements (1.631), set times for filing motions for discovery (1.687(c) and testimony (1.651(a))	1	5⅓
Filing of motions for discovery (1.635, 1.651(a), 1.687(c))	1	6⅓
Filing of opposition to motion for discovery (1.638(a))	⅔	7
Decision on motion for discovery	⅔	7⅔
Time for compliance with any discovery ordered	⅔	8⅓
Junior party testimony (case-in-chief; 1.672(b)):		
Testimony	2	10⅓
Senior party cross-examination of affiants if needed	1	11⅓
Senior party testimony (case-in-chief and case-in-rebuttal, 1.672(b)):		
Testimony	2	13
Junior party cross-examination of affiants if needed	1	14
Junior party testimony (case-in-rebuttal):		
Testimony	⅔	15⅔
Senior party cross-examination of affiants if needed	⅔	16
Filing of record (1.653(c))	1⅓	17⅓
Brief for junior party (1.656)	1	18⅓
Brief for senior party (1.656)	1	19⅓
Reply brief for junior party (1.656)	⅔	20
Final hearing (1.654)	1	21
Decision (1.658)	2	23

The following is an index for proposed §§ 1.601 through 1.688:

Rule Index

Sec.

1.601 Scope of rules, definitions.
1.602 Interest in applications and patents involved in interference.
1.603 Interference between applications; subject matter of the interference.
1.604 Request for interference between applications by an applicant.
1.605 Suggestion of claim to applicant by examiner.
1.606 Interference between an application and a patent; subject matter of the interference.
1.607 Request by applicant for interference with patent.
1.608 Interference between an application and a patent; *prima facie* showing by applicant.
1.609 Preparation of interference papers by examiner.
1.610 Assignment of interference to examiner-in-chief time period for completing interference.
1.611 Declaration of interference.
1.612 Access to applications.
1.613 Lead attorney, same attorney representing different parties in an interference, withdrawal of attorney or agent.
1.614 Jurisdiction over interference.
1.615 Suspension of *ex parte* prosecution.
1.616 Sanctions for failure to comply with rules or order.
1.617 Summary judgment against applicant.
1.618 Return of unauthorized papers.
1.621 Preliminary statement, time for filing, notice of filing.
1.622 Preliminary statement, who made invention, where invention made.
1.623 Preliminary statement, invention made in United States.
1.624 Preliminary statement; invention made abroad.
1.625 Preliminary statement; derivation by an opponent.
1.626 Preliminary statement; earlier application.
1.627 Preliminary statement, sealing before filing, opening of statement.
1.628 Preliminary statement, correction of error.
1.629 Effect of preliminary statement.
1.630 Reliance on earlier application.
1.631 Access to preliminary statement, service of preliminary statement.
1.633 Preliminary motions.
1.634 Motion to correct inventorship.
1.635 Miscellaneous motions.
1.636 Motions, time for filing.
1.637 Content of motions.
1.638 Opposition and reply, time for filing opposition and reply.
1.639 Evidence in support of motion, opposition, or reply.
1.640 Motions, hearing and decision, redeclaration of interference, order to show cause.
1.641 Unpatentability discovered by examiner-in-chief.
1.642 Addition of new application to interference.
1.643 Prosecution of interference by assignee.
1.644 Petitions in interference.

1.645 Extension of time, late papers, stay of proceedings.
1.646 Service of papers, proof of service.
1.647 Translation of documents in foreign language.
1.651 Setting times for discovery and taking testimony, parties entitled to take testimony.
1.652 Judgment for failure to take testimony or file record.
1.653 Record.
1.654 Final hearing.
1.655 Matters considered in rendering a final decision.
1.656 Briefs for final hearing.
1.657 Burden of proof as to date of invention.
1.658 Final Decision.
1.659 Recommendation.
1.660 Notice of reexamination, reissue, protest, or litigation.
1.661 Termination of interference after judgment.
1.662 Request for entry of adverse judgment; reissue filed by patentee.
1.663 Status of claim of defeated applicant after interference.
1.664 Action after interference.
1.665 Second interference.
1.666 Filing of interference settlement agreements.
1.671 Evidence must comply with rules.
1.672 Manner of taking testimony.
1.673 Notice of examination of witness.
1.674 Persons before whom depositions may be taken.
1.675 Examination of witness, reading and signing tanscript of deposition.
1.676 Certification and filing by officer, marking exhibits.
1.677 Form of a transcript of deposition.
1.678 Transcript of deposition must be filed.
1.679 Inspection of transcripts.
1.682 Official records and printed publications.
1.683 Testimony in another interference, proceeding, or action.
1.684 Testimony in a foreign country.
1.685 Errors and irregularities in depositions.
1.687 Additional Discovery.
1.688 Use of discovery.

The following is a table correlating the present rules (37 CFR 1.201 through 1.288) to the proposed rules (proposed 37 CFR 1.601 through 1.688).

RULE CORRELATION TABLE

Old	New
1.201 (a)	1.601 (a)
1.201 (b)	1.601 (b), (c)
1.201 (c)	1.602
1.202	None
1.203 (a)	1.603 (a), (b)
1.203 (b)	1.605 (a)
1.203 (c)	1.605 (b)
None	1.604 (a)
1.203 (d)	1.604 (b)
1.204 (a)	None
1.204 (b)	1.603 (b)
1.204 (c)	1.603 (c)
1.205 (a)	1.606 (a), (b)
1.205 (b)	1.607 (a), (c)
1.205 (c)	1.607 (d)
None	1.608 (a)
1.206 (a)	1.607 (b)
1.207 (a)	1.609

RULE CORRELATION TABLE—Continued

Old	New
None	1.610
1.207 (b)	1.611
1.208	1.613
1.211	1.614
1.212	1.615
None	1.616
1.228	1.617
None	1.618
1.215 (a)	1.621 (a)
1.215 (b)	1.621 (b)
1.215 (c)	1.623 (c)
1.216 (a)	1.622 (a), (b)
1.216 (a) (1)-(6)	1.623 (a)
1.216 (b)	1.623 (b), 1.624 (b), 1.625 (b)
1.216 (c)	1.625
1.217 (a)	1.624 (a), 1.625 (a)
1.217 (b)	1.623 (c)
1.218	1.621 (c)
1.219	1.627
1.222	1.628
1.223	1.629
1.224	1.630
1.225	1.640 (a), (c), and 1.651 (c) (4)
1.226	1.612
1.227	1.631
1.231	1.633, 1.634
1.237	1.641
1.239	1.642
1.242	1.643
1.243	1.635, 1.636, 1.637 (b) 1.638 through 1.640
1.244	1.644
1.245	1.645
1.246	1.645
1.247	1.649
1.248	1.648
None	1.647
1.251	1.651
1.252	1.652
1.253	1.653
1.254	1.653
1.255	1.650 (c)
1.256	1.654
1.257 (a)	1.657
1.257 (b)	1.650 (c), (d)
1.258	1.655
1.259	1.659
New	1.660
1.262	1.662 (c)
1.263	1.662 (a) and (d)
1.264	1.662 (b) and (c)
New	1.662 (e)
1.265	1.663
1.266	1.664
1.267	1.665
1.268	1.666
1.271	1.671
New	1.671 (g)
1.272 (a)	1.672 (a), (b)
1.272 (b)	1.672 (c)
1.272 (c)	1.672 (d), (c)
1.273 (a)	1.673 (a), (c), (d),
New	1.673 (c)
1.273 (b)	1.673 (f)
1.274	1.674
1.275	1.675
1.276	1.676
1.277	1.677
1.278	1.678
1.279	1.679
1.281	1.645
1.282	1.682
1.283	1.683
1.285	1.685
1.286	Eliminated
1.287 (a) (1) (i), (ii)	1.673 (b)
1.287 (a) (1) (iii)	1.673 (a)
1.287 (a) (2), (3)	Eliminated
1.287 (b)	Eliminated
1.287 (c)	1.687
1.287 (d) (1)	1.673 (c)
1.287 (d) (2)	1.616
1.287 (c)	1.687 (d)
1.288	1.688

Other Considerations

The proposed rule change would not have a significant impact on the quality of the human environment or the conservation of energy resources.

The proposed rule change is in conformity with the requirements of the Regulatory Flexibility Act (Pub. L. 96-354), Executive order 12291, and the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

The Patent and Trademark Office has determined that this proposed rule change is not a major rule under Executive Order 12291. The annual effect on the economy would be less than $100 million. There would be no major increase in costs or prices for consumers, individual industries, federal state, or local government agencies, or geographic regions. There would be 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.

This proposed rule change would not impose a burden under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq., since no significant additional record keeping or reporting requirements are placed upon the public. It is anticipated that less paperwork would be involved under the proposed rule change. Likewise, it is anticipated that the cost of an interference should be less under the proposed rule change.

List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Authority delegations (Government agencies), Conflict of interests, Courts, Inventions and patents, Lawyers.

Notice is hereby given that, pursuant to the authority granted to the Commissioner of Patents and Trademarks by 35 U.S.C. 6, 23, 41, and 135, the Patent and Trademark Office proposes to amend Title 37 of the Code of Federal Regulations as set forth below:

PART 1—RULES OF PRACTICE IN PATENT CASES

It is proposed to amend 37 CFR, Chapter I, as follows with deletions indicated by brackets and additions by arrows:

1. Section 1.1 is proposed to be amended by adding a new paragraph (d) to read as follows:

§ 1.1 All communications to be addressed to Commissioner of Patents and Trademarks.

* * * * *

(d) Communications relating to interferences and applications or patents involved in an interference should be additionally marked "BOX INTERFERENCE."

2. Section 1.4 is proposed to be amended by revising paragraph (a)(2) and reprinting the introductory text of paragraph (a) to read as follows:

§ 1.4 Nature of correspondence.

(a) Correspondence with the Patent and Trademark Office comprises:

* * * * *

(2) Correspondence in and relating to a particular application or other proceeding in the Office. See particularly the rules relating to the filing, processing, or other proceedings of national applications in Subpart B, §§ 1.31 to 1.352; of international applications in subpart C, §§ 1.401 to 1.482; of reexamination of patents in Subpart D, §§ 1.501 to 1.570; ►of interferences in Subpart E, §§ 1.601 to 1.688;◄ and of trademark applications §§ 2.11 to 2.189.

* * * * *

3. Section 1.5 is proposed to be amended by adding a new paragraph (e) to read as follows:

§ 1.5 Identification of application, patent or registration.

* * * * *

(e) When a paper concerns an interference, it should state the names of the parties and the number of the interference. The name of the examiner-in-chief assigned to the interference (§ 1.610) and the name of the party filing the paper should appear conspicuously on the first page of the paper.

4. Section 1.8 is proposed to be amended by adding to paragraph (a) a new subparagraph (xii) to read as follows:

§ 1.8 Certificate of mailing.

(a) * * *

(xii) The filing of a paper in an interference which an examiner-in-chief orders to be filed by hand or "Express Mail."

* * * * *

5. Section 1.9 is proposed to be amended by adding a new paragraph (g) to read as follows:

§ 1.9 Definitions.

* * * * *

(g) For definitions in interferences see § 1.601.

6. Section 1.11 is proposed to be amended by revising paragraph (a) as follows:

§ 1.11 Files open to the public.

(a) After a patent has been issued, the specification, drawings and all papers relating to the case in the file of the patent are open to inspection by the general public, and copies may be obtained upon paying the fee therefor. After [an award of priority by the Board of Patent Interferences as to all parties, or after termination if no such award is made] ►entry of a judgment in an interference by the Board of Appeals and Interferences as to all parties or after termination of an interference without an award of judgment◄ the file of any interference which involved a patent, or an application on which a patent has issued, is similarly open to public inspection and procurement of copies. See § 2.27 for trademark files.

* * * * *

§ 1.14 [Amended]

7. Section 1.14 is proposed to be amended by removing from paragraph (d) the words "Board of Appeals or the Board of Patent Interferences" and inserting, in their place, the words "Board of Appeals and Interferences."

8. Section 1.17 is proposed to be amended by revising paragraphs (e) and (g)–(i) as follows:

§ 1.17 Patent application processing fees.

* * * * *

(e) For filing a notice of appeal from the examiner to the Board of Appeals ►and Interferences◄:

By a small entity (§ 1.9(f)).....$57.50
By other than a small entity.....115.00

* * * * *

(g) For filing a request for an oral hearing before the Board of Appeals ►and Interferences in appeal under 35 U.S.C. § 134◄:

By a small entity (§ 1.9(f)).....$50.00
By other than a small entity.....100.00

(h) For filing a petition to the Commissioner under a section of this part listed below which refers to this paragraph—$120.00.

—§ 1.47—for filing by other than all the inventors or a person not the inventor
—§ 1.48—for correction of inventorship
—§ 1.182—for decision on questions not specifically provided for
—§ 1.183—to suspend the rules
►—§ 1.644(e)—for petition or request for reconsideration of a decision on petition in an interference◄
—[1.268] ►§ 1.666(c)◄—for late filing of interference settlement agreement.

(i) For filing a petition to the Commissioner under a section of this part listed below which refers to this paragraph—$60.00.

—§ 1.12—for access to an assignment record
—§ 1.14—for access to an application
—§ 1.55—for entry of late priority papers
—§ 1.102—to make application special
—§ 1.103—to suspend action in application
—§ 1.177—for divisional reissues to issue separately
[—§ 1.268—for access to interference settlement agreement]
—§ 1.312—for amendment after payment of issue fee
—§ 1.313—to withdraw an application from issue
—§ 1.314—to defer issuance of a patent
—§ 1.334—for patent to issue to assignee, assignment recorded late
►—§ 1.666(b)—for access to interference settlement agreement◄

* * * * *

9. Section 1.36 is proposed to be revised as follows:

§ 1.36 Revocation of power of attorney or authorization; withdrawal of attorney or agent.

A power of attorney or authorization of agent may be revoked at any stage in the proceedings of a case, and an attorney or agent may withdraw, upon application to and approval by the Commissioner. An attorney or agent, except an associate attorney or agent whose address is the same as that of the principal attorney or agent, will be notified of the revocation of [his or her] ►the◄ power of attorney or authorization, and the applicant or patent owner will be notified of the withdrawal of the attorney or agent. An assignment will not of itself operate as a revocation of a power or authorization previously given, but the assignee of the entire interest may revoke previous powers and be represented by an attorney or agent of [his or her] ►the assignee's◄ own selection. ►See § 1.613(d) for withdrawal of an attorney or agent of record in an interference.◄

10. Section 1.48 is proposed to be revised as follows:

§ 1.48 Correction of inventorship.

If the correct inventor or inventors are not named in an application for patent through error without any deceptive intention on the part of the actual inventor or inventors, the application may be amended to name only the actual inventor or inventors. Such amendment must be diligently made and must be accompanied by (a) a petition including a statement of facts verified by the original named inventor or inventors establishing when the error without deceptive intention was discovered and how it occurred; (b) an oath or declaration by each actual inventor or inventors as required by § 1.63; (c) the fee set forth in § 1.17(h); and (d) the written consent of any assignee.

▷When the application is involved in an interference, the petition shall comply with the requirements of this section and shall be accompanied by a motion under § 1.634.◁

§ 1.55 [Amended]

11. Section 1.55 is proposed to be amended by removing from paragraph (a) "1.224" and inserting, in its place, "1.630".

12. Section 1.59 is proposed to be revised as follows:

§ 1.59 Papers of application with filing date not to be returned.

Papers in an application which has received a filing date pursuant to § 1.53 will not be returned for any purpose whatever. If applicants have not preserved copies of the papers, the Office will furnish copies at the usual cost of any application in which either the required basic filing fee (§ 1.16) or the processing and retention fee (§ 1.21(1)) has been paid. ▷See § 1.618 for return of unauthorized and improper papers in interferences.◁

13. Section 1.68 is proposed to be revised as follows:

§ 1.68 Declaration in lieu of oath.

Any document to be filed in the Patent and Trademark Office and which is required by any law, rule, or other regulation to be under oath may be subscribed to by a written declaration [with the exception of testimony relating to interferences and other contested cases covered by §§ 1.271 to 1.286]. Such declaration may be used in lieu of the oath otherwise required, if, and only if, the declarant is on the same document, warned that willful false statements and the like are punishable by fine or imprisonment, or both (18 U.S.C. 1001) and may jeopardize the validity of the application or any patent issuing thereon. The declarant must set forth in the body of the declaration that all statements made of [his] ►the declarant's◄ own knowledge are true and that all statements made on information and belief are believed to be true.

14. Section 1.103 is proposed to be amended by revising paragraph (d) as follows:

§ 1.103 Suspension of action.

* * * * *

(d) Action on applications in which the Office has accepted a request filed under◄ 1.139 will be suspended for the entire pendency of these applications except for purposes relating to [proceedings under § 1.201(b)] ▷interference proceedings under §§ 1.601 through 1.688◁.

15. Section 1.122 is proposed to be amended by revising paragraph (b) as follows:

§ 1.122 Entry and consideration of amendments.

* * * * *

(b) Ordinarily all amendments presented in a paper filed while the application is open to amendment are entered and considered, subsequent cancellation or correction being required of improper amendments. Untimely amendatory papers may be refused entry and consideration in whole or in part. ▷For amendments presented during an interference see § 1.664.◁

§ 1.136 [Amended].

16. Section 1.136 is proposed to be amended by removing "§ 1.207" and inserting, in its place, "§ 1.610(a)" and by removing "§ 1.245" and inserting, in its place, "§ 1.615".

17. Section 1.138 is proposed to be revised as follows:

§ 1.138 Express abandonment.

An application may be expressly abandoned by filing in the Patent and Trademark Office a written declaration of abandonment signed by the applicant [himself] and the assignee of record, if any, and identifying the application. [Except as provided in § 1.262 and an] ►An◄ application may also be expressly abandoned by filing a written declaration of abandonment signed by the attorney or agent of record. Express abandonment of the application may not be recognized by the Office unless it is actually received by appropriate officials in time to act thereon before the date of issue.

18. Section 1.181 is proposed to be amended by revising paragraph (a) as follows:

§ 1.181 Petition to the Commissioner.

(a) Petition may be taken to the Commissioner: (1) From any action or requirement of any examiner in the *ex parte* prosecution of an application which is not subject to appeal to the Board of Appeals ►and Interferences◄ or to the court; (2) in cases in which a statute or the rules specify that the matter is to be determined directly by or reviewed by the Commissioner; and (3) to invoke the supervisory authority of the Commissioner in appropriate circumstances. ►For petitions in interferences, see § 1.644.◄

* * * * *

19. It is proposed to revise the center heading preceding § 1.191 to read "Appeal to the Board of Appeals and Interferences".

20. Section 1.191 is proposed to be amended by revising paragraphs (a) and (c) as follows:

§ 1.191 Appeal to Board of Appeals ▷and Interferences◁.

(a) Every applicant for a patent or for reissue of a patent, or every owner of a patent under reexamination, any of the claims of which have been twice rejected or who has been given a final rejection (§ 1.113), may, upon the payment of the fee set forth in § 1.17(e), appeal from the decision of the examiner to the Board of Appeals ►and Interferences◄ within the time allowed for response.

* * * * *

(c) [Except as otherwise provided by § 1.206,] ►An◄ appeal when taken must be taken from the rejection of all claims under rejection which the applicant or patent owner proposes to contest. Questions relating to matters not affecting the merits of the invention may be required to be settled before an appeal can be considered.

* * * * *

§ 1.194 [Amended]

21. Section 1.194 is proposed to be amended by removing the words "Board of Appeals" and inserting, in their place, the words "Board of Appeals and Interferences."

22. Section 1.196 is proposed to be revised as follows:

§ 1.196 Decision by the Board of Appeals ►and Interferences◄.

(a) The Board of Appeals ►and Interferences◄, in its decision, may affirm or reverse the decision of the [primary] examiner in whole or in part on the grounds and on the claims specified by the examiner. The affirmance of the rejection of a claim on any of the grounds specified constitutes a general affirmance of the decision of the [primary] examiner on that claim, except as to any ground specifically reversed.

(b) Should the Board of Appeals ►and Interferences◄ have knowledge of any grounds not involved in the appeal for rejecting any appealed claim, it may include in the decision a statement to that effect with its reasons for so holding, which statement shall constitute a ►new◄ rejection of the claims. ►When the Board of Appeals and Interferences makes a new rejection of an appealed claim, the appellant may exercise any one of the following three options:

(1) ◄The appellant may submit an appropriate amendment of the claims so rejected or a showing of facts, or both, and have the matter reconsidered by the [primary] examiner►in which event the application will be remanded to the examiner and the decision of the Board of Appeals and Interferences shall not be considered final for the purpose of judicial review◄. The statement shall be binding upon the [primary] examiner unless an amendment or showing of facts not previously of record be made which, in the opinion of the [primary] examiner, [avoids] ►overcomes◄ the [additional] ►new◄ ground for rejection stated in the decision. ►When appropriate, upon conclusion of proceedings on remand before the examiner, the Board of Appeals and Interferences may enter an order otherwise making its decision final.◄

►(2)◄ The appellant may [waive such reconsideration before the primary examiner and] have the case reconsidered ►under § 1.197(b)◄ by the Board of Appeals ►and Interferences◄ upon the same record [before them]. Where request for such reconsideration is made the Board of Appeals ►and Interferences◄ shall, if necessary, render a new decision which shall include all grounds upon which a patent is refused.

►(3)◄ The appellant may [waive reconsideration by the Board of Appeals and] treat the decision, including the [added] ►new◄ grounds for rejection given by the Board of Appeals ►and Interferences◄, as a final decision in the case.

(c) Should the decision of the Board of Appeals ►and Interferences◄ include an explicit statement that a claim may be allowed in amended form, appellant shall have the right to amend in conformity with such statement which shall be binding on the [primary] examiner in the absence of new references or grounds of rejection.

(d) Although the Board of Appeals ►and Interferences◄ normally will confine its decision to a review of rejections made by the [primary] examiner, should it have knowledge of any grounds for rejecting any allowed claim [that it believes should be considered] it may include in its decision a [statement to that effect] ►recommended rejection of the claim◄ and remand the case to the [primary] examiner [for consideration thereof]. In such event, the Board shall set a period, not less than [one month] ►thirty days◄, within which the appellant may submit to the [primary] examiner an appropriate amendment, [or] a showing of facts or reasons, or both, in order to avoid the grounds set forth in the [statement] ►recommendation◄ of the Board of Appeals ►and Interferences◄. [If the primary examiner rejects the previously allowed claim or claims on the basis of such statement, the appellant may appeal to the Board of Appeals from the rejection.] ►The examiner shall be bound by the recommendation and shall enter and maintain the recommended rejection unless an amendment or showing of facts not previously of record is filed which, in the opinion of the examiner, overcomes the recommended rejection. Should the examiner make the recommended rejection final the applicant may again appeal to the Board of Appeals and Interferences.◄ Whenever a decision of the Board of Appeals ►and Interferences◄ includes a remand, that decision shall not be considered a final decision [in the case, but the Board of Appeals shall, upon conclusion of the proceedings before the examiner on remand, either adopt its decision as final or render a new decision on all of the claims on appeal, as it may deem appropriate]. ►When appropriate, upon conclusion of proceedings on remand before the examiner, the Board of Appeals and Interferences may enter an order otherwise making its decision final.◄

23. Section 1.197 is proposed to be amended by revising paragraphs (a) and (b) as follows:

§ 1.197 Action following decision.

(a) After decision by the Board of Appeals ►and Interferences◄, the case shall be returned to the [primary] examiner, subject to the appellant's right of appeal or other review, for such further action by the appellant or by the [primary] examiner, as the condition of the case may require, to carry into effect the decision.

(b) A single request for [rehearing or] reconsideration[,] or modification of the decision[,] may be made if filed within thirty days from the date of the original decision unless that decision is so modified as to become, in effect, a new decision, and the Board of Appeals ►and Interferences◄ so states.

* * * * *

§ 1.198 [Amended]

24. Section 1.198 is proposed to be amended by removing the words "Board of Appeals" and inserting, in their place, the words "Board of Appeals and Interference."

25. It is proposed to remove the center heading preceding § 1.201.

§§ 1.201–1.212 [Removed]

26. It is proposed to remove §§ 1.201 through 1.212.

27. It is proposed to remove the center heading preceding § 1.215.

§§ 1.215–1.228 [Removed]

28. It is proposed to remove §§ 1.215 through 1.228.

29. It is proposed to remove the center heading preceding § 1.231.

§§ 1.231–1.238 [Removed]

30. It is proposed to remove §§ 1.231 through 1.238.

31. It is proposed to remove the center heading preceding § 1.242.

§§ 1.242–1.247 [Removed]

32. It is proposed to remove §§ 1.242 through 1.247.

33. It is proposed to add a center heading preceding § 1.248 to read "Miscellaneous Provisions".

34. Section 1.248 is proposed to be amended by adding paragraph (c) and revising the section heading as follows:

§ 1.248 Service of Papers; manner of service; proof of service ►in cases other than interferences◄

* * * * *

►(c) See § 1.646 for service of papers in interferences.◄

35. It is proposed to remove the center heading preceding § 1.251.

§§ 1.251–1.259 [Removed]

36. It is proposed to remove §§ 1.251 through 1.259.

37. It is proposed to remove the center heading preceding § 1.261.

§§ 1.261–1.268 [Removed]

38. It is proposed to remove §§ 1.261 through 1.268.

39. It is proposed to remove the center heading preceding § 1.271.

§§ 1.271–1.288 [Removed]

40. It is proposed to remove §§ 1.271 through 1.288.

41. Section 1.292 is proposed to be amended by revising paragraph (a) and adding paragraph (c) as follows:

§ 1.292 Public use proceedings.

(a) When a petition for the institution of public use proceedings, supported by affidavits or declarations and the fee set forth in § 1.17(j) is filed by one having information of the pendency of an application and is found, on reference to the [primary] examiner, to make a prima facie showing that the invention [involved in an interference or] claimed

in an application believed to be on file had been in public use or on sale ►more than◄ one year before the filing of the application, [or before the date alleged by an interfering party in his or her preliminary statement or the date of invention established by such party,] a hearing may be had before the Commissioner to determine whether a public use proceeding should be instituted. If instituted, [times may be set] ►the Commissioner may designate an appropriate official to conduct the public use proceeding, including the setting of times◄ for taking testimony, which shall be taken as provided by [§§ 1.271 to 1.286] ►§§ 1.671 through 1.685.◄ The petitioner will be heard in the proceedings but after decision therein will not be heard further in the prosecution of the application for patent.

* * * * *

►(c) A petition for institution of public use proceedings shall not be filed by a party to an interference as to an application involved in the interference. Public use and on sale issues in an interference shall be raised by a preliminary motion under § 1.633(a).◄

§ 1.301 [Amended]

42. Section 1.301 is proposed to be amended by removing the words "Board of Appeals" and the words "Board of Patent Interferences" and inserting, in each of their places, the words "Board of Appeals and Interferences."

§ 1.302 [Amended]

43. Section 1.302 is proposed to be amended by removing from paragraph (b) "1.248" and inserting, in its place, "1.646" and by removing "and other contested cases".

§ 1.303 [Amended]

44. Section 1.303 is proposed to be amended by removing from paragraph (a) the words "Board of Appeals" and the words "Board of Patent Interferences" and inserting, in each of their places, the words "Board of Appeals and Interferences" and by removing from paragraph (c) "1.248" and inserting, in its place, "1.646".

45. Section 1.304 is proposed to be amended by revising paragraph (a) as follows:

§ 1.304 Time for appeal or civil action.

(a) The time for filing the notice and reasons of appeal to the U.S. Court of Appeals for the Federal Circuit (§ 1.302) or for commencing a civil action (§ 1.303) is sixty days from the date of the decision of the [Board of Appeals or the Board of Patent Interferences] ►Board of Appeals and Interferences◄. If a request for [rehearing or] reconsideration[,] or modification of the decision[,] is filed within the time provided [pursuant to] ►under◄ § 1.197(b) or [§ 1.256(b)] ►§ 1.658(b)◄, the time for filing an appeal or commencing a civil action shall expire at the end of the sixty-day period or thirty days after action on the request, whichever is later. ►Except for an appeal from or commencing a civil action after a decision of the Board of Appeals and Interferences in a reexamination proceeding or an interference proceeding, the◄ [The] time periods set forth herein are subject to the provisions of § 1.136. ►See § 1.550(c) for extensions of time to appeal or commence a civil action in a reexamination proceeding. See § 1.645(a) for extensions of time to appeal or commence a civil action in an interference. The Commissioner, upon a showing of excusable neglect, may extend the time for seeking judicial review when a request is untimely filed after expiration of the time prescribed by this section.◄

* * * * *

46. Section 1.322 is proposed to be amended by revising paragraph (a) as follows:

§ 1.322 Certificate of correction of Office mistake.

(a) A certificate of correction under 35 U.S.C. 254 may be issued at the request of the patentee or [his] ►the patentee's◄ assignee. Such certificate will not be issued at the request or suggestion of anyone not owning an interest in the patent, nor on motion of the Office, without first notifying the patentee (including any assignee of record) and affording [him] ►the patentee◄ an opportunity to be heard. ►When the request relates to a patent involved in an interference, the request shall comply with the requirements of this section and shall be accompanied by a motion under § 1.635.◄

* * * * *

47. Section 1.323 is proposed to be revised as follows:

§ 1.323 Certificate of correction of applicant's mistake.

Whenever a mistake of a clerical or typographical nature or of minor character which was not the fault of the Office, appears in a patent and a showing is made that such mistake occurred in good faith, the Commissioner may, upon payment of the [required] fee ►set forth in § 1.20(a)◄, issue a certificate, if the correction does not involve such changes in the patent as would constitute new matter or would require reexamination. ►A request for a certificate of correction of a patent involved in an interference shall comply with the requirements of this section and shall be accompanied by a motion under § 1.635.◄

48. Section 1.324 is proposed to be revised as follows:

§ 1.324 Correction of inventorship in patent.

Whenever a patent is issued and it appears that the correct inventor or inventors were not named through error without deceptive intention on the part of the actual inventor or inventors, the Commissioner may, on petition of all the parties and the assignees and satisfactory proof of the facts and payment of the fee set forth in § 1.20(b), or on order of a court before which such matter is called in question, issue a certificate naming only the actual inventor or inventors. ►A request to correct inventorship of a patent involved in an interference shall comply with the requirements of this section and shall be accompanied by a motion under § 1.634.◄

§ 1.550 [Amended]

49. Section 1.550 is proposed to be amended by removing from paragraph (a) "Board of Appeals" and inserting, in its place, "Board of Appeals and Interferences."

50. Section 1.565 is proposed to be amended by revising paragraph (b) and adding paragraph (e) as follows:

§ 1.565 Concurrent office proceedings.

* * * * *

(b) If a patent in the process of reexamination is or becomes involved in [interference proceedings or] litigation[,] or a reissue application for the patent is filed or pending, the Commissioner shall determine whether or not to stay the reexamination[,] or reissue [or interference] proceeding.

* * * * *

►(e) If a patent in the process of reexamination is or becomes involved in an interference, the Commissioner may stay reexamination or the interference. The Commissioner will not consider a request to stay an interference unless a motion (§ 1.635) to stay the interference has been presented to, and denied by, an examiner-in-chief and the request is filed within ten (10) days of a decision by an examiner-in-chief denying the motion for a stay or such other time as the examiner-in-chief may set.◄

51. It is proposed to add a new subpart entitled "Subpart E—Interferences" which reads as follows:

Subpart E—Interferences

Sec.

1.601 Scope of rules, definitions.
1.602 Interest in applications and patents involved in an interference.
1.603 Interference between applications; subject matter of the interference.
1.604 Request for interference between applications by an applicant.
1.605 Suggestion of claim to applicant by examiner.
1.606 Interference between an application and a patent; subject matter of the interference.
1.607 Request by applicant for interference with patent.
1.608 Interference between an application and a patent; prima facie showing by applicant.
1.609 Preparation of interference papers by examiner.
1.610 Assignment of interference to examiner-in-chief, time period for completing interference.
1.611 Declaration of interference.
1.612 Access to applications.
1.613 Lead attorney, same attorney representing different parties in an interference, withdrawal of attorney or agent.
1.614 Jurisdiction over interference.
1.615 Suspension of ex parte prosecution.
1.616 Sanctions for failure to comply with rules or order.
1.617 Summary judgment against applicant.
1.618 Return of unauthorized papers.
1.621 Preliminary statement, time for filing, notice of filing.
1.622 Preliminary statement, who made invention, where invention made.
1.623 Preliminary statement; invention made in United States.
1.624 Preliminary statement; invention made abroad.
1.625 Preliminary statement; derivation by an opponent.
1.626 Preliminary statement; earlier application.
1.627 Preliminary statement, sealing before filing, opening of statement.
1.628 Preliminary statement, correction of error.
1.629 Effect of preliminary statement.
1.630 Reliance on earlier application.
1.631 Access to preliminary statement, service of preliminary statement.
1.633 Preliminary motions.
1.634 Motion to correct inventorship.
1.635 Miscellaneous motions.
1.636 Motions, time for filing.
1.637 Content of motions.
1.638 Opposition and reply, time for filing opposition and reply.
1.639 Evidence in support of motion, opposition, or reply.
1.640 Motions, hearing and decision, redeclaration of interference, order to show cause.
1.641 Unpatentability discovered by examiner-in-chief.
1.642 Addition of new application to interference.
1.643 Prosecution of interference by assignee.
1.644 Petitions in interference.
1.645 Extension of time, late papers, stay of proceedings.
1.646 Service of papers, proof of service.
1.647 Translation of documents in foreign language.
1.651 Setting times for discovery and taking testimony, parties entitled to take testimony.
1.652 Judgment for failure to take testimony or file record.
1.653 Record and exhibits.
1.654 Final hearing.
1.655 Matters considered in rendering a final decision.
1.656 Briefs for final hearing.
1.657 Burden of proof as to date of invention.
1.658 Final Decision.
1.659 Recommendation.
1.660 Notice of reexamination, reissue, protest, or litigation.
1.661 Termination of interference after judgment.
1.662 Request for entry of adverse judgment; reissue filed by patentee.
1.663 Status of claim of defeated applicant after interference.
1.664 Action after interference.
1.665 Second interference.
1.666 Filing of interference settlement agreements.
1.671 Evidence must comply with rules.
1.672 Manner of taking testimony.
1.673 Notice of examination of witness.
1.674 Persons before whom depositions may be taken.
1.675 Examination of witness, reading and signing transcript of deposition.
1.676 Certification and filing by officer, marking exhibits.
1.677 Form of a transcript of deposition.
1.678 Transcript of deposition must be filed.
1.679 Inspection of transcript.
1.682 Official records and printed publications.
1.683 Testimony in another interference, proceeding, or action.
1.684 Testimony in a foreign country.
1.685 Errors and irregularities in depositions.
1.687 Additional Discovery.
1.688 Use of discovery.

Authority: 35 U.S.C. 6, 23, 41, and 135.

Subpart E—Interferences

§ 1.601 Scope of rules, definitions.

This subpart governs the procedure in patent interferences in the Patent and Tradmark Office. This subpart shall be construed to secure the just, speedy, and inexpensive determination of every interference. For the meaning of terms in the Federal Rules of Evidence as applied to interferences, see § 1.671(c). Unless otherwise clear from the context, the following definitions apply to this subpart:

(a) "Additional discovery" is discovery to which a party may be entitled under § 1.687 in additional to discovery to which the party is entitled as a matter of right under § 1.673(a) and (b).

(b) "Affidavit" means affidavit, declaration under § 1.68, or statutory declaration under 28 U.S.C. 1746. A transcript of an *ex parte* deposition may be used as an affidavit.

(c) "Board" means the Board of Appeals and Interferences.

(d) "Case-in-chief" means that portion of a party's case where the party has the burden of going forward with evidence.

(e) "Case-in-rebuttal" means that portion of a party's case where the party presents evidence in rebuttal to the case-in-chief of another party.

(f) A "count" defines the interfering subject matter between (1) two or more applications or (2) one or more applications and one or more patents. When there is more than one count, each count shall define a separate patentable invention. Any claim of an application or patent which corresponds to a count is a claim involved in the interference within the meaning of 35 U.S.C. 135(a). A claim of a patent or application which is identical to a count is said to "correspond exactly" to the count. A claim of a patent or application which is not identical to a count, but which defines the same patentable invention as the count, is said to "correspond substantially" to the count. When a count is broader in scope than all claims which correspond to the count, the count is a "phantom count." A phanton count is not patentable to any party.

(g) The "effective filing date" of an application or a patent is the filling date of an earlier application accorded to the application or patent under 35 U.S.C. 119, 120, or 365.

(h) In the case of an application, "filing date" means the filing date assigned to the application. In the case of a patent, "filing date" means the filing date assigned to the application which issued as the patent.

(i) An "interference" is a proceeding instituted in the Patent and Trademark Office before the Board of Appeals and Interferences to determine any question of patentability and priority of invention between two or more parties claiming the same patentable invention. An interference may be declared between two or more pending applications naming different inventors when, in the opinion of an examiner, the applications contain claims for the same patentable invention. An interference may be declared between one or more pending applications and one or more unexpired patents naming different inventors when, in the opinion of an examiner, any application and any unexpired patents contain claims for the same patentable invention.

(j) An "interference-in-fact" exists when all the claims of a party which correspond to a count and all the claims of an opponent which correspond to the count define the same patentable invention.

(k) A "lead" attorney or agent is a registered attorney or agent of record who is primarily responsible for prosecuting an interference on behalf of a party and is the attorney or agent whom an examiner-in-chief may contact to set times and take other action in the interference.

(l) A "party" is (1) an applicant or patentee involved in the interference or (2) a legal representative or an assignee of an applicant or patentee involved in an interference. Where acts of a party are normally performed by an attorney or agent, "party" may be construed to mean the attorney or agent. An "inventor" is the individual named as inventor in an application involved in an interference or the individual named as inventor in a patent involved in an interference.

(m) A "senior party" is the party with earliest effective filing date as to all counts or, if there is no party with the earliest filing date as to all counts, the party with the earliest filing date. A "junior party" is any other party.

(n) Invention "A" is the "same patentable invention" as an invention "B" when invention "A" is the same as (35 U.S.C. 102) or is obvious (35 U.S.C. 103) in view of invention "B" assuming invention "B" is prior art with respect to invention "A". Invention "A" is a "separate patentable invention" with respect to invention "B" when invention "A" is new (35 U.S.C. 102) and non-obvious (35 U.S.C. 103) in view of invention "B" assuming invention "B" is prior art with respect to invention "A".

(o) "Sworn" means sworn or affirmed.

(p) "United States" means the United States of America, its territories and possesssions.

§ 1.602 Interest in applications and patents involved in an interference.

(a) Unless good cause is shown, an interference shall not be declared or continued between (1) applications owned by a single party or (2) applications and an unexpired patent owned by a single party.

(b) The parties, within 20 days after an interference is declared, shall notify the Board of any and all right, title, and interest in any application or patent involved or relied upon in the interference unless the right, title, and interest is set forth in the notice declaring the interference.

(c) If a change of any right, title, and interest in any application or patent involved or relied upon in the interference occurs after notice is given declaring the interference and before the time expires for seeking judicial review of a final decision of the Board, the parties shall notify the Board of the change within 20 days of the change.

§ 1.603 Interference between applications; subject matter of the interference.

Before an interference is declared between two or more applications, the examiner must be of the opinion that there is interfering subject matter claimed in the applications which is patentable to each applicant subject to a judgment in the interference. The interfering subject matter shall be defined by one or more counts. Each count shall define a separate patentable invention. Each application must contain, or be amended to contain, at least one claim which corresponds to each count. All claims in the applications which define the same patentable invention as a count shall be designated to correspond to the count.

§ 1.604 Request for interference between applications by an applicant.

(a) An applicant may seek to have an interference declared with an application of another by (1) suggesting a proposed count and presenting a claim corresponding to the proposed count, (2) identifying the other application and, if known, a claim in the other application which corresponds to the proposed count, and (3) explaining why an interference should be declared.

(b) When an applicant presents a claim known to the applicant to define the same patentable invention claimed in a pending application of another, the applicant shall identify that pending application, unless the claim is presented in response to a suggestion by the examiner. The examiner shall notify the Commissioner of any instance where it appears an applicant may have failed to comply with the provisions of this paragraph.

§ 1.605 Suggestion of claim to applicant by examiner.

(a) The examiner may suggest that an applicant present a claim in an application for the purpose of an interference with another application or a patent. The applicant to whom the claim is suggested shall amend the application by presenting the suggested claim within a time specified by the examiner, not less than 30 days. Failure or refusal of an applicant to timely present a claim which is the same or substantially the same as the suggested claim shall be taken without further action as a disclaimer by the applicant of the invention defined by the suggested claim.

(b) The suggestion of a claim by the examiner for the purpose of an interference will not stay the period for response to any outstanding Office action. When a suggested claim is timely presented, *ex parte* proceedings in the application will be stayed pending a determination of whether an interference will be declared.

§ 1.606 Interference between an application and a patent; subject matter of the interference.

Before an interference is declared between an application and an unexpired patent, an examiner must determine that there is interfering subject matter claimed in the application and the patent which is patentable to the applicant subject to a judgment in the interference. The interfering subject matter will be defined by one or more counts. Each count shall define a separate patentable invention. Any application must contain, or be amended to contain, at least one claim which corresponds to each count. All claims in the application and patent which define the same patentable invention as a count shall be designated to correspond to the count. At the time an interference is initially declared (§ 1.611), a count shall not be narrower in scope than any patent claim which corresponds to the count and any single patent claim will be presumed, subject to a motion under § 1.633(c), to define one patentable invention.

§ 1.607 Request by applicant for interference with patent.

(a) An applicant may seek to have an interference declared between an application and an unexpired patent by (1) presenting a proposed count and a claim corresponding to the proposed count and, if any claim of the patent or application does not correspond exactly to the proposed count, explaining why an interference should be declared, (2) identifying the patent and indicating which claim in the application and which claim or claims of the patent correspond to the proposed count, (3) applying the terms of the application claim corresponding to the count to the disclosure of the application.

(b) When an applicant seeks an interference with a patent, examination of the application, including any appeal to the Board, shall be conducted with special dispatch within the Patent and Trademark Office. The examiner shall determine whether there is interfering subject matter claimed in the application and the patent which is

patentable to the applicant subject to a judgment in an interference. If the examiner determines that there is any interfering subject matter, an interference will be declared. If the examiner determines that there is no interfering subject matter, the examiner shall state the reasons why an interference is not being declared and otherwise act on the application.

(c) When an applicant presents a claim which corresponds exactly or substantially to a claim of a patent, the applicant must identify the patent and the number of the patent claim, unless the claim is presented in response to a suggestion by the examiner. The examiner shall notify the Commissioner of any instance where an applicant fails to identify the patent.

(d) A notice that an applicant is seeking to provoke an interference with a patent will be placed in the file of the patent and a copy of the notice will be sent to the patentee. The identity of the applicant will not be disclosed unless an interference is declared. If a final decision is made not to declare an interference, a notice to that effect will be placed in the patent file and will be sent to the patentee.

§ 1.608 Interference between an application and a patent; prima facie showing by applicant.

(a) When the earlier of the filing date or effective filing date of an application is three months or less after the earlier of the filing date or effective filing date of a patent, the applicant, before an interference will be declared, shall file an affidavit alleging that there is a basis upon which applicant is entitled to a judgment relative to the patentee.

(b) When the earlier of the filing date or the effective filing date of an application is more than three months after the earlier of the filing date or the effective filing date under 35 U.S.C. 120 of a patent, the applicant, before an interference will be declared, shall file (1) evidence which may consist of patents or printed publications, other documents, and one or more affidavits which demonstrate that applicant is *prima facie* entitled to a judgment relative to the patentee and (2) an explanation stating with particularity the basis upon which the applicant is *prima facie* entitled to the judgment. The significance of any printed publication or other document which is self-authenticating within the meaning of Rule 902 of the Federal Rules of Evidence or § 1.671(d) and any patent shall be discussed in an affidavit or the explanation. Any printed publication or other document which is not self-authenticating shall be authenticated and discussed with particularity in an affidavit. Upon a showing of sufficient cause, an affidavit may be based on information and belief. If an examiner finds an application to be in condition for declaration of an interference, the examiner will consider the evidence and explanation only to the extent of determining whether a basis upon which the applicant would be entitled to a judgment relative to the patentee is alleged and, if a basis is alleged, an interference may be declared.

§ 1.609 Preparation of interference papers by examiner.

When the examiner determines that an interference should be declared, the examiner shall forward to the Board:

(a) All relevant application and patent files and

(b) A statement identifying:

(1) The count or counts;

(2) The claims of any application or patent which correspond to the count, stating whether the claims correspond exactly or substantially to the count;

(3) The claims in any application which are deemed by the examiner to be patentable over any count; and

(4) Whether an applicant or patentee is entitled to the benefit of the filing date of an earlier application and, if so, sufficient information to identify the earlier application.

§ 1.610 Assignment of interference to examiner-in-chief, time period for completing interference.

(a) Each interference will be declared by an examiner-in-chief who may enter all interlocutory orders in the interference, except that only a panel consisting of at least three members of the Board shall (1) hear oral argument at final hearing, (2) enter a decision under §§ 1.617, 1.640 (c) or (e), 1.652, 1.656(i) or 1.658 or (3) enter any other order which terminates the interference.

(b) As necessary, another examiner-in-chief may act in place of the one who declared the interference. Unless otherwise provided in this section, at the discretion of the examiner-in-chief assigned to the interference, a panel consisting of two or more members of the Board may enter interlocutory orders.

(c) Unless otherwise provided in this subpart, times for taking action by a party in the interference will be set on a case-by-case basis by the examiner-in-chief assigned to the interference. Times for taking action shall be set and the examiner-in-chief shall exercise control over the interference such that the pendency of the interference before the Board does not normally exceed two years.

(d) An examiner-in-chief may hold a conference with the parties to consider: (1) Simplification of any issues, (2) the necessity or desirability of amendments to counts, (3) the possibility of obtaining admissions of fact and genuineness of documents which will avoid unnecessary proof, (4) any limitations on the number of expert witnesses, (5) the time and place for conducting a deposition (§ 1.673(g)), and (6) any other matter as may aid in the disposition of the interference. After a conference, the examiner-in-chief may enter any order which may be appropriate.

(e) The examiner-in-chief may determine a proper course of conduct in an interference for any situation not specifically covered by this part.

§ 1.611 Declaration of interference.

(a) Notice of declaration of an interference will be sent to each party.

(b) When a notice of declaration is returned to the Patent and Trademark Office undelivered, or in any other circumstance where appropriate, an examiner-in-chief may (1) send a copy of the notice to a patentee named in a patent involved in an interference or the patentee's assignee of record in the Patent and Trademark Office or (2) order publication of an appropriate notice in the *Official Gazette*.

(c) The notice of declaration shall specify:

(1) The name and residence of each party involved in the interference;

(2) The name and address of record of any attorney or agent of record in any application or patent involved in the interference;

(3) The name of any assignee of record in the Patent and Trademark Office;

(4) The identity of any application or patent involved in the interference;

(5) Where a party is accorded the benefit of the filing date of an earlier application, the identity of the earlier application;

(6) The count or counts;

(7) The claim or claims of any application or any patent which correspond to each count; and

(8) The order of the parties.

(d) The notice of declaration may also specify the time for: (1) Filing a preliminary statement as provided in § 1.621(a); (2) serving notice that a preliminary statement has been filed as provided in § 1.621(b); and (3) filing preliminary motions authorized by § 1.621(b); and (3) filing preliminary motions authorized by § 1.633, oppositions to the motions, and replies to the oppositions.

(e) Notice may be given in the *Official Gazette* that an interference has been declared involving a patent.

§ 1.612 Access to applications.

(a) After an interference is declared, each party shall have access to and may obtain copies of the files of any application set out in the notice declaring the interference, except for affidavits filed under § 1.131 and any evidence and explanation under § 1.608(b) filed separate from an amendment.

(b) After preliminary motions under § 1.633 are decided (§ 1.640(b)), each party shall have access to and may obtain copies of any affidavit filed under § 1.131 and any evidence and explanation filed under § 1.608(b) in any application set out in the notice declaring the interference.

(c) Any evidence and explanation filed under § 1.608(b) in the file of any application identified in the notice declaring the interference shall be served when required by § 1.617(b).

(d) The parties at any time may agree to exchange copies of papers in the files of any application identified in the notice declaring the interference.

§ 1.613 Lead attorney, same attorney representing different parties in an interference, withdrawal of attorney or agent.

(a) Each party may be required to designate one attorney or agent of record as the lead attorney or agent.

(b) The same attorney or agent may not represent two or more parties in an interference except as may be permitted under § 1.344.

(c) An examiner-in-chief may make necessary inquiry to determine whether an attorney or agent should be disqualified from representing a party in an interference. If an examiner-in-chief is of the opinion that an attorney or agent should be disqualified, the examiner-in-chief shall refer the matter to the Commissioner. The Commissioner will make a final decision as to whether any attorney or agent should be disqualified.

(d) No attorney or agent of record in an interference may withdraw as attorney or agent of record except with the approval of an examiner-in-chief and after reasonable notice to the party on whose behalf the attorney or agent has appeared. A request to withdraw as attorney or agent of record in an interference shall be made by motion (§ 1.635).

§ 1.614 Jurisdiction over interference.

(a) The Board shall assume jurisdiction over an interference when the interference is declared under § 1.611.

(b) When the interference is declared the interference is a contested case within the meaning of 35 U.S.C. 24.

(c) The examiner shall have jurisdiction over any pending application until the interference is declared. An examiner-in-chief, where appropriate, may for a limited purpose restore jurisdiction to the examiner over any application involved in the interference.

§ 1.615 Suspension of ex parte prosecution.

(a) When an interference is declared, *ex parte* prosecution of an application involved in the interference is suspended. Amendments and other papers related to the application which are received during pendency of the interference will not be entered or considered without the consent of an examiner-in-chief.

(b) Ex parte prosecution as to specified matters may be continued concurrently with the interference with the consent of the examiner-in-chief.

§ 1.616 Sanctions for failure to comply with rules or order.

An examiner-in-chief or the Board may impose an appropriate sanction against a party who fails to comply with the regulations of this part or any order entered by an examiner-in-chief or the Board. An appropriate sanction may include among others entry of an order:

(a) Holding certain facts to have been established in the interference;

(b) Precluding a party from filing a motion or a preliminary statement;

(c) Precluding a party from presenting or contesting a particular issue;

(d) Precluding a party from requesting, obtaining, or opposing discovery; or

(e) Granting judgment in the interference.

§ 1.617 Summary judgment against applicant.

(a) An examiner-in-chief shall review any evidence filed by an applicant under § 1.608(b) to determine if the applicant is *prima facie* entitled to a judgment relative to the patentee. If the examiner-in-chief determines that the evidence shows the applicant is *prima facie* entitled to a judgment relative to the patentee, the interference shall proceed before the examiner-in-chief. If in the opinion of the examiner-in-chief the evidence fails to show that the applicant is *prima facie* entitled to a judgment relative to the patentee, the examiner-in-chief shall, concurrently with the notice declaring the interference, enter an order stating the reasons for the opinion and directing the applicant, within a time set in the order, to show cause why summary judgment should not be entered against the applicant.

(b) The applicant may file a response to the order and state any reasons why summary judgment should not be entered. A response may include a request by the applicant for a hearing before the Board. Additional evidence shall not be presented by the applicant or considered by the Board unless the applicant shows good cause why any additional evidence was not initially presented with the evidence filed under § 1.608(b). At the time an applicant files a response, the applicant shall serve a copy of any evidence filed under § 1.608(b) and this paragraph.

(c) If a response is not timely filed by the applicant, the Board shall enter a final decision granting summary judgment against the applicant.

(d) If a response is timely filed by the applicant, all opponents may file a statement within a time set by the examiner-in-chief. The statement shall set forth any views as to why summary judgment should be granted against the applicant. Evidence shall not be filed by any opponent. An opponent may not request an oral hearing.

(e) Unless authorized by the examiner-in-chief, no reply shall be filed by the applicant to the statement by the patentee.

(f) When more than two parties are involved in an interference, all parties may participate in summary judgment proceedings under this section.

(g) If a response by the applicant is timely filed and the time for all opponents to file a statement has expired, the Board shall decide whether the evidence submitted under § 1.608(b) and any additional evidence properly submitted under paragraph (b) of this section shows that the applicant is *prima facie* entitled to a judgment relative to the patentee. If the Board decides that the applicant is not *prima facie* entitled to a judgment relative to the patentee, the Board shall enter a final decision granting summary judgment against the applicant. If the Board decides otherwise, an interlocutory order shall be entered authorizing the interference to proceed before the examiner-in-chief.

(h) Only an applicant who filed evidence under § 1.608(b) may request a hearing. If that applicant requests a hearing, the Board may hold a hearing prior to entry of a decision under paragraph (g) of this section. The examiner-in-chief shall set a date and time for the hearing. Unless otherwise ordered by the examiner-in-chief or the

Board, the applicant and patentee will each be entitled to no more than 30 minutes of oral argument at the hearing.

§ 1.618 Return of unauthorized papers.

(a) The Patent and Trademark Office shall return to a party any paper presented by the party when the filing of the paper is not authorized by, or is not in compliance with the requirements of, this subpart. Any paper returned will not thereafter be considered by the Patent and Trademark Office in the interference. A party may be permitted to file a corrected paper under such conditions as may be deemed appropriate by an examiner-in-chief.

(b) When presenting a paper in an interference, a party shall not submit with the paper a copy of a paper previously filed in the interference.

§ 1.621 Preliminary statement, time for filing, notice of filing.

(a) Within the time set for filing preliminary motions under § 1.633, each party may file a preliminary statement. The preliminary statement may be signed by any individual having knowledge of the facts recited therein or an attorney or agent of record.

(b) When a party files a preliminary statement the party shall also simultaneously file and serve on all opponents in the interference a notice stating that a preliminary statement has been filed. A copy of the preliminary statement need not be served until ordered by an examiner-in-chief.

§ 1.622 Preliminary statement, who made invention, where invention made.

(a) A party's preliminary statement must identify the name of the inventor who made the invention defined by each count and must state on behalf of the inventor the facts required by paragraph (a) of §§ 1.623, 1.624, and 1.625 as may be appropriate. When the inventor identified in the preliminary statement is not identical to the inventor named in the party's application or patent, the party shall file a motion under § 1.634 to correct inventorship.

(b) The preliminary statement shall state whether the invention was made in the United States or abroad. If made abroad, the preliminary statement shall state whether the party is entitled to the benefit of the second sentence of 35 U.S.C. 104.

§ 1.623 Preliminary statement; invention made in United States.

(a) When the invention was made in the United States or a party is entitled to the benefit of the second sentence of 35 U.S.C. 104, the preliminary statement must state the following facts as to the invention defined by each count:

(1) The date on which the first drawing of the invention was made.

(2) The date on which the first written description of the invention was made.

(3) The date on which the invention was first disclosed by the inventor to another person.

(4) The date on which the invention was first conceived by the inventor.

(5) The date on which the invention was first actually reduced to practice. If the invention was not actually reduced to practice by or on behalf of the inventor prior to the party's filing date, the preliminary statement shall so state.

(6) The date after the inventor's conception of the invention when active exercise of reasonable diligence toward reducing the invention to practice began.

(b) If a party intends to prove derivation, the preliminary statement must also comply with § 1.625.

(c) When a party alleges under paragraph (a)(1) of this section that a drawing was made, a copy of the drawing shall be filed with an identified in the preliminary statement. When a party alleges under paragraph (a)(2) of this section that a written description of the invention was made, a copy of the written description shall be filed with and identified in the preliminary statement. See § 1.628(b) when a drawing or written description cannot be filed with the preliminary statement.

§ 1.624 Preliminary statement; invention made abroad.

(a) When the invention was made abroad and a party intends to rely on introduction of the invention into the United States, the preliminary statement must state the following facts as to the invention defined by each count:

(1) The date on which a drawing of the invention was first introduced into the United States.

(2) The date on which a written description of the invention was first introduced into the United States.

(3) The date on which the invention was first disclosed to another person in the United States.

(4) The date on which the inventor's conception of the invention was first introduced into the United States.

(5) The date on which an actual reduction to practice of the invention was first introduced into the United States.

(6) The date after introduction of the inventor's conception into the United States when active exercise of reasonable diligence toward reducing the invention to practice began.

(b) If a party intends to prove derivation, the preliminary statement must also comply with § 1.625.

(c) When a party alleges under paragraph (a)(1) of this section that a drawing was made a copy of the drawing shall be filed with and identifies in the preliminary statement. When a party alleges under paragraph (a)(2) of this section that a written description of the invention was made, a copy of the written description shall be filed with and identified in the preliminary statement. See § 1.628(b) when a drawing or written description cannot be filed with the preliminary statement.

§ 1.625 Preliminary statement; derivation by an opponent.

(a) When the invention was made in the United States or abroad and a party intends to prove derivation by an opponent from the party, the preliminary statement must state the following as to the invention defined by each count:

(1) The name of the opponent.

(2) The date on which the first drawing of the invention was made.

(3) The date on which the first written description of the invention was made.

(4) The date on which the invention was first disclosed by the inventor to another person.

(5) The date on which the invention was first conceived by the inventor.

(6) The date on which the invention was first communicated to the opponent.

(b) If a party intends to prove priority, the preliminary statement must also comply with § 1.623 or § 1.624.

(c) When a party alleges under paragraph (a)(2) of this section that a drawing was made, a copy of the drawing shall be filed with and identified in the preliminary statement. When a party alleges under paragraph (a)(3) of this section that a written description of the invention was made, a copy of the written description shall be filed with and identified in the preliminary statement. See § 1.628(b) when a drawing or written description cannot be filed with the preliminary statement.

§ 1.626 Preliminary statement; earlier application.

When a party does not intend to present evidence to prove a conception or an actual reduction to practice and the party intends to rely solely on the filing date of an earlier application filed in the United States or abroad to prove a constructive reduction to practice, the preliminary statement may so state and identify the earlier application with particularity.

§ 1.627 Preliminary statement, sealing before filing, opening of statement.

(a) The preliminary statement and copies of any drawing or written description shall be filed in a sealed envelope bearing only the name of the party filing the statement and the style (e.g., Jones v. Smith) and number of the interference. The sealed envelope should contain only the preliminary statement and copies of any drawing or written description. If the preliminary statement is filed through the mail, the sealed envelop should be enclosed in an outer envelope addressed to the Commissioner of Patents and Trademarks in accordance with § 1.1(d).

(b) A preliminary statement may be opened only at the direction of an examiner-in chief.

§ 1.628 Preliminary statement, correction of error.

(a) A material error arising through inadvertence or mistake in connection with (1) a preliminary statement or (2) drawings or a written description submitted therewith or omitted therefrom, may be corrected by a motion (§ 1.635) for leave to file a corrected statement. The motion shall be supported by an affidavit and shall show that the correction is essential to the ends of justice and shall be accompanied by the corrected statement. The motion shall be filed as soon as practical after discovery of the error.

(b) When a party cannot attach a copy of a drawing or a written description to the party's preliminary statement as required by §§ 1.623(c), 1.624(c), or 1.625(c) because the drawing or written description is not in the party's possession, custody, or control, the party may file a motion (§ 1.635) to amend its preliminary statement promptly after it secures possession, custody, or control of a copy of the drawing or written description. A copy of the drawing or written description may be obtained, where appropriate, by a motion (§ 1.635) for additional discovery under § 1.687 or during a testimony period.

§ 1.629 Effect of preliminary statement.

(a) A preliminary statement should be carefully prepared. A party shall be strictly held to any date alleged in the preliminary statement. Doubts as to (1) definiteness or sufficiency of any allegation in a preliminary statement or (2) compliance with formal requirements will be resolved against the party filing the statement by restricting the party to the earlier of its filing date or effective filing date or to the latest date of a period alleged in the preliminary statement as may be appropriate. A party may not correct a preliminary statement except as provided by § 1.628.

(b) Evidence which shows that an act alleged in the preliminary statement occurred prior to the date alleged in the statement shall establish only that the act occurred no earlier than the date alleged in the statement.

(c) If a party does not file a preliminary statement, the party:

(1) Shall be restricted to the earlier of the party's filing date or effective filing date and

(2) Will not be permitted to prove that:

(i) The party made the invention prior to the party's filing date or

(ii) Any opponent derived the invention from the party.

(d) If a party files a preliminary statement which contains an allegation of a date of first drawing or first written description and the party does not file a copy of the first drawing or written description with the preliminary statement as required by § 1.623(c), § 1.624(c), or § 1.625(c), the party will be restricted to the earlier of the party's filing date or effective filing date as to that allegation. The content of any drawing or written description submitted with a preliminary statement will not normally be evaluated or considered by the Board.

(e) A preliminary statement shall not be used as evidence on behalf of the party filing the statement.

§ 1.630 Reliance on earlier application.

A party shall not be entitled to rely on the filing date of an earlier application filed in the United States or abroad unless (a) the earlier application is identified (§ 1.611(c)(5)) in the notice declaring the interference or (b) the party files a preliminary motion under § 1.633 seeking the benefit of the filing date of the earlier application.

§ 1.631 Access to preliminary statement, service of preliminary statement.

(a) Unless otherwise ordered by an examiner-in-chief, concurrently with entry of a decision by the examiner-in-chief on preliminary motions filed under § 1.633, any preliminary statement filed under § 1.621(a) shall be opened to inspection by the senior party and any junior party who filed a preliminary statement. Within a time set by the examiner-in-chief, a party shall serve copies of its preliminary statement on every opponent who served a notice under § 1.621(b).

(b) A junior party who does not file a preliminary statement shall not have access to the preliminary statement of any other party.

(c) If an interference is terminated before the preliminary statements have been opened, the preliminary statements will remain sealed and will be returned to the respective parties who submitted the statements.

§ 1.633 Preliminary motions.

A party may file the following preliminary motions:

(a) A motion for judgment on the ground that an opponent's claim corresponding to a count is not patentable to the opponent. In determining a motion filed under this paragraph, a claim may be construed by reference to the prior art of record. A motion under this paragraph shall not be based on: (1) Priority of invention of the subject matter of a count by the moving party as against any opponent or (2) derivation of the subject matter of a count by an opponent from the moving party. See § 1.637(a).

(b) A motion for judgment on the ground that there is no interference-in-fact. A motion under this paragraph is proper only if: (1) the interference involves a design application or patent or a plant application or patent or (2) no claim of a party which corresponds to a count is identical to any claim of an opponent which corresponds to that count. See § 1.637(a).

(c) A motion to redefine the interfering subject matter by (1) adding or substituting a count, (2) amending an application claim corresponding to a count, (3) designating an application or patent claim to correspond to a count, or (4) designating an application or patent claim as not corresponding to a count. See § 1.637 (a) and (c).

(d) A motion to substitute a different application owned by a party for an application involved in the interference. See § 1.637 (a) and (d).

(e) A motion to declare an additional interference (1) between an additional application not involved in the interference and owned by a party and an opponent's application or patent involved in the interference or (2) when an interference involves three or more parties, between less than all applications and any patent involved in the interference. See § 1.637 (a) and (e).

(f) A motion to be accorded the benefit of the filing date of an earlier application filed in the United States or abroad. See § 1.637 (a) and (f).

(g) A motion to attack the benefit accorded an opponent in the notice declaring the interference of the filing date of an earlier application filed in the United States or abroad. See § 1.637 (a) and (g).

(h) When a patent is involved in an interference and the patentee has on file or files an application for reissue under § 1.171, a motion to add the application for reissue to the interference. See § 1.637 (a) and (h).

(i) When a motion is filed under paragraph (a), (b), or (g) of this section an opponent, in addition to opposing the motion, may file a motion to redefine the interfering subject matter under paragraph (c) of this section or a motion to substitute a different application under paragraph (d) of this section.

§ 1.634 Motion to correct inventorship.

A party may file a motion to (a) amend its application involved in an interference to correct inventorship as provided by § 1.48 or (b) correct inventorship of its patent involved in an interference as provided in § 1.324. See § 1.637(a).

§ 1.635 Miscellaneous motions.

A party seeking entry of an order relating to any matter other than a matter which may be raised under §§ 1.633 or 1.634 may file a motion requesting entry of the order. See § 1.637 (a) and (b).

§ 1.636 Motions, time for filing.

(a) A preliminary motion under § 1.633 (a) through (h) shall be filed within a time period set by an examiner-in-chief.

(b) A preliminary motion under § 1.633(i) shall be filed within 20 days of the service of the preliminary motion under § 1.633 (a), (b), or (g) unless otherwise ordered by an examiner-in-chief.

(c) A motion under § 1.634 shall be filed as soon as practical after an error is discovered in the inventorship of an application or patent involved in an interference unless otherwise ordered by an examiner-in-chief.

(d) A motion under § 1.635 shall be filed as specified in this subpart or when appropriate unless otherwise ordered by an examiner-in-chief.

§ 1.637 Content of motions.

(a) Every motion shall include (1) a statement of the precise relief requested, (2) a statement of the material facts in support of the motion, and (3) a full statement of the reasons why the relief requested should be granted.

(b) A motion under § 1.635 shall contain a certificate by the moving party stating that the moving party has conferred with all opposing parties in an effort in good faith to resolve by agreement the issues raised by the motion. A moving party shall indicate in the motion whether any other party plans to oppose the motion. The provisions of this paragraph do not apply to a motion to suppress evidence (§ 1.656(h)).

(c) A preliminary motion under § 1.633(c) shall explain why the interfering subject matter should be redefined.

(1) A preliminary motion seeking to add or substitute a count shall:

(i) Propose each count to be added or substituted.

(ii) When the moving party is an applicant, show the patentability to the applicant of all claims in, or proposed to be added to, the party's application which correspond to each proposed count and apply the terms of the claims to the disclosure of the party's application; when necessary a moving party applicant shall file with the motion an amendment adding any proposed claim to the application.

(iii) Identify all claims in an opponent's application which should be designated to correspond to each proposed count; if an opponent's application does not contain such a claim, the moving party shall propose a claim to be added to the opponent's application. The moving party shall show the patentability of any proposed claims to the opponent and apply the terms of the claims to the disclosure of the opponent's application.

(iv) Designate the claims of any patent involved in the interference which define the same patentable invention as each proposed count.

(v) Show that each proposed count defines a separate patentable invention from every other count in the interference.

(vi) Where appropriate, be accompanied by a motion under § 1.633(f) requesting the benefit of the filing date of any earlier application filed in the United States or abroad.

(2) A preliminary motion seeking to amend an application claim corresponding to a count shall:

(i) Propose an amended claim.

(ii) Apply the terms of each proposed claim to the disclosure of the application.

(iii) Show the patentability to the applicant of each proposed amended claim and apply the terms of the proposed amended claim to the disclosure of the application; when necessary a moving party applicant shall file with the motion an amendment adding the proposed claim to the application.

(iv) Where appropriate, be accompanied by a motion under § 1.633(f) requesting the benefit of the filing date of any earlier application filed in the United States or abroad.

(3) A preliminary motion seeking to designate an application or patent claim to correspond to a count shall:

(i) Identify the claim and the count.

(ii) Show the claim defines the same patentable invention as the count.

(iii) Where appropriate, be accompanied by a motion under § 1.633(f) requesting the benefits of the filing date of any earlier application filed in the United States or abroad.

(4) A preliminary motion seeking to designate an application or patent claim as not corresponding to a count shall:

(i) Identify the claim and the count.

(ii) Show the claim does not define the same patentable invention as any other claim designated in the notice declaring the interferences as corresponding to the count.

(d) A preliminary motion under § 1.633(d) to substitute a different application shall:

(1) Identify the different application.

(2) Certify that a complete copy of the file of the different application, except for documents filed under § 1.131 or § 1.608(b), has been served on all opponents.

(3) Show the patentability to the applicant of all claims in, or proposed to be added to, the different application which correspond to each count and apply the terms of the claims to the disclosure of the different application; when necessary the applicant shall file with the motion an amendment adding a claim to the different application.

(4) Where appropriate, be accompanied by a motion under § 1.633(f) requesting the benefit of the filing date of an earlier application filed in the United States or abroad.

(e) A preliminary motion to declare an additional interference under § 1.633(e) shall explain why an additional interference is necessary.

(1) when the preliminary motion seeks an additional interference under § 1.633(e)(1), the motion shall:

(i) Identify the additional application.

(ii) Certify that a complete copy of the file of the additional application, except for documents filed under §§ 1.131 or 1.608(b), has been served on all opponents.

(iii) Propose a count for the additional interference.

(iv) Show the patentability to the applicant of all claims in, or proposed to be added to, the additional application which correspond to each proposed count for the additional intereference and apply the terms of the claims to the disclosure of the additional application; when necessary the applicant shall file with the motion an amendment adding a claim to the additional application.

(v) When the opponent is an applicant, show the patentability to the opponent of any claims in, or proposed to be added to, the opponent's application which correspond to the proposed count and apply the terms of the claims to the disclosure of the opponent's application.

(vi) When the opponent is a patentee, designate the claims of the patent which define the same patentable invention defined by the proposed count.

(vii) Show that each proposed count for the additional interference defines a separate patentable invention from all counts of the interference in which the motion is filed.

(viii) Where appropriate, be accompanied by a motion under § 1.633(f) requesting the benefit of the filing date of an earlier application filed in the United States or abroad.

(2) When the preliminary motion seeks an additional interference under § 1.633(e)(2), the motion shall:

(i) Identify any application or patent to be involved in the additional interference.

(ii) Propose a count for the additional interference.

(iii) When the moving party is an applicant, show the patentability to the applicant of all claims in, or proposed to be added to, the party's application which correspond to each proposed count and apply the terms of the claims to the disclosure of the party's application; when necessary a moving party applicant shall file with the motion an amendment adding any proposed claim to the application.

(iv) Identify all claims in any opponent's application which should be designated to correspond to each proposed count; if an opponent's application does not contain such a claim, the moving party shall propose a claim to be added to the opponent's application. The moving party shall show the patentability of any proposed claims to the opponent and apply the terms of the claims to the disclosure of the opponent's application.

(v) Designate the claims of any patent involved in the interference which define the same patentable invention as each proposed count.

(vi) Show that each proposed count for the additional interference defines a separate patentable invention from all counts in the interference in which the motion is filed.

(vii) Where appropriate, be accompanied by a motion under § 1.633(f) requesting the benefit of the filing date of an earlier application filed in the United States or abroad.

(f) A preliminary motion for benefit under § 1.633(f) shall:

(1) Identify the earlier application.

(2) When the earlier application is an application filed in the United States, certify that a complete copy of the file of the earlier application, except for documents filed under § 1.131 or § 1.608(b), has been served on all opponents. When the earlier application is an application filed abroad, certify that a copy of the application filed abroad has been served on all opponents.

(3) Show that the earlier application discloses an embodiment within the scope of each count.

(g) A preliminary motion to attack benefit under § 1.633(g) shall explain, as to each count, why an opponent should not be accorded the benefit of the filing date of the earlier application.

(h) A preliminary motion to add an application for reissue under § 1.633(h) shall:

(1) Identify the application for reissue.

(2) Certify that a complete copy of the file of the application for reissue has been served on all opponents.

(3) Show the patentability of all claims in, or proposed to be added to, the application for reissue which correspond to each count and apply the terms of the claims to the disclosure of the application for reissue; when necessary a moving applicant for reissue shall file with the motion an amendment adding a claim to the application for reissue.

(4) Where appropriate, be accompanied by a motion under § 1.633(f) requesting the benefit of the filing date of an earlier application filed in the United States or abroad.

§ 1.638 Opposition and reply, time for filing opposition and reply.

(a) Unless otherwise ordered by an examiner-in-chief, any opposition to any motion shall be filed within 20 days after service of the motion. An opposition shall (1) identify any material fact set forth in the motion which is in dispute and (2) include an argument why the relief requested in the motion should be denied.

(b) A reply to an opposition shall not be filed unless authorized by this subpart or an examiner-in-chief or the motion was filed under §§ 1.633 or 1.634. Unless otherwise ordered by an examiner-in-chief, any authorized reply shall be filed within 15 days after service of the opposition. A reply shall be directed only to new points raised in the opposition.

§ 1.639 Evidence in support of motion, opposition, or reply.

(a) Proof of any material fact alleged in a motion, opposition, or reply must be filed and served with the motion, opposition, or reply unless the proof relied upon is part of the interference file or the file of any patent or application involved in the interference or any earlier application filed in the United States of which a party has been accorded or seeks to be accorded benefit.

(b) Proof may be in the form of patents, printed publications, and affidavits.

(c) When a party believes that testimony is necessary to support or oppose a preliminary motion under § 1.633, the party shall describe the nature of the testimony needed. If the examiner-in-chief finds that testimony is needed to decide the motion, the examiner-in-chief may grant appropriate interlocutory relief and enter an order authorizing the taking of testimony and deferring a decision on the motion to final hearing.

§ 1.640 Motions, hearing and decision, redeclaration of interference, order to show cause.

(a) A hearing on a motion may be held in the discretion of the examiner-in-chief. The examiner-in-chief shall set the date and time for any hearing. The length of oral argument at a hearing on a motion is a matter within the discretion of the examiner-in-chief. An examiner-in-chief may direct that a hearing take place by telephone.

(b) Motions will be decided by an examiner-in-chief. An examiner-in-chief may consult with an examiner in deciding motions involving a question of patentability. An examiner-in-chief may grant or deny any motion or take such other action which will secure the just, speedy, and inexpensive determination of the interference.

(1) When preliminary motions under § 1.633 are decided, the examiner-in-chief will, when necessary, set a time for filing any amendment to an application involved in the interference and for filing a supplemental preliminary statement as to any new counts involved in the interference. A supplemental preliminary statement shall meet the requirements specified in §§ 1.623, 1.624, 1.625, or 1.626, but need not be filed if a party states that it intends to rely on a preliminary statement previously filed under § 1.621(a). After the time expires for filing any amendment and supplemental preliminary statement, the examiner-in-chief will, if necessary, redeclare the interference.

(2) After a decision is entered on preliminary motions filed under § 1.633, a further motion under § 1.633 will not

be considered except as provided by § 1.655(b).

(c) When a decision on any motion under §§ 1.633, 1.634, or 1.635 is entered which does not result in the issuance of an order to show cause under paragraph (d) of this section, a party may file a request for reconsideration within 14 days after the date of the decision. The filing of a request for reconsideration will not stay any time period set by the decision. The request for reconsideration shall specify with particularity the points believed to have been misapprehended or overlooked in rendering the decision. No opposition to a request for reconsideration shall be filed unless requested by an examiner-in-chief or the Board. A request for reconsideration will ordinarily not be granted unless an opposition has been requested by an examiner-in-chief or the Board. The request for reconsideration shall be decided by a panel of the Board consisting of at least three examiners-in-chief, one of whom will normally be the examiner-in-chief who decided the motion.

(d) An examiner-in-chief may issue an order to show cause why judgment should not be entered against a party when:

(1) A decision on a motion is entered which is dispositive of the interference against the party as to all counts.

(2) The party is a junior party who fails to file a preliminary statement.

(3) The party is a junior party whose preliminary statement fails to overcome the earlier of the filing date or effective filing date of another party.

(e) When an order to show cause is issued under paragraph (d) of this section, the Board shall enter a judgment in accordance with the order unless, within 20 days after the date of the order, the party against whom the order issued files a paper which shows good cause why judgment should not be entered in accordance with the order. Any other party may file a response to the paper within 20 days of the date of service of the paper. If the party against whom the order was issued fails to show good cause, the Board shall enter judgment against the party. If a party wishes to take testimony in response to an order to show cause, the party's response should be accompanied by a motion (§ 1.635) requesting the testimony period. See § 1.651(c)(4).

§ 1.641 Unpatentability discovered by examiner-in-chief.

During the pendency of an interference, if the examiner-in-chief becomes aware of a reason why a claim corresponding to a count may not be patentable, the examiner-in-chief may notify the parties of the reason and set a time within which each party may present its views. After considering any timely filed views, the examiner-in-chief shall decide how the interference shall proceed.

§ 1.642 Addition of new application to interference.

During the pendency of an interference, if the examiner-in-chief becomes aware of an application not involved in the interference which claims the same patentable invention as a count in the interference, the examiner-in-chief may add the application to the interference on such terms as may be fair to all parties.

§ 1.643 Prosecution of interference by assignee.

(a) An assignee of record in the Patent and Trademark Office of the entire interest in an application or patent involved in an interference is entitled to conduct prosecution of the interference to the exclusion of the inventor.

(b) An assignee of a part interest in an application or patent involved in an interference may file a motion (§ 1.635) for entry of an order authorizing it to prosecute the interference. The motion shall show (1) the inability or refusal of the inventor to prosecute the interference or (2) other cause why the ends of justice require that the assignee of a part interest be permitted to prosecute the interference. The examiner-in-chief may allow the assignee of a part interest to prosecute the interference upon such terms as may be appropriate.

§ 1.644 Petitions in interferences.

(a) There is no appeal to the Commissioner in an interference from a decision of an examiner-in-chief or a panel consisting of more than one examiner-in-chief. The Commissioner will not consider a petition in an interference unless:

(1) The petition is from a decision of an examiner-in-chief or a panel and the examiner-in-chief or the panel shall be of the opinion (i) that the decision involves a controlling question of procedure or an interpretation of a rule as to which there is a substantial ground for a difference of opinion and (ii) that an immediate decision on petition by the Commissioner may materially advance the ultimate termination of the interference;

(2) The petition seeks to invoke the supervisory authority of the Commissioner; or

(3) The petition seeks relief under § 1.183.

(b) A petition under paragraph (a)(1) of this section filed more than 15 days after the date of the decision of the examiner-in-chief or the panel may be dismissed as untimely. A petition under paragraph (a)(2) of this section shall not be filed prior to decision by the Board awarding judgment and shall not relate to (1) the merits of priority of invention or patentability or (2) the admissability of evidence under the Federal Rules of Evidence. Any petition under paragraph (a)(3) of this section shall be timely if it is made as part of, or simultaneously with, a proper motion under §§ 1.633, 1.634, or 1.635. Any opposition to a petition shall be filed within 15 days of the date of service of the petition.

(c) The filing of a petition shall not stay the proceeding unless a stay is granted in the discretion of the examiner-in-chief, the panel, or the Commissioner.

(d) Any petition must contain a statement of the facts involved and the point or points to be reviewed and the action requested. Briefs or memoranda, if any, in support of the petition or opposition shall accompany or be embodied therein. The petition will be decided on the basis of the record made before the examiner-in-chief or the panel and no new evidence will be considered by the Commissioner in deciding the petition. Copies of documents already of record in the interference shall not be submitted with the petition or opposition.

(e) Any petition under paragraph (a) of this section shall be accompanied by the petition fee set forth in § 1.17(h).

(f) Any request for reconsideration of a decision by the Commissioner shall be filed within 15 days of the decision of the Commissioner and must be accompanied by the fee set forth in § 1.17(h). No opposition to a request for reconsideration shall be filed unless requested by the Commissioner. A request for reconsideration will ordinarily not be granted unless an opposition has been requested by the Commissioner.

(g) Where reasonably possible, service of any petition, opposition, or request for reconsideration shall be such that delivery is accomplished within one working day. Service by hand or "Express Mail" complies with this paragraph.

(h) An oral hearing on the petition will not be granted except when considered necessary by the Commissioner.

(i) The Commissioner may delegate to appropriate Patent and Trademark Office employees the determination of petitions under this section.

§ 1.645 Extension of time, late papers, stay of proceedings.

(a) A party may file a motion (§ 1.635) seeking an extension of time to take action in an interference, file a notice of appeal (§§ 1.302, 1.304), or commence a civil action (§§ 1.303, 1.304). The motion shall be filed within sufficient time to actually reach the examiner-in-chief before expiration of the time for taking action, filing the notice, or commencing the civil action. A moving party should not assume that the motion will be granted even if there is no objection by any other party. The motion will be denied unless the moving party shows good cause why an extension should be granted. The press of other business arising after an examiner-in-chief sets a time for taking action will not normally constitute good cause. A motion seeking additional time to take testimony because a party has not been able to procure the testimony of a witness shall set forth the name of the witness, any steps taken to procure the testimony of the witness, the dates on which the steps were taken, and the facts expected to be proved through the witness.

(b) Any paper belatedly filed will not be considered except upon motion (§ 1.635), accompanied by an affidavit, which shows sufficient cause why the paper was not timely filed.

(c) The provisions of § 1.136 do not apply to time periods in interferences.

(d) In an appropriate circumstance, an examiner-in-chief may stay proceedings in an interference.

§ 1.646 Service of papers, proof of service.

(a) A copy of every paper filed in the Patent and Trademark Office in an interference or an application or patent involved in the interference shall be served upon all other parties except:

(1) Preliminary statements when filed under § 1.621; preliminary statements shall be served when service is ordered by an examiner-in-chief.

(2) Certified transcripts and exhibits which accompany the transcripts filed under §§ 1.676 or 1.684; copies of transcripts shall be served as part of a party's record under § 1.653(c).

(b) Service shall be on an attorney or agent for a party. If there is no attorney or agent for the party, service shall be on the party. An examiner-in-chief may order additional or waive service where appropriate.

(c) Unless otherwise ordered by an examiner-in-chief, service of a paper may be made as follows:

(1) By handing a copy of the paper to the person served.

(2) By leaving a copy of the paper with someone employed by the person at the person's usual place of business.

(3) When the person served has no usual place of business, by leaving a copy of the paper at the person's residence with someone of suitable age and discretion then residing therein.

(4) By mailing a copy of the paper by first class mail; when service is by mail the date of mailing is regarded as the date of service.

(5) When it is shown to the satisfaction of an examiner-in-chief that none of the above methods of obtaining or serving the copy of the paper was successful, the examiner-in-chief may order service by publication of an appropriate notice in the *Official Gazette*.

(d) An examiner-in-chief may order that a paper be served by hand or "Express Mail".

(e) Proof of service must be made before a paper will be considered in an interference. Proof of service may appear on or be affixed to the paper. Proof of service shall include the date and manner of service. In the case of personal service under paragraphs (c)(1) through (c)(3) of this section, proof of service shall include the names of any person served and the person who made the service. Proof of service may be made by an acknowledgment of service by or on behalf of the person served or a statement signed by the party or the party's attorney or agent containing the information required by this section. A statement of an attorney or agent attached to, or appearing in, the paper stating the time and manner of service will be accepted as *prima facie* proof of service.

§ 1.647 Translation of document in foreign language.

When a party relies on a document in a language other than English, a translation of the document into English and an affidavit attesting to the accuracy of the translation shall be filed with the document.

§ 1.651 Setting times for discovery and taking testimony, parties entitled to take testimony.

(a) At an appropriate stage in an interference, an examiner-in-chief shall set (1) a time for filing motions (§ 1.635) for additional discovery under § 1.687(c) and (2) testimony periods for taking any necessary testimony.

(b) Where appropriate, testimony periods will be set to permit a party to:

(1) Present its case-in-chief and/or case-in-rebuttal and/or

(2) Cross-examine an opponent's case-in-chief and/or case-in-rebuttal.

(c) A party is not entitled to take testimony to present a case-in-chief unless:

(1) The examiner-in-chief orders the taking of testimony under § 1.639(c);

(2) The party alleges in its preliminary statement a date of invention prior to the earlier of the filing date or effective filing date of the senior party;

(3) A testimony period has been set to permit an opponent to prove a date of invention prior to the earlier of the filing date or effective date of the party and the party has filed a preliminary statement alleging a date of invention prior to that date; or

(4) A motion (§ 1.635) is filed showing good cause why a testimony period should be set.

(d) Testimony shall be taken during the testimony periods set under paragraph (a) of this section.

§ 1.652 Judgment for failure to take testimony or file record.

If a junior party fails to timely take testimony authorized under § 1.651, or file a record under § 1.653(c), an examiner-in-chief, with or without a motion (§ 1.635) by another party, may issue an order to show cause why judgment should not be entered against the junior party. When an order is issued under this section, the Board shall enter judgment in accordance with the order unless, within 15 days after the date of the order, the junior party files a paper which shows good cause why judgment should not be entered in accordance with the order. Any other party may file a response to the paper within 15 days of the date of service of the paper. If the party against whom the order was issued fails to show good cause, the Board shall enter judgment against the party.

§ 1.653 Record and exhibits.

(a) Testimony shall consist of affidavits under § 1.672 (b) and (e), transcripts of depositions under § 1.672 (b) and (c), agreed statements of fact under § 1.672(f), and transcripts of interrogatories, cross-interrogatories, and recorded answers under § 1.684(c).

(b) An affidavit shall be filed as set forth in § 1.672 (b) or (e). A certified transcript of a deposition including a deposition cross-examining an affiant, shall be filed as set forth in § 1.676. An original agreed statement shall be filed as set forth in § 1.672(f). A transcript of interrogatories, cross-interrogatories, and recorded answers shall be filed as set forth under § 1.684(c).

(c) In addition to the items specified in paragraph (b) of this section and within a time set by an examiner-in-chief each

party shall file three copies and serve one copy of a record consisting of:

(1) An index of the name of each witness giving the pages of the record where the direct testomony and cross-examination of each witness begins.

(2) An index of exhibits briefly describing the nature of each exhibit and giving the page of the record where each exhibit is first identified and offered into evidence.

(3) The count or counts.

(4) Each (i) affidavit, (ii) transcript, including transcripts of cross-examination of any affiant, (iii) agreed statement relied upon by the party, and (iv) transcript of interrogatories, cross-interrogatories, and recorded answers field under paragraph (b) of this section.

(5) Each notice, official record, and publication relied upon by the party and filed under § 1.682(a).

(6) Any evidence from another interference, proceeding, or action relied upon by the party under § 1.683.

(7) Each request for an admission and the admission and each written interrogatory and the answer upon which a party intends to rely under § 1.688.

(d) The pages of the record shall be consecutively numbered.

(e) The name of each witness shall appear at the top of each page of each affidavit or transcript.

(f) The record may be typewritten or printed.

(g) When the record is printed, it may be produced by standard typographical printing or by any process capable of producing a clear black permanent image. All printed matter except on covers must appear in at least 11 point type on opaque, unglazed paper. Margins must be justified. Footnotes may not be printed in type smaller than 9 point. The page size shall be 8½ by 11 inches (21.8 by 27.9 cm.) with type matter 6½ by 9½ inches (16.5 by 24.1 cm.). The record shall be bound to lie flat when open.

(h) When the record is typewritten, it must be clearly legible on opague, unglazed, durable paper approximately 8½ by 11 inches (21.8 by 27.9 cm.) in size (letter size). Typing shall be double-spaced on one side of the paper in not smaller than pica-type with a margin of 1½ inches (3.8 cm.) on the left-hand side of the page. The pages of the record shall be bound with covers at their left edges in such manner to lie flat when open in one or more volumes of convenient size (approximately 100 pages per volume is suggested). Multigraphed or otherwise reproduced copies conforming to the standards specified in this paragraph may be accepted.

(i) Each party shall file its exhibits with the record specified in paragraph (c) of this section. One copy of each documentary exhibit shall be served. Documentary exhibits shall be filed in an envelope or folder and shall not be bound as part of the record. Physical exhibits, if not filed by an officer under § 1.676(d), shall be filed with the record. Each exhibit shall contain a label which identifies the party submitting the exhibit and an exhibit number, the style of the interference (e.g., Jones v. Smith), and the interference number. Where possible, the label should appear at the bottom right-hand corner of each documentary exhibit. Upon termination of an interference, an examiner-in-chief may return an exhibit to the party filing the exhibit. When any exhibit is returned, the examiner-in-chief shall enter an appropriate order indicating that the exhibit has been returned.

(j) Any testimony, record, or exhibit which does not comply with this section may be returned under § 1.618.

§ 1.654 Final hearing.

(a) At an appropriate stage of the interference, the parties will be given an opportunity to appear before the Board to present oral argument at a final hearing. An examiner-in-chief shall set a date and time for final hearing. Unless otherwise ordered by an examiner-in-chief or the Board, each party will be entitled to no more than 60 minutes of oral argument at final hearing.

(b) The opening argument of a junior party shall include a fair statement of the junior party's case and the junior party's position with respect to the case presented on behalf of any other party. A junior party may reserve a portion of its time for rebuttal.

(c) After final hearing, the interference shall be taken under advisement by the Board. No further paper shall be filed except under § 1.658(b) or as authorized by an examiner-in-chief or the Board. No additional oral argument shall be had unless ordered by the Board.

§ 1.655 Matters considered in rendering a final decision.

(a) In rendering a final decision, the Board may consider any properly raised issue including (1) priority of invention, (2) derivation by an opponent from a party who filed a preliminary statement under § 1.625, (3) patentability of the invention, (4) admissibility of evidence, (5) any interlocutory matter deferred to final hearing, and (6) any other matter necessary to resolve the interference. The Board may also consider whether any interlocutory order was manifestly erroneous or an abuse of discretion. All interlocutory orders shall be presumed to have been correct and the burden of showing manifest error or an abuse of discretion shall be on the party attacking the order.

(b) A party shall not be entitled to raise for consideration at final hearing a matter which properly could have been raised by a motion under §§ 1.633 or 1.634 unless (1) the motion was properly filed, (2) the matter was properly raised by a party in an opposition to a motion under §§ 1.633 or 1.634 and the motion was granted over the opposition, or (3) the party shows good cause why the issue was not timely raised by motion or opposition.

(c) To prevent manifest injustice, the Board may consider an issue even though it would not otherwise be entitled to consideration under this section.

§ 1.656 Briefs for final hearing.

(a) Each party shall be entitled to file briefs for final hearing. The examiner-in-chief shall determine the briefs needed and shall set the time and order for filing briefs.

(b) The opening brief of a junior party shall contain under appropriate headings and in the order indicated:

(1) A table of contents, with page references, and a table of cases (alphabetically arranged), statutes, and other authorities cited, with references to the pages of the brief where they are cited.

(2) A statement of the issues presented for decision in the interference.

(3) A statement of the facts relevant to the issues presented for decision with appropriate references to the record.

(4) An argument, which may be preceded by a summary, which shall contain the contentions of the party with respect to the issues to be decided, and the reasons therefore, with citations to the cases, statutes, other authorities, and parts of the record relied on.

(5) A short conclusion stating the precise relief requested.

(6) An appendix containing a copy of the counts.

(c) The opening brief of the senior party shall conform to the requirements of paragraph (b) of this section except:

(1) a statement of the issues and of the facts need not be made unless the party is dissatisfied with the statement in the opening brief of the junior party and

(2) an appendix containing a copy of the counts need not be made if the copy of the counts in the opening brief of the junior party is correct.

(d) Briefs may be printed or typewritten. If typewritten, legal-size paper may be used. The opening brief of

each party in excess of 50 legal-size double-spaced typewritten pages or any other brief in excess of 25 legal-size double-space typewritten pages shall be printed unless a satisfactory reason be given why the brief should not be printed. Any printed brief shall comply with the requirements of §.1.653(g). Any typewritten brief shall comply with the requirements of § 1.653(h), except legal-size paper may be used and the binding and covers specified are not required.

(e) An original and three copies of each brief must be filed.

(f) Any brief which does not comply with the requirements of this section may be returned under § 1.618(a).

(g) Any party, separate from its opening brief, but filed concurrently therewith, may file an original and three copies of concise proposed findings of fact and conclusions of law. Any proposed findings of fact shall be supported by specific references to the record. Any proposed conclusions of law shall be supported by citation of cases, statutes, or other authority. Any opposing party, separate from its opening or reply brief, but filed concurrently therewith, may file a paper accepting or objecting to any proposed findings of fact or conclusions of law; when objecting, a reason must be given. The Board may adopt the proposed findings of fact and conclusions of law in whole or in part.

(h) If a party wants the Board in rendering its final decision to rule on the admissibility of any evidence, the party shall file with its opening brief an original and three copies of a motion (§ 1.635) to suppress the evidence. The provisions of § 1.637(b) do not apply to a motion to suppress under this paragraph. Any objection previously made to the admissibility of an opponent's evidence is waived unless the motion required by this paragraph is filed. An original and three copies of an opposition to the motion may be filed with an opponent's opening brief or reply brief as may be appropriate.

(i) When a junior party fails to timely file an opening brief, an order may issue requiring the junior party to show cause why the Board should not treat failure to file the brief as a concession of priority. If the junior party fails to respond within a time period set in the order, judgment may be entered against the junior party.

§ 1.657 Burden of proof as to date of invention.

A rebuttable presumption shall exist that, as to each count, the inventors made their invention in the chronological order of the earlier of their filing dates or effective filing dates. The burden or proof shall be upon a party who contends otherwise.

§ 1.658 Final decision.

(a) After final hearing, the Board shall enter a decision resolving the issues raised at final hearing. The decision may (1) enter judgment, in whole or in part, (2) remand the interference to an examiner-in-chief for further proceedings, or (3) take further action not inconsistent with law. A judgment as to a count shall state whether or not each party is entitled to a patent containing the claims in the party's patent or application which correspond to the count. When the Board enters a decision awarding judgment as to all counts, the decision shall be regarded as a final decision.

(b) Any request for reconsideration of a decision under paragraph (a) of this section shall be filed within 14 days after the date of the decision. The request for reconsideration shall specifiy with particularity the points believed to have been misapprehended or overlooked in rendering the decision. Any reply to a request for reconsideration shall be filed within 14 days of the date of service of the request for reconsideration. Where reasonably possible, service of the request for reconsideration shall be such that delivery is accomplished by hand or "Express Mail." The Board shall enter a decision on the request for reconsideration. If the Board shall be of the opinion that the decision on the request for reconsideration significantly modifies its original decision under paragraph (a) of the section, the Board may designate the decision on the request for reconsideration as a new decision.

(c) A judgment in an interference settles all issues which (1) were raised and decided in the interference, (2) could have been properly raised and decided in the interference by a motion under § 1.633 (a) through (d) and (f) through (i) or § 1.634 and (3) could have been properly raised and decided in an additional interference with a motion under § 1.633(e). A party, other than a party awarded a favorable judgment as to all counts, who could have properly moved, but failed to move, under §§ 1.633 or 1.634, shall be estopped to take *ex parte* or inter partes action in the Patent and Trademark Office after the interference which is inconsistent with the party's failure to properly move.

§ 1.659 Recommendation.

(a) Should the Board have knowledge of any ground for rejecting any application claim not involved in the judgment of the interference, it may include in its decision a recommended rejection of the claim. Upon resumption of *ex parte* prosecution of the application, the examiner shall be bound by the recommendation and shall enter and maintain the recommended rejection unless an amendment or showing of facts not previously of record is filed which, in the opinion of the examiner, overcomes the recommended rejection.

(b) Should the Board have knowledge of any ground for reexamination of a patent involved in the interference as to a patent claim not involved in the judgment of the interference, it may include in its decision a recommendation to the Commissioner that the patent by reexamined. The Commissioner will determine whether reexamination will be orderd.

(c) The Board may make any other recommendation to the examiner or the Commissioner as may be appropriate.

§ 1.660 Notice of reexamination, reissue, protest, or litigation.

(a) When a request for reexamination of a patent involved in an interference is filed, the patent owner shall notify the Board within 10 days of receiving notice that the request was filed.

(b) When an application for reissue is filed by a patentee involved in an interference, the patentee shall notify the Board within 10 days of the day the application for reissue is filed.

(c) When a protest under § 1.291 is filed against an application involved in an interference, the applicant shall notify the Board within 10 days of receiving notice that the protest was filed.

(d) A party in an interference shall notify the Board promptly of any litigation related to any patent or application involved in an interference, including any civil action commended under 35 U.S.C. 146.

§ 1.661 Termination of interference after judgment.

After a final decision is entered by the Board awarding judgment as to all counts, an interference is considered terminated when no appeal (35 U.S.C. 141) or other review (35 U.S.C. 146) has been or can be taken or had.

§ 1.662 Request for entry of adverse judgment; reissue filed by patentee.

(a) A party may, at any time during an interference, request and agree to entry of an adverse judgment. The filing by an applicant or patentee of a written disclaimer of the invention defined by a count, concession or priority or unpatentability of the subject matter of

a count, abandonment of the invention defined by a count, or abandonment of the contest as to a count will be construed as a request for entry of an adverse judgment against the applicant or patentee as to all claims which correspond to the count. Abandonment of an application by an applicant, other than an applicant for reissue having a claim of the patent sought to be reissued involved in the interference, will be construed as a request for entry of an adverse judgment against the applicant as to all claims corresponding to all counts. Upon the filing by a party of a request for entry of an adverse judgment, the Board may enter judgment against the party.

(b) If a patentee involved in an interference files an application for reissue during the interference and omits all claims of the patent corresponding to the counts of the interference for the purpose of avoiding the interference, judgment may be entered against the patentee. A patentee who files an application for reissue other than for the purpose of avoiding the interference shall timely file a preliminary motion under § 1.633(h) or show good cause why the motion could not have been timely filed.

(c) The filing of a statutory disclaimer under 35 U.S.C. 253 by a patentee will not be construed as a request for entry of an adverse judgment against the patentee, but will delete any statutorily disclaimed claims from being involved in the interference. A statutory disclaimer of any claim involved in an interference shall in subsequent proceedings have the same effect with respect to the patentee as an adverse judgment.

(d) After judgment is entered under this section or after the filing of a statutory disclaimer, if an interference no longer exists, the interference may be dissolved as to any party against whom judgment has not been entered and any further prosecution of any application involved in the interference shall be *ex parte* before an examiner.

§ 1.663 Status of claim of defeated applicant after interference.

Whenever an adverse judgment is entered as to a count against an applicant from which no appeal (35 U.S.C. 141) or other review (35 U.S.C. 146) has been or can be taken or had, the claims of the application corresponding to the count stand finally disposed of without further action by the examiner. Such claims are not open to further *ex parte* prosecution.

§ 1.664 Action after interference.

(a) After termination of an interference, the examiner will promptly take such action in any application previously involved in the interference as may be necessary. Unless entered by order of an examiner-in-chief, amendments presented during the interference shall not be entered, but may be subsequently presented by the applicant subject to the provisions of this part provided prosecution of the application is not otherwise closed.

(b) After judgment, the application of any party may be held subject to further examination, including an interference with another application.

§ 1.665 Second interference.

A second interference between the same parties will not be declared upon an application not involved in an earlier interference for an invention defined by a count of the earlier interference. See § 1.658(c).

§ 1.666 Filing of interference settlement agreements.

(a) Any agreement or understanding between parties to an interference, including any collateral agreements referred to therein, made in connection with or in contemplation of the termination of the interference, must be in writing and a true copy thereof must be filed before the termination of the interference (§ 1.661) as between the parties to the agreement or understanding.

(b) If any party filing the agreement or understanding under paragraph (a) of this section so requests, the copy will be kept separate from the file of the interference, and made available only to Government agencies on written request, or to any person upon petition accompanied by the fee set forth in § 1.17(i) and on a showing of good cause.

(c) Failure to file the copy of the agreement or understanding under paragraph (a) of this section will render permanently unenforceable such agreement or understanding and any patent of the parties involved in the interference or any patent subsequently issued on any application of the parties so involved. The Commissioner may, however, upon petition accompanied by the fee set forth in § 1.17(h) and on a showing of good cause for failure to file within the time prescribed, permit the filing of the agreement or understanding during the six month period subsequent to the termination of the interference as between the parties to the agreement or understanding.

§ 1.671 Evidence must comply with rules.

(a) Evidence consists of testimony and exhibits official records and publications filed under § 1.682, evidence from another interference, proceeding, or action filed under § 1.683, and discovery relied upon under § 1.688, and the specification (including claims) and drawings of any application or patent:

(1) Involved in the interference.

(2) To which a party has been accorded benefit in the notice declaring the interference or by a preliminary motion granted under § 1.633.

(3) For which a party has sought, but has been denied, benefit by a preliminary motion under § 1.633.

(4) For which benefit was rescinded by a preliminary motion granted under § 1.633.

(b) Except as otherwise provided in this part, the Federal Rules of Evidence shall apply to interference proceedings. Those portions of the Federal Rules of Evidence relating to criminal actions, juries, and other matters not relevant to interferences shall not apply.

(c) Unless the context is otherwise clear, the following terms of the Federal Rules of Evidence shall be construed as follows:

(1) "Courts of the United States," "U.S. Magistrate," "court," "trial court," or "trier of fact" means examiner-in-chief or Board as may be appropriate.

(2) "Judge" means examiner-in-chief.

(3) "Judicial notice" means official notice.

(4) "Civil action," "civil proceeding," "action," or "trial," mean interference.

(5) "Appellate court" means United States Court of Appeals for the Federal Circuit or a United States district court when judicial review is under 35 U.S.C. 146.

(6) "Before the hearing" in Rule 703 means before giving testimony by oral deposition or affidavit.

(7) "The trial or hearing" in Rules 803(24) and 804(5) means the taking of testimony by oral deposition.

(d) Certification is not necessary as a condition to admissibility when the record is a record of the Patent and Trademark Office to which all parties have access.

(e) A party may not rely on an affidavit filed by that party during *ex parte* prosecution of an application, an affidavit under § 1.608(b), or an affidavit under § 1.639(b) unless (1) a copy of the affidavit is or has been served and (2) a written notice is filed prior to the close of the party's relevant testimony period stating that the party intends to rely on the affidavit. When proper notice is given under this paragrah, the affidavit

shall be deemed filed under § 1.672(b). A copy of the affidavit shall be included in the record (§ 1.653).

(f) The significance of documentary and other exhibits shall be discussed with particularly by a witness during oral deposition or in an affidavit.

(g) A party must file a motion (§ 1.635) seeking permission from an examiner-in-chief prior to taking testimony or seeking documents or things under 35 U.S.C. 24. The motion shall describe the general nature and show the admissibility in the interference of the testimony, document, or thing.

(h) Evidence which is not taken or sought and filed in accordance with this subpart shall not be admissible.

§ 1.672 Manner of taking testimony.

(a) Testimony of a witness may be taken by oral deposition or affidavit in accordance with this subpart.

(b) A party wishing to take the testimony of a witness whose testimony will not be compelled under 35 U.S.C. 24 may elect to present the testimony of the witness by affidavit or deposition. A party electing to present testimony of a witness by affidavit shall file an affidavit of the witness or, where appropriate, a notice under § 1.671(e). To facilitate preparation of the record (§ 1.653(g) and (h)), a party should file an affidavit on paper which is 8½ by 11 inches (21.8 by 27.9 cm). After the affidavit is filed and within a time set by an examiner-in-chief, any opponent may file a request to cross-examine the witness on oral deposition. If any opponent requests cross-examination of an affiant, the party shall notice a deposition under § 1.673(e) for the purpose of cross-examination by any opponent. Any redirect and recross shall take place at the deposition. At any deposition for the purpose of cross-examination of a witness whose testimony is presented by affidavit, the party shall not be entitled to rely on any document or thing not mentioned in one or more of the affidavits filed under this paragraph, except to the extent necessary to conduct proper redirect. A party electing to present testimony of a witness by deposition shall notice a deposition of the witness under § 1.673(a). The party who gives notice of a deposition shall be responsible for obtaining a court reporter and for filing a certified transcript of the deposition as required by § 1.676.

(c) A party wishing to take the testimony of a witness whose testimony will be compelled under 35 U.S.C. 24 must first obtain permission from an examiner-in-chief under § 1.671(g). If permission is granted, the party shall notice a deposition of the witness under § 1.673 and may proceed under 35 U.S.C. 24. The testimony of the witness shall be taken on oral deposition.

(d) Notwithstanding the provisions of this subpart, if the parties agree in writing, a deposition may be taken before any person authorized to administer oaths, at any place, upon any notice, and in any manner, and when so taken may be used like other depositions.

(e) If the parties agree in writing, the testimony of any witness may be submitted in the form of an affidavit without opportunity for cross-examination. The affidavit of the witness shall be filed in the Patent and Trademark Office.

(f) If the parties agree in writing, testimony may be submitted in the form of an agreed statement setting forth (1) how a particular witness would testify if called or (2) the facts in the case of one or more of the parties. The agreed statement shall be filed in the Patent and Trademark Office. See § 1.653(a).

§ 1.673 Notice of examination of witness.

(a) A party electing to take testimony of a witness by deposition shall, after complying with paragraphs (b) and (g) of this section, file and serve a single notice of deposition stating the time and place of each deposition to be taken. Depositions may be noticed for a reasonable time and place in the United States. Unless the parties agree in writing, a deposition may not be noticed for any other place without approval of an examiner-in-chief (see § 1.684). The notice shall specify the name and address of each witness and the general nature of the testimony to be given by the witness. If the name of a witness is not known, a general description sufficient to identify the witness or a particular class or group to which the witness belongs may be given instead.

(b) Unless the parties agree otherwise, at least three days prior to the conference required by paragraph (g) of this section, a party shall serve, but not file, the following:

(1) A copy of each document in the party's possession, custody, or control and upon which the party intends to rely at any deposition and

(2) A list of and a proffer of reasonable access to things in the party's possession, custody, or control and upon which the party intends to rely at any deposition.

(c) A party shall not be permitted to rely at any deposition on any witness not listed in the notice, or any document not served or any thing not listed as required by paragraph (b) of this section, (1) unless all opponents agree in writing or on the record to permit the party to rely on the witness, document, or thing or (2) except upon a motion (§ 1.635) promptly filed which is accompanied by any proposed notice, additional documents, or lists and which shows sufficient cause why the notice, documents, or lists were not served in accordance with this section.

(d) Each opposing party shall have a full opportunity to attend a deposition and cross-examine. If an opposing party attends a deposition of a witness not named in a notice and cross-examines the witness or fails to object to the taking of the deposition, the opposing party shall be deemed to have waived any right to object to the taking of the deposition for lack of proper notice.

(e) A party electing to present testimony by affidavit and who is required to notice depositions for the purpose of cross-examination under § 1.672(b), shall, after complying with paragraph (g) of this section, file and serve a single notice of deposition stating the time and place of each cross-examination deposition to be taken.

(f) The parties shall not take depositions in more than one place at the same time or so nearly at the same time that reasonable opportunity to travel from one place of deposition to another cannot be had.

(g) Before serving a notice of deposition and after complying with paragraph (b) of this section, a party shall have an oral conference with all opponents to attempt to agree on a mutually acceptable time and place for conducting the deposition. A certificate shall appear in the notice stating that the oral conference took place or explaining why the conference could not be had. If the parties cannot agree to a mutually acceptable place and time for conducting the deposition at the conference, the parties shall contact an examiner-in-chief who shall then designate the time and place for conducting the deposition.

(h) A copy of the notice of deposition shall be attached to the certified transcript of the deposition filed under § 1.676(a).

§ 1.674 Persons before whom depositions may be taken.

(a) Within the United States or a territory or insular possession of the United States a deposition shall be taken before an officer authorized to administer oaths by the laws of the United States or of the place where the examination is held.

(b) Unless the parties agree in writing, the following persons shall not be competent to serve as an officer: (1) A relative or employee of a party, (2) a

relative or employee of an attorney or agent of a party, or (3) a person interested, directly or indirectly, in the interference either as counsel, attorney, agent, or otherwise.

§ 1.675 Examination of witness, reading and signing transcript of deposition.

(a) Each witness before giving an oral deposition shall be duly sworn according to law by the officer before whom the deposition is to be taken.

(b) The testimony shall be taken in answer to interrogatories with any questions and answers recorded in their regular order by the officer or by some other person, who shall be subject to the provisions of § 1.674(b), in the presence of the officer unless the presence of the officer is waived on the record by agreement of all parties.

(c) All objections made at the time of the deposition to the qualifications of the officer taking the deposition, the manner of taking it, the evidence presented, the conduct of any party, or any other objection to the proceeding shall be noted on the record by the officer. Evidence objected to shall be taken subject to any objection.

(d) Unless the parties agree in writing or waive reading and signature by the witness on the record at the deposition, when the testimony has been transcribed a transcript of the deposition shall be read by the witness and then signed by the witness in the presence of any notary.

§ 1.676 Certification and filing by officer, marking exhibits.

(a) The officer shall prepare a certified transcript of the deposition by attaching to a transcript of the deposition a copy of the notice of deposition, any exhibits to be annexed to the certified transcript, and a certificate signed and sealed by the officer and showing:

(1) The witness was duly sworn by the officer before commencement of testimony by the witness.

(2) The transcript is a true record of the testimony given by the witness.

(3) The name of the person by whom the testimony was recorded and, if not recorded by the officer, whether the testimony was recorded in the presence of the officer.

(4) The presence or absence of any opposing party.

(5) The place where the deposition was taken and the day and hour when the deposition began and ended.

(6) The officer is not disqualified under § 1.674.

(b) If the parties waived any of the requirements of paragraph (a) of this section, the certificate shall so state.

(c) The officer shall note on the certificate the circumstances under which a witness refuses to sign a transcript.

(d) Unless the parties agree otherwise in writing or on the record at the deposition, the officer shall securely seal the certified transcript in an envelope endorsed with the style of the interference (e.g., Smith v. Jones), the interference number, the name of the witness, and the date of sealing and shall promptly forward the envelope to BOX INTERFERENCE, Commissioner of Patents and Trademarks, Washington, D.C. 20231. Documents and things produced for inspection during the examination of a witness, shall, upon request of a party, be marked for identification and annexed to the certified transcript, and may be inspected and copied by any party, except that if the person producing the documents and things desires to retain them, the person may (1) offer copies to be marked for identification and annexed to the certified transcript and to serve thereafter as originals if the person affords to all parties fair opportunity to verify the copies by comparison with the originals or (2) offer the originals to be marked for identification, after giving to each party an opportunity to inspect and copy them, in which event the documents and things may be used in the same manner as if annexed to the certified transcript. The exhibits shall then be filed as specified in § 1.653(i). If the weight or bulk of a document or thing shall reasonably prevent the document or thing from being annexed to the certified transcript, it shall, unless waived on the record at the deposition by all parties, be authenticated by the officer and forwarded to the Commissioner in a separate package marked and addressed as provided in this paragraph.

§ 1.677 Form of a transcript of deposition.

(a) A transcript of a deposition must be typswritten on opaque, unglazed, durable paper approximately 8½ by 11 inches (21.8 by 27.9 cm.) in size (letter size). Typing shall be double-spaced on one side of the paper in not smaller than pica-type with a margin of 1½ inches (3.8 cm.) on the left-hand side of the page. The pages must be consecutively numbered throughout the entire record of each party (§ 1.653(d)) and the name of the witness must be typed at the top of each page (§ 1.653(e)). The questions propounded to each witness must be consecutively numbered unles spaper with numbered lines is used and each question must be followed by its answer.

(b) Exhibits must be numbered consecutively and each must be marked as required by § 1.653(i).

§ 1.678 Transcript of deposition must be filed.

Unless otherwise ordered by an examiner-in-chief, a certified transcript of a deposition must be filed in the Patent and Trademark Office within 45 days from the date of the deposition. If a party refues to file a certified transcript, the examiner-in-chief or the Board may take appropriate action under § 1.616. If a party refues to file a certified transcript, any opponent may move for leave to file the certified transcript and include a copy of the transcript as part of the opponent's record.

§ 1.679 Inspection of transcript.

A certified transcript filed in the Patent and Trademark Office may be inspected by any party. The certified transcript may not be removed from the Patent and Trademark Office for printing (§ 1.653(g)) unless authorized by an examiner-in-chief upon such terms as may be appropriate.

§ 1.682 Official records and printed publications.

(a) A party may introduce into evidence, if otherwise admissible, any official record or printed publication not identified on the record during the taking of testimony of a witness, by filing a notice offering the official record or publication into evidence. If the evidence relates to the party's case-in-chief, the notice shall be filed prior to close of testimony of the party's case-in-chief. If the evidence relates to rebuttal, the notice shall be filed prior to the close of testimony of the party's case-in-rebuttal. The notice shall (1) identify the official record or printed publication, (2) identify the portion thereof to be introduced in evidence, (3) indicate generally the relevance of the portion sought to be introduced in evidence, and (4) be accompanied by a certified copy of the official record or a copy of the printed publication.

(b) A copy of the notice, official record, and publication shall be served.

(c) Unless otherwise ordered by an examiner-in-chief, any written objection to the notice or to the admissibility of the official record or printed publication shall be filed within 15 days of service of the notice. See also § 1.656(h).

§ 1.683 Testimony in another interference, proceeding, or action.

(a) Prior to close of a party's appropriate testimony period or within such time as may be set by an examiner-in-chief, a party may file a motion

(§ 1.635) for leave to use in an interference testimony of a witness from another interference, proceeding, or action involving the same parties, subject to such conditions as may be deemed appropriate by an examiner-in-chief. The motion shall specify with particularity the exact testimony to be used and shall demonstrate its relevance.

(b) Any objection to the admissibility of the testimony of the witness shall be made in an opposition to the motion. See also § 1.656(h).

§ 1.684 Testimony in a foreign country.

(a) An examiner-in-chief may authorize testimony of a witness to be taken in a foreign country. A party seeking to take testimony in a foreign country shall, prior to the close of the party's appropriate testimony period or within such time as may be set by an examiner-in-chief, file a motion (§ 1.635):

(1) Naming the witness.

(2) Describing the particular facts to which it is expected that the witness will testify.

(3) Stating the grounds on which the moving party believes that the witness will so testify.

(4) Demonstrating that the expected testimony is admissible.

(5) Demonstrating that the testimony cannot be taken in this country at all or cannot be taken in this country without hardship to the moving party greatly exceeding the hardship to which all opposing parties will be exposed by the taking of the testimony in a foreign country.

(6) Accompanied by an affidavit stating that the motion is made in good faith and not for the purpose of delay or harassing any party.

(7) Accompanied by written interrogatories to be asked of the witness.

(b) Any opposition under § 1.638(a) shall state any objection to the written interrogatories and shall include any cross-interrogatories to be asked of the witness. A reply under § 1.638(b) may be filed and shall be limited to stating any objection to any cross-interrogatories proposed in the opposition.

(c) If the motion is granted, the moving party shall be responsible for obtaining answers to the interrogatories and cross-interrogatories before an officer qualified to administer oaths in the foreign country under the laws of the United States or the foreign country. The officer shall prepare a transcript of the interrogatories, cross-interrogatories, and recorded answers to the interrogatories and cross-interrogatories and shall transmit the transcript to BOX INTERFERENCE, Commissioner of Patents and Trademarks, Washington, D.C. 20231, with a certificate signed and sealed by the officer and showing:

(1) The witness was duly sworn by the officer before answering the interrogatories and cross-interrogatories.

(2) The recorded answers are a true record of the answers given by the witness to the interrogatories and cross-interrogatories.

(3) The name of the person by whom the answers were recorded and, if not recorded by the officer, whether the answers were recorded in the presence of the officer.

(4) The presence or absence of any party.

(5) The place, day, and hour that the answers were recorded.

(6) A copy of the recorded answers was read by or to the witness before the witness signed the recorded answers and that the witness signed the recorded answers in the presence of the officer. The officer shall state the circumstances under which a witness refuses to read or sign recorded answers.

(7) The officer is not disqualified under § 1.674.

(d) If the parties agree in writing, the testimony may be taken before the officer on oral deposition.

(e) A party taking testimony in a foreign country shall have the burden of proving that false swearing in the giving of testimony is punishable as perjury under the laws of the foreign country. Unless false swearing in the giving of testimony before the officer shall be punishable as perjury under the laws of the foreign country where testimony is taken, the testimony shall not be entitled to the same weight as testimony taken in the United States. The weight of the testimony shall be determined in each case.

§ 1.685 Errors and irregularities in depositions.

(a) An error in a notice for taking a deposition is waived unless a motion (§ 1.635) to quash the notice is filed as soon as the error is, or could have been, discovered.

(b) An objection to a qualification of an officer taking a deposition is waived unless:

(1) The objection is made on the record of the deposition before a witness begins to testify.

(2) If discovered after the deposition, a motion (§ 1.635) to suppress the deposition is filed as soon as the objection is, or could have been, discovered.

(c) An error or irregularity in the manner in which testimony is transcribed, a certified transcript is signed by a witness, or a certified transcript is prepared, signed, certified, sealed, indorsed, forwarded, filed, or otherwise handled by the officer is waived unless a motion (§ 1.635) to suppress the deposition is filed as soon as the error or irregularity is, or could have been, discovered.

(d) An objection to the competency of a witness, admissibility of evidence, manner of taking the deposition, the form of questions and answers, any oath or affirmation, or conduct of any party at the deposition is waived unless an objection is made on the record at the deposition stating the specific ground of objection. Any objection which a party wishes considered by the Board at final hearing shall be included in a motion to suppress under § 1.656(h).

(e) Nothing in this section precludes taking notice of plain errors affecting substantial rights although they were not brought to the attention of an examiner-in-chief or the Board.

§ 1.687 Additional discovery.

(a) A party is not entitled to discovery except as authorized in this subpart.

(b) Where appropriate, a party may obtain production of documents and things during cross-examination of an opponent's witness or during the testimony period of the party's case-in-rebuttal. If the witness refuses to produce a requested document or thing, the party may file a motion (§ 1.635) for additional discovery under paragraph (c) of this section.

(c) Upon a motion (§ 1.635) brought by a party within the time set by an examiner-in-chief under § 1.651 or thereafter as authorized by § 1.645 and upon a showing that the interest of justice so requires, an examiner-in-chief may order additional discovery, as to matters under the control of a party within the scope of the Federal Rules of Civil Procedure, specifying the terms and conditions of such additional discovery.

(d) The parties may agree to discovery among themselves at any time. In the absence of an agreement, a motion for additional discovery shall not be filed except as authorized by this subpart.

§ 1.688 Use of discovery.

(a) A party may introduce into evidence, if otherwise admissible, an admission to a written request for an admission or an answer to a written interrogatory obtained by discovery under § 1.687 by filing a copy of the request for admission and admission or a copy of the written interrogatory and answer. If the admission or answer relates to a party's case-in-chief, the

admission or answer shall be filed prior to the close of testimony of the party's case-in-chief. If the admission or answer relates to the party's rebuttal, the admission or answer shall be filed prior to the close of testimony of the party's case-in-rebuttal. Unless otherwise ordered by an examiner-in-chief, any written objection to the admissibility of an admission or answer shall be filed within 15 days of service of the admission or answer.

(b) A party may not rely upon any other matter obtained by discovery unless it is introduced into evidence under this subpart.

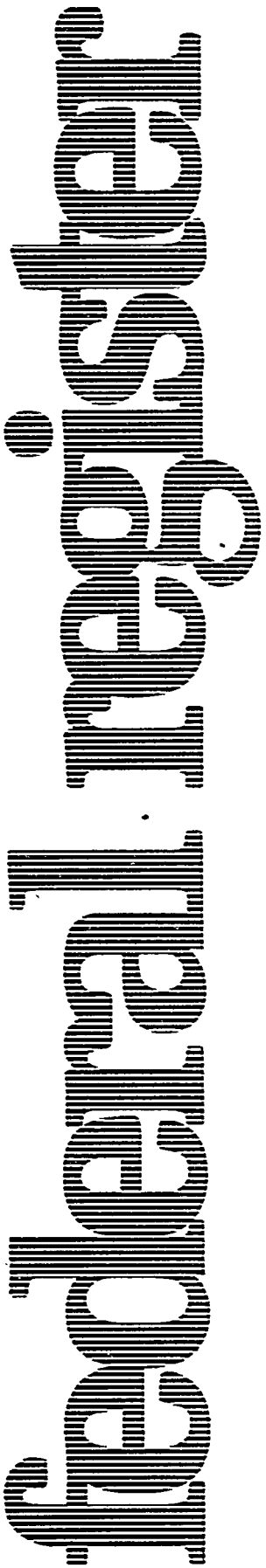
Dated: January 4, 1984.

Gerald J. Mossinghoff,

Commissioner of Patents and Trademarks.

[FR Doc. 84-1979 Filed 1-27-84; 8:45 am]

BILLING CODE 3510-16-M



Monday
January 30, 1984

Part IV

Department of Health and Human Services

Food and Drug Administration

21 CFR Parts 73, et al.

Incorporation by Reference; Proposed Updating of Text; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 73, 74, 103, 105, 131, 133, 135, 136, 137, 139, 145, 146, 150, 155, 160, 161, 163, 164, 166, 168, 169, 172, 173, 175, 176, 177, 178, 179, and 189

[Docket No. 84N-0025]

Incorporation by Reference; Proposed Updating of Text

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the regulatory text pertaining to materials incorporated by reference in those parts of Title 21 of the Code of Federal Regulations concerned with color additives and food. This action is being taken to meet the requirements for incorporation by reference set forth in Title 1 of the Code of Federal Regulations (1 CFR Part 51).

DATE: Comments by February 29, 1984.

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

FOR FURTHER INFORMATION CONTACT: Michael E. Kashtock, Bureau of Foods (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Title 1 of the Code of Federal Regulations (1 CFR Part 51) requires the filing and updating of material that has been incorporated by reference in the Code of Federal Regulations. The purpose of the requirement is to ensure the public availability and accuracy of material that has been incorporated from other sources.

Accordingly, FDA has reviewed the regulations concerned with color additivies and food (21 CFR Parts 1-199) that include materials incorporated by reference. The agency has concluded that it is necessary to amend a number of these regulations to bring them into compliance with the requirements prescribed in 1 CFR Part 51.

Many of the incorporated materials consist of methods or specifications that were published in compendia such as the Food Chemicals Codex or the Official Methods of Analysis of the Association of Official Analytical Chemists. In many cases, although this material has not been modified in the compendium, the volume of the compendium cited when a regulation was established has been superseded by a subsequent volume. In addition, many of the individual methods have been superseded by updated versions of the methods, which, though updated, do not represent a substantial change in the method. The agency believes that in such cases the most recently published method or compendia should be cited in the incorporating regulatory text.

Additionally, and for similar reasons, the agency is updating several regulations citing U.S. Government-sponsored publications such as the United States Pharmacopeia and the National Formulary. Although these publications do not constitute official incorporations by reference, their updating at this time is appropriate.

The agency believes that the proposed materials that would be incorporated by reference or used to update particular regulations do not include any substantive changes to those regulations.

Under the formal rulemaking procedures, a final rule based on this proposal will result in the updating of nearly all regulations in Parts 1-99 containing material incorporated by reference.

The agency is not proposing to update a small number of analytical methods incorporated by reference in the parts of Title 21 covered by this proposal because the agency has not been able to review the most recent versions of these methods. In addition, the updating of some methods incorporated in the parts of Title 21 covered by this proposal may require changes of a more substantive nature, necessitating additional review by agency scientists. The agency is not proposing to make these more substantive changes at this time.

Although the agency normally provides interested persons with a 60-day comment period, the agency is shortening the comment period to 30 days because these proposed changes are not substantive. Also, the agency would like to publish a final rule prior to the April 1, 1984 revision date for the publication of Title 21 of the Code of Federal Regulations, so that the changes provided can be incorporated in the 1984 edition of Title 21.

The agency has determined pursuant to 21 CFR 25.24(b)(22) (proposed December 11, 1979; 44 FR 71742) that this proposed action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

FDA, in accordance with the Regulatory Flexibility Act, has considered the effect that this proposal would have on small entities including small businesses and has determined that the effect of this proposal will be to improve the availability of the materials incorporated, while not significantly affecting their content or other factors affecting their use. Therefore, FDA certifies in accordance with section 605(b) of the Regulatory Flexibility Act that no significnt economic impact on a substantial number of small entities will derive from this action.

List of Subjects

21 CFR Part 73

Color additives, Cosmetics, Drugs, Medical devices.

21 CFR Part 74

Color additives, Cosmetics, Drugs, Medical devices.

21 CFR Part 103

Quality standards.

21 CFR Part 105

Dietary foods, Food labeling, Infant foods, Nutrition, Vitamins and minerals.

21 CFR Part 131

Cream, Food standards, Milk, Yogurt.

21 CFR Part 133

Cheese, Food standards.

21 CFR Part 135

Food standards, Frozen desserts, Ice cream.

21 CFR Part 136

Bakery products, Bread, Food standards.

21 CFR Part 137

Cereals, Flour, Food standards.

21 CFR Part 139

Food standards, Macaroni, Noodles.

21 CFR Part 145

Canned fruit, Food standards, Fruit.

21 CFR Part 146

Canned fruit juice, Food standards, Fruit juices.

21 CFR Part 150

Food standards, Fruit butter, Jam, Jelly.

21 CFR Part 155

Canned vegetables, Food standards, Vegetables.

21 CFR Part 160

Eggs, Food standards.

21 CFR Part 161

Fish, Food standards, Seafood.

21 CFR Part 163

Cocoa products, Chocolate, Food standards.

21 CFR Part 164

Food standards, Nuts, Peanuts.

21 CFR Part 166

Food standards, Margarine.

21 CFR Part 168

Food standards, Sirups, Sugars.

21 CFR Part 169

Food dressings, Food standards, Vanilla.

21 CFR Part 172

Food additives, Food preservatives, Spices and flavorings.

21 CFR Part 173

Food additives, Food processing aids.

21 CFR Part 175

Adhesives, Food additives, Food packaging.

21 CFR Part 176

Food additives Food packaging, Paper and paperboard.

21 CFR Part 177

Food additives, Polymeric food packaging.

21 CFR Part 178

Food additives, Food packaging, Sanitizing solutions.

21 CFR Part 179

Food additives, Food packaging, Irradiation of food.

21 CFR Part 189

Food ingredients, Prohibited direct food ingredients, Prohibited indirect food ingredients.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 409, 701(e), 706, 70 Stat. 919 as amended, 72 Stat. 1784–1788 as amended, 74 Stat. 399–407 as amended (21 U.S.C. 348, 371(e), 376)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), it is proposed that Title 21 of the Code of Federal Regulations be amended as follows:

PART 73—LISTING OF COLOR ADDITIVES EXEMPT FROM CERTIFICATION

1. Part 73 is amended:

a. In § 73.160 by revising paragraphs (a) and (b), to read as follows:

§73.160 Ferrous gluconate.

(a) *Identity.* The color additive ferrous gluconate is the ferrous gluconate defined in the Food Chemicals Codex, 3d Ed. (1981), pp. 122–123, which is incorporated by reference. Copies may be obtained from the National Academy Press, 2101 Constitution Ave. NW., Washington, DC 20418, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(b) *Specifications.* Ferrous gluconate shall meet the specifications given in the Food Chemicals Codex, 3d Ed. (1981), which is incorporated by reference. The availability of this incorporation by reference is given in paragraph (a) of this section.

* * * * *

b. In § 73.450 by revising paragraphs (a)(1) and (b), to read as follows:

§73.450 Riboflavin.

(a) *Identity.* (1) The color additive riboflavin is the riboflavin defined in the Food Chemicals Codex, 3d Ed. (1981), pp. 262–263, which is incorporated by reference. Copies may be obtained from the National Academy Press, 2101 Constitution Ave. NW., Washington, DC 20418, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

(b) *Specifications.* Riboflavin shall meet the specifications given in the Food Chemicals Codex, 3d Ed. (1981), which is incorporated by reference. The availability of this incorporation by reference is given in paragraph (a)(1) of this section.

* * * * *

c. In § 73.1015 by revising the introductory text of paragrah (c) and by revising paragraph (c)(3), to read as follows:

§73.1015 Chromium-cobalt-aluminum oxide.

* * * * *

(c) *Uses and restrictions.* The color additive chromium-cobalt-aluminum oxide may be safely used for coloring linear polyethylene surgical sutures, United States Pharmacopeia (U.S.P.), for use in general surgery, subject to the following restrictions:

* * * * *

(3) The dyed suture shall conform in all respects to the requirements of the U.S.P. XX (1980).

* * * * *

d. In § 73.1025 by revising paragraph (c)(1), to read as follows:

§73.1025 Ferric ammonium citrate.

* * * * *

(c) * * *

(1) The dyed suture shall conform in all respects to the requirements of the United States Pharmacopeia XX (1980).

* * * * *

e. In § 73.1070 by revising paragraph (b), to read as follows:

§73.1070 Calcium carbonate.

* * * * *

(b) *Specifications.* Calcium carbonate shall meet the specifications for precipitated calcium carbonate in the United States Pharmacopeia XX (1980).

* * * * *

f. In § 73.1375 by revising paragraph (c)(1), to read as follows:

§73.1375 Pyrogallol.

* * * * *

(c) * * *

(1) the dyed suture shall conform in all respects to the requirements of the United States Pharmacopeia XX (1980).

* * * * *

§73.1550 [Amended]

g. In § 73.1550 *Talc* in paragraph (b) by revising "U.S.P." to read "United States Pharmacopeia XX (1980)".

PART 74—LISTING OF COLOR ADDITIVES SUBJECT TO CERTIFICATION

2. Part 74 is amended:

a. In § 74.1102 by revising paragraph (c)(1)(ii), to read as follows:

§74.1102 FD&C Blue No. 2.

* * * * *

(c) * * *

(1) * * *

(ii) The dyed suture shall conform in all respects to the requirements of the United States Pharmacopeia XX (1980).

b. In § 74.1109 by revising paragraph (c)(1), to read as follows:

§74.1109 D&C Blue No. 9.

* * * * *

(c) * * *

(1) The dyed suture shall conform in all respects to the requirements of the United States Pharmacopeia XX (1980).

* * * * *

PART 103—QUALITY STANDARDS FOR FOODS WITH NO IDENTITY STANDARDS

3. Part 103 is amended in § 103.35 by revising the introductory text of paragraphs (b) and (c), by revising the first sentence in paragraph (d)(1)(ii), and by revising the first sentence in paragraph (e)(2), to read as follows:

§103.35 Bottled water.

* * * * *

(b) *Microbiological quality.* Bottled water shall, when a sample consisting of analytical units of equal volume is examined by the methods described in applicable sections of "Standard Methods for the Examination of Water and Wastewater," 15th Ed. (1980), American Public Health Association, which is incorporated by reference (copies may be obtained from the Division of Food Technology, Bureau of Foods (HFF-210), 200 C St. SW., Washington, DC 20204, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC (20408), meet the following standards of microbiological quality:

* * * * *

(c) *Physical quality.* Bottled water shall, when a composite of analytical units of equal volume from a sample is examined by the method described in applicable sections of "Standard Methods for the Examination of Water and Wastewater," 15th Ed. (1980), which is incorporated by reference (the availability of this incorporation by reference is given in paragraph (b) of this section), meet the following standards of physical quality:

* * * * *

(d) * * *

(1) * * *

(ii) Analyses conducted to determine compliance with paragraph (d)(1)(i) of this section shall be made in accordance with the methods described in the applicable sections of "Standard Methods for the Examination of Water and Wastewater," 15th Ed. (1980), or "Methods for Chemical Analysis of Water and Wastes," Environmental Monitoring and Support Laboratory, EPA-600/4-82-055, March 1983, U.S. Environmental Protection Agency, both of which are incorporated by reference.

* * *

* * * * *

(e) * * *

(2) Analyses conducted to determine compliance with paragraph (e)(1) of this section shall be made in accordance with the methods described in the applicable sections of "Standard Methods for the Examination of Water and Wastewater," 15th Ed. (1980), and "Interim Radiochemical Methodology for Drinking Water," Environmental Monitoring and Support Laboratory EPA-600/4-75-008 (Revised), March 1976, U.S. Environmental Protection Agency, both of which are incorporated by reference.

* * * * *

PART 105—FOODS FOR SPECIAL DIETARY USE

4. Part 105 is amended in § 105.65 by revising paragraph (c)(4)(i), to read as follows:

§ 105.65 Infant foods.

* * * * *

(c) * * *

(4) * * *

(i) For the purpose of this paragraph (c)(4), the method for determining biological quality of protein shall be the method prescribed in sections 43.212-43.216 under "Biological Evaluation of Protein Quality—Official Final Action" of "Official Methods of Analysis of the Association of Official Analytical Chemists," 13th Ed. (980), which is incorporated by reference. Copies may be obtained from the Association of Official Analytical Chemists, P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

PART 131—MILK AND CREAM

5. Part 131 is amended:

(a) In § 131.110 by revising the introductory text in paragraph (d) and by revising paragraph (d)(1) and (3), to read as follows:

§ 131.110 Milk.

* * * * *

(d) *Methods of analysis.* Referenced methods are from "Official Methods of Analysis of the Association of Official Analytical Chemists," 13th Ed. (1980), which is incorporated by reference. Copies may be obtained from the Association of Official Analytical Chemists, P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(1) Milkfat content—"Fat, Roese-Gottlieb Method—Official Final Action," section 16.059.

(2) * * *

(3) Vitamin D content—"Vitamin D—Official Final Action," sections 43.195-43.208.

* * * * *

b. In § 131.115 by revising paragraph (d), to read as follows:

§ 131.115 Concentrated milk.

* * * * *

(d) *Methods of analysis.* Referenced methods are from "Official Methods of Analysis of the Association of Official Analytical Chemists," 13th Ed. (1980), which is incorporated by reference. Copies may be obtained from the Association of Official Analytical Chemists, P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(1) Milkfat content—"Fat—Official Final Action," section 16.172.

(2) Total milk solids—"Total Solids—Official Final Action," section 16.169.

(3) Vitamin D content—"Vitamin D in Milk—Official Final Action," sections 43.195-43.208.

* * * * *

c. In §131.120 by revising paragraph (c), to read as follows:

§ 131.120 Sweetened condensed milk.

* * * * *

(c) *Methods of analysis.* The milkfat content is determined by the method prescribed in "Official Methods of Analysis of the Association of Official Analytical Chemists," 13th Ed. (1980), section 16.185, under "Fat—Official Final Action," which is incorporated by reference. Copies may be obtained from the Association of Official Analytical Chemists, P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

d. In §131.122 by revising paragraph (c), to read as follows:

§ 131.122 Sweetened condensed skimmed milk.

* * * * *

(c) *Methods of analysis.* The milkfat content is determined by the method prescribed in "Official Methods of Analysis of the Association of Official Analytical Chemists," 13th Ed. (1980), section 16.185, under "Fat—Official Final Action," which is incorporated by reference. Copies may be obtained from the Association of Official Analytical Chemists, P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

e. In §131.123 by revising paragraph (d), to read as follows:

* * * * *

§ 131.123 Lowfat dry milk.

(d) *Methods of analysis.* The following referenced methods of analysis are from "Official Methods of Analysis of the Association of Official Analytical Chemists," 13th Ed. (1980), which is incorporated by reference. Copies may be obtained from the

Association of Official Analytical Chemists, P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(1) Milkfat content—"Fat in Dried Milk—Official Final Action," sections 16.199–16.200.

(2) Moisture content—"Moisture—Official Final Action," section 16.192.

(3) Vitamin D content—"Vitamin D—Official Final Action," sections 43.195–43.208.

* * * * *

f. In § 131.125 by revising paragraph (c), to read as follows:

§ 131.125 Nonfat dry milk.

* * * * *

(c) *Methods of analysis.* The following referenced methods of analysis are from "Official Methods of Analysis of the Association of Official Analytical Chemists," 13th Ed. (1980), which is incorporated by reference. Copies may be obtained from the Association of Official Analytical Chemists, P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(1) Milkfat content—"Fat in Dried Milk—Official Final Action," sections 16.199–16.200.

(2) Moisture content—"Moisture—Official Final Action," section 16.192.

* * * * *

g. In § 131.127 by revising paragraph (d), to read as follows:

§ 131.127 Nonfat dry milk fortified with vitamins A and D.

* * * * *

(d) *Methods of analysis.* The following referenced methods of analysis are from "Official Methods of Analysis of the Association of Official Analytical Chemists," 13th Ed. (1980), which is incorporated by reference. Copies may be obtained from the Association of Official Analytical Chemists, P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(1) Milkfat content—"Fat in Dried Milk—Official Final Action," sections 16.199–16.200.

(2) Moisture content—"Moisture—Official Final Action," section 16.192.

(3) Vitamin D content—"Vitamin D—Official Final Action," sections 43.195–43.208.

* * * * *

h. In § 131.130 by revising paragraph (d), to read as follows:

§ 131.130 Evaporated milk.

* * * * *

(d) *Methods of analysis.* The following referenced methods of analysis are from "Official Methods of Analysis of the Association of Official Analytical Chemists," 13th Ed. (1980), which is incorporated by reference. Copies may be obtained from the Association of Official Analytical Chemists, P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(1) Milkfat content—"Fat—Official Final Action," section 16.172

(2) Total milk solids—"Total Solids—Official Final Action," section 16.169.

(3) Vitamin D content—"Vitamin D in Milk—Official Final Action," sections 43.195–43.208.

* * * * *

i. In § 131.132 by revising paragraph (d), to read as follows:

§ 131.132 Evaporated skimmed milk.

* * * * *

(d) *Methods of analysis.* The following referenced methods of analysis are from "Official Methods of Analysis of the Association of Official Analytical Chemists," 13th Ed. (1980), which is incorporated by reference. Copies may be obtained from the Association of Official Analytical Chemists, P.O. Box 540, Benjamin Franklin Station, Washington, D.C. 20044, or may be examined at the Office of the Federal Register, 1100 L. St. NW., Washington, D.C. 20408.

(1) Milkfat content—"Fat—Official Final Action," section 16.172.

(2) Total milk solids—"Total Solids—Official Final Action," section 16.169.

(3) Vitamin D content—"Vitamin D in Milk—Official Final Action," sections 43.195–43.208.

* * * * *

j. In § 131.135 by revising the introductory text of paragraph (d) and by revising paragraph (d)(1) and (3), to read as follows:

§ 131.135 Lowfat milk.

* * * * *

(d) *Methods of analysis.* Referenced methods are from "Official Methods of Analysis of the Association of Official Analytical Chemists," 13th Ed. (1980), which is incorporated by reference. Copies may be obtained from the Association of Official Analytical Chemists, P.O. Box 540, Benjamin Franklin Station, Washington, D.C. 20044, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, D.C. 20408.

(1) Milkfat content—"Fat, Roese-Gottlieb Method—Official Final Action," section 16.059.

(2) * * *

(3) Vitamin D content—"Vitamin D—Official Final Action," sections 43.195–43.208.

* * * * *

k. In § 131.143 by revising the introductory text of paragraph (d) and by revising paragraph (d)(1) and (3), to read as follows:

§ 131.143 Skim milk.

* * * * *

(d) *Methods of analysis.* Referenced methods are from "Official Methods of Analysis of the Association of Official Analytical Chemists," 13th Ed. (1980), which is incorporated by reference. Copies may be obtained from the Association of Official Analytical Chemists, P.O. Box 540, Benjamin Franklin Station, Washington, D.C. 20044, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, D.C. 20408.

(1) Milkfat content—"Fat, Roese-Gottlieb Method—Official Final Action," section 16.059.

(2) * * *

(3) Vitamin D content—"Vitamin D—Official Final Action," sections 43.195–43.208.

* * * * *

l. In § 131.147 by revising paragraph (d), to read as follows:

§ 131.147 Dry whole milk.

* * * * *

(d) *Methods of analysis.* The following referenced methods of analysis are from "Official Methods of Analysis of the Association of Official Analytical Chemists," 13th Ed. (1980), which is incorporated by reference. Copies may be obtained from the Association of Official Analytical Chemists, P.O. Box 540, Benjamin Franklin Station, Washington, D.C. 20044, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, D.C. 20408.

(1) Milkfat content—"Fat in Dried Milk—Official Final Action," sections 16.199–16.200.

(2) Moisture content—"Moisture—Official Final Action," section 16.192.

(3) Vitamin D content—"Vitamin D—Official Final Action," sections 43.195–43.208.

* * * * *

m. In § 131.149 by revising paragraph (c), to read as follows:

§ 131.149 Dry cream.

* * * * *

(c) *Methods of analysis.* The following referenced methods of analysis are from "Official Methods of Analysis of the Association of Official Analytical Chemists," 13th Ed. (1980), which is incorporated by reference. Copies may be obtained from the Association of Official Analytical Chemists, P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(1) Milkfat content—"Fat in Dried Milk—Official Final Action," sections 16.199–16.200.

(2) Moisture content—"Moisture—Official Final Action," section 16.192.

* * * * * *

n. In § 131.150 by revising paragraph (c), to read as follows:

§ 131.150 Heavy cream.

* * * * * *

(c) *Methods of analysis.* The milkfat content is determined by the method prescribed in "Official Methods of Analysis of the Association of Official Analytical Chemists," 13th Ed. (1980), section 16.156, 16.059, under "Fat, Roese-Gottlieb Method—Official Final Action," which is incorporated by reference. Copies may be obtained from the Association of Official Analytical Chemists, P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

o. In § 131.155 by revising paragraph (c), to read as follows:

§ 131.155 Light cream.

* * * * * *

(c) *Methods of analysis.* The milkfat content is determined by the method prescribed in "Official Methods of Analysis of the Association of Official Analytical Chemists," 13th Ed. (1980), section 16.156, 16.1059, under "Fat, Roese-Gottlieb Method—Official Final Action," which is incorporated by reference. Copies may be obtained from the Association of Official Analytical Chemists, P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * * *

p. In § 131.157 by revising paragraph (c), to read as follows:

§ 131.157 Light whipping cream.

* * * * * *

(c) *Methods of analysis.* The milkfat content is determined by the method prescribed in "Official Methods of Analysis of the Association of Official Analytical Chemists," 13th Ed. (1980), section 16.156, 16.059, under "Fat, Roese-Gottlieb Method—Official Final Action," which is incorporated by reference. Copies may be obtained from the Association of Official Analytical Chemists, P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * * *

q. In § 131.160 by revising paragraph (c), to read as follows:

§ 131.160 Sour cream.

* * * * * *

(c) *Methods of analysis.* Referenced methods in paragraph (c) (1) and (2) of this section are from "Official Methods of Analysis of the Association of Official Analytical Chemists," 13th Ed. (1980), which is incorporated by reference. Copies may be obtained from the Association of Official Analytical Chemists, P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(1) Milkfat content—"Fat—Official Final Action," section 16.172.

(2) Titratable acidity—"Acidity—Official Final Action," section 16.023.

* * * * * *

r. In § 131.162 by revising paragraph (c), to read as follows:

§ 131.162 Acidified sour cream.

* * * * * *

(c) *Methods of analysis.* Referenced methods in paragraph (c)(1) and (2) of this section are from "Official Methods of Analysis of the Association of Official Analytical Chemists," 13th Ed. (1980), which is incorporated by reference. Copies may be obtained from the Association of Official Analytical Chemists, P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(1) Milkfat content—"Fat—Official Final Action," section 16.172.

(2) Titratable acidity—"Acidity—Official Final Action," section 16.023.

* * * * * *

s. In § 131.180 by revising paragraph (c), to read as follows:

§ 131.180 Half-and-half.

* * * * * *

(c) *Methods of analysis.* The milkfat content is determined by the method prescribed in "Official Methods of Analysis of the Association of Official Analytical Chemists," 13th Ed. (1980), in section 16.156, 16,059, under "Fat, Roese-Gottlieb Method—Official Final Action," which is incorporated by reference. Copies may be obtained from the Association of Official Analytical Chemists, P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * * *

t. In § 131.185 by revising paragraph (c), to read as follows:

§ 131.185 Sour half-and-half.

* * * * * *

(c) *Methods of analysis.* Referenced methods in paragraph (c)(1) and (2) of this section are from "Official Methods of Analysis of the Association of Official Analytical Chemists," 13th Ed. (1980), which is incorporated by reference. Copies may be obtained from the Association of Official Analytical Chemists, P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(1) Milkfat content—"Fat—Official Final Action," section 16.172.

(2) Titratable acidity—"Acidity—Official Final Action," section 16.023.

* * * * * *

u. In § 131.187 by revising paragraph (c), to read as follows:

§ 131.187 Acidified sour half-and-half.

* * * * * *

(c) *Methods of analysis.* Referenced methods in paragraph (c)(1) and (2) of this section are from "Official Methods of Analysis of the Association of Official Analytical Chemists," 13th Ed. (1980), which is incorporated by reference. Copies may be obtained from the Association of Official Analytical Chemists, P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(1) Milkfat content—"Fat—Official Final Action," section 16.172.

(2) Titratable acidity—"Acidity—Official Final Action," section 16.023.

* * * * * *

PART 133—CHEESES AND RELATED CHEESE PRODUCTS

6. Part 133 is amended:

a. In § 133.102 by revising the second sentence in paragraph (a), to read as follows:

§ 133.102 Asiago fresh and asiago soft cheese.

(a) * * * It contains not more than 45 percent of moisture, and its solids contain not less than 50 percent of milkfat, as determined by the methods prescribed in § 133.5 (a), (b), and (d).
* * *
* * * * * *

b. In § 133.108 by revising the second sentence in paragraph (a) and by revising the last sentence in paragraph (c)(2), to read as follows:

§ 133.108 Brick cheese.

(a) * * * It contains not more than 44 percent of moisture, and its solids contain not less than 50 percent of milkfat, as determined by the methods prescribed in § 133.5 (a), (b), and (d).
* * *
* * * * * *

(c) * * *
(2) * * * Brick cheese shall be deemed not to have been made from pasteurized milk if 0.25 gram shows a phenol equivalent of more than 5 micrograms when tested by the method prescribed in § 133.5(c).
* * * * * *

c. In § 133.111 by revising the third sentence in paragraph (a), to read as follows:

§ 133.111 Caciocavallo siciliano cheese.

(a) * * * It contains not more than 40 percent of moisture, and its solids contain not less than 42 percent milkfat as determined by the methods prescribed in § 133.5 (a), (b), and (d).
* * *
* * * * * *

d. In § 133.118 by revising the second sentence in paragraph (a), by revising the last sentence in paragraph (c)(2), and by revising paragraph (c)(3), to read as follows:

§ 133.118 Colby cheese.

(a) * * * It contains not more than 40 percent of moisture, and its solids contain not less than 50 percent of milkfat, as determined by the methods prescribed in § 133.5 (a), (b), and (d).
* * *
* * * * * *

(c) * * *
(2) * * * Colby cheese shall be deemed not to have been made from pasturized milk if 0.25 gram shows a phenol equivalent of more than 3 micrograms when tested by the method prescribed in § 133.5(c).

(3) During the cheesemaking process the milk may be treated with hydrogen peroxide/catalase as provided in § 133.113(b)(3)(v).
* * * * * *

e. In § 133.123 by revising paragraph (a)(5), to read as follows:

§ 133.123 Cold-pack and club cheese.

(a) * * *
(5) Moisture and fat are determined by the methods prescribed in § 133.5 (a), (b), and (d).
* * * * * *

f. In § 133.124 by revising paragraph (a)(4), to read as follows:

§ 133.124 Cold-pack cheese food.

(a) * * *
(4) Moisture and fat are determined by the methods prescribed in § 133.5 (a), (b), and (d), except that in determining moisture the loss in weight which occurs in drying for 5 hours, under the conditions prescribed in such method, is taken as the weight of moisture.
* * * * * *

g. In § 133.125 by revising paragraph (a)(3), to read as follows:

§ 133.125 Cold-pack cheese food with fruits, vegetables, or meats.

(a) * * *
(3) When the added fruits, vegetables, or meats contain fat, the method prescribed for the determination of fat by § 133.5 (b) and (d) is not applicable.
* * * * * *

h. In § 133.127 by revising the second and third sentences in paragraph (a), to read as follows:

§ 133.127 Cook cheese, koch kaese.

(a) * * * It contains not more than 80 percent moisture as determined by the method prescribed in § 133.5(a). When tested for phosphatase by the method prescribed in § 133.5(c), 0.25 gram of cook cheese shows a phenol equivalent of not more than 3 micrograms.
* * * * * *

i. In § 133.129 by revising paragraph (a), to read as follows:

§ 133.129 Dry curd cottage cheese.

(a) Cottage cheese dry curd is the soft uncured cheese prepared by the procedure set forth in paragraph (b) of this section. The finished food contains less than 0.5 percent milkfat. It contains not more than 80 percent of moisture, as determined by the method prescribed in § 133.5(a).
* * * * * *

j. In § 133.133 by revising paragraph (a), to read as follows:

§ 133.133 Cream cheese.

(a) Cream cheese is the soft uncured cheese prepared by the procedure set forth in paragraph (b) of this section. The finished cream cheese contains not less than 33 percent of milkfat and not more than 55 percent of moisture, as determined by the methods prescribed in § 133.5 (a) and (b).
* * * * * *

k. In § 133.134 by revising paragraph (b), to read as follows:

§ 133.134 Cream cheese with other foods.
* * * * * *

(b) No water other than that contained in the added food ingredients is used, but the moisture content of the mixture in no case is more than 60 percent. The milkfat is not less than 33 percent of the percent by weight of the cream cheese used, but in no case is it less than 27 percent of the finished food. Mositure and fat are determined by the methods prescribed in § 133.5 (a) and (b), except that when the added food contains fat the method prescribed for the determination of fat is not applicable.
* * * * * *

l. In §133.136 by revising the second sentence in paragraph (a), by revising the second sentence in paragraph (c)(2), and by revising paragraph (c)(3), to read as follows:

§ 133.136 Washed curd and soaked curd cheese.

(a) * * * It contains not more than 42 percent of moisture, and its solids contain not less than 50 percent of milkfat, as determined by the methods prescribed in § 133.5 (a), (b), and (d).
* * *
* * * * * *

(c) * * *
(2) * * * Washed cured cheese shall be deemed not to have been made from pasteurized milk of 0.25 gram shows a phenol equivalent of more than 3 micrograms when tested by the method prescribed in § 133.5(c).
(3) During the cheesemaking process the milk may be treated with hydrogen peroxide/catalase as provided in § 133.113(b)(3)(v).
* * * * * *

m. In § 133.140 by revising the last sentence in paragraph (a), to read as follows:

§ 133.140 Gammelost cheese.

(a) * * * It contains not more than 52 percent of moisture, as determined by the method prescribed in § 133.5(a).
* * * * * *

n. In § 133.141 by revising the fourth sentence in paragraph (a), to read as follows:

§ 133.141 Gorgonzola cheese.

(a) * * * It contains not more than 42 percent moisture, and its solids contain not less than 50 percent milkfat, as determined by the methods prescribed in § 133.5 (a), (b), and (d). * * *

* * * * *

o. In § 133.144 by revising the second sentence in paragraph (a), by revising the second sentence in paragraph (c)(2), and by revising paragraph (c)(3), to read as follows:

§ 133.144 Granular and stirred curd cheese.

(a) * * * It contains not more than 39 percent of moisture, and its solids contain not less than 50 percent of milkfat, as determined by the methods prescribed in § 133.5 (a), (b), and (d). * * *

* * * * *

(c) * * *

(2) * * * Granular cheese shall be deemed not to have been made from pasteurized milk if 0.25 gram shows a phenol equivalent of more than 3 micrograms when tested by the method prescribed in § 133.5(c).

(3) During the cheesemaking process the milk may be treated with hydrogen peroxide/catalase as provided in § 133.113(b)(3)(v).

* * * * *

p. In § 133.146 by revising paragraph (a)(6), to read as follows:

§ 133.146 Grated cheeses.

(a) * * *

(6) Moisture and fat in grated cheeses are determined by the methods prescribed in § 133.5 (a), (b), and (d).

* * * * *

q. In § 133.147 by revising paragraph (a)(2), to read as follows:

§ 133.147 Grated American cheese food.

(a) * * *

(2) Grated American cheese food contains not less than 23 percent of milkfat, as determined by the method prescribed in § 133.5(b).

* * * * *

r. In § 133.148 by revising the third sentence in paragraph (a), to read as follows:

§ 133.148 Hard grating cheeses.

(a) * * * They contain not more than 34 percent of moisture, and their solids contain not less than 32 percent of milkfat, as determined by the methods prescribed in § 133.5 (a), (b), and (d). * * *

* * * * *

s. In § 133.150 by revising the third sentence in paragraph (a) and by revising the last sentence in paragraph (c)(2), to read as follows:

§ 133.150 Hard cheeses.

(a) * * * They contain not more than 39 percent of moisture, and their solids contain not less than 50 percent of milkfat, as determined by the methods prescribed in § 133.5 (a), (b), and (d). * * *

* * * * *

(c) * * *

(2) * * * A hard cheese shall be deemed not to have been made from pasteurized milk if 0.25 gram shows a phenol equivalent of more than 3 micrograms when tested by the method prescribed in § 133.5(c).

* * * * *

t. In § 133.153 by revising the last sentence in paragraph (a) and by revising the last sentence in paragraph (c)(2), to read as follows:

§ 133.153 Monterey cheese and monterey jack cheese.

(a) * * * It contains not more than 44 percent of moisture, and its solids contain not less than 50 percent of milkfat, as determined by the methods prescribed in § 133.5 (a), (b), and (d).

* * * * *

(c) * * *

(2) * * * Monterey cheese shall be deemed not to have been made from pasteurized milk if 025 gram shows a phenol equivalent of more than 3 micrograms when tested by the method prescribed in § 133.5(c).

* * * * *

u. In § 133.155 by revising the last sentence in paragraph (a) and by revising the last sentence in paragraph (c)(2), to read as follows:

§ 133.155 Mozzarella cheese and scamorza cheese.

(a) * * * It contains more than 52 percent but not more than 60 percent of moisture, and its milkfat content, calculated on the solids basis, is not less than 45 percent, as determined by the methods prescribed in § 133.5 (a), (b), and (d).

* * * * *

(c) * * *

(2) * * * The finished food shall be deemed not to have been made from pasteurized milk if 0.25 gram shows a phenol equivalent of more than 3 micrograms when tested by the method prescribed in § 133.5(c), provolone modification.

* * * * *

v. In § 133.156 by revising the last sentence in paragraph (a) and by revising the last sentence in paragraph (c)(2), to read as follows:

§ 133.156 Low-moisture mozzarella and scamorza cheese.

(a) * * * Its moisture content is more than 45 percent but not more than 52 percent, and its milkfat content, calculated on the solids basis, is not less than 45 percent, as determined by the methods prescribed in § 133.5 (a), (b), and (d).

* * * * *

(c) * * *

(2) * * * The finished food shall be deemed not to have been made from pasteurized milk if 0.25 gram shows a phenol equivalent of more than 3 micrograms when tested by the method prescribed in § 133.5(c), provolone modification.

* * * * *

w. In § 133.160 by revising the last sentence in paragraph (a) and by revising the last sentence in paragraph (c)(2), to read as follows:

§ 133.160 Muenster and munster cheese.

(a) * * * It contains not more than 46 percent of moisture, and its solids contain not less than 50 percent of milkfat, as determined by the methods prescribed in § 133.5 (a), (b), and (d).

* * * * *

(c) * * *

(2) * * * Muenster cheese shall be deemed not to have been made from pasteurized milk if 0.25 gram shows a phenol equivalent of more than 3 micrograms when tested by the method prescribed in § 133.5(c).

* * * * *

x. In § 133.162 by revising paragraph (a), to read as follows:

§ 133.162 Neufchatel cheese.

(a) Neufchatel cheese is the soft uncured cheese prepared by the procedure set forth in paragraph (b) of this section. The finished neufchatel cheese contains not less than 20 percent but less than 33 percent of milkfat and not more than 65 percent of moisture, as determined by the methods prescribed in § 133.5 (a) and (b).

* * * * *

y. In § 133.164 by revising the third sentence in paragraph (a), to read as follows:

§ 133.164 Nuworld cheese.

(a) * * * It contains not more than 46 percent of moisture and its solids contain not less than 59 percent of milkfat, as determined by the methods prescribed in § 133.5 (a), (b), and (d).

* * * * *

z. In § 133.165 by revising the fourth sentence in paragraph (a), to read as follows:

§ 133.165 Parmesan and reggiano cheese.

(a) * * * It contains not more than 32 percent of moisture, and its solids contain not less than 32 percent of milkfat, as determined by the methods prescribed in § 133.5 (a), (b), and (d).

* * * * *

aa. In § 133.168 by revising paragraph (a)(3), to read as follows:

§ 133.168 Pasteurized blended cheese with fruits, vegetables, or meats.

(a) * * *

(3) When the added fruits, vegetables, or meats contain fat, the method prescribed for the determination of fat by § 133.5(b) is not applicable.

* * * * *

bb. In § 133.169 by revising the second sentence in paragraph (a)(2) and by revising paragraph (a)(5), to read as follows:

§ 133.169 Pasteurized process cheese.

(a) * * *

(2) * * * When tested for phosphatase by the method prescribed in § 133.5(c), the phenol equivalent of 0.25 gram of pasteurized process cheese is not more than 3 micrograms.

* * * * *

(5) Moisture and fat are determined by the methods prescribed in § 133.5 (a), (b), and (d).

* * * * *

cc. In § 133.170 by revising paragraph (a)(3), to read as follows:

§ 133.170 Pasteurized process cheese with fruits, vegetables, or meats.

(a) * * *

(3) When the added fruits, vegetables, or meats contain fat, the method prescribed for the determination of fat by § 133.5(b) is not applicable.

* * * * *

dd. In § 133.173 by revising the second sentence in paragraph (a)(2) and by revising paragraph (a)(4), to read as follows:

§ 133.173 Pasteurized process cheese food.

(a) * * *

(2) * * * When tested for phosphatase by the method prescribed in § 133.5(c), the phenol equivalent of 0.25 gram of pasteurized process cheese food is not more than 3 micrograms.

* * * * *

(4) Moisture and fat are determined by the methods prescribed in § 133.5 (a) and (b), except that in determining moisture the loss in weight which occurs in drying for 5 hours, under the conditions prescribed in such method, is taken as the weight of the moisture.

* * * * *

ee. In § 133.174 by revising paragraph (a)(3), to read as follows:

§ 133.174 Pasteurized process cheese food with fruits, vegetables, or meats.

(a) * * *

(3) When the added fruits, vegetables, or meats contain fat, the method prescribed for the determination of fat by § 133.5(b) is not applicable.

* * * * *

ff. In § 133.176 by revising paragraph (a)(2), to read as follows:

§ 133.176 Pasteurized cheese spread with fruits, vegetables, or meats.

(a) * * *

(2) When the added fruits, vegetables, or meats contain fat, the method prescribed for the determination of fat by § 133.5(b) is not applicable.

* * * * *

gg. In § 133.178 by revising the second sentence in paragraph (a)(2), to read as follows:

§ 133.178 Pasteurized neufchatel cheese spread with other foods.

(a) * * *

(2) * * * When tested for phosphatase by the method prescribed in § 133.5(c), the phenol equivalent of 0.25 gram of such food is not more than 3 micrograms.

* * * * *

hh. In § 133.179 by revising the second sentence in paragraph (a)(2) and by revising paragraph (a)(4), to read as follows:

§ 133.179 Pasteurized process cheese spread.

(a) * * *

(2) * * * When tested for phosphatase by the method prescribed in § 133.5(c), the phenol equivalent of 0.25 gram of pasteurized process cheese spread is not more than 3 micrograms.

* * * * *

(4) Moisture and fat are determined by the methods prescribed in § 133.5 (a) and (b), except that in determining moisture the loss in weight which occurs in drying for 5 hours, under the conditions prescribed in such method, is taken as the weight of the moisture.

* * * * *

ii. In § 133.180 by revising paragraph (a)(2), to read as follows:

§ 133.180 Pasteurized process cheese spread with fruits, vegetables, or meats.

(a) * * *

(2) When the added fruits, vegetables, or meats contain fat, the method prescribed for the determination of fat by § 133.5(b) is not applicable.

* * * * *

jj. In § 133.182 by revising the third sentence in paragraph (a), to read as follows:

§ 133.182 Soft ripened cheeses.

(a) * * * Their solids contain not less than 50 percent of milkfat, as determined by the methods prescribed in § 133.5 (a), (b), and (d).

* * * * *

kk. In § 133.183 by revising the third sentence in paragraph (a), to read as follows:

§ 133.183 Romano cheese.

(a) * * * It contains not more than 34 percent of moisture, and its solids contain not less than 38 percent of milkfat, as determined by the methods prescribed in § 133.5 (a), (b), and (d).

* * * * *

ll. In § 133.184 by revising the third sentence in paragraph (a), to read as follows:

§ 133.184 Roquefort, sheep's milk blue-mold, blue-mold cheese from sheep's milk.

(a) * * * It contains not more than 45 percent moisture, and its solids contain not less than 50 percent milkfat, as determined by the methods prescribed in § 133.5 (a), (b), and (d).

* * * * *

mm. In § 133.186 by revising the last sentence in paragraph (a), to read as follows:

§ 133.186 Sap sago cheese.

(a) * * * It contains not more than 38 percent of moisture, as determined by the method prescribed in § 133.5(a).

* * * * *

nn. In § 133.187 by revising the third sentence of paragraph (a) and by revising the last sentence in paragraph (c)(2), to read as follows:

§ 133.187 Semisoft cheeses.

(a) * * * They contain more than 39 percent, but not more than 50 percent, of moisture, and their solids contain not less than 50 percent of milkfat, as determined by the methods prescribed in § 133.5 (a), (b), and (d).

* * * * *

(c) * * *

(2) * * * A semisoft cheese shall be deemed not to have been made from pasteurized milk if 0.25 gram shows a phenol equivalent of more than 5 micrograms when tested by the method prescribed in § 133.5(c).

* * * * *

oo. In § 133.188 by revising the third sentence in paragraph (a) and by revising the last sentence in paragraph (c)(2), to read as follows:

§ 133.188 Semisoft part-skim cheeses.

(a) * * * They contain not more than 50 percent of moisture, and their solids contain not less than 45 percent, but less than 50 percent, of milkfat, as determined by the methods set forth in § 133.5 (a), (b), and (d).

* * * * *

(c) * * *

(2) * * * A semisoft part-skim cheese shall be deemed not to have been made from pasteurized milk if 0.25 gram shows a phenol equivalent of more than 5 micrograms when tested by the method prescribed in § 133.5(c).

* * * * *

pp. In § 133.189 by revising the second sentence in paragraph (a), to read as follows:

§ 133.189 Skim milk cheese for manufacturing.

(a) * * * It contains not more than 50 percent of moisture, as determined by the method prescribed in § 133.5(a).

* * * * *

qq. In § 133.190 by revising the third sentence in paragraph (a) and by revising the last sentence in paragraph (c)(2), to read as follows:

§ 133.190 Spiced cheeses.

(a) * * * Their solids contain not less than 50 percent of milkfat as determined by the methods prescribed in § 133.5 (a), (b), and (d).

* * * * *

(c) * * *

(2) * * * Spiced cheeses shall be deemed not to have been made from pasteurized milk if 0.25 gram shows a phenol equivalent of more than 3 micrograms when tested by the method prescribed in § 133.5(c).

* * * * *

PART 135—FROZEN DESSERTS

7. Part 135 is amended:

a. In § 135.110 by revising paragraph (d), to read as follows:

§ 135.110 Ice cream and frozen custard.

* * * * *

(d) *Methods of analysis.* The fat content shall be determined by the method prescribed in "Official Methods of Analysis of the Association of Official Analytical Chemists," 13th Ed. (1980), sections 16.287, 16.059, under "Fat, Roese-Gottlieb Method—Official Final Action," which is incorporated by reference. Copies may be obtained from the Association of Official Analytical Chemists, P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

b. In § 135.130 by revising paragraph (c), to read as follows:

§ 135.130 Mellorine.

* * * * *

(c) *Methods of analysis.* Fat and protein content, and the PER shall be determined by following the methods contained in "Official Methods of Analysis of the Association of Official Analytical Chemists," 13th Ed. (1980), which is incorporated by reference. Copies may be obtained from the Association of Official Analytical Chemists, P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(1) Fat content shall be determined by the method: "Fat, Roese-Gottlieb Method—Official Final Action," section 16.287.

(2) Protein content shall be determined by one of the following methods: "Nitrogen—Official Final Action," Kjeldahl Method, section 16.285, or Dye Binding Method, section 16.286.

(3) PER shall be determined by the method: "Biological Evaluation of Protein Quality—Official Final Action," sections 43.212–43.216.

* * * * *

PART 136—BAKERY PRODUCTS

8. Part 136 is amended:

a. In § 136.110 by revising paragraph (d), to read as follows:

§ 136.110 Bread, rolls, and buns.

* * * * *

(d) Total solids are determined by the method prescribed in "Official Methods of Analysis of the Association of Official Analytical Chemists," 13th Ed. (1980), section 14.091(a), which is incorporated by reference, except that if the baked unit weighs 1 pound or more, one entire unit is used for the determination; if the baked unit weighs less than 1 pound, enough units to weigh 1 pound or more are used. Copies of the material incorporated by reference may be obtained from the Association of Official Analytical Chemists, P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

b. In § 136.160 by revising paragraph (a)(5), to read as follows:

§ 136.160 Raisin bread, rolls, and buns.

(a) * * *

(5) The total solids are determined by the method prescribed in § 136.110(d), except that section 14.091(b) of "Official Methods of Analysis of the Association of Official Analytical Chemists," 13th Ed. (1980), which is incorporated by reference, will apply. Copies may be obtained from the Association of Official Analytical Chemists, P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

PART 137—CEREAL FLOURS AND RELATED PRODUCTS

9. Part 137 is amended:

a. In § 137.105 by revising the fourth and fifth sentences in the introductory text of paragraph (a) and by revising paragraph (c), to read as follows:

§ 137.105 Flour.

(a) * * * When tested for granulation as prescribed in paragraph (c)(4) of this section, not less than 98 percent of the flour passes through a cloth having openings not larger than those of woven wire cloth designated "212 m (No. 70)" complying with the specifications for such cloth set forth in "Official Methods of Analysis of the Association of Official Analytical Chemists" (AOAC), 13th Ed. (1980), Table 1, "Nominal Dimensions of Standard Test Sieves (U.S.A. Standard Series)," under the heading "Definitions of Terms and Explanatory Notes," which is incorporated by reference. Copies may be obtained from the Association of Official Analytical Chemists, P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

(c) For the purposes of this section:

(1) Ash is determined by the method prescribed in the AOAC, 13th Ed. (1980), section 14.006, "Direct Method—Official Final Action," under the heading "Ash (5)," which is incorporated by reference.

The availability of this incorporation by reference is given in paragraph (a) of this section. Ash is calculated to a moisture-free basis by subtracting the percent of moisture in the flour from 100, dividing the remainder into the percent of ash, and multiplying the quotient by 100.

(2) Protein is 5.7 times the nitrogen as determined by the method prescribed in section 2.057, "Improved Kjeldahl Methods for Nitrate-Free Samples (20)—Official Final Action," AOAC, 13th Ed. (1980), which is incorporated by reference. The availability of this incorporation by reference is given in paragraph (a) of this section. Protein is calculated to a moisture-free basis by subtracting the percent of moisture in the flour from 100, dividing the remainder into the percent of protein, and multiplying the quotient by 100.

(3) Moisture is determined by the method prescribed in the AOAC, 13th Ed. (1980), sections 14.002 and 14.003, "Vacuum Oven Method (2)—Official Final Action," under the heading "Total Solids Moisture, Indirect Method," which is incorporated by reference. The availability of this incorporation by reference is given in paragraph (a) of this section.

(4) Granulation is determined as follows: Use No. 70 sieve complying with the specifications for "Nominal Dimensions of Standard Test Sieves (U.S.A. Standard Series)" prescribed in paragraph (a) of this section. Attach bottom pan to sieve in Ro-Tap sifter (or an equivalent sifter). Place half of a rubber ball or other sieving aid in the sieve. Pour 100 grams of the sample in the sieve and turn on the sifter with knocker. Sift exactly 5 minutes. Weigh the residue on the No. 70 sieve and convert to percentage.

b. In § 137.180 by revising the introductory text in paragraph (c) and by revising the next to last sentence in paragraph (c)(1), to read as follows:

§ 137.180 Self-rising flour.

* * * * *

(c) The method referred to in paragraph (a) of this section is the method prescribed in "Official Methods of Analysis of the Association of Official Analytical Chemists" (AOAC), 13th Ed. (1980), section 8.002, "Reagent (Displacement soln.)," and section 8.003, "Chittick apparatus," under the heading "Total Carbon Dioxide (1)—Official Final Action," which is incorporated by reference. Copies may be obtained from the Association of Official Analytical Chemists, P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408. The following procedure is substituted for the procedure specified in the AOAC, under section 8.004, "Determination":

(1) * * * Observe the temperature of the air surrounding the apparatus and also the barometric pressure and multiply the number of cc. of gas evolved by the factor given in section 52.007, "Correction factors for gasometric determination or carbon dioxide," AOAC, 13th Ed. (1980), which is incorporated by reference (the availability of this incorporation by reference is given in paragraph (c) of this section, for the temperature and pressure observed.

* * * * *

c. In § 137.190 by revising the last two sentences in the section, to read as follows:

§ 137.190 Cracked wheat.

* * * Cracked wheat contains not more than 15 percent of the moisture as determined by the method prescribed in "Official Methods of Analysis of the Association of Official Analytical Chemists," 13th Ed. (1980), section 7.002 under "Preparation of Sample—Official Final Action," and section 7.003 under "Moisture—Official Final Action. I. Drying in Vacuo at 95–100° (2)," which is incorporated by reference. Copies may be obtained from the Association of Official Analytical Chemists, P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

d. In § 137.195 by revising the last two sentences in the section, to read as follows:

§ 137.195 Crushed wheat.

* * * Crushed wheat contains not more than 15 percent of moisture as determined by the method prescribed in "Official Methods of Analysis of the Association of Official Analytical Chemists," 13th Ed. (1980), section 7.002 under "Preparation of Sample—Official Final Action," and section 7.003 under "Moisture—Official Final Action. I. Drying in Vacuo at 95–100° (2)," which is incorporated by reference. Copies may be obtained from the Association of Official Analytical Chemists, P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

e. In § 137.200 by revising paragraph (c)(1) and by revising the first two sentences in paragraph (c)(2), to read as follows:

§ 137.200 Whole wheat flour.

* * * * *

(c) * * *

(1) Moisture is determined by the method prescribed in "Official Methods of Analysis of the Association of Official Analytical Chemists" (AOAC), 13th Ed. (1980), section 14.002 "Vacuum Oven Method—Official Final Action," and section 14.003, "Determination," which is incorporated by reference. Copies may be obtained from the Association of Official Analytical Chemists, P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(2) The method referred to in paragraph (a) of this section is as follows: Use No. 8 and No. 20 sieves, having standard 8-inch full-height frames, complying with the specifications set forth in the AOAC, Table 1, "Nominal Dimensions of Standard Test Sieves (U.S.A. Standard Series)," under the heading "Definitions of Terms and Explanatory Notes," which is incorporated by reference. The availability of this incorporation by reference is given in paragraph (c)(1) of this section.

* * * * *

f. In § 137.211 by revising the first, second, and sixth sentences in paragraph (b)(2), to read as follows:

§ 137.211 White corn flour.

* * * * *

(b) * * *

(2) The method referred to in paragraph (a) of this section is as follows: Weigh 5 grams of sample into a tared truncated metal cone (top diameter 5 centimeters, bottom diameter 2 centimeters, height 4 centimeters), fitted at bottom with 70-mesh wire cloth complying with the specifications for No. 70 wire cloth in "Official Methods of Analysis of the Association of Official Analytical Chemists," 13th Ed. (1980), Table 1, "Nominal Dimensions of Standard Test Sieves (U.S.A. Standard Series)," under the heading "Definitions of Terms and Explanatory Notes," which is incorporated by reference. Copies may be obtained from the Association of Official Analytical Chemists, P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408. * * * Transfer the residue from cone to a No. 50 sieve having a standard 8-inch diameter full-height frame, complying with the specifications for wire cloth and sieve frame in "Nominal Dimensions of

Standard Test Sieves (U.S.A. Standard Series)."

* * * * *

g. In § 137.230 by revising the first and second sentence in paragraph (b)(2), to read as follows:

§ 137.230 Corn grits.

* * * * *

(b) * * *

(2) The method referred to in paragraph (a) of this section is as follows: Use No. 10 and No. 25 sieves; having standard 8-inch diameter full-height frames, complying with the specifications for wire cloth and sieve frames in "Official Methods of Analysis of the Association of Official Analytical Chemists", 13th Ed. (1980), Table 1, "Nominal Dimensions of Standard Test Sieves (U.S.A. Standard Series)," under the heading "Definitions of Terms and Explanatory Notes," which is incorporated by reference. Copies may be obtained from the Association of Official Analytical Chemists, P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

h. In § 137.250 by revising paragraph (b)(1) and by revising the first and second sentences of paragraph (b)(2), to read as follows:

§ 137.250 White corn meal.

* * * * *

(b)(1) For the purposes of this section, moisture, fat, and crude fiber content will be determined by the following methods of analysis from "Official Methods of Analysis of the Association of Official Analytical Chemists," 13th Ed. (1980), which is incorporated by reference (copies may be obtained from the Association of Official Analytical Chemists, P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408):

(i) Moisture content—sections 14.062 and 14.063 (Official Final Action).

(ii) Fat content—sections 14.062 and 14.067 (Official Final Action).

(iii) Crude fiber content—sections 14.062 and 14.065 (Official Final Action).

(2) The method referred to in paragraph (a) of this section is as follows: Use No. 12 and No. 25 sieves, having standard 8-inch diameter full-height frames, complying with the specifications for wire cloth and sieve frames in "Nominal Dimensions of Standard Test Sieves (U.S.A. Standard Series)" prescribed in § 137.105(a), which is incorporated by reference. Copies may be obtained from the Association of Official Analytical Chemists, P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

i. In § 137.270 by revising the introductory text in paragraph (b) and by revising the next to last sentence in paragraph (b)(1), to read as follows:

§ 137.270 Self-rising white corn meal.

* * * * *

(b) The method referred to in paragraph (a) of this section is the method prescribed in "Official Methods of Analysis of the Association of Official Analytical Chemists" (AOAC), 13th Ed. (1980), section 8.002, "Reagent (Displacement soln.)," and section 8.003, "Chittick apparatus," under the heading "Total Carbon Dioxide (1)—Official Final Action," which is incorporated by reference. Copies may be obtained from the Association of Official Analytical Chemists, P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408. The following procedure is substituted for the procedure specified in the AOAC, under section 8.004, "Determination".

(1) * * * Observe the termperature of the air surrounding the apparatus and also the barometric pressure and multiply the number of cc. of gas evolved by the factor given in the AOAC, 13th Ed. (1980), section 52.007 under "Reference tables for the temperature and pressure observed," which is incorporated by reference. The availability of this incorporation by reference is given in paragraph (b) of this section.* * *

* * * * *

j. In §137.300 by revising the first and second sentences in paragraph (b)(2), to read as follows:

§ 137.300 Farina.

* * * * *

(b) * * *

(2) The method referred to in paragraph (a) of this section is as follows: Use No. 20 and No. 100 sieves, having standard 8-inch full-height frames, complying with the specifications for such cloth set forth in "Official Methods of Analysis of the Association of Official Analytical Chemists," 13th Ed. (1980), Table 1, "Nominal Dimensions of Standard Test Sieves (U.S.A. Standard Series)," under the heading "Definitions of Terms and Explanatory Notes," which is incorporated by reference. Copies may be obtained from the Association of Official Analytical Chemists, P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

k. In § 137.350 by revising the 13th sentence to the end in paragraph (e), to read as follows:

§ 137.350 Enriched rice.

* * * * *

(e) * * * Dilute an aliquot of filtrate with 0.1 *N* hydrochloric acid, so that each milliliter contains about 0.2 microgram of thiamine, and determine thiamine by the "Rapid Fluorometric Method—Official Final Action," in section 43.034 of "Official Methods of Analysis of the Association of Official Analytical Chemists" (AOAC), 13th Ed. (1980), which is incorporated by reference. Copies may be obtained from the Association of Official Analytical Chemists, P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408. With a suitable aliquot determine riboflavin by the method prescribed in section 43.041(a) by the "Fluorometric Method—Official Final Action," AOAC, 13th Ed. (1980), beginning with the third sentence of the second paragraph, "Adjust, with vigorous agitation * * *." Determined niacin in a 200-milliliter aliquot of the filtrate by the "Colorimetric Method—Official final Action," in section 43.045, AOAC, 13th Ed. (1980), beginning with the sixth sentence of the first paragraph, "Adjust to pH 4.5 with * * *." Evaporate to dryness a 100-milliliter aliquot of the nonfiltered material withdrawn while agitating, and determine iron using the method "Iron—Official Final Action," in sections 14.011, 14.012, and 14.013, AOAC, 13th Ed. (1980); and, if required, determine calcium as directed in section 14.014 under the heading "Calcium—Official Final Action," AOAC, 13th Ed. (1980).

* * * * *

PART 139—MACARONI AND NOODLE PRODUCTS

10. Part 139 is amended:

a. In § 139.110 by revising paragraph (a)(5), to read as follows:

§ 139.110 Macaroni products.

(a) * * *

(5) Gum gluten, is such quantity that the protein content of the finished food is not more than 13 percent by weight.

The finished macaroni product contains not less than 87 percent of total solids as determined by the method prescribed in "Official Methods of Analysis of the Association of Official Analytical Chemists," 13th Ed. (1980), in section 14.133, under the heading "Vacuum Oven Method—Official Final Action," which is incorporated by reference. Copies may be obtained from the Association of Official Analytical Chemists, P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

b. In § 139.117 by revising paragraph (a)(2), to read as follows:

§ 139.117 Enriched macaroni products with fortified protein.

(a) * * *

(2) Each such finished food, when tested by the methods described in the cited sections of "Official Methods of Analysis of the Association of Official Analytical Chemists," 13th Ed. (1980), which is incorporated by reference (copies may be obtained from the Association of Official Analytical Chemists, P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408) meets the following specification:

(i) The protein content (N × 6.25) is not less than 20 percent by weight (on a 13 percent moisture basis) as determined by the method in section 14.142. The protein quality is not less than 95 percent that of casein as determined on the cooked food by the method in sections 43.212 through 43.216 of the official methods.

(ii) The total solids content is not less than 87 percent by weight as determined by the method in section 14.133 of the official methods.

* * * * *

c. In § 139.150 by revising the second and third sentences in paragraph (a)(4), to read as follows:

§ 139.150 Noodle products.

(a) * * *

(4) * * * The finished noodle product contains not less than 87 percent of total solids as determined by the method prescribed in "Official Methods of Analysis of the Association of Official Analytical Chemists," 13th Ed. (1980), in section 14.133, under the heading "Vacuum Oven Method—Official Final Action," which is incorporated by reference. Copies may be obtained from the Association of Official Analytical Chemists, P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.* * *

* * * * *

PART 145—CANNED FRUITS

11. Part 145 is amended:

a. In § 145.3 by revising paragraph (m) and by revising the third sentence in paragraph (n), to read as follows:

§ 145.3 Definitions.

* * * * *

(m) The procedure for determining the densities of the packing medial means the following: The density of the packing medium, when measured 15 days or more after packing, or the denisty of the blended homogenized slurry of the comminuted entire contents of the container, when measured less than 15 days after canning, is determined according to "Official Methods of Analysis of the Association of Official Analytical Chemists," 13th Ed. (1980), which is incorporated by reference, section 31.011 (Solids) "By Means of the Refractometer—Official Final Action" (and sections 52.012 and 52.015) with result expressed as percent by weight of sucrose (degrees Brix) with correction for temperature to the equivalent at 20° C, but without correction for invert sugar or other substances. Copies of the material incorporated by reference may be obtained from the Association of Official Analytical Chemists, P.O. Box 540 Benjamin Franklin Station, Washington, DC 20044, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(n) * * * The bottom of the sieve is woven-wire cloth which complies with the specifications for the No. 8 sieve set forth in the "Definitions of Terms and Explanatory Notes" of the "Official Methods of Analysis of the Association of Official Analytical Chemists," 13th Ed. (1980), which is incorporated by reference. * * *

* * * * *

(b). In § 145.110 by revising the fifth and sixth sentences in paragraph (a)(1), to read as follows:

§ 145.110 Canned applesauce.

(a) * * * (1) * * * The soluble solids content, measured by refractometer and expressed as percent sucrose (degrees Brix) with correction for temperature to the equivalent at 20° C (68° F), is not less than 9 percent (exclusive of the solids of any added optional nutritive carbohydrate sweeteners) as determined by the method prescribed in "Official Methods of Analysis of the Association of Official Analytical Chemists," 13th Ed. (1980), section 22.024, "Soluble Solids by Refractometer in Fresh and Canned Fruits, Jams, Marmalades, and Preserves—Official First Action," which is incorporated by reference, but without correction for invert sugar or other substances. Copies may be obtained from the Association of Official Analytical Chemists, P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

c. In § 145.125 by revising the third and fourth sentences in paragraph (b)(2)(ii), to read as follows:

§ 145.125 Canned cherries.

* * * * *

(b) * * *

(2) * * *

(ii) * * * The bottom of the sieve is No. 8 woven-wire cloth that complies with the specifications for such cloth set forth in the "Official Methods of Analysis of the Association of Official Analytical Chemists," 13th Ed. (1980), Table 1, "Nominal Dimensions of Standard Test Sieves (U.S.A. Standard Series)," under the heading "Definitions of Terms and Explanatory Notes," which is incorporated by reference. Copies may be obtained from the Association of Official Analytical Chemists, P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044, or may be examined at the Office of the Federal Register, 1100 L St., NW., Washington, DC 20403.

* * * * *

d. In § 145.135 by revising the first and second sentences in paragraph (b)(1)(i) and by revising the fourth and fifth sentences in paragraph (c)(1), to read as follows:

§ 145.135 Canned fruit cocktail.

* * * * *

(b) * * *

(1) * * *

(i) Not more than 20 percent by weight of the units in the container of peach or pear, or of pineapple if the units thereof are diced, are more than ¾ inch in greatest edge dimension, or pass through the meshes of a sieve designated as 5/16 inch that complies with the specifications for such cloth set forth in the "Official Methods of Analysis of the Association of Official Analytical Chemists," 13th Ed. (1980), Table 1, "Nominal Dimensions of Standard Test Sieves (U.S.A. Standard Series)," under the heading "definitions of Terms and

Explanatory Notes," which is incorporated by reference. Copies may be obtained from the Association of Official Analytical chemists, P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044, or may be examined at the Office of the Federal Register, 1100 L St., NW., Washington, DC 20408. * * *

* * * * *

(c) * * *

(1) * * * The bottom of the sieve is woven-wire cloth that complies with the specifications for such cloth set forth under "2380 Micron (No. 8)" in Table 1, "Nominal Dimensions of Standard Test Sieves (U.S.A. Standard Series)," prescribed in paragraph (b)(1)(i) of this section, which is incorporated by reference. The availability of this incorporation by reference is given in paragraph (b)(1)(i) of this section. * * *

* * * * *

e. In § 145.145 by revising the introductory text of paragraph (a)(3)(iii) and by revising the third and fourth sentences in paragraph (c)(2), to read as follows:

§ 145.145 Canned grapefruit.

(a) * * *

(3) * * *

(iii) The respective densities of packing media in paragraph (a)(3)(i) (*d*) to (*i*) of this section as measured on the refractometer, expressed as percent by weight sucrose (degrees Brix) with correction for temperature to the equivalent at 20° C (68° F), 15 days or more after the grapefruit are canned or the blended homogenized slurry of the comminuted entire contents of the container if canned for less than 15 days, according to the "Official Methods of Analysis of the Association of Official Analytical Chemists" (AOAC), 13th Ed. (1980), section 31.011 under "Solids By Means of Refractometer—Official Final Action," and Reference Tables, section 52.012 (Refractive indices (n) of sucrose solutions at 20°) and section 52.015 (Refractive indices of invert sugar solutions), which is incorporated by reference (copies may be obtained from the Association of Official Analytical Chemists, P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044, or may be examined at the Office of the Federal Register, 1100 L St., NW., Washington, DC 20408), but without correction for invert sugar or other substances, are as follows:

* * * * *

(c) * * *

(2) * * * The bottom of the sieve is woven-wire cloth that complies with the specifications for the No. 8 sieve set forth in the "Definitions of Terms and Explanatory Notes" of the AOAC, 13th Ed. (1980), Table 1, which is incorporated by reference. The availability of this incorporation by reference is given in paragraph (a)(3)(iii) of this section. * * *

* * * * *

PART 146—CANNED FRUIT JUICES

12. Part 146 is amended:

a. In § 146.113 by revising the third and fourth sentences in paragraph (a) and by revising the seventh and eighth sentences in paragraph (b)(3), to read as follows:

§ 146.113 Canned fruit nectars.

(a) * * * The consistency of the finished product is such that the time of flow is not less than 30 seconds when tested by the method set forth in "Official Methods of Analysis of the Association of Official Analytical Chemists" (AOAC), 13th Ed. (1980), sections 22.009–22.011, under "Apparent Viscosity (Consistency), Official Final Action," which is incorporated by reference. Copies may be obtained from the Association of Official Analytical Chemists, P.O. Box 540, Benjamin Franklin Station, Washington, D.C. 20044, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408. * * *

(b) * * *

(3) * * * The weight of any fruit ingredient shall be determined as follows: Determine the percent of soluble solids in such fruit ingredient by the method prescribed in the AOAC, 13th Ed. (1980), section 31.011, under "Solids," which is incorporated by reference. The availability of this incorporation by reference is given in paragraph (a) of this section. * * *

* * * * *

b. In § 146.114 by revising the fifth and sixth sentences in paragraph (a)(1), to read as follows:

§ 146.114 Lemon juice.

(a) * * * (1) * * * When prepared from concentrated lemon juice, the finished food contains not less than 6 percent, by weight, of soluble solids taken as the refractometric sucrose value (of the filtrate), corrected to 20° C, but uncorrected for acidity, in accordance with the "International Scale of Refractive Indices of Sucrose Solutions" in table 52.012 of "Official Methods of Analysis of the Association of Official Analytical Chemists," 13th Ed. (1980), which is incorporated by reference, and has a titratable acidity content of not less than 4.5 percent, by weight, calculated as anhydrous citrus acid. Copies of the incorporation by reference may be obtained from the Association of Official Analytical Chemists, P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408. * * *

* * * * *

c. In § 146.120 by revising the second and third sentences in paragraph (a), to read as follows:

§ 146.120 Frozen concentrate for lemonade.

(a) * * * The product contains not less than 48.0 percent by weight of soluble solids taken as the sucrose value determined by refractometer and corrected for acidity prescribed in "Official Methods of Analysis of the Association of Official Analytical Chemists," 13th Ed. (1980), section 22.025, "Frozen Concentrate for Lemonade (12)," under the heading "Soluble Solids by Refractometer—Official First Action," which is incorporated by reference. Copies may be obtained from the Association of Official Analytical Chemists, P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408. * * *

* * * * *

d. In § 146.185 by revising paragraph (b)(2)(i), to read as follows:

§ 146.185 Canned pineapple juice.

* * * * *

(b) * * *

(2) * * *

(i) Determine the degrees Brix of the canned pineapple juice by the method prescribed in "Official Methods of Analysis of the Association of Official Analytical Chemists," 13th Ed. (1980), section 31.009, "Solids by Means of Spindle—Official Final Action," which is incorporated by reference. Copies may be obtained from the Association of Official Analytical Chemists, P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

PART 150—FRUIT BUTTERS, JELLIES, PRESERVES, AND RELATED PRODUCTS

13. Part 150 is amended:

a. In § 150.110 by revising paragraph (d) (3) and (5), to read as follows:

§ 150.110 Fruit butter.

* * * * *

(d) * * *

(3) The soluble solids content of the finished fruit butter is not less than 43 percent, as determined by the method prescribed in "Official Methods of Analysis of the Association of Official Analytical Chemists" (AOAC), 13th Ed. (1980), section 22.024, under "Soluble Solids by Refractometer in Fresh and Canned Fruits, Fruit Jellies, Marmalades, and Preserves—Official Final Action," which is incorporated by reference, except that no correction is made for water-insoluble solids. Copies may be obtained from the Association of Official Analytical Chemists, P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

(5) The weight of fruit juice or diluted fruit juice or concentrated fruit juice (optional ingredient, paragraph (c)(6)) from a fruit specified in paragraph (b)(1) of this section is the weight of such juice, as determined by the method prescribed in paragraph (d)(2) of this section, except that the precent of soluble solids is determined by the method prescribed in the AOAC, 13th Ed. (1980), section 31.011, under "Solids by Means of Refractometer—Official Final Action," which is incorporated by reference; the weight of diluted concentrated juice from any other fruits is the original weight of the juice before it was diluted or concentrated. The availability of this incorporation by reference is given in paragraph (d)(3) of this section.

* * * * *

b. In § 150.140 by revising paragraph (d)(3), to read as follows:

§ 150.140 Fruit jelly.

* * * * *

(d) * * *

(3) The soluble solids content of the finished jelly is not less than 85 percent, as determined by the method prescribed in "Official Methods of Analysis of the Association of Official Analytical Chemists," 13th Ed. (1980), section 31.011, under "Solids by Means of Refractometer—Official Final Action," which is incorporated by reference. Copies may be obtained from the Association of Official Analytical Chemists, P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

c. In § 150.160 by revising paragraph (d)(5), to read as follows:

§ 150.160 Fruit preserves and jams.

* * * * *

(d) * * *

(5) The soluble solids content of the finished jam or preserve is not less than 85 percent, as determined by the method prescribed in "Official Methods of Analysis of the Association of Official Analytical Chemists," 13th Ed. (1980), section 22.024, under "Soluble Solids by Refractometer in Fresh and Canned Fruits, Jellies, Marmalades, and Preserves—Official Final Action," which is incorporated by reference, except that no correction is made for water-insoluble solids. Copies may be obtained from the Association of Officials Analytical Chemists, P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

PART 155—CANNED VEGETABLES

14. Part 155 is amended:

a. In § 155.120 by revising the fourth and fifth sentences in paragraph (b)(2)(i), to read as follows:

§ 155.120 Canned green beans and canned wax beans.

* * * * *

(b) * * *

(2) * * *

(i) * * * The bottom of the sieve is woven-wire cloth that complies with the specifications for such cloth set forth in "Official Methods of Analysis of the Association of Official Analytical Chemists," 13th Ed. (1980), Table 1, "Nominal Dimensions of Standard Test Sieves (U.S.A. Standard Series)," under the heading "Definitions of Terms and Explanatory Notes," which is incorporated by reference. Copies may be obtained from the Association of Official Analytical Chemists, P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408. * * *

* * * * *

b. In § 155.130 by revising the fourth and fifth sentences in paragraph (b)(2)(i) and by revising paragraph (c)(1)(ii), to read as follows:

§ 155.130 Canned corn.

* * * * *

(b) * * *

(2) * * *

(i) * * * The bottom of the sieve is woven-wire cloth that complies with the specifications for such sieve set forth in the "Definitions of Terms and Explanatory Notes" prescribed in "Official Methods of Analysis of the Association of Official Analytical Chemists," 13th Ed. (1980), Table 1, "Nominal Dimensions of Standard Test Sieves (U.S.A. Standard Series)," under the heading "Definitions of Terms and Explanatory Notes," which is incorporated by reference. Copies may be obtained from the Association of Official Analytical Chemists, P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408. * * *

* * * * *

(c) * * *

(1) * * *

(ii) In whole kernel corn, the drained weight of the corn ingredient, determined by the procedure set forth in § 155.3, shall not be less than 61 percent of the water capacity of the container.

* * * * *

PART 160—EGGS AND EGG PRODUCTS

15. Part 160 is amended in § 160.180 by revising the first and second sentences, to read as follows:

§ 160.180 Egg yolks.

Egg yolks, liquid egg yolks, yolks, liquid yolks are yolks of eggs of the domestic hen, so separated from the whites thereof as to contain not less than 43 percent total egg solids, as determined by the method prescribed in "Official Methods of Analysis of the Association of Official Analytical Chemists," 13th Ed. (1980), sections 17.006 and 17.007 under "Total Solids, Vacuum Method (3)—Official Final Action," which is incorporated by reference. Copies may be obtained from the Association of Official Analytical Chemists, P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408. * * *

* * * * *

PART 161—FISH AND SHELLFISH

16. Part 161 is amended:

a. In § 161.145 by revising the fourth and fifth sentences in paragraph (c)(3), to read as follows:

§ 161.145 Canned oysters.

* * * * *

(c) * * *

(3) * * * The bottom of the sieve is woven-wire cloth that complies with the specifications for such cloth set forth under "2380 Micron (No. 8)" in "Official Methods of Analysis of the Association of Official Analytical Chemists," 13th Ed. (1980), Table 1, "Nominal Dimensions of Standard Test Sieves (U.S.A. Standard Series)," under the heading "Definitions of Terms and Explanatory Notes," which is incorporated by reference. Copies may be obtained from the Association of Official Analytical Chemists, P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408. * * *

* * * * *

b. In § 171.173 by revising the sixth and seventh sentences in paragraph (c)(1), to read as follows:

§ 161.173 Canned wet pack shrimp in transparent or nontransparent containers.

* * * * *

(c) * * *

(1) * * * The bottom of the sieve is woven-wire cloth that complies with the specifications for such cloth set forth as a 2.36-millimeter (No. 8) sieve in the "Definitions of Terms and Explanatory Notes" of the "Official Methods of Analysis of the Association of Official Analytical Chemists," 13th Ed. (1980), which is incorporated by reference. Copies may be obtained from the Association of Official Analytical Chemists, P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408. * * *

* * * * *

c. In § 161.175 by revising paragraph (g)(1)(v), to read as follows:

§ 161.175 Frozen raw breaded shrimp.

* * * * *

(g) * * *

(1) * * *

(v) U.S. Standard Sieve No. 20, 12 inch diameter. The sieves shall comply with the specifications for such cloth set forth in "Official Methods of Analysis of the Association of Official Analytical Chemists," (AOAC), 13th Ed. (1980), Table 1, "Nominal Dimensions of Standard Test Sieves (U.S.A. Standard Series)," under the heading "Definitions of Terms and Explanatory Notes," which is incorporated by reference. Copies may be obtained from the Association of Official Analytical Chemists, P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

d. In § 161.190 by revising the second and third sentences of the introductory text of paragraph (a)(7) and by revising the second sentence and by removing the third sentence in paragraph (c)(3)(iv), to read as follows:

§ 161.190 Canned tuna.

(a) * * *

(7) * * * Pass the combined portions through a sieve fitted with woven-wire cloth of ¼-inch mesh complying with the specifications for such cloth set forth in "Official Methods of Analysis of the Association of Official Analytical Chemists," 13th Ed. (1980), Table 1, "Nominal Dimensions of Standard Test Sieves (U.S.A. Standard Series)," under the heading "Definitions of Terms and Explanatory Notes," which is incorporated by reference. Copies may be obtained from the Association of Official Analytical Chemists, P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408. * * *

* * * * *

(c) * * *

(3) * * *

(iv) * * * The mesh in the top sieve complies with the specifications for 1 ½-inch woven-wire cloth as prescribed in paragraph (a)(7) of this section. * * *

* * * * *

PART 163—CACAO PRODUCTS

17. Part 163 is amended:

a. In § 163.110 by revising the last two sentences of paragraph (a), to read as follows:

§ 163.110 Cacao nibs.

(a) * * * The cacao shell content of cacao nibs is not more than 1.75 percent by weight (calculated to an alkali-free basis if they or the cacao beans from which they were prepared have been processed with alkali), as determined by the method prescribed under "Shell in Cacao Nibs—Official final Action" prescribed in the "Official Methods of Analysis of the Association of Official Analytical Chemists," 12th Ed. (1975), sections 13.010–13.014, which is incorporated by reference. Copies may be obtained from the Association of Official Analytical Chemists, P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044, or may be examined at the Office of the Federal Register, 1100 L St. NE., Washington, DC 20408.

* * * * *

b. In § 163.111 by revising the last two sentences of the paragraph that follows paragraph (a)(5), to read as follows:

§ 163.111 Chocolate liquor.

(a) * * *

(5) * * *

* * * Unless the chocolate liquor is seasoned with butter, milkfat, or ground nut meats, the percentage of cacao fat is determined by the method prescribed under "Fat Method I—Official Final Action" in the "Official Methods of Analysis of the Association of Official Analytical Chemists," 13th Ed. (1980), section 13.031, which is incorporated by reference. Copies may be obtained from the Association of Official Analytical Chemists, P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

c. In § 163.112 by revising the last two sentences of the text that follows paragraph (a)(4), to read as follows:

§ 163.112 Breakfast cocoa.

(a) * * *

(4) * * *

* * The finished breakfast cocoa contains not less than 22 percent of cacao fat, as determined by the method prescribed under "Fat Method I—Official Final Action" prescribed in the "Official Methods of Analysis of the Association of Official Analytical Chemists," 13th Ed. (1980), section 13.031, which is incorporated by reference. Copies may be obtained from the Association of Official Analytical Chemists, P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

PART 164—TREE NUT AND PEANUT PRODUCTS

18. Part 164 is amended in § 164.150 by revising the last two sentences of paragraph (a), to read as follows:

§ 164.150 Peanut butter.

(a) * * * The fact content of the finished food shall not exceed 55 percent when determined as prescribed in "Official Methods of Analysis of the Association of Official Analytical Chemists," 13th Ed. (1980), section 27.006(a) under "Crude Fat—Official First Action, Direct Method," in

paragraph (a), which is incorporated by reference. Copies may be obtained from the Association of Official Analytical Chemists, P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

PART 166—MARGARINE

19. Part 166 is amended in § 166.110 by revising the first and second sentences in paragraph (a), to read as follows:

§ 166.110 Margarine.

(a) Margarine (or oleomargarine) is the food in plastic form or liquid emulsion, containing not less than 80 percent fat determined by the method prescribed in "Official Methods of Analysis of the Association of Official Analytical Chemists," 13th Ed. (1980), section 16.206, "Indirect Method," under the heading "Fat (47)—Official Final Action," which is incorporated by reference. Copies may be obtained from the Association of Official Analytical Chemists, P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

PART 168—SWEETENERS AND TABLE SIRUPS

20. Part 168 is amended:

a. In § 168.111 by revising the introductory text of paragraph (d) and by revising paragraphs (d) (2), (3), and (4), to read as follows:

§ 168.111 Dextrose monohydrate.

* * * * *

(d) For purpose of this section, the methods of analysis to be used to determine if the food meets the specifications of paragraph (b) (1) and (2) of this section are the following sections in "Official Methods of Analysis of the Association of Official Analytical Chemists," 13th Ed. (1980), which is incorporated by reference. Copies may be obtained from the Association of Official Analytical Chemists. P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

(2) Reducing sugar content, § 31.220(a).

(3) Sulfated ash content, § 31.216.

(4) Sulfur dioxide content, §§ 20.106–20.111.

* * * * *

b. In § 168.120 by revising paragraph (d), to read as follows:

§ 168.120 Glucose sirup.

* * * * *

(d) For purposes of this section, the methods of analysis to be used to determine if the food meets the specifications of paragraphs (b) (1) and (2) of this section are the following sections in "Official Methods of Analysis of the Association of Official Analytical Chemists," 13th Ed. (1980), which is incorporated by reference. Copies may be obtained from the Association of Official Analytical Chemists, P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(1) Total solids content, §§ 31.208–31.209.

(2) Reducing sugar content, § 31.220(a).

(3) Sulfated ash content, § 31.216.

(4) Sulfur dioxide content, sections 20.106–20.111.

* * * * *

c. In § 168.122 by revising the introductory text of paragraph (d)(1) and by revising paragraph (d)(1)(i), to read as follows:

§ 168.122 Lactose.

* * * * *

(d)(1) The methods of analysis to be used to determine whether the food meets the requirements of paragraph (b)(1), (2), and (3) of this section are the following sections in "Official Methods of Analysis of the Association of Official Analytical Chemists," 13th Ed. (1980), which is incorporated by reference. Copies may be obtained from the Association of Official Analytical Chemists, P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(i) Lactose content, § 31.061.

* * * * *

PART 169—FOOD DRESSINGS AND FLAVORINGS

21. Part 169 is amended in § 169.3 by revising the third and fourth sentences in paragraph (b), to read as follows:

§ 169.3 Definitions.

* * * * *

(b) * * * The moisture content of vanilla beans is determined by the method prescribed in "Official Methods of Analysis of the Association of Official Analytical Chemists," 13th Ed. (1980), sections 7.004 and 7.005, which is incorporated by reference, except that the toluene used is blended with 20 percent by volume of benzene and the total distillation time is 4 hours. Copies of the material incorporated by reference may be obtained from the Association of Official Analytical Chemists, P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

PART 172—FOOD ADDITIVES PERMITTED FOR DIRECT ADDITION TO FOOD FOR HUMAN CONSUMPTION

22. Part 172 is amended.

a. In § 172.215 by revising paragraph (b)(1), to read as follows:

§ 172.215 Coumarone-indene resin.

* * * * *

(b) * * *

(1) Softening point, ring and ball: 126° C minimum as determined by ASTM method E28–67 (1977), "Standard Test Method for Softening Point by Ring and Ball Apparatus," which is incorporated by reference. Copies may be obtained from the American Society for Testing Materials, 1916 Race St., Philadelphia, PA 19103, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

b. In § 172.250 by revising the entries for "Determination of boiling-point range" and "Determination of nonvolatile residue" in paragraph (b)(3), to read as follows:

§ 172.250 Petroleum naphtha.

* * * * *

(b) * * *

(3) * * *

Analytical Specifications for Petroleum Naphtha

* * * * *

Determination of boiling-point range. Use ASTM method D86–78, "Standard Method of Test for Distillation of Petroleum Products," which is incorporated by reference. Copies may be obtained from the American Society for Testing Materials, 1916 Race St., Philadelphia, PA 19103, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

Determination of nonvolatile residue. For hydrocarbons boiling below 250° F, determine the nonvolatile residue by ASTM method D1353–78, "Standard Method of Test for Nonvolatile Matter in Volatile Solvents for Use in Paint, Varnish, Lacquer, and Related Products;" for those boiling above 250° F, use ASTM method D381–80, "Standard Method of

Test for Existent Gum in Fuels by Jet Evaporation," which methods are incorporated by reference. Copies may be obtained from the American Society for Testing Materials, 1916 Race St. Philadelphia, PA 19103, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

c. In § 172.280 by revising paragraph (a), to read as follows:

§ 172.280 Terpene resin.

* * * * *

(a) The food additive is the betapinene polymer obtained by polymerizing terpene hydrocarbons derived from wood. It has a softening point of 112° C–118° C, as determined by ASTM method E28–67 (1977), "Standard Test Method for Softening Point By Ring and Ball Apparatus," which is incorporated by reference. Copies may be obtained from the American Society for Testing Materials, 1916 Race St. Philadelphia, PA 19103, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

d. In § 172.320 by revising paragraph (b)(1) and by revising the first and second sentences in paragraph (d), to read as follows:

§ 172.320 Amino acids.

* * * * *

(b) * * *

(1) As found in "Food Chemicals Codex," National Academy of Sciences/National Research Council (NAS/NRC), 3d Ed. (1981), which is incorporated by reference (copies may be obtained from the National Academy Press, 2101 Constitution Ave. NW., Washington, DC 20418, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408) for the following:

L-Alanine
L-Arginine
L-Arginine Monohydrochloride
L-Cysteine Monohydrochloride
L-Cystine
Aminoacetic acid (glycine)
L-Leucine
DL-Methionine
L-Methionine
L-Tryptophan
L-Phenylalanine
L-Proline
L-Serine
L-Threonine
Glutamic Acid Hydrochloride
L-Isoleucine
L-Lysine Monohydrochloride
Monopotassium L-glutamate
L-Tyrosine
L-Valine

* * * * *

(d) Compliance with the limitations concerning PER under paragraph (c) of this section shall be determined by the method described in § 43.212, "Official Methods of Analysis of the Association of Official Analytical Chemists," 13th Ed. (1980), which is incorporated by reference. Copies may be obtained from the Association of Official Analytical Chemists, P.O. Box 540, Benjamin Franklin Station, Washington, D.C. 20044, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, D.C. 20408.

* * * * *

e. In § 172.372 by revising the first and second sentences in paragraph (d), to read as follows:

§ 172.372 N-Acetyl-L-methionine.

* * * * *

(d) Compliance with the limitations concerning PER under paragraph (c) of this section shall be determined by the method described in § 43.212, "Official Methods of Analysis of the Association of Official Analytical Chemists," 13th Ed. (1980), which is incorporated by reference. Copies may be obtained from the Association of Official Analytical Chemists," P.O. Box 540, Benjamin Franklin Station, Washington, D.C. 20044, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, D.C. 20408.

* * * * *

f. In § 172.385 by revising paragraph (c) (1), (2) and (3), to read as follows:

§ 172.385 Whole fish protein concentrate.

* * * * *

(c) * * *

(1) Protein content (N x 6.25) shall not be less than 75 percent by weight of the final product, as determined by the method described in section 2.057 in "Official Methods of Analysis of the Association of Official Analytical Chemists" (AOAC), 13th Ed. (1980). Protein quality shall not be less than 100, as determined by the method described in section 43.212 of the AOAC. The 13th Ed. is incorporated by reference, and copies may be obtained from the Association of Official Analytical Chemists, P.O. Box 540, Benjamin Franklin Station, Washington, D.C. 20044, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, D.C. 20408.

(2) Moisture content shall not exceed 10 percent by weight of the final product, as determined by the method described in section 24.003 of the AOAC. See paragraph (c)(1) of this section for availability of the material incorporated by reference.

(3) Fat content shall not exceed 0.5 percent by weight of the final product, as determined by the method described in section 24.005 of the AOAC. See paragraph (c)(1) of this section for availability of the material incorporated by reference.

* * * * *

g. In § 172.510 by revising the footnote at the end of the section, to read as follows:

§ 172.510 Natural flavoring substances and natural substances used in conjunction with flavors.

* * * * *

[1] As determined by using the method (or, in other than alcoholic beverages, a suitable adaptation thereof) in section 9.129 of the "Official Methods of Analysis of the Association of Official Analytical Chemists," 13th Ed. (1980), which is incorporated by reference. Copies may be obtained from the Association of Official Analytical Chemists, P.O. Box 540, Benjamin Franklin Station, Washington, D.C. 20044 or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, D.C. 20408.

* * * * *

h. In § 172.615 by revising the entries for "Paraffin" and "Natural resin" in the table in paragraph (a), to read as follows:

§ 172.615 Chewing gum base.

* * * * *

(a) * * *

Synthetic	Specifications
* * * * *	
Paraffin	Synthesized by Fischer-Tropsch process from carbon monoxide and hydrogen which are catalytically converted to a mixture of paraffin hydrocarbon. Lower molecular weight fractions are removed by distillation. The residue is hydrogenated and further treated by percolation through activated charcoal. The product has a congealing point of 200°–210° F as determined by ASTM method D938–71 (1981), "Congealing Point of Pharmaceutical Petrolatums," ASTM method D721–50T "Tentative Method of Test for Oil Content of Petroleum Waxes," and ASTM method E131–81(a), "Standard Definitions of Terms and Symbols Relating to Molecular Spectroscopy," which are incorporated by reference. Copies may be obtained from the American Society for Testing Materials, 1916 Race St., Philadelphia, PA 19103, or may be examined at the Office of the Federal Register 1100 L St. NW., Washington, D.C. 20408.
* * * * *	
Terpene Resins	
* * * * *	
Natural resin	Consisting of polymers of -pinene; softening point minimum 155° C, determined by U.S.P closed-capillary method, United States Pharmacopeia XX (1980) (page 981).
* * * * *	

i. In § 172.810 by revising the introductory text, to read as follows:

§ 172.810 Dioctyl sodium sulfosuccinate.

The food additive dioctyl sodium sulfosuccinate, which meets the specifications of the Food Chemicals Codex, 3d Ed. (1981), pp. 102–104, which is incorporated by reference (copies may be obtained from the National Academy Press, 2101 Constitution Ave. NW., Washington, D.C. 20418, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, D.C. 20408), may be safely used in food in accordance with the following prescribed conditions:

* * * * *

j. In § 172.812 by revising paragraph (a), to read as follows:

§ 172.812 Glycine.

* * * * *

(a) The additive complies with the specifications of the "Food Chemicals Codex," 3d Ed. (1981), p. 140, which is incorporated by reference. Copies may be obtained from the National Academy Press, 2101 Constitution Ave. NW., Washington, DC 20418, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

k. In § 172.820 by revising paragraph (b)(1), to read as follows:

§ 172.820 Polyethylene glycol (mean molecular weight 200–9,500).

* * * * *

(b) *Analytical method.* (1) The analytical method prescribed in the United States Pharmacopeia XX (1980), page 1244, for polyethylene glycol 400 shall be used to determine the total ethylene and diethylene glycol content of polyethylene glycols having mean molecular weights of 450 or higher.

* * * * *

l. In § 172.846 by revising paragraph (b), to read as follows:

§ 172.846 Sodium stearoyl lactylate.

* * * * *

(b) The additive meets the specifications of the "Food Chemicals Codex," 3d Ed. (1981), pp. 300–301, which is incorporated by reference. Copies may be obtained from the National Academy Press, 2101 Constitution Ave. NW., Washington, DC 20418, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

m. In § 172.860 by revising paragraph (c)(2), to read as follows:

§ 172.860 Fatty acids.

* * * * *

(c) * * *

(2) Chick-edema factor shall be determined by the bioassay method described in "Official Methods of Analysis of the Association of Official Analytical Chemists," 13th Ed. (1980), §§ 28.127–28.128, which is incorporated by reference. Copies may be obtained from the Association of Official Analytical Chemists, P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

n. In § 172.862 by revising paragraph (b) (1) and (2), to read as follows:

§ 172.862 Oleic acid derived from tall oil fatty acids.

* * * * *

(b) * * *

(1) Specifications for oleic acid prescribed in the "Food Chemicals Codex," 3d Ed. (1981), pp. 207–208, which is incorporated by reference, except that titer (solidification point) shall not exceed 13.5° C and unsaponifiable matter shall not exceed 0.5 percent. Copies of the material incorporated by reference may be obtained from the National Academy Press, 2101 Constitution Ave. NW., Washington, DC 20418, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(2) The resin acid content does not exceed 0.01 as determined by ASTM method D1240–54 (Reapproved 1981), "Standard Method of Test for Rosin Acids in Fatty Acids," which is incorporated by reference. Copies may be obtained from the American Society for Testing Materials, 1916 Race St., Philadelphia, PA 19103, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

o. In § 172.864 by revising paragraph (b)(2), to read as follows:

§ 172.864 Synthetic fatty alcohols.

* * * * *

(b) * * *

(2) Use ASTM method D86–78, "Standard Method of Test for Distillation of Petroleum Products," which is incorporated by reference, to determine boiling point range. Copies of the material incorporated by reference may be obtained from the American Society for Testing Materials, 1916 Race St., Philadelphia, PA 19103, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

p. In § 172.874 by revising paragraph (a), to read as follows:

§ 172.874 Hydroxypropyl methylcellulose.

* * * * *

(a) The additive complies with the definition and specifications prescribed in the National Formulary XV (1980).

* * * * *

q. In § 172.876 by revising paragraph (a), to read as follows:

§ 172.876 Castor oil.

* * * * *

(a) The additive meets the specifications of the United States Pharmacopeia XX (1980).

* * * * *

r. In § 172.878 by revising paragraph (a)(1), to read as follows:

§ 172.878 White mineral oil.

* * * * *

(a) * * *

(1) It meets the test requirements of the United States Pharmacopeia XX (1980) for readily carbonizable substances (page 532).

* * * * *

s. In § 172.880 by revising paragraph (a), to read as follows:

§ 172.880 Petrolatum.

* * * * *

(a) Petrolatum complies with the specifications set forth in the United States Pharmacopeia XX (1980) for white petrolatum or in the National Formulary XV (1980) for petrolatum.

* * * * *

t. In § 172.882 by revising the entries for "Boiling point" and "Synthetic isoparaffinic petroleum hydrocarbons" in paragraph (a), to read as follows:

§ 172.882 Synthetic isoparaffinic petroleum hydrocarbons.

* * * * *

(a) * * *

Boiling point 200°–500° F as determined by ASTM method D86–78, "Standard Method of Test for Distillation of Petroleum Products," which is incorporated by reference. Copies may be obtained from the American Society for Testing Materials, 1916 Race St., Philadelphia, PA 19103, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.	
* * * * *	
Synthetic isoparaffinic petroleum hydrocarbons containing antioxidants shall meet the specified ultraviolet absorbance limits after correction for any absorbance due to the antioxidants. The ultraviolet absorbance shall be determined by the procedure described for application of	

mineral oil, disregarding the last sentence of the procedure, under "Specifications" on page 66 of the *Journal of the Association of Official Analytical Chemists,* Volume 45 (February 1962), which is incorporated by reference. Copies are available from the Division of Food and Color Additives, Bureau of Foods (HFF-330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408. For hydrocarbons boiling below 250° F, the nonvolatile residue shall be determined by ASTM method D1353-78, "Standard Method of Test for Nonvolatile Matter in Volatile Solvents for Use in Paint, Varnish, Lacquer, and Related Products;" for those boiling above 250° F, ASTM method D381-80, "Standard Method of Test for Existent Gum in Fuels by Jet Evaporation" shall be used. These methods are incorporated by reference. Copies may be obtained from the American Society for Testing Materials, 1916 Race St., Philadelphia, PA 19103, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

PART 173—SECONDARY DIRECT FOOD ADDITIVES PERMITTED IN FOOD FOR HUMAN CONSUMPTION

23. Part 173 is amended as follows:

a. In § 173.160 by revising paragraph (d), to read as follows:

§ 173.160 Candida guilliermondii.

* * * * *

(d) The additive is so used that the citric acid produced conforms to the specifications of the "Food Chemicals Codex," 3d Ed. (1981), under "Citric acid," which is incorporated by reference. Copies may be obtained from the National Academy Press, 2101 Constitution Ave. NW., Washington, DC 20418, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

b. In § 173.165 by revising the first and second sentences in paragraph (d), to read as follows:

§ 173.165 Candida lipolytica.

* * * * *

(d) The additive is so used that the citric acid produced conforms to the specifications of the "Food Chemicals Codex," 3d Ed. (1981), which is incorporated by reference. Copies may be obtained from the National Academy Press, 2101 Constitution Ave. NW., Washington, DC 20418, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.* * *

* * * * *

c. In § 173.280 by revising paragraph (c), to read as follows:

§ 173.280 Solvent extraction process for citric acid.

* * * * *

(c) The citric acid so produced meets the specifications of the "Food Chemicals Codex," 3d Ed. (1981), pp. 86-87, which is incorporated by reference (copies may be obtained from the National Academy Press, 2101 Constitution Ave. NW., Washington, DC 20418, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408), and the polynuclear aromatic hydrocarbon specifications of § 173.165.

* * * * * *

d. In § 173.310 by revising the limitations for 'Sodium carboxymethylcellulose" in the table in paragraph (c), to read as follows:

§ 173.310 Boiler water additives.

* * * * *

(c) * * *

Substances	Limitations
* * *	* * *
Sodium carboxymethylcellulose.	Contains not less than 95 percent sodium carboxymethylcellulose on a dry-weight basis, with maximum substitution of 0.9 carboxymethylcellulose groups per anhydroglucose unit, and with a minimum viscosity of 15 centipoises for 2 percent by weight aqueous solution at 25° C; by method prescribed in the "Food Chemicals Codex," 3d Ed. (1981), pp. 280-282, which is incorporated by reference. Copies may be obtained from the National Academy Press, 2101 Constitution Ave. NW., Washington, DC 20418, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.
* * *	* * *

* * * * *

e. In § 173.340 by revising the limitations for "Polyoxyethylene 40 monostearate" in the table in paragraph (a)(2), to read as follows:

§ 173.340 Defoaming agents.

* * * * *

(a) * * *

(2) * * *

Substances	Limitation
* * *	* * *
Polyoxyethylene 40 monostearate.	As defined in the United States Pharmacopeia XX.
* * *	* * *

* * * * *

f. In § 173.395 by revising paragraph (d), to read as follows:

§ 173.395 Trifluoromethane sulfonic acid.

* * * * *

(d) No residual catalyst may remain in the product at a detection limit of 0.2 part per million fluoride as determined by the method described in "Official Methods of Analysis of the Association of Official Analytical Chemists," section 25.049, 13th Ed. (1980), which is incorporated by reference. Copies may be obtained from the Association of Official Analytical Chemists, P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

PART 175—INDIRECT FOOD ADDITIVES: ADHESIVE COATINGS AND COMPONENTS

24. Part 175 is amended:

a. In § 175.250 by revising paragraphs (b) (1) and (3), to read as follows:

§ 175.250 Paraffin (synthetic).

* * * * *

(b) * * *

(1) *Congealing point.* The substance has a congealing point of not less than 200° F nor more than 210° F as determined by ASTM method D938-71 (1981), "Congealing Point of Pharmaceutical Petrolatums," which is incorporated by reference. Copies may be obtained from the American Society for Testing Materials, 1916 Race St., Philadelphia, PA 19103, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

(3) *Absorptivity.* The substance has an absorptivity at 290 millimicrons in decahydronaphthalene at 190° F not exceeding 0.01 as determined by ASTM method E131-81(a), "Definition of Terms and Symbols Relating to Absorption-Spectroscopy," which is incorporated by reference. See paragraph (b)(1) of this section for availability of the incorporation by reference.

* * * * *

b. In § 175.270 by revising the introductory text of paragraph (b) and by revising the first sentence in paragraph (b)(5), to read as follows:

§ 175.270 Poly(vinyl fluoride) resins.

* * * * *

(b) The poly(vinyl fluoride) basic resins have an intrinsic viscosity of not less than 0.75 deciliter per gram as determined by ASTM method D1243-79, "Standard Method of Test for Dilute Solution Viscosity of Vinyl Chloride Polymers," which is incorporated by reference. Copies may be obtained from the American Society for Testing Materials, 1916 Race St., Philadelphia, PA 19103, or may be examined at the

Office of the Federal Register, 1100 L St. NW., Washington, DC 10408.

* * * * *

(5) *Calculation.* The calculation method used is that described in appendix X 1.3 (ASTM method D1243–79, "Standard Method of Test for Dilute Solution Viscosity of Vinyl Chloride Polymers," which is incorporated by reference; see paragraph (b) of this section for availability of the incorporation by reference) with the reduced viscosity determined for three concentration levels not greater than 0.5 gram per deciliter and extrapolated to zero concentration for intrinsic viscosity. * * *

c. In § 175.300 by revising the entry for "Poly[2-(diethylamino) ethyl methacrylate] phosphate" in paragraph (b)(3)(xxix) and the entry for "Cyclohexanone-formaldehyde resin" in paragraph (b)(3)(xxxiii), to read as follows:

§ 175.300 Resinous and polymeric coatings.

* * * * *

(b) * * *

(3) * * *

(xxix) *Surface active agents:*

* * * * *

Poly [2-(diethylamino) ethyl methacrylate] phosphate (minimum intrinsic viscosity in water at 25° C is not less than 9.0 deciliters per gram as determined by ASTM method D1243–79, "Standard Method of Test for Dilute Solution Viscosity of Vinyl Chloride Polymers," which is incorporated by reference (copies may be obtained from the American Society for Testing Materials, 1916 Race St., Philadelphia, PA 19103, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408), for use only as a suspending agent in the manufacture of vinyl chloride copolymers and limited to use at levels not to exceed 0.1 percent by weight of the copolymers.

* * * * *

(xxxiii) Miscellaneous materials:

* * * * *

Cyclohexanone-formaldehyde resin produced when 1 mole of cyclohexanone is made to react with 1.65 moles of formaldehyde such that the finished resin has an average molecular weight of 600–610 as determined by ASTM method D2503–57, "Standard Method of Test for Molecular Weight of Hydrocarbons by Thermoelectric Measurement of Vapor Pressure" (Reapproved 1977), which is incorporated by reference. Copies may be obtained from the American Society for Testing Materials, 1916 Race St., Philadelphia, PA 19103, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408. For use only in contact with nonalcoholic and nonfatty foods under conditions of use E, F, and G, described in table 2 of paragraph (d) of this section.

* * * * *

PART 176—INDIRECT FOOD ADDITIVES: PAPER AND PAPERBOARD COMPONENTS

25. Part 176 is amended in § 176.170 in paragraph (a)(5) in the "List of substances" column by revising the entries for "Petroleum asphalt" and "Poly[(methylimino) (2-hydroxytrimethylene) hydrochloride]" and by revising the first and second sentences in the entry for "Poly[oxyethylene(dimethylimino) ethylene (dimethylimino) ethylene dichloride];" in paragraph (b)(2) in the "List of substances" column by revising the entries for "Cyclized rubber" and "Ethylene-acrylic acid copolymers," by revising the first and second sentences in the entry for "Petroleum alicyclic hyrocarbon resins," and by revising the entry for "Styrene-dimethylstyrene-α-methylstyrene copolymers;" and by revising the first sentence in the introductory text in paragraph (d)(3), to read as follows:

§ 176.170 Components of paper and paperboard in contact with aqueous and fatty foods.

* * * * *

(a) * * *

(5) * * *

List of substances	Limitations
* * * * *	
Petroleum asphalt, steam and vacuum refined to meet the following specifications: Softening point 180° F to 200° F, as determined by ASTM method D36-76, "Standard Test Method for Softening Point of Bitumen (Ring and Ball Apparatus);" penetration at 77° F not to exceed 3 mm, as determined by ASTM Method D5-73 (Reapproved 1978), "Standard Method of Test for Penetration of Bituminous Materials," which are incorporated by reference (copies may be obtained from the American Society for Testing Materials, 1916 Race St., Philadelphia, PA 19103, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408); and maximum weight loss not to exceed 3% when distilled to 700° F, not to exceed an additional 11% when further distilled between 700° F and thermal decomposition	* * *
* * * * *	
Poly[(methylimino)(2-hydroxytrimethylene)hydrochloride] produced by reaction of 1:1 molar ratio of methylamine and epichlorohydrin so that a 31-percent aqueous solution at 25° C has a Stokes viscosity range of 2.5–4.0 as determined by ASTM method D1545-76 (Reapproved 1981), "Standard Method of Test for Viscosity of Transparent Liquids by Bubble Time Method," which is incorporated by reference. Copies may be obtained from the American Society for Testing Materials, 1916 Race St., Philadelphia, PA 19103, or may be examined at the Office of Federal Register, 1100 L St. NW., Washington, DC 20408	* * *
* * * * *	
Poly[oxyethylene (dimethylimino) ethylene (dimethylimino)ethylene dichloride] produced by reacting equimolar quantities of *N,N,N,N*-tetramethylethylene-diamine and dichlorethyl ether to yield a solution of the solid polymer in distilled water at 25° C with a reduced viscosity of not less than 0.15 deciliter per gram as determined by ASTM method D1243-79, "Standard Method of Test for Dilute Solution Viscosity of Vinyl Chloride Polymers," which is incorporated by reference. Copies may be obtained from the American Society for Testing Materials, 1916 Race St., Philadelphia, PA 19103, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408	* * *
* * * * *	

(b) * * *

(2) * * *

List of substances	Limitations
* * * * *	
Cyclized rubber produced when natural pale crepe rubber dissolved in phenol is catalytically cyclized so that the finished cyclized rubber has a melting point of 235° F to 311° F as determined by ASTM method E28-67 (Reapproved 1977), "Standard Method of Test for Softening Point by Ring and Ball Apparatus," which is incorporated by reference (copies may be obtained from the American Society for Testing Materials, 1916 Race St., Philadelphia, PA 19103, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408), and contains no more than 4000 ppm of residual free phenol as determined by a gas liquid chromatographic procedure titled "Determination of Free Phenol in Cyclized Rubber Resin," which is incorporated by reference. Copies are available from the Division of Food and Color Additives, Bureau of Foods (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408	* * *
* * * * *	
Ethylene-acrylic acid copolymers produced by the copolymerization of ethylene and acrylic acid and/or their partial ammonium salts. The finished copolymer shall contain no more than 25 weight percent of polymer units derived from acrylic acid and no more than 0.35 weight percent of residual monomeric acrylic acid, and have a melt index not to exceed 350 as determined by ASTM method D1238-79, "Standard Method of Measuring Flow Rates of Thermoplastics by Extrusion Plastometer," which is incorporated by reference. Copies may be obtained from the American Society for Testing Materials, 1916 Race St., Philadelphia, PA 19103, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408	
* * * * *	
Petroleum alicyclic hydrocarbon resins, or the hydrogenated product thereof, meeting the following specifications: Softening point 97° C minimum, as determined by ASTM method E28-67 (Reapproved 1977), "Standard Method of Test for Softening Point by Ring and Ball Apparatus," aniline point 120° C minimum, as determined by ASTM method D611-77, "Standard Method of Test for Aniline Point and Mixed Aniline Point of Petroleum Products and Hydrocarbon Solvents," which are incorporated by reference (copies may be obtained from the American Society for Testing Materials, 1916 Race St., Philadelphia, PA 19103, or may be examined at the Office of the Federal Register, 1100 L St., NW., Washington, DC 20408), aniline point 120° C minimum, as determined by ASTM method D611-77, and specific gravity 0.96–0.99 (20° C/20° C) * * *	

List of substances	Limitations
* * * * * *	
Styrene-dimethylstyrene-α-methylstyrene copolymers produced by polymerizing equimolar ratios of the three comonomers such that the finished copolymers have a minimum average molecular weight of 835 as determined by ASTM method D2503-67, "Standard Method of Test for Molecular Weight of Hydrocarbons by Thermoelectric Measurement of Vapor Pressure" (Reapproved 1977), which is incorporated by reference. Copies may be obtained from the American Society for Testing Materials, 1916 Race St., Philadelphia, PA 19103, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408	
* * * * *	

(d) * * *

(3) *Selection of test method.* Paper or paperboard ready for use in packaging shall be tested by use of the extraction cell described in "Official Analytical Chemists," 13th Ed. (1980), section 27.010, under "Exposing Flexible Barrier Materials for Extraction," which is incorporated by reference (copies may be obtained from the Association of Official Analytical Chemists, P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408); also described in ASTM method F34-76 (Reapproved 1980), "Standard Method for Exposing Flexible Barrier Materials to Liquids for Extraction," which is incorporated by reference (copies may be obtained from the American Society for Testing Materials, 1916 Race St., Philadelphia, PA 19103, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408), except that formed paper and paperboard products may be tested in the container by adapting the in-container methods described in § 175.300(e) of this chapter.* * *

* * * * * *

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

26. Part 177 is amended as follows:

a. In § 177.1010 by revising paragraph (c)(3), to read as follows:

§ 177.1010 Acrylic and modified acrylic plastics, semirigid and rigid.

* * * * *

(c) * * *

(3) *Preparation of solvents.* The water used shall be double-distilled water, prepared in a still using a block tin condenser. The 8 and 50 percent (by volume) alcohol solvents shall be prepared from ethyl alcohol meeting the specifications of the United States Pharmacopeia XX and diluted with double-distilled water that has been prepared in a still using a tin block condenser. The *n*-heptane shall be spectrophotometric grade. Adequate precautions must be taken to keep all solvents dust-free.

* * * * *

b. In § 177.1320 by revising paragraph (c)(1)(iii), to read as follows:

§ 177.1320 Ethylene-ethyl acrylate copolymers.

* * * * *

(c) * * *

(1) * * *

(iii) *Specific gravity.* Ethylene-ethyl acrylate copolymers have a specific gravity of not less than 0.920 nor more than 0.935, as determined by ASTM method D1505-68 (Reapproved 1975), "Test for Density of Plastic Gradient Technique," which is incorporated by reference. Copies may be obtained from the American Society for Testing Materials, 1916 Race St., Philadelphia, PA 19103, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

c. In § 177.1330 by revising paragraph (e)(4), to read as follows:

§ 177.1330 Ionomeric resins.

* * * * *

(e) * * *

(4) *Selection of test method.* The finished food-contact articles shall be tested either by the extraction cell described in the *Journal of the Association of Official Agricultural Chemists,* Vol. 47, No. 1, p. 177-179 (February 1964), also described in ASTM method F34-76 (Reapproved 1980), "Standard Test Methods for Liquid Extraction of Flexible Barrier Materials," which are incorporated by reference, or by adapting the in-container methods described in § 175.300(e) of this chapter. Copies of the material incorporated by reference are available from the Division of Food and Color Additives, Bureau of Foods (HFF-330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, and the American Society for Testing and Materials, 1916 Race St., Philadelphia, PA 19103, respectively, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

d. In § 177.1360 by revising the second and third sentences of the introductory text in paragraph (b), by revising the second sentence in paragraph (c), and by revising the second sentence in pararaph (d), to read as follows:

§ 177.1360 Ethylene-vinyl acetate-vinyl alcohol copolymers.

* * * * *

(b) * * * Film samples of 0.013 centimeter (0.005) inch thickness representing the finished article shall meet the following extractive limitation when tested by ASTM method F34-76 (Reapproved 1980), "Exposing Flexible Barrier Materials to Liquids for Extraction," which is incorporated by reference. Copies may be obtained from the American Society for Testing Materials, 1916 Race St., Philadelphia, PA 19103, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

(c) * * * Film samples of 0.0076 centimeter (0.003 inch) thickness representing the finished articles shall meet the following extractive limitation when tested by ASTM method F34-76 (Reapproved 1980), "Exposing Flexible Barrier Materials to Liquids for Extraction," which is incorporated by reference. * * *

(d) * * * Film samples of .018 centimeter (0.007 inch) thickness representing the finished articles shall meet the following extractive limitation when tested by ASTM method F34-76 (Reapproved 1980), "Exposing Flexible Barrier Materials to Liquids for Extraction," which is incorporated by reference. * * *

* * * * *

e. In § 177.1430 by revising paragraph (a)(1) and (3), to read as follows:

§ 177.1430 Isobutylene-butene copolymers.

* * * * *

(a) * * *

(1) Average molecular weight is in the range 300-5,000 as determined by ASTM method D2503-67 (Reapproved 1977), "Standard Method of Test for Molecular Weight of Hydrocarbons by Thermoelectric Measurement of Vapor Pressure," which is incorporated by reference. Copies may be obtained from the American Society for Testing Materials, 1916 Race St., Philadelphia, PA 19103, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

(3) Maximum bromine value is 40 as determined by ASTM method D1492-78, "Standard Method of Test for Bromine Index of Aromatic Hydrocarbons by Coulometric Titration," which is incorporated by reference. The availability of this incorporation by reference is given in paragraph (a)(1) of this section.

* * * * *

f. In § 177.1480 by revising paragraph (b)(1)(ii), to read as follows:

§ 177.1480 Nitrile rubber modified acrylonitrile-methyl acrylate copolymers.

* * * * *

(b) * * *

(1) * * *

(ii) Intrinsic viscosity in acetonitrile at 25° C is not less than 0.29 deciliter per gram as determined by ASTM method D1243–79, "Standard Method of Test for Dilute Solution Viscosity of Vinyl Chloride Polymers," which is incorporated by reference. Copies may be obtained from the American Society for Testing Materials, 1916 Race St., Philadelphia, PA 19103, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

g. In § 177.1520 by revising paragraph (d)(1), (2), and (6), to read as follows:

§ 177.1520 Olefin polymers.

* * * * *

(d) * * *

(1) *Density.* Density shall be determined by ASTM method D1505–68 (Reapproved 1975), "Test for Density of Plastics—Gradient Technique," which is incorporated by reference. Copies may be obtained from the American Society for Testing Materials, 1916 Race St., Philadelphia, PA 19103, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(2) *Melting point or softening point—*

(i) *Melting point.* The melting point shall be determined by ASTM method D2117–64 (1978), "Standard Method of Test for Melting Point of Semicrystalline Polymers," which is incorporated by reference. The availability of this incorporation by reference is given in paragraph (d)(1) of this section.

(ii) *Softening point.* The softening point shall be determined by ASTM method E28–67 (1977), "Standard Method of Test for Softening Point by Ring and Ball Apparatus," which is incorporated by reference. The availability of this incorporation by reference is given in paragraph (d)(1) of this section.

* * * * *

(6) *Mooney viscosity—olefin copolymers described in paragraph (a)(3)(iii) of this section.* Mooney viscosity is determined by ASTM method D1646–81, "Standard Method of Test for Viscosity and Curing Characteristic of Rubber by the Shearing Disc Viscometer," which is incorporated by reference (the availability of this incorporation by reference is given in paragraph (d)(1) of this section), using the large rotor at a temperature of 212° F, except that a temperature of 260° F shall be used for those copolymers whose Mooney viscosity cannot be determined at 212° F. The apparatus containing the sample is warmed for 1 minute, run for 8 minutes, and viscosity measurements are then made.

* * * * *

h. In § 177.1550 by revising the first and second sentences in paragraph (d)(2)(i), to read as follows:

§ 177.1550 Perfluorocarbon resins.

* * * * *

(d) * * *

(2) * * *

(i) The perfluorocarbon resins identified in paragraph (a)(1) of this section shall have a melt viscosity of not less than 10^4 poises at 380° C (716° F) as determined by ASTM method D1238–79, "Standard Method of Test for Melt Viscosity in Perfluorocarbon," which is incorporated by reference. Copies may be obtained from the American Society for Testing Materials, 1916 Race St., Philadelphia, PA 19103, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408. * * *

* * * * *

i. In § 177.1570 by revising the paragraph (b)(1) (ii), (iii), and (iv), to read as follows:

§ 177.1570 Poly-1-butene resins and butene/ethylene copolymers.

* * * * *

(b) * * *

(1) * * *

(ii) *Viscosity.* Poly-1-butene resins and the butene/ethylene copolymers have an intrinsic viscosity 1.0 to 3.2 as determined by ASTM method D1601–78, "Standard Method of Test for Dilute Solution Viscosity of Ethylene Polymers," which is incorporated by reference. Copies may be obtained from the American Society for Testing Materials, 1916 Race St., Philadelphia, PA 19103, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(iii) *Density.* Poly-1-butene resins have a density of 0.904 to 0.920 gms/cm^3, and butene/ethylene copolymers have a density of 0.890 to 0.916 gms/cm^3 as determined by ASTM method D1505–68 (Reapproved 1975), "Test for Density of Plastics—Gradient Technique," which is incorporated by reference. The availability of this incorporation by reference is given in paragraph (b)(1)(ii) of this section.

(iv) *Melt index.* Poly-1-butene resins have a melt index of 0.1 to 24 and the butene/ethylene copolymers have a melt index of 0.1 to 20 as determined by ASTM method D1238–79, condition E, "Standard Method of Measuring Flow Rates of Thermoplastics by Extrusion Plastometer," which is incorporated by reference. The availability of this incorporation by reference is given in paragraph (b)(1)(ii) of this section.

* * * * *

j. In § 177.1590 by revising paragraph (c), to read as follows:

§ 177.1590 Polyester elastomers.

* * * * *

(c) An appropriate sample of the finished polyester elastomer in the form in which it contacts food when subjected to ASTM method D968–51 (Reapproved 1976), "Standard Test Method for Abrasion Resistance of Coatings of Paint, Varnish, Lacquer, and Related Products by the Falling Sand Method," which is incorporated by reference (copies may be obtained from the American Society for Testing Materials, 1916 Race St., Philadelphia, PA 19103, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408), using No. 50 emery abrasive in lieu of Ottawa sand, shall exhibit an abrasion coefficient of not less than 100 liters per mil of thickness.

k. In § 177.1610 by revising the second sentence in paragraph (a), to read as follows:

§ 177.1610 Polyethylene, chlorinated.

* * * * *

(a) * * * Such chlorinated polyethylene contains a maximum of 60 percent by weight of total chlorine, as determined by ASTM method D1303–55 (1979), "Standard Method of Test for Total Chlorine in Vinyl Chloride Polymers and Copolymers," which is incorporated by reference (copies may be obtained from the American Society for Testing Materials, 1916 Race St., Philadelphia, PA 19103, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408), and has a 7.0 percent maximum extractable fraction in *n*-hexane at 50° C, as determined by the method in contact with all types of food, except that when used in contact with fatty food of types III, IV–A, V, VII–A, and IX described in table 1 of § 176.170(c) of this chapter, chlorinated polyethylene is limited to use only as a modifier admixed at levels not exceeding 15 weight percent in plastic articles prepared from polyvinyl chloride and/or from vinyl chloride copolymers complying with § 177.1930.

* * *

1. In § 177.1630 by revising the entries "Melting Point" and "Density" under the entry "1,4-Benzenedicarboxylic acid" in paragraph (e)(4)(v), to read as follows:

§ 177.1630 Polyethylene phthalate polymers.

* * * * *

(e) * * *
(4) * * *
(v) * * *

1,4-Benzenedicarboxylic acid * * *.
Melting point: 200° to 215° C as determined by ASTM method D2117–64 (1978), "Standard Test Method for Melting Point of Semicrystalline Polymers," which is incorporated by reference. Copies may be obtained from the American Society for Testing Materials, 1916 Race St., Philadelphia, PA 19103, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.
Density: 1.15 to 1.20 as determined by ASTM method D1505–68 (Reapproved 1975), "Test for Density of Plastics—Gradient Technique," which is incorporated by reference. Copies may be obtained from the American Society for Testing Materials, 1916 Race St., Philadelphia, PA 19103, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

m. In § 177.1650 by revising paragraph (c), to read as follows:

§ 177.1650 Polysulfide polymer-polyepoxy resins.

* * * * *

(c) An appropriate sample of the finished resin in the form in which it contacts food, when subjected to ASTM method D965–51 (1976), "Standard Test Method for Abrasion Resistance of Coatings of Paint, Varnish, Lacquer, and Related Products by the Falling Sand Method," which is incorporated by reference (copies may be obtained from the American Society for Testing Materials, 1916 Race St., Philadelphia, PA 19103, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408), using No. 50 Emery abrasive in lieu of Ottawa sand, shall exhibit an abrasion coefficient of not less than 20 liters per mil of film thickness.

n. In § 177.1670 by revising paragraph (b), to read as follows:

§ 177.1670 Polyvinyl alcohol film.

* * * * *

(b) The finished food-contact film for use in contact with food types V or IX, when extracted with the solvent characterizing the type of food and under the conditions of time and temperature characterizing its intended use as determined from tables 1 and 2 of § 176.170(c) of this chapter, yields total extractives not to exceed 0.5 milligram per square inch of food-contact surface when tested by ASTM method F34–76 (Reapproved 1980), "Standard Test Method for Liquid Extraction of Flexible Barrier Materials," which is incorporated by reference. Copies may be obtained from the American Society for Testing Materials, 1916 Race St., Philadelphia, PA 19103, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408

* * * * *

o. In § 177.1680 by revising paragraph (c), to read as follows:

§ 177.1680 Polyurethane resins.

* * * * *

(c) An appropriate sample of the finished resin in the form in which it contacts food, when subjected to ASTM method D965–51 (1976), "Standard Test Method for Abrasion Resistance of Coatings of Paint, Varnish, Lacquer, and Related Products By the Falling Sand Method,"which is incorporated by reference (copies may be obtained from the American Society for Testing Materials, 1916 Race St., Philadelphia, PA 19103, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408), using No. 50 Emery abrasive in lieu of Ottawa sand, shall exhibit an abrasion coefficient of not less than 20 liters per mil of film thickness.

p. In § 177.1950 by revising paragraph (c)(1)(ii), to read as follows:

§ 177.1950 Vinyl chloride-ethylene copolymers.

* * * * *

(c) * * *
(1) * * *

(ii) Intrinsic viscosity in cyclohexanone at 30° C is not less than 0.50 deciliter per gram as determined by ASTM method D1243–79, "Standard Method of Test for Dilute Solution Viscosity of Vinyl Chloride Polymers," which is incorporated by reference. Copies may be obtained from the American Society for Testing Materials, 1916 Race St., Philadelphia, PA 19103, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

q. In § 177.1960 by revising paragraph (b)(1)(ii), to read as follows:

§ 177.1960 Vinyl chloride-hexene-1 copolymers.

* * * * *

(b) * * *
(1) * * *

(ii) Inherent viscosity in cyclohexanone at 30° C is not less than 0.59 deciliters per gram as determined by ASTM method D1243–79, "Standard Method of Test for Dilute Solution Viscosity of Vinyl Chloride Polymers," which is incorporated by reference. Copies may be obtained from the American Society for Testing Materials, 1916 Race St., Philadelphia, PA 19103, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

r. In § 177.1970 by revising paragraph (c)(1)(ii), to read as follows:

§ 177.1970 Vinyl chloride-lauryl vinyl ether copolymers.

* * * * *

(c) * * *
(1) * * *

(ii) Inherent viscosity in cyclohexanone at 30° C is not less than 0.60 deciliter per gram as determined by ASTM method D1243–79, "Standard Method of Test for Dilute Solution Viscosity of Vinyl Chloride Polymers," which is incorporated by reference. Copies may be obtained from the American Society for Testing Materials, 1916 Race St., Philadelphia, PA 19103, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

s. In § 177.1980 by revising paragraph (c)(1)(ii), to read as follows:

§ 177.1980 Vinyl chloride-propylene copolymers.

* * * * *

(c) * * *
(1) * * *

(ii) Intrinsic viscosity in cyclohexanone at 30° C is not less than 0.50 deciliter per gram as determined by ASTM method D1243–79, "Standard Method of Test for Dilute Solution Viscosity of Vinyl Chloride Polymers," which is incorporated by reference. Copies may be obtained from the American Society for Testing Materials, 1916 Race St., Philadelphia, PA 19103, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

t. In § 177.2210 by revising the flush paragraph following paragraph (b)(3), to read as follows:

§ 177.2210 Ethylene polymer, chlorosulfonated.

* * * * *

(b) * * *
(3) * * *

Methods for the specifications in this paragraph (b), titled "Chlorine and Bromine—Coulometric Titration Method

by Aminco Chloridometer," "Hypolon® Synthetic Rubber—Determination of Sulfur by Parr Bomb," and ASTM method D2857–70 (1977), "Standard Method of Test for Dilute Solution Viscosity of Polymers," are incorporated by reference. Copies of the ASTM method may be obtained from the American Society for Testing Materials, 1916 Race St., Philadelphia, PA 19103. Copies of the other two methods are available from the Division of Food and Color Additives, Bureau of Foods (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204. Copies of all three methods may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

u. In § 177.2440 by revising paragraph (a), to read as follows:

§ 177.2440 Polyethersulfone resins.

* * * * * *

(a) For the purpose of this section, polyethersulfone resins are poly(oxy-*p*-phenylenesulfonyl-p-phenylene) resins (CAS Reg. No. 25667–42–9), which have a minimum number average molecular weight of 16,000, as determined by reduced viscosity in dimethyl formamide in accordance with ASTM method D2857–70 (1977), "Standard Method of Test Dilute Solution Viscosity of Polymers," which is incorporated by reference. Copies may be obtained from the American Society for Testing Materials, 1916 Race St., Philadelphia, PA 19103, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

v. In § 177.2450 by revising paragraph (b)(1), to read as follows:

§ 177.2450 Polyamide-imide resins.

* * * * *

(b) * * *

(1) Nitrogen content: Not less than 7.80 weight percent and not more than 8.20 weight percent, as determined by the Dumas Nitrogen Determination as set forth in "Official Methods of Analysis of the Association of Official Analytical Chemists," 13th Ed. (1980), which is incorporated by reference. Copies may be obtained from the Association of Official Analytical Chemists, P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

w. In § 177.2460 by revising the introductory text in paragraph (c)(1) and by revising the first sentence in paragraph (c)(1)(iv), to read as follows:

§ 177.2460 Poly(2,6-demethyl-1,4-phenylene) oxide resins.

* * * * *

(c) * * *

(1) *Specifications.* Intrinsic viscosity is not less than 0.40 deciliter per gram as determined by ASTM method D1243–79, "Standard Method of Test for Dilute Solution Viscosity of Vinyl Chloride Polymers," which is incorporated by reference, modified as follows. Copies of the incorporation by reference may be obtained from the American Society for Testing Materials, 1916 Race St., Philadelphia, PA 19103, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

(iv) Calculation. The calculation method used is that described in Appendix X.1.3 (ASTM method D1243–79, cited and incorporated by reference in paragraph (c)(1) of this section) with the reduced viscosity determined for three concentration levels (0.4, 0.2, and 0.1 gram per deciliter) and extrapolated to zero concentration for intrinsic viscosity.

* * * * *

x. In § 177.2480 by revision paragraph (c)(3), to read as follows:

§ 177.2480 Polyoxymethylene homopolymer.

* * * * *

(c) * * *

(e) Density of the homopolymer is between 1.39 and 1.44 as determined by ASTM method D1505–68 (Reapproved 1975), "Test for Density of Plastics—Gradient Technique," which is incorporated by reference. Copies may be obtained from the American Society for Testing Materials, 1916 Race St., Philadelphia, PA 19103, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

y. In § 177.2600 by revising the entry for "Silicone basic polymer" in paragraph (c)(4)(i), to read as follows:

§ 177.2600 Rubber articles intended for repeated use.

* * * * *

(c) * * *

(4) * * *

(i) * * *

* * * * *

Silicone basic polymer as described in ASTM method D1418–79, "Standard Recommended Practice for Rubber and Rubber Latices—Nomenclature," which is incorporated by reference. Copies may be obtained from the American Society for Testing Materials, 1916 Race St., Philadelphia, PA 19103, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

27. Part 178 is amended as follows:

a. In § 178.1005 by revising paragraph (c), to read as follows:

§ 178.1005 Hydrogen peroxide solution.

* * * * *

(c) *Specifications.* Hydrogen peroxide solution shall meet the specifications of the "Food Chemicals Codex," 3d Ed. (1981), pp. 146–147, which is incorporated by reference (copies may be obtained from the National Academy Press, 2101 Constitution Ave. NW., Washington, DC 20418, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408), and the United States Pharmacopeia XX (1980), except that hydrogen peroxide may exceed the concentration specified therein.

* * * * *

b. In § 177.2010 by revising in the "Substances" column in paragraph (b) the entries for "Butylated, styrenated cresols," "Dicetyl thiodipropionate," and "Dimyristyl thiodipropionate," to read as follows:

§ 178.2010 Antioxidants and/or stabilizers for polymers.

* * * * *

(b) * * *

Substances	Limitations
* * * * *	
Butylated, styrenated cresols produced when equal moles of isobutylene, styrene, and a meta-cresol-paracresol mixture having a no more than 3° C distillation range including 202° C are made to react so that the final product meets the following specifications: Not less than 85 percent by weight of total alkylated phenols consisting of 13–25 percent by weight of butylated *m*- and *p*-cresols, 26–33 percent by weight of styrenated *m*- and *p*-cresols, 37–49 percent by weight of butylated styrenated *m*- and *p*-cresols, and not more than 10 percent by weight total of alkylated xylenols, alkylated *o*-cresol, alkylated phenol, and alkylated ethylphenols; ash not more than 0.003 percent; and refractive index at 25° C of 1.5550–1.5650, as determined by ASTM method D1218–61 (1977), "Standard Method for Measurement of Refractive Index and Refractive Dispersion of Hydrocarbon Liquids," which is incorporated by reference. Copies may be obtained from the American Society for Testing Materials, 1916 Race St., Philadelphia, PA 19103, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408	* * *

Substances	Limitations
* * * * *	
Dicetyl thiodipropionate having a melting point of 59°–62° C as determined by ASTM method E324-69 (Reapproved 1974), "Relative Initials and Final Melting Points and the Melting Range of Organic Chemicals," and a saponification value in the range 176–183 as determined by ASTM method D1962-67 (Reapproved 1973), "Saponification Value of Drying Oils, Fatty Acids, and Polymerized Fatty Acids," which are incorporated by reference. Copies may be obtained from the American Society for Testing Materials, 1916 Race St., Philadelphia, PA 19103, or may be examined at the Office of the Federal Register, 1100 L St. NW, Washington, DC 20408	* * *
* * * * *	
Dimyristyl thiodipropionate having a melting point of 48°–52° C as determined by ASTM method E324-79, "Relative Initials and Final Melting Points and the Melting Range of Organic Chemicals," and a saponification equivalent in the range 280–290 as determined by ASTM method D1962-67 (1979), "Saponification Values of Drying Oils, Fatty Acids, and Polymerized Fatty Acids," which are incorporated by reference. Copies may be obtained from the American Society for Testing Materials, 1916 Race St., Philadelphia, PA 19103, or may be examined at the Office of the Federal Register, 1100 St. NW., Washington, DC 20408	* * *
* * * * *	

c. In § 178.3530 by revising the entry for "Boiling point 145°–500°" and by revising the last two sentences in the entry for "Synthetic isoparaffinic petroleum hydrocarbons" in paragraph (a), to read as follows:

§ 178.3530 Isoparaffinic petroleum hydrocarbons, synthetic.

* * * * *

(a) * * *

Boiling point 145°–500° F, as determined by ASTM method D86–78, "Standard Method of Test for Distillation of Petroleum Products," which is incorporated by reference. Copies may be obtained from the American Society for Testing Materials, 1916 Race St., Philadelphia, PA 19103, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, D.C. 20408.

* * * * *

Synthetic isoparaffinic petroleum hydrocarbons * * *. For hydrocarbons boiling below 250° F, the nonviolatile residue shall be determined by ASTM method D1353–79, "Standard Method of Test for Nonvolatile Matter in Volatile Solvents for Use in Paint, Varnish, Lacquer, and Related Products"; for those boiling above 250° F, ASTM procedure D381–80, Standard Method of Test for Existent Gum in Fuels for Jet Evaporation," which are incorporated by reference. Copies may be obtained from the American Society for Testing Materials, 1916 Race St., Philadelphia, PA 19103, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, D.C. 20408.

* * * * *

d. In § 178.3620 by revising paragraphs (b)(1)(i), (c)(1)(ii), (d)(1)(i), and by revising the first and second sentences in V.B.19.b. in the method in paragraph (d)(3), to read as follows:

§ 178.3620 Mineral oil

* * * * *

(b) * * *

(1) * * *

(i) Saybolt color 20 minimum as determined by ASTM method D156–81, "Standard Method of Test for Saybolt Color of Petroleum Products," which is incorporated by referencer. Copies may be obtained from the American Society for Testing Materials, 1916 Race St., Philadelphia, PA 19103, or may be examined at the Office of the Federal Register, 1100 L St., NW., Washington, D.C. 20408.

* * * * *

(c) * * *

(1) * * *

(ii) Color 5.5 maximum as determined by ASTM method D1500–64 (1977), "Standard Method of Test for ASTM Color of Petroleum Products," which is incorporated by reference. The availability of this incorporation by reference is given in paragraph (b)(1)(i) of this section.

* * * * *

(d) * * *

(1) * * *

(i) Distillation endpoint at 760 millimeters pressure not to exceed 700° F, with a maximum residue not to exceed 2 percent, as determined by ASTM method D86–78, "Standard Method of Test for Distillation of Petroleum Products," which is incorporated by reference. The availability of this incorporation by reference is given in paragraph (b)(1)(i) of this section.

(3) * * *

V. * * *

B. * * *

19. * * *

b. If such a peak is evident in the spectrum of the sample solution, and the spectrum as a whole is not incompatible with that of a pyrene contaminant yielding such a peak of the observed absorbance, calculate the concentration of pyrene that would yield this peak (334 mμ) by the base-line technique described in ASTM method E169–63 (Reapproved 1977), "Standard Recommended Practices for General Techniques of Ultraviolet Quantitative Analysis," which is incorporated by reference. The availability of this incorporation by reference is given in paragraph (b)(1)(i) of this section.

* * * * *

e. In § 178.3690 by revising the paragraphs (b) (1) and (4), to read as follows:

§ 178.3690 Pentaerythritol adipate-stearate.

* * * * *

(b) * * *

(1) Melting point (dropping) of 49°–52° C as determined by ASTM method D566–76, "Standard Test Method for Dropping Point of Lubricating Grease," which is incorporated by reference. Copies may be obtained from the American Society for Testing Materials, 1916 Race St., Philadelphia, PA 19103, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, D.C. 20408.

* * * * *

(4) Iodine number not to exceed 2 as determined by Iodine Absorption Number, Hanus Method, of the "Official Methods of Analysis of the Association of Official Analytical Chemists," §§ 28.018–28.020, 13th Ed. (1980), which is incorporated by reference. Copies may be obtained from the Association of Official Analytical Chemist, P.O. Box 540, Benjamin Franklin Station, Washington, D.C. 20044, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, D.C. 20408.

* * * * *

f. In § 178.3700 by revising paragraph (a), to read as follows:

§ 178.3700 Petrolatum.

* * * * *

(a) Petrolatum complies with the specifications set forth in the United States Pharmacopeia XX (1980) for white petrolatum or in the National Formulary XV (1980) for yellow petrolatum.

* * * * *

g. In § 178.3740 by revising the entry for "Polybutene, hydrogenated" in the list of substances in paragraph (b), to read as follows:

§ 178.3740 Plasticizers in polymeric substances.

* * * * *

(b) * * *

Substances	Limitations
* * * * *	
Polybutene, hydrogenated (minimum viscosity at 210° F, 39 Saybolt Universal seconds, as determined by ASTM methods D445-79 ("Test for Kinematic Viscosity of Transparent and Opaque Liquids") and D2161-74 ("Standard Method of Test for Conversion of Kinematic Viscosity of Saybolt Universal Viscosity or to Saybolt Furol Viscosity"), and bromine number of 3 or less, as determined by ASTM method D1492-78 ("Standard Method of Test for Bromine Index of Aromatic Hydrocarbons by Coulometric Titration"), which are incorporated by reference. Copies may be obtained from the American Society for Testing Materials, 1916 Race St., Philadelphia, PA 19103, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408	* * *
* * * * *	

h. In § 178.3770 by revising paragraphs (a)(1) and (b)(1), to read as follows:

§ 178.3770 Polyhydric alcohol diesters of oxidatively refined (Gersthoffen process) montan wax acids.

* * * * *

(a) * * *

(1) Dropping point 77°–82° C, as determined by ASTM method D566–76, "Standard Method for Dropping Point of Lubricating Grease," which is incorporated by reference. Copies may be obtained from the American Society for Testing Materials, 1916 Race St., Philadelphia, PA 19103, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

(b) * * *

(1) Dropping point 77°–82° C, as determined by ASTM method D566–76, "Standard Method for Dropping Point of Lubricating Grease," which is incorporated by reference. The availability of this incorporation by reference is given in paragraph (a)(1) of this section.

* * * * *

i. In § 178.3870, by revising paragraph (f)(1), (2), (3), and (4), to read as follows:

§ 178.3870 Rosins and rosin derivatives.

* * * * *

(f) * * *

(1) Color: Color shall be as determined by ASTM method D509–70 (1981), "Standard Method of Sampling and Grading Rosin," which is incorporated by reference. Copies may be obtained from the American Society for Testing Materials, 1916 Race St., Philadelphia, PA 19103, or may be examined at the Office of the Federal Register, 1100 L St., NW., Washington, DC 20408.

(2) Refractive index: Refractive index shall be as determined by ASTM method D1747–62, "Standard Method for Refractive Index of Viscous Materials" (Reapproved 1978), which is incorporated by reference. The availability of this incorporation by reference is given in paragraph (f)(1) of this section.

(3) Acid number: Acid number shall be as determined by ASTM method D465–59 (Reapproved 1975), "Standard Test Method of Test for Acid Number of Rosin," which is incorporated by reference. The availability of this incorporation by reference is given in paragraph (f)(1) of this section.

(4) Viscosity: Viscosity in poises shall be as determined by ASTM method D1824–66, "Standard Test Method for Apparent Viscosity of Plastisols" (Reapproved 1972), and in Saybolt seconds by ASTM method D88–56, "Standard Methods of Test for Saybolt Viscosity" (Reapproved 1973), which are incorporated by reference. The availability of this incorporation by reference is given in paragraph (f)(1) of this section.

* * * * *

j. In § 178.3910 by revising paragraph (a)(4)(i)(*a*), (*b*), and (*c*), to read as follows:

§ 178.3910 Surface lubricants used in the manufacture of metallic articles.

* * * * *

(a) * * *

(4) * * *

(i) * * *

(*a*) Initial boiling point is 75° F minimum and final boiling point is 550° F maximum, as determined by ASTM method D86–78, "Standard Method of Test for Distillation of Petroleum Products," which is incorporated by reference. Copies may be obtained from the American Society for Testing Materials, 1916 Race St., Philadelphia, PA 19103, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(*b*) Nonvolatile residue is 0.005 gram per 100 milliliters, maximum, as determined by ASTM method D381–80, "Standard Method of Test for Existent Gum in Fuels by Jet Evaporation," when the final boiling point is 250° F or above and by ASTM method D1353–78, "Standard Method of Test for Nonvolatile Matter in Volatile Solvents for Use in Paint, Varnish, Lacquer, and Related Products," when the final boiling point is below 250° F. These ASTM methods are incorporated by reference. The availability of these incorporations by reference is given in paragraph (a)(4)(i)(*a*) of this section.

(*c*) Saybolt color 20 minimum as determined by ASTM method D156–81, "Standard Method of Test for Saybolt Color of Petroleum Products: Saybolt Chromometer Method," which is incorporated by reference. The availability of this incorporation by reference is given in paragraph (a)(4)(i)(*a*) of this section.

* * * * *

PART 179—IRRADIATION IN THE PRODUCTION, PROCESSING, AND HANDLING OF FOOD

28. Part 179 is amended in § 179.45 by revising the first and second sentences in paragraph (b)(9) and by revising the first and second sentences in paragraph (c)(2)(iv), to read as follows:

§ 179.45 Packaging materials for use during the irradiation of prepackaged foods.

* * * * *

(b) * * *

(9) Vinylidene chloride-vinyl chloride copolymer film prepared from vinylidene chloride-vinyl chloride basic copolymers containing not less than 70 weight percent of vinylidene chloride and having a viscosity of 0.50–1.50 centipoises as determined by ASTM method D729–81, "Standard Specifications for Vinylidene Chloride Molding Compounds," which is incorporated by reference. Copies may be obtained from the American Society for Testing Materials, 1916 Race St., Philadelphia, PA 19103, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.* * *

* * * * *

(c) * * *

(2) * * *

(iv) Vinyl chloride-vinyl acetate copolymer film prepared from the basic copolymer containing 88.5 to 90.0 weight percent of vinyl chloride with 10.0 to 11.5 weight percent of vinyl acetate and having a maximum volatility of not over 3.0 percent (1 hour at 105° C) and viscosity not less than 0.30 determined by ASTM method D1243–79, "Standard Method of Test for Dilute Solution Viscosity of Vinyl Chloride Polymers," Method A, which is incorporated by reference. The availability of this incorporation by reference is given in paragraph (b)(9) of this section.* * *

PART 189—SUBSTANCES PROHIBITED FROM USE IN HUMAN FOOD

29. Part 189 is amended as follows:

a. In § 189.130 by revising paragraph (c), to read as follows:

§189.130 Coumarin.

* * * * *

(c) The analytical methods used for detecting coumarin in food are in §§ 19.016–19.024 of the "Official Methods of Analysis of the Association of Official Analytical Chemists," 13th Ed. (1980), which is incorporated by reference. Copies may be obtained from the Association of Official Analytical Chemists, P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

b. In § 189.135 by revising paragraph (c), to read as follows:

§189.135 Cyclamate and its derivatives.

* * * * *

(c) The analytical methods used for detecting cyclamate in food are in sections 20.162–20.172 of the "Official Methods of Analysis of the Association of Official Analytical Chemists," 13th Ed. (1980), which is incorporated by

reference. Copies may be obtained from the Association of Official Analytical Chemists, P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

c. In § 189.145 by revising paragraph (c), to read as follows:

§ 189.145 Dulcin.

* * * * *

(c) The analytical methods used for detecting dulcin in food are in sections 20.173–20.176 of the "Official Methods of Analysis of the Association of Official Analytical Chemists," 13th Ed. (1980), which is incorporated by reference. Copies may be obtained from the Association of Official Analytical Chemists, P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

d. In § 189.155 by revising paragraph (c), to read as follows:

§ 189.155 Monochloroacetic acid.

* * * * *

(c) The analytical methods used for detecting monochloroacetic acid in food are in sections 20.068–20.072 of the "Official Methods of Analysis of the Association of Official Analytical Chemists," 13th Ed. (1980), which is incorporated by reference. Copies may be obtained from the Association of Official Analytical Chemists, P.O. Box 5540, Benjamin Franklin Station, Washington, DC 20044, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

e. In § 189.165 by revising paragraph (c), to read as follows:

§ 189.165 Nordihydroguaiaretic acid (NDGA).

* * * * *

(c) The analytical method used for detecting NDGA in food is in section 20.008(b) of the "Official Methods of Analysis of the Association of Official Analytical Chemists," 13th Ed. (1980), which is incorporated by reference. Copies may be obtained from the Association of Official Analytical Chemists, P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

f. In § 189.175 by revising paragraph (c), to read as follows:

§ 189.175 P-4000.

* * * * *

(c) The analytical methods used for detecting P-4000 in food are in sections 20.177–20.181 of the "Official Methods of Analysis of the Association of Official Analytical Chemists," 13th Ed. (1980), which is incorporation by reference. Copies may by obtained from the Association of Official Analytical chemists, P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044, or may be examined at the Office of the Federal Register, 1100 L ST. NW., Washington DC 20408.

g. In § 189.190 by revising paragraph (c), to read as follows:

§ 189.190 Thiourea.

* * * * *

(c) The analytical methods used for detecting thiourea are in sections 20.115–20.126 of the "Official Methods of Analysis of the Association of Official Analytical Chemists," 13th Ed. (1980), which is incorporated by reference. Copies may be obtained from the Association of Official Analytical Chemists, P.O. Box, 540 Benjamin Franklin Station, Washington, DC 20044, or may be examined at the Office of the Federal Register, 1100 L ST. SW., Washington, DC 20408.

Interested persons may, on or before February 29, 1984, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that indiciduals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 23, 1984.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 84-2259 Filed 1-27-84; 8:45 am]

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Federal Register

Monday
January 30, 1984

Part V

Environmental Protection Agency

Publicly-Owned Treatment Works; National Municipal Policy; Notice

ENVIRONMENTAL PROTECTION AGENCY

[WH-FRL 2515-6]

Notice of National Municipal Policy on Publicly-Owned Treatment Works.

AGENCY: Environmental Protection Agency.

ACTION: Notice of National Municipal Policy.

SUMMARY: This notice sets forth the Environmental Protection Agency's policy on ensuring that all publicly-owned treatment works (POTW) comply with the statutory requirements and compliance dead-lines in the Clean Water Act (CWA). The policy describes the Agency's intention to focus its efforts on POTWs that previously received Federal funding assistance and are not in compliance, on all other major POTWs, and on minor POTWs that are contributing significantly to an impairment of water quality. It also describes how the Agency expects EPA Regions and States to carry out the intent of the policy. The purposes of the policy are to achieve maximum improvement in water quality in accordance with the goals of the CWA, and to protect the public's investment in wastewater treatment facilities.

The Agency has recently proposed a regulation that redefines secondary treatment pursuant to the 1981 amendments to section 304(d) of the CWA, 48 FR 52258, November 16, 1983. This related action will help provide reasonable certainty regarding POTWs applicable effluent limits and will facilitate implementation of this policy.

EFFECTIVE DATE: This policy will be effective January 30, 1984.

FOR FURTHER INFORMATION CONTACT: Robert W. Zeller, Ph. D., U.S. Environmental Protection Agency, EN-338, 401 M Street, SW., Washington, D.C., 20460 (202) 475-8304.

Dated: January 23, 1984.

William D. Ruckelshaus,

Administrator.

Statement of Policy

When the Clean Water Act (CWA) was passed in 1972, Congress gave municipalities until 1977 to comply with its requirements. Congress authorized the Environmental Protection Agency (EPA) to extend the deadline to 1983 and then again to July 1, 1988, for some municipalities. In addition, Congress amended the Act in 1981 to modify the basic treatment requirements. Therfore, Congress has authorized EPA to give some municipalities several additional years to achieve compliance and has also provided more reasonable treatment requirements for certain types of facilities.

The CWA requires all publicly-owned treatment works (POTWs) to meet the statutory compliance deadlines and to achieve the water quality objectives of the Act, whether or not they receive Federal funds. The EPA will focus on POTWs that previously received Federal funding assistance and are not currently in compliance with their applicable effluent limits, on all other major POTWs, and on minor POTWs that are contributing significantly to an impairment of water quality. EPA's goal will be to obtain compliance by POTWs as soon as possible, and no later than July 1, 1988. Where there are extraordinary circumstances that preclude compliance of such facilities by July 1, 1988, EPA will work with States and the affected municipal authorities to ensure that these POTWs are on enforceable schedules for achieving compliance as soon as possible thereafter, and are doing all they can in the meantime to abate pollution to the Nation's waters.

Implementation Strategy

The Agency is committed to pursuing a clear course of action that fulfills the intent of Congress and results in the maximum improvement in water quality. The Agency is also committed to protecting the public's financial investment in wastewater treatment facilities. To meet these objectives, the Agency expects EPA Regions and States to adhere to the National policy stated above and to use the following mechanisms to carry out the intent of this policy.

EPA Regions will cooperate with their respective States to develop strategies that describe how they plan to bring noncomplying facilities into compliance. These strategies should include a complete inventory of all noncomplying facilities, should identify the affected municipalities consistent with the National policy, and should describe a plan to bring these POTWs into compliance as soon as possible. Regions and States will then use the annual State program grant negotiation process to reach agreement on the specific activities they will undertake to carry out the plan.

Based on the information in the final strategies, the permitting authority (Region or approved NPDES State) will require affected municipal authorities to develop one of the following as necessary:

Composite Correction Plan: An affected municipality that has a constructed POTW that is not in compliance with its NPDES permit effluent limits will be required to develop a Composite Correction Plan (CCP). The CCP should describe the cause(s) of noncompliance, should outline the corrective actions necessary to achieve compliance, and should provide a schedule for completing the required work and for achieving compliance.

Municipal Compliance Plan: An affected municipality that needs to construct a wastewater treatment facility in order to achieve compliance will be required to develop a Municipal Compliance Plan (MCP). The MCP should describe the necessary treatment technology and estimated cost, should outline the proposed sources and methods of financing the proposed facility (both construction and O&M), and should provide a schedule for achieving compliance as soon as possible.

The permitting authority will use the information in these plans and will work with the affected municipality to develop a reasonable schedule for achieving compliance. In any case where the affected municipal authority is unable to achieve compliance promptly, the permitting authority will, in addition to setting a schedule for achieving full compliance, ensure that the POTW undertakes appropriate interim steps that lead to full compliance as soon as possible. Where there are extraordinary circumstances that make it impossible for an affected municipal authority to meet a July 1, 1988 compliance date, the permitting authority will work with the affected municipality to establish a fixed date schedule to achieve compliance in the shortest, reasonable period of time thereafter, including interim abatement measures as appropriate. The general goal is to establish enforceable compliance schedules for all affected municipalities by the end of FY 1985. Once schedules for affected municipalities are in place, the permitting authority will monitor progress towards compliance and will take follow-up action as appropriate. Nothing in this policy is intended to

impede or delay any ongoing or future enforcement actions.

Overview

EPA Headquarters will overview the implementation of this policy to ensure that actions taken by Regions and States are consistent with National policy and that the Agency as a whole is making progress towards meeting the statutory deadlines and achieving the water quality objectives of the Act.

Dated: January 23, 1984.

William D. Ruckelshaus,

Administrator.

[FR Doc. 84-2433 Filed 1-27-84; 8:45 am]

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Reader Aids

Federal Register

Vol. 49, No. 20

Monday, January 30, 1984

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PUBLICATIONS AND SERVICES

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General information, index, and finding aids	523-5227
Public inspection desk	523-5215
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Code of Federal Regulations

General information, index, and finding aids	523-5227
Printing schedules and pricing information	523-3419

Laws

Indexes	523-5282
Law numbers and dates	523-5282
	523-5266

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the President	523-5230
Weekly Compilation of Presidential Documents	523-5230

United States Government Manual	523-5230

Other Services

Library	523-4986
Privacy Act Compilation	523-4534
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, JANUARY

1-340.....3
341-556.....4
557-860.....5
861-1044.....6
1045-1170.....9
1171-1320.....10
1321-1466.....11
1467-1666.....12
1667-1866.....13
1867-1974.....16
1975-2088.....17
2089-2222.....18
2223-2462.....19
2463-2740.....20
2741-2878.....23
2879-3032.....24
3033-3168.....25
3169-3440.....26
3441-3638.....27
3639-3834.....30

CFR PARTS AFFECTED DURING JANUARY

At the end of each month, the Office of the Federal Register publishes separately a list of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

1 CFR

Proposed Rules:
326.....1450

3 CFR

Executive Orders:
February 26, 1885, (Revoked by PLO 6501).....2114
May 14, 1915 (Revoked in part by PLO 6500).....1986
11476 (Amended by EO 12460).....3169
11888 (Amended by EO 12459).....2039
12163 (Amended by EO 12459).....1977
12369 (Continued by EO 12455).....345
12382 (Continued by EO 12454).....343
12387 (Superseded by EO 12456).....347
12428 (Amended by EO 12457).....865
12454.....343
12455.....345
12456.....347
12457.....865
12458.....1977
12459.....2039
12460.....3169
Proclamations:
4707 (Amended by EO 12459).....2039
5133 (Amended by Proc. 5142).....341
5142.....341
5143.....557
5144.....861
5145.....863
5146.....1816
5147.....1975
5148.....3441

5 CFR

339.....1321
432.....1321
534.....2879
553.....2741
731.....1869
752.....1321
754.....1869
831.....1321
870.....3033
871.....3033
872.....3033
873.....3033
890.....1045
1001.....1332
Proposed Rules:
532.....602
1411.....1450
1701.....1450

7 CFR

2.....1047
6.....361, 3048, 3051
52.....1333
55.....2879
56.....2223
59.....2223
70.....2223
101.....3639
201.....1171
225.....2463
301.....1871
319.....1872, 3058, 3173
354.....1173
371.....3443
404.....1876
413.....857
415.....1881
421.....871
432.....876
442.....2225
701.....1174
770.....2225
810.....3443
905.....1467, 2229
906.....1979, 3173
907.....848, 1048, 1468, 1930, 2880, 3640
910.....876, 1657, 2033, 2465, 3059, 3484
915.....1048
928.....1667
932.....1
944.....1979
959.....2230
979.....2230
992.....3059
939.....1668
993.....1469
1033.....1980
1207.....2093
1430.....2, 361
1464.....2466
1901.....3724
1924.....3724
1940.....3724
1941.....3724
1942.....3724
1943.....3724
1944.....3724
1945.....3724
1948.....3724
1951.....1895
1980.....3724
Proposed Rules:
51.....603, 1909
770.....409
810.....1730, 3485, 3663

984.....1909
989.....413
991.....1379,1380
1540.....414
1736.....1910, 2115
1945.....3666

8 CFR

238.....2093, 2094

9 CFR

53.....3446
78.....3448
81.....368, 2742
94.....1886, 3449
97.....1175
301.....2230
307.....1469
317.....2230
320.....2230
350.....1469
351.....1469
354.....1469
355.....1469
362.....1469
381.....1469, 2230, 3641

Proposed Rules:

381.....2473

10 CFR

110.....2881
205.....2744
213.....2744
440.....3624
463.....5
625.....2692

Proposed Rules:

2.....414
20.....1205, 3667
72.....414
455.....2846
1040.....1450
1535.....1450

11 CFR

Proposed Rules:

100.....1995
101.....1995

12 CFR

Ch. VII.....559
5.....52
29.....2236
212.....1334, 2746
215.....2902
217.....2883
225.....794
265.....2094
349.....1176
544.....53
552.....53
572a.....1334
614.....2746
720.....559
722.....559
735.....559
750.....559
790.....559
791.....559
792.....559
793.....559

Proposed Rules:

5.....893
205.....2204, 3488
220.....1996
226.....2210, 2211
330.....2787
410.....1450
561.....2787
563b.....415
564.....2787
701.....3089

13 CFR

Proposed Rules

125.....2257
140.....3090

14 CFR

11.....53
21.....53
39.....369, 370, 1049, 1669, 1887, 2239, 2240, 2467, 2746–2749, 3449, 3451
43.....53
45.....53
71.....371, 1050, 1051, 1176, 2241, 2750, 3061, 3452–3455
75.....2241
91.....53
95.....1470, 1888
97.....1052, 2750
241.....1982, 3643
385.....1671

Proposed Rules:

39.....415–417, 2791
71.....419, 895, 1211, 2263, 2792, 2903, 3488, 3489, 3669, 3670
252.....3671

15 CFR

371.....3061
373.....3061
376.....3061
378.....3061
379.....3061
385.....3061
399.....3061
806.....3173
904.....1036, 1037, 1464
924.....1037
929.....1037
935.....1037
936.....1037
937.....1037
938.....1037

Proposed Rules:

17.....420
303.....605
373.....2264
376.....2264
806.....3192
1033.....1450

16 CFR

453.....559, 564

Proposed Rules:

455.....1911
1615.....3062
1616.....3062
1632.....2793

17 CFR

Ch. I.....2884
Ch. II.....2884
21.....1335
33.....2752
200.....3064
211.....53
231.....2468
240.....3064
241.....2468
251.....2468
270.....1476, 1477
271.....55, 2468

Proposed Rules:

230.....614
239.....614
240.....421
270.....614, 1735–1737, 2904, 2912
274.....614, 2912

18 CFR

35.....1177
154.....565, 2886, 3643
157.....3456
270.....3072
271.....56, 565, 566, 3074 3456
273.....3643
274.....566
282.....568, 3644
301.....1177
1312.....1016

Proposed Rules:

Ch. I.....3193
2.....70
3.....643
11.....1067
13.....1067
154.....70, 3093
157.....1525
201.....70
270.....70, 3198
271.....70, 644, 1525, 2116
282.....1525
284.....1525

19 CFR

10.....852, 1480, 1482
134.....1672
148.....1672
162.....1672
171.....1672
172.....1672
177.....1484

Proposed Rules:

Ch. I.....1740
4.....3200
101.....1380, 1530
134.....3671
146.....3200
151.....1531
175.....3201
201.....1450

20 CFR

341.....569
416.....1177, 1340

Proposed Rules:

404.....3672

21 CFR

5.....571
73.....372
74.....61
81.....61
82.....61
136.....1982
312.....2095
436.....2241
440.....3457
448.....2241
449.....2241
452.....373
510.....62
520.....572, 1983
539.....3457
540.....3457
546.....1340
558.....62, 374, 3645
610.....1683, 3074
640.....1685, 2243
660.....1683, 3074
800.....3174
808.....3645
876.....573, 1053
890.....1053
895.....1177
1316.....1178

Proposed Rules:

73.....3804
74.....3804
103.....3804
105.....3804
131.....3804
133.....3804
135.....3804
136.....3804
137.....3804
139.....3804
145.....3804
146.....3804
150.....3804
155.....3804
160.....3804
161.....3804
163.....3804
164.....3804
168.....3804
168.....3804
169.....3804
172.....3804
173.....3804
175.....3804
176.....3804
177.....3804
178.....3804
179.....3804
182.....3490
184.....3490
189.....3804
1020.....2918

22 CFR

Proposed Rules:

219.....1450
607.....1450
1103.....1450
1304.....1450

23 CFR

626.....1895
650.....1178, 1485
655.....1895
752.....1895

Proposed Rules:

625.....1213
645.....1219
655.....1213

24 CFR

51.....877
200.....375–377
570.....3074
841.....2608
890.....3174

3282.....1966
Proposed Rules:
14.....3202

25 CFR
26.....2097
27.....2100
163.....1686
Proposed Rules:
16.....1381
20.....1381, 2267
23.....1381

26 CFR
1.....1182, 1692, 2104, 2469, 2470, 3077, 3177, 3461
35a.....62
55.....2104, 3177
Proposed Rules:
1.....645, 646, 1075, 1225–1244, 1384, 1742, 2794, 2802 3490, 3491
5.....3491
20.....2794
25.....896, 2117, 2794
51.....1748
301.....2794

27 CFR
9.....2757, 2758
Proposed Rules:
4.....1752

28 CFR
0.....3177
524.....190, 192
Proposed Rules:
2.....1532
16.....3208
511.....195
548.....194
551.....195

29 CFR
17.....2760
18.....2739
1601.....1054
1910.....881
1960.....3077
2610.....63
2619.....1054, 1896
2621.....1055
2622.....63
Proposed Rules:
1910.....844, 996
1917.....996

30 CFR
250.....1897
917.....65
926.....66
936.....1488
938.....379
948.....1489
Proposed Rules:
870.....1752
901.....1532, 2268
904.....2919
913.....3093
925.....2268
931.....3094
935.....3209
938.....2478
942.....2117
946.....3095

32 CFR
229.....1016
257.....1490
885.....881
Proposed Rules:
199.....2118

33 CFR
1.....574
80.....3177
117.....575, 577, 3178, 3179
153.....574, 576
161.....577
165.....583, 2244
Proposed Rules:
110.....649, 3216
117.....1535, 3211, 3212
140.....1083
142.....1083
157.....2998
207.....3491
230.....1387

34 CFR
Proposed Rules:
241.....2458
250.....2850
251.....2850
252.....2850
253.....2850
254.....2850
255.....2850
256.....2850
257.....2850
258.....2850
259.....2850
260.....2850
261.....2850
262.....2850

35 CFR
111.....1184

36 CFR
223.....2760
254.....1184, 2762
296.....1016, 1900
Proposed Rules:
1.....3492
2.....3492
7.....3492
406.....1450

37 CFR
1.....548
Proposed Rules:
1.....3768

38 CFR
17.....3646
21.....2109, 2110
Proposed Rules:
21.....1400, 2118

39 CFR
9.....2887
10.....583, 1340, 1983
Proposed Rules:
233.....897

40 CFR
7.....1656
12.....1656
51.....1934
52.....67, 583, 1187, 1341, 1342, 1491, 1903, 3080–3084, 3436, 3463, 3647
60.....1905, 2470, 2762
65.....1189
67.....1188
81.....2471, 3179
86.....68, 2889, 3010
162.....380, 3095
180.....388–390, 892, 3085
271.....585, 1695, 2891–2894
439.....1190
469.....1056
716.....1636
747.....2762
761.....1697
Proposed Rules:
52.....78, 79, 2119–2122, 2269, 3036
60.....1997, 2058, 2448, 2636, 2656
87.....421
145.....2123
162.....423
180.....426, 2802, 3097, 3093
228.....1911
261.....427
264.....3674
265.....3674
712.....1536
721.....82, 99, 1753
754.....2921
799.....108, 430–456, 899, 1760, 2478

41 CFR
Ch. 1.....1343
Ch. 101.....2246
1–6.....1906
101–11.....1344
101–29.....2246, 2773
101–42.....2246, 2896
101–47.....1347, 3465
105–60.....2248
105–61.....1348
Proposed Rules:
105–61.....1403

42 CFR
400.....3648
405.....234, 408, 3648
409.....234
421.....3648
489.....234

43 CFR
Subtitle A.....1190
7.....1016
20.....3661
3000.....2110
3040.....2110
3100.....2110
3106.....2896
3110.....2110
3120.....2110
Public Land Orders:
6388 (Corrected by PLO 6499).....1986
6397 (Corrected by PLO 6500).....1986
6468 (Corrected by PLO 6498).....1986
6498.....1986
6499.....1986
6500.....1986
6501.....2114
6502.....2774

44 CFR
64.....1699, 1907, 3180
65.....1701, 1702, 3467
67.....1492, 1496
Proposed Rules:
67.....1710, 3492

45 CFR
84.....1622
96.....1703
801.....3661
1180.....3182
1627.....1703
Proposed Rules:
1175.....1450
1181.....1450
1609.....1037
1620.....1038
1625.....2924
1626.....1090
1706.....1450

46 CFR
381.....2897
Proposed Rules:
7.....903
502.....3228
503.....1537
512.....3228
531.....3228

47 CFR
Ch. I.....882, 1190
1.....3185
2.....1520, 2358
15.....1512
22.....3296
31.....3186
43.....896
51.....896
52.....896
64.....1352, 3186
69.....1352
73.....391–396, 1252–1254, 1367, 1704, 2774–2778
87.....1519
90.....1056, 1520, 1728
97.....1374, 3186
Proposed Rules:
Ch. I.....1090, 1533, 2124, 2802
2.....1997
31.....1245
63.....3213
64.....1248
73.....465–467, 903, 1091, 1252–1254, 2000, 2478, 3215–3225
74.....903
90.....1997
94.....3226
97.....1097

48 CFR
Proposed Rules:
Ch. 5.....2000

49 CFR
1.....1521
71.....887

172.....2250
173.....2250, 3188, 3468, 3473
179.....2250, 3468, 3473
210.....1521
213.....1987
232.....1988
233.....3374
235.....3374
236.....3374
350.....3476
571.....1522
1033.....586
1043.....1988
1152.....396
1155.....2900
1201.....2253
1220.....3477
1309.....2471
1310.....2471

Proposed Rules:

394.....1912
807.....1450
1220.....3493

50 CFR

17.....1057, 1992, 2779, 2783
22.....887
23.....590, 1058
215.....1037
216.....1037
220.....1037
222.....1037
285.....1037
351.....1522, 3086
611.....396, 595, 1037, 2472 3189, 3482
620.....1036
621.....1037
649.....1037
650.....1037
651.....1037, 3190
652.....1037
655.....402, 1037
663.....597, 1060, 3190
671.....1375
672.....1037, 1061, 3191
674.....1037
675.....396, 1037, 1063, 2472
680.....1037
681.....407, 1037

Proposed Rules:

17.....1166, 1919, 2485
23.....2128
216.....1778
550.....1450
611.....3674
655.....3674
662.....1255, 1919

LIST OF PUBLIC LAWS

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Last Listing December 19, 1983.

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Title	Price	Revision Date
1, 2 (2 Reserved)	$6.00	Jan. 1, 1983
3 (1982 Compilation and Parts 100 and 101)	6.00	Jan. 1, 1983
4	7.50	Jan. 1, 1983
5 Parts:		
1-1199	8.50	Jan. 1, 1983
1200-End, 6 (6 Reserved)	6.00	Jan. 1, 1983
7 Parts:		
0-45	9.00	Jan. 1, 1983
46-51	7.50	Jan. 1, 1983
52	9.00	Jan. 1, 1983
53-209	7.50	Jan. 1, 1983
210-299	7.00	Jan. 1, 1983
300-399	5.50	Jan. 1, 1983
400-699	6.50	Jan. 1, 1983
700-899	6.50	Jan. 1, 1983
900-999	8.50	Jan. 1, 1983
1000-1059	7.50	Jan. 1, 1983
1060-1119	6.50	Jan. 1, 1983
1120-1199	7.00	Jan. 1, 1983
1200-1499	7.00	Jan. 1, 1983
1500-1899	6.50	Jan. 1, 1983
1900-1944	8.00	Jan. 1, 1983
1945-End	7.00	Jan. 1, 1983
8	6.50	Jan. 1, 1983
9 Parts:		
1-199	7.50	Jan. 1, 1983
200-End	7.50	Jan. 1, 1983
10 Parts:		
0-199	9.00	Jan. 1, 1983
200-399	7.50	Jan. 1, 1983
400-499	6.50	Jan. 1, 1983
500-End	7.00	Jan. 1, 1983
11	5.50	July 1, 1983
12 Parts:		
1-199	7.00	Jan. 1, 1983
200-299	8.00	Jan. 1, 1983
300-499	7.00	Jan. 1, 1983
500-End	8.00	Jan. 1, 1983
13	8.00	Jan. 1, 1983
14 Parts:		
1-59	7.00	Jan. 1, 1983
60-139	7.00	Jan. 1, 1983
140-199	5.50	Jan. 1, 1983
200-1199	7.00	Jan. 1, 1983
1200-End	6.50	Jan. 1, 1983
15 Parts:		
0-299	6.50	Jan. 1, 1983
300-399	7.00	Jan. 1, 1983
400-End	7.50	Jan. 1, 1983
16 Parts:		
0-149	7.00	Jan. 1, 1983
150-999	7.00	Jan. 1, 1983
1000-End	7.00	Jan. 1, 1983
17 Parts:		
1-239	8.00	Apr. 1, 1983
240-End	7.00	Apr. 1, 1983
18 Parts:		
1-149	7.00	Apr. 1, 1983
150-399	8.00	Apr. 1, 1983
400-End	6.50	Apr. 1, 1983
19	8.50	Apr. 1, 1983
20 Parts:		
1-399	5.50	Apr. 1, 1983
400-499	7.00	Apr. 1, 1983
500-End	7.50	Apr. 1, 1983
21 Parts:		
1-99	6.00	Apr. 1, 1983
100-169	6.50	Apr. 1, 1983
170-199	6.50	Apr. 1, 1983
200-299	4.75	Apr. 1, 1983
300-499	8.00	Apr. 1, 1983
500-599	6.50	Apr. 1, 1983
600-799	5.00	Apr. 1, 1983
800-1299	6.00	Apr. 1, 1983
1300-End	5.00	Apr. 1, 1983
22	8.50	Apr. 1, 1983
23	7.00	Apr. 1, 1983
24 Parts:		
0-199	6.00	Apr. 1, 1983
200-499	8.00	Apr. 1, 1983
500-799	5.00	Apr. 1, 1983
800-1699	6.50	Apr. 1, 1983
1700-End	6.00	Apr. 1, 1983
25	8.00	Apr. 1, 1983
26 Parts:		
§§ 1.0-1.169	8.00	Apr. 1, 1983
§§ 1.170-1.300	7.50	[1] Apr. 1, 1982
§§ 1.301-1.400	6.00	Apr. 1, 1983
§§ 1.401-1.500	7.00	Apr. 1, 1983
§§ 1.501-1.640	6.50	Apr. 1, 1983
§§ 1.641-1.850	7.50	[1] Apr. 1, 1982
§§ 1.851-1.1200	8.00	Apr. 1, 1983
§§ 1.1201-End	8.50	Apr. 1, 1983
2-29	7.00	Apr. 1, 1983
30-39	6.00	Apr. 1, 1983
40-299	7.50	Apr. 1, 1983
300-499	6.00	Apr. 1, 1983
500-599	8.00	[2] Apr. 1, 1980
600-End	5.00	Apr. 1, 1983
27 Parts:		
1-199	6.50	Apr. 1, 1983
200-End	6.50	Apr. 1, 1983
28	7.00	July 1, 1983
29 Parts:		
0-99	8.00	July 1, 1983
100-499	5.50	July 1, 1983
500-899	8.00	July 1, 1983
900-1899	5.50	July 1, 1983
1900-1910	8.50	July 1, 1983
1911-1919	4.50	July 1, 1983
1920-End	8.00	July 1, 1983
30 Parts:		
0-199	7.00	July 1, 1983
200-End	10.00	July 1, 1982
31 Parts:		
0-199	6.00	July 1, 1983
200-End	6.50	July 1, 1983
32 Parts:		
1-39, Vol. I	8.50	July 1, 1983

Title	Price	Revision Date
1–39, Vol. II	13.00	July 1, 1983
1–39, Vol. III	9.00	July 1, 1983
40–189	6.50	July 1, 1983
190–399	13.00	July 1, 1983
400–699	12.00	July 1, 1983
700–799	7.50	July 1, 1983
800–999	6.50	July 1, 1983
1000–End	6.00	July 1, 1983
33 Parts:		
1–199	14.00	July 1, 1983
200–End	7.00	July 1, 1983
34 Parts:		
1–299	13.00	July 1, 1983
300–399	6.00	July 1, 1983
400–End	15.00	July 1, 1983
35	5.50	July 1, 1983
36 Parts:		
1–199	6.50	July 1, 1983
200–End	12.00	July 1, 1983
37	6.00	July 1, 1983
38 Parts:		
0–17	7.00	July 1, 1983
18–End	6.50	July 1, 1983
39	7.50	July 1, 1983
40 Parts:		
0–51	7.50	July 1, 1983
52	14.00	July 1, 1983
53–80	8.50	July 1, 1982
81–99	7.50	July 1, 1983
100–149	6.00	July 1, 1983
150–189	6.50	July 1, 1983
190–399	7.00	July 1, 1983
400–424	6.50	July 1, 1983
425–End	7.50	July 1, 1982
41 Chapters:		
1, 1–1 to 1–10	7.00	July 1, 1983
1, 1–11 to Appendix, 2 (2 Reserved)	6.50	July 1, 1983
3–6	7.00	July 1, 1983
7	5.00	July 1, 1983
8	4.75	July 1, 1983
9	7.00	July 1, 1983
10–17	6.50	July 1, 1983
18, Vol. I, Parts 1–5	6.50	July 1, 1983
18, Vol. II, Parts 6–19	7.00	July 1, 1983
18, Vol. III, Parts 20–52	6.50	July 1, 1983
19–100	7.00	July 1, 1983
101	14.00	July 1, 1983
102–End	6.50	July 1, 1983
42 Parts:		
1–60	7.50	Oct. 1, 1982
61–399	7.50	Oct. 1, 1983
400–End	9.50	Oct. 1, 1982

Title	Price	Revision Date
43 Parts:		
1–999	9.00	Oct. 1, 1983
1000–3999	8.50	Oct. 1, 1982
*4000–End	7.50	Oct. 1, 1983
44	7.50	Oct. 1, 1982
45 Parts:		
1–199	9.00	Oct. 1, 1983
200–499	6.00	Oct. 1, 1982
500–1199	7.50	Oct. 1, 1982
*1200–End	9.00	Oct. 1, 1983
46 Parts:		
*1–40	9.00	Oct. 1, 1983
41–69	7.50	Oct. 1, 1982
*70–89	5.00	Oct. 1, 1983
*90–139	9.00	Oct. 1, 1983
*140–155	8.00	Oct. 1, 1983
156–165	7.50	Oct. 1, 1982
166–199	7.00	Oct. 1, 1983
200–399	8.50	Oct. 1, 1982
*400–End	7.00	Oct. 1, 1983
47 Parts:		
0–19	8.50	Oct. 1, 1982
20–69	9.00	Oct. 1, 1982
70–79	8.00	Oct. 1, 1982
80–End	9.00	Oct. 1, 1982
48	1.50	[3] Sept. 19, 1983
49 Parts:		
1–99	6.50	Oct. 1, 1982
100–177	9.00	Oct. 1, 1982
178–199	8.00	Oct. 1, 1982
200–399	7.50	Oct. 1, 1982
400–999	8.00	Oct. 1, 1982
1000–1199	7.50	Nov. 1, 1982
1200–1299	7.50	Oct. 1, 1982
1300–End	7.50	Oct. 1, 1982
50 Parts:		
1–199	7.00	Oct. 1, 1982
200–End	8.00	Oct. 1, 1982
CFR Index and Findings Aids	9.50	Jan. 1, 1983
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[2] No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1983. The CFR volume issued as of Apr. 1, 1980, should be retained.

[3] Refer to September 19, 1983, FEDERAL REGISTER, Book II (Federal Acquisition Regulation).