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Thursday
July 2, 1987

Briefings on How To Use the Federal Register—
For information on briefings in Chicago, IL, and Boston, MA, see announcement on the inside cover of this issue.

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THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

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

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2 1/2 hours) to present:

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

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

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WHEN: July 8, at 9 a.m.
WHERE: Room 204A,
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WHEN: July 15, at 9 a.m.
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Boston, MA.
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Presidential Documents

Title 3—

The President

Memorandum of June 30, 1987

Determination Under Section 301 of the Trade Act of 1974

Memorandum for the United States Trade Representative

Pursuant to Section 301 of the Trade Act of 1974, as amended (19 U.S.C. 2411), I have determined to suspend the intellectual property portion of the investigation of the Government of Brazil's acts, policies, and practices with respect to informatics (computer and computer-related) products. Further, I am directing the United States Trade Representative to pursue the investigation of barriers to U.S. investment in the Brazilian informatics sector. The two parts of this investigation that I suspended on December 30, 1986—on Brazilian administrative procedures and "market reserve" practices—shall remain suspended until terminated or reopened based upon developments in those areas.

Reasons for Determination

At my direction, the Trade Representative initiated this investigation in September 1985. Based upon favorable developments regarding Brazil's administrative procedures and "market reserve" practices, I suspended those parts of this investigation on December 30, 1986. I indicated that those parts of the Section 301 investigation could be terminated if the improvements on which the suspension was based were properly implemented and had the expected effect of reducing the burdens or restrictions on U.S. commerce. The Trade Representative will continue to monitor developments in this area, with a view to terminating or reopening these parts of the investigation as appropriate based on developments.

Last December I directed the Trade Representative to continue negotiations with the Government of Brazil to address our concerns regarding Brazilian restrictions on U.S. investment in the informatics sector and the lack of adequate and effective protection for intellectual property, including computer software. Recently the Government of Brazil's lower house passed legislation that, we believe, would provide adequate copyright protection to computer software. Although enactment of this legislation still requires favorable action by the upper house, progress to date and the likely enactment of legislation adequately protecting computer software from piracy warrants suspension of the intellectual property portion of this investigation. The Trade Representative will continue to monitor developments in this area as well, with a view to terminating or reopening this part of the investigation as appropriate based on developments.

Regarding the Government of Brazil's restrictions on U.S. investment in the informatics sector, we have been asked to judge its performance in this area based upon a favorable "track record" in approving U.S. investment proposals. I am directing the Trade Representative to pursue this part of the Section 301 investigation as appropriate.

This determination shall be published in the **Federal Register.**

Ronald Reagan

THE WHITE HOUSE,
Washington, June 30, 1987.

[FR Doc. 87-15302
Filed 7-1-87; 10:45 am]
Billing code 3195-01-M

Editorial note: For a statement by the Assistant to the President for Press Relations, dated June 30, on the trade determination, see the *Weekly Compilation of Presidential Documents* (vol. 23, no. 26).

Rules and Regulations

Federal Register
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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

Food and Nutrition Service

7 CFR Parts 250 and 252

Food Distribution, Donation of Food for Use in the United States, Its Territories and Possessions and Areas Under its Jurisdiction, and National Commodity Processing Program

AGENCY: Food and Nutrition Service, USDA.

ACTION: Interim rule.

SUMMARY: This rule amends the Food Distribution Program (FDP) Regulations (7 CFR Part 250) and the National Commodity Processing Program (NCP) Regulations (7 CFR Part 252). The rule allows processors to substitute concentrated skim milk which has been purchased or manufactured by the processor for United States Department of Agriculture (USDA) donated nonfat dry milk in the preparation of processed end products sold to USDA donated food program recipient agencies. Processors are required to use all the USDA donated nonfat dry milk received in the production of other processed foods, and must to demonstrate the equivalency of milk solids contained in the concentrated skim milk as compared to the milk solids contained in USDA donated nonfat dry milk. The Department believes that allowing substitution of concentrated skim milk for nonfat dry milk will result in improved and less expensive processed dairy products being offered to program recipient agencies resulting in an expanded market for dairy products. Comments are also solicited on the feasibility of allowing substitution of additional types of commercially purchased commodities for USDA donated commodities for which there are verifiable equivalencies.

DATES: Interim rule effective July 1, 1987. Comments must be submitted on or before September 30, 1987.

ADDRESSES: Comments may be mailed to Susan Proden, Chief, Program Administration Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, Virginia 22303, Telephone (703) 756-3660

FOR FURTHER INFORMATION CONTACT: Susan Proden, (703) 756-3660.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under Executive Order 12291 and has not been classified major because it does not meet any of the three criteria identified under the Executive Order. Compliance with the provisions in this proposal would not have an annual effect on the economy of more than $100 million or more, nor will it cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions. This action will not have significant adverse effects on competition, employment, investment, productivity, or innovation, or on the ability of United States based enterprises to compete with foreign-based enterprises in domestic or export markets.

Allowing the substitution of concentrated skim milk for USDA donated nonfat dry milk as permitted by this rule will give processors more flexibility in formulating dairy products for recipient agencies, thereby increasing the variety of dairy products which can be produced and encouraging processors to enter into National Commodity Processing and State processing contracts. The Department anticipates that this action will also result in improved and less expensive processed dairy products being offered to recipient agencies. The improved and less expensive end products will be of direct benefit to recipient agencies, and will also serve to increase the consumption of surplus nonfat dry milk. This change has been requested by a number of recipient agencies, distributing agencies and processors seeking to improve the variety, quality and cost of end products containing USDA donated food. Since it is established that concentrated skim milk and nonfat dry milk have the same nutritional qualities, when used in equal amounts based on milk solids content as required by this rule, this rule will not affect the nutritional properties of end products. Substitution of the same generic commercial food for donated food is already permitted in both processing programs.

In order to allow recipient agencies to receive these benefits for the 1987-88 school year, however, this rule must be made effective on or before July 1, 1987. Giving prior notice and taking comments before making this rule effective would not permit implementation of the new substitution provision for the new school year. For these reasons, Anna Kondratas, Administrator of the Food and Nutrition Service has found, in accordance with 5 U.S.C. 553(b), that good cause exists for publishing this rule without prior public notice and comment and that to require prior notice and comment would be contrary to the public interest. For these same reasons, the Administrator has found, in accordance with 5 U.S.C. 553(d), that good cause exists for making this rule effective less than 30 days after publication. However, since the Department believes that an opportunity for public comment could result in improved and simplified administration of the rule, it is being published as an interim rule with a 90-day comment period.

This action has been reviewed with regard to the Regulatory Flexibility Act (5 U.S.C. 601-612). Anna Kondratas, Administrator of the Food and Nutrition Service (FNS), has certified that this action will not have a significant economic impact on a substantial number of small entities.

Both these programs are listed in the Catalog of Federal Domestic Assistance under 10.550 and are subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials (7 CFR Part 3015, Subpart V and final rule related notice published June 24, 1983 (48 FR 29112)).

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520), the additional recordkeeping and reporting requirements contained in §§ 250.15 and 252.4 of this rule are subject to review and approval by the Office of Management and Budget (OMB). Current reporting and

recordkeeping requirements for Parts 250 and 252 were approved by OMB under Control Number 0584-0007 and 0584-0325 respectively.

Background

Processing as Allowed in the Food Distribution Program and the National Commodity Processing Program

Under § 250.15(b) of the FDP Regulations, commercial food processing companies may contract with either State or local agencies to process USDA donated foods into more usable end products. For example, a processor may, under contract, use donated cheese in manufacturing cheese pizzas. The pizza may then be sold to recipient agencies which are eligible to receive donated commodities. The value of the donated cheese is either subtracted from the price of the pizza or received by the recipient agency in the form of a rebate.

Under § 252.4(b) of the NCP Regulations, FNS may enter into an agreement with a food processor upon approval of the processor's application for participation in the program for the conversion of donated foods into more usable end products. End products are then sold to recipient agencies which are eligible to receive donated foods in accordance with the same type of procedures as those established for the sale of end products under the FDP.

Current Regulatory Restrictions on Substitution and the Proposal

The definition of substitution in Section 250.3 of the FDP Regulations and Section 252.2 of the NCP Regulations is ". . . the replacement of donated foods with like quantities of domestically produced commercial foods of the same generic identify and of equal or better quality (i.e., cheddar cheese for cheddar cheese, nonfat dry milk for nonfat dry milk, etc.)."

Section 250.15(f) of the FDP Regulations permits a contracting agency to allow for limited substitution of donated foods with commercially purchased food in its processing contracts. Substitution is restricted to those foods specifically identified by FNS as substitutable. Donated foods can be replaced with commercial foods without advance approval from the distributing agency to meet the 100 percent yield requirement or when donated and commercial foods have been commingled in joint storage tanks or bins. In all other cases of substitution, advance approval must be obtained from the distributing agency. The distributing agency may grant a processor's request for substitution only when the distributing agency is unable to provide a sufficient inventory of donated foods to prevent disruption of the production of end products.

Section 252.4(c)(7) of the NCP Regulations requires FNS approval of any substitution of donated food. The regulations limit substitution to instances in which foods are commingled or when delays in shipment adversely affect production.

This rule allows food processors operating under State and National Commodity Processing contracts to substitute concentrated skim milk which has been purchased or manufactured by the processor for USDA donated nonfat dry milk in the preparation of food products sold to USDA program recipient agencies: Processors are required to use, rather than sell in bulk form, all USDA donated nonfat dry milk in the production of other end products and must demonstrate the equivalency between the milk solids content contained in the concentrated skim milk used in place of USDA donated nonfat dry milk.

Similarities Between Nonfat Dry Milk and Concentrated Skim Milk

The substitution of concentrated skim milk for nonfat dry milk is not permitted under the current FDP and NCP Regulations. However, the Department is aware that both the general consensus of the dairy industry and the Food and Drug Administration regulations support the premise that the only difference between concentrated skim milk and nonfat dry milk is the amount of water or moisture in the product. Food and Drug Administration regulations on food labeling (Food Labeling (21 CFR 101.4(b)(3)) state that:

(b) The name of an ingredient shall be a specific name and not a collective (generic) name, except that:

* * * * *

(3) Skim milk, concentrated skim milk, reconstituted skim milk, and nonfat dry milk may be declared as "skim milk" or "nonfat milk."

Measuring Equivalency of Nonfat Dry Milk and Concentrated Skim Milk

Processors require different percentages of milk solids content in concentrated skim milk based on the characteristics of the product being produced. The milk solids content of concentrated skim milk usually ranges from 25 to 50 percent. It is the intent of the Department to ensure that the donated nonfat dry milk is replaced by an equivalent amount of milk solids from concentrated skim milk. This equivalency is established based on the amount of milk solids contained in each of the two products. By using the milk solids content as a measure of equivalency, it is possible to establish an equation to compare concentrated skim milk to nonfat dry milk.

For purposes of all processing contracts, nonfat dry milk will be considered as containing 96.5 percent milk solids. So, for example, if we wish to establish the milk solids equivalency for concentrated skim milk containing 40 percent milk solids, the following equation would be used:

Example

To compute milk solids equivalency of 40% concentrated skim milk and nonfat dry milk:

1 pound of 40% concentrated skim milk contains .40 pound of milk solids.

1 pound of nonfat dry milk contains .965 pound of milk solids.

Therefore, 1 pound of 40% concentrated skim milk is equivalent to .40 divided by .965 or .415 pound of nonfat dry milk.

or

1 pound of nonfat dry milk is equivalent to .965 divided by .40 or 2.413 pounds of 40% concentrated skim milk.

Benefits of Substitution

The Department believes that this change to allow processors to substitute concentrated skim milk for donated nonfat dry milk will benefit everyone. Since processors will have more flexibility in formulating dairy products for USDA recipient agencies, they will be more likely to enter into National Commodity Processing and State Processing contracts and a wider variety of dairy products will be offered to recipient agencies. This change should also result in improved product quality and reduced charges to recipient agencies.

What the Rule Does

This rule amends both the Food Distribution Program Regulations (Part 250) and the National Commodity Processing Program Regulations (Part 252).

Part 250

In § 250.3, a new term, "substituted food", is added. It means the commercial food that is substituted for USDA donated food, as prescribed by § 250.15(f).

The definition of "substitution" in § 250.3 is expanded to include the substitution of donated nonfat dry milk with an equivalent amount, based on milk solids content, of concentrated skim milk which has been purchased or manufactured by the processor.

Paragraph (f) of § 250.15 is reorganized to clarify the circumstances under which substitution is permitted, both with and without the prior

approval of the distributing agency. Additionally, the section is amended to permit the substitution of donated nonfat dry milk with concentrated skim milk. The use of Federal acceptance services to monitor the quality of substituted commodities is expanded to include monitoring the level of milk solids content in the concentrated skim milk that is substituted for government donated nonfat dry milk.

A new paragraph (f)(3) is added to § 250.15. It requires that processing contracts which allow for substitution of concentrated skim milk for donated nonfat dry milk include provisions specifying: (1) The percent of milk solids that, at a minimum, must be contained in the concentrated skim milk; (2) the weight ratio of concentrated skim milk to donated nonfat dry milk. The weight ratio is the weight of concentrated skim milk which equals one pound of donated nonfat dry milk, based on milk solids. In calculating this weight, nonfat dry milk shall be considered as containing 96.5 percent milk solids. If more than one concentration of concentrated skim milk is to be used, a separate weight ratio must be specified for each concentration; (3) the processor's method of verifying that the milk solids content of the concentrated skim milk is as stated in the contract; (4) a requirement that inventory drawdowns of donated nonfat dry milk shall be limited to an amount equal to the amount of concentrated skim milk, based on the weight ratio, used to produce the end product; (5) a requirement that the contract value of donated food for a given amount of concentrated skim milk used to produce an end product is the value of the equivalent amount of nonfat dry milk based on the weight ratio; (6) a requirement that the concentrated skim milk must be produced in a USDA approved plant or in a plant approved by an appropriate regulatory authority for the processing of Grade A milk products; and (7) a requirement that documentation sufficient to substantiate compliance with the contract provisions must be maintained in accordance with § 250.6(r)(4).

These additional contract provisions make explicit the amount of donated nonfat dry milk and related milk solids involved in the substitution and the required minimum amount of milk solids content of the concentrated skim milk. Additionally, they require the establishment of a self-monitoring procedure for the processor to ensure that the contracted percentage of milk solids is contained in the concentrated skim milk and that recipient agencies receive the value of the donated nonfat dry milk based on the milk solids equivalency of the nonfat dry milk either through discount or refund.

To ensure proper title transfer of substituted and donated food, a new paragraph (f)(5) is added to § 250.15. It requires that title to the substituted food transfers to the contracting agency upon the initiation of the processing of the end product containing the substituted food. Title to the equivalent amount of donated food will transfer to the processor at the same time (except when the substitution is necessary to meet the 100 percent yield requirement or to otherwise replace missing or out-of-condition donated food). Once title has transferred, the processor must use the substituted food in accordance with the terms and conditions, of this Part.

To maintain program integrity, a monitoring system must be established to ensure proper inventory control, that an equivalent amount of milk solids is received by recipient agencies in purchased end products and that recipient agencies receive the value of the donated nonfat dry milk through discounts or refunds which must be based on the milk solids equivalency. Furthermore, the system must be designed to provide reasonable assurance that the processor uses and does not sell the donated nonfat dry milk in bulk form. This rule establishes a monitoring system by requiring processors to provide data to distributing agencies and requiring distributing agencies to analyze the data to ensure that the objectives of the commodity donation system are not compromised by substitution.

Paragraph (m) of Section 250.15 addresses processor performance reports which are submitted monthly to the distributing agency. New reporting requirements are added for processors substituting concentrated skim milk for donated nonfat dry milk. Data must be reported on: (1) The total amount of nonfat dry milk used in end products sold to nonprogram outlets; and (2) the amount of concentrated skim milk and the percent of milk solids contained in the concentrated skim milk used in products sold to recipient agencies.

Distributing agencies are currently responsible for analyzing the processor monthly performance reports required by Section 250.15(m). This rule amends paragraph (n) to require distributing agencies to analyze the processor's monthly data to ensure proper inventory control and that an amount of milk solids equivalent to the amount contained in the donated nonfat dry milk received by the processor is contained in end products sold to recipient agencies. Distributing agencies are also required to analyze the monthly data to ensure that donated nonfat dry milk was used by the processor and not sold in bulk form.

Distributing agencies are currently required to submit a quarterly processing inventory report in accordance with paragraph (o) of § 250.15. New reporting requirements are added to paragraph (o). In addition to the information distributing agencies are currently required to report, for processors substituting concentrated skim milk for nonfat dry milk data must also be reported on: (1) The number of pounds of nonfat dry milk used in commercial products sold to nonprogram outlets; and (2) the number of pounds of concentrated skim milk, and the percent of milk solids contained therein, used in end products sold to recipient agencies.

To reflect the new contract and reporting requirements, a new sentence is added to the recordkeeping requirements of paragraph 250.6(r)(4). Processors are required to maintain documentation which shows their compliance with the substitution provisions of the processing contract. Documentation is also required to support the data provided in the processor's monthly performance reports.

Part 252

Essentially, the same changes in Part 250 are made in Part 252. Although the concepts are the same, the wording and placement of the changes differ slightly due to current format differences between Parts 250 and 252.

The definition of "substitution" in § 252.2 is expanded to include the substitution of donated nonfat dry milk with an equivalent amount, based on milk solids content, of concentrated skim milk which has been purchased or manufactured by the processor.

Section 252.3(c) is revised to specify that title to the substituted food will transfer to FNS and title to the equivalent amount of donated food will transfer to the processor upon the initiation of the processing of the end product containing the substituted food. Title of an equivalent amount of donated food will not transfer when substitution is necessary to meet the 100 percent yield requirement or to otherwise replace missing or out-of-condition donated food. Once title has transferred, the processor must use the substituted food in accordance with the terms and conditions of this Part.

Paragraph 252.4(c)(6) now limits the amount of donated food the processor can draw down to only the amount used to produce end products. To expand the drawdown limits to include cases of concentrated skim milk substitution, the paragraph is amended to allow processors to draw down only the amount of donated nonfat dry milk which is equal to the amount of concentrated skim milk, based on milk solids content, used to produce end products.

The limits of substitution, as described in the second sentence of paragraph 252.4(c)(7), is expanded to allow for the substitution of donated nonfat dry milk with an equivalent amount, based on milk solids content, of concentrated skim milk.

A new sentence is added in paragraph 252.4(c)(7) which requires processors seeking FNS approval to substitute donated nonfat dry milk with concentrated skim milk to add an addendum to their processing agreement. Processors are required to specify in the addendum: (1) The percent of milk solids that, at a minimum, must be contained in the concentrated skim milk; (2) the weight ratio of concentrated skim milk to donated nonfat dry milk. The weight ratio is the weight of contracted skim milk which equals one pound of donated nonfat dry milk, based on milk solids. In calculating this weight, nonfat dry milk shall be considered as containing 96.5 percent milk solids. If more than one concentration of concentrated skim milk is to be used, a separate weight ratio must be specified for each concentration; (3) the processor's method of verifying that the milk solids content in the concentrated skim milk is as stated in the agreement; (4) a requirement that the concentrated skim milk shall be produced in a USDA approved plant or in a plant approved by an appropriate regulatory authority for the processing of Grade A milk products; and (5) a requirement that the contract value of donated food for a given amount of concentrated skim milk used to produce an end product is the value of the equivalent amount of donated nonfat dry milk, based on the weight ratio.

Paragraph 252.4(c)(9)(ii) is redesignated (c)(9)(iii) and a new paragraph (c)(9)(ii) is added outlining changes on the processor monthly performance report. The new paragraph (c)(9)(ii) replicates new paragraph 250.15(m)(2) of the FDP regulations. This new paragraph requires processors to provide the type of information needed to ensure proper inventory control and to demonstrate that an amount of milk solids equivalent to the amount contained in the donated nonfat dry milk received by the processor is contained in products sold to recipient agencies. It also requires data which demonstrate that donated nonfat dry milk is being used by the processor and is not being sold in bulk form.

Request for Comments

The Department is soliciting comments on this rule. Additionally, the Department seeks comments on whether other nongeneric substitutions of commodities either purchased or manufactured by processor for USDA donated commodities should be permitted. Of particular interest would be suggested criteria for the Department to use in proposing any additional allowable substitution. For example, the criteria for allowing additional substitutions might be:

That an equivalent value can be established between the commodities purchased or manufactured by the processor and donated commodities and that an acceptable system of monitoring the value of the substituted commodities and donated commodities can be implemented which ensures that:

(1) The full value of donated commodities is received by recipient agencies in the form of end products; and

(2) The processor is not selling donated commodities in bulk form.

List of Subjects in 7 CFR Parts 250 and 252

Aged, Agricultural commodities, Business and industry, Food assistance programs, Food donations, Food processing, Grant programs-social programs, Infants and children, Price support programs, Reporting and recordkeeping requirements, School breakfast and lunch program, Surplus agricultural commodities.

Accordingly, Parts 250 and 252 are amended as follows:

PART 250—DONATION OF FOOD FOR USE IN THE UNITED STATES, ITS TERRITORIES AND POSSESSIONS AND AREAS UNDER ITS JURISDICTION.

1. The authority citation for Part 250 continues to read:

Authority: Sec. 32, Pub. L. 74–320, 49 Stat. 744 (7 U.S.C. 612c); Pub. L. 75–165, 50 Stat. 323 (15 U.S.C. 713c); secs. 6, 9, 60 Stat. 231, 233, Pub. L. 79–396 (42 U.S.C. 1755, 1758); sec. 416, Pub. L. 81–439, 63 Stat. 1058 (7 U.S.C. 1431); sec. 402, Pub. L. 81–665, 68 Stat. 843 (22 U.S.C. 1922); sec. 210, Pub. L. 84–540, 70 Stat. 202 (7 U.S.C. 1859); sec. 9, Pub. L. 85–931, 72 Stat. 1792 (7 U.S.C. 1431b); Pub. L. 86–756, 74 Stat. 899 (7 U.S.C. 1431 note); sec. 709, Pub. L. 89–321, 79 Stat. 1212 (7 U.S.C. 1446a–1); sec. 3, Pub. L. 90–302, 82 Stat. 117 (42 U.S.C. 1761); secs. 409, 410, Pub. L. 93–288, 88 Stat. 157 (42 U.S.C. 5179, 5180), sec. 2, Pub. L. 93–326, 88 Stat. 286 (42 U.S.C. 1762a); sec. 16, Pub. L. 94–105, 89 Stat. 522 (42 U.S.C. 1766); sec. 1304(a), Pub. L. 95–113, 91 Stat. 980 (7 U.S.C. 612c note); sec. 311, Pub. L. 95–478, 92 Stat. 1533 (42 U.S.C. 3030a); sec. 10, Pub. L. 95–627, 92 Stat. 3623 (42 U.S.C. 1760); Pub. L. 98–8, 97 Stat. 35 (7 U.S.C. 612c note); (5 U.S.C. 301), unless otherwise noted.

2. In § 250.3, a new term, "Substituted food" is added in alphabetical order, and the definition of "Substitution" is revised as follows:

Section 250.3 Definitions.

* * * * *

"Substituted food" means domestically produced food that is purchased or manufactured by a processor and is substituted for donated food.

"Substitution" means (1) the replacement of donated foods with like quantities of domestically produced commercial foods of the same generic identity and of equal or better quality (i.e. cheddar cheese for cheddar cheese, nonfat dry milk for nonfat dry milk, etc.); or (2) in the case of donated nonfat dry milk, substitution as defined under (1) of this paragraph or replacement with an equivalent amount, based on milk solids content, of domestically produced concentrated skim milk.

* * * * *

3. Section 250.6 paragraph (r)(4) is amended by adding the following sentence at the end of the paragraph:

§ 250.6 Obligations of distributing agencies.

* * * * *

(r) * * *

(4) * * * Processors must maintain records which will permit a determination regarding compliance with the contracting provisions required by § 250.15(f) (3) and (4) as well as maintain records used as the basis for compiling the processor performance reports required by § 250.15(m).

* * * * *

4. In § 250.15:

a. Introductory paragraph (f) and paragraphs (f)(1) through (f)(3) are redesignated as introductory paragraph (f)(1) and paragraphs (f)(1)(i) through (f)(1)(iii) respectively; the text beginning with newly redesignated paragraph (f)(1)(iii) through the last four complete sentences of paragraph (f) is revised; new paragraphs (f)(2), (f)(3), (f)(4) and (f)(5) are added.

b. Paragraph (m)(2) is redesignated as paragraph (m)(3), and a new paragraph (m)(2) is added.

c. Paragraphs (n)(2), (n)(3) and (n)(4) are redesignated as paragraphs (n)(3), (n)(4), and (n)(5), respectively, and a new paragraph (n)(2) is added.

d. Introductory paragraph (o) and paragraphs (o)(1) through (o)(6) are redesignated as introductory paragraph (o)(1) and paragraphs (o)(1)(i) through (o)(1)(vi) respectively; and a new paragraph (o)(2) is added.

The revisions and additions read as follows:

§ 250.15 State Processing of Donated Foods.

* * * * *

(f) * * *

(1) * * *

(iii) Substitution is allowed without advance approval by the distributing agency only when:

(A) It is necessary to replace donated food with commercial food to meet the 100 percent yield requirement; or

(B) The donated and commercial foods have been commingled through the use of joint storage tanks or bins; or

(C) The processing contract permits the use of concentrated skim milk which has been purchased or manufactured by the processor for donated nonfat dry milk.

(2) Documentation must be maintained by both parties in accordance with §250.6(r). When there is substitution, the donated foods shall be used by the processor and shall not otherwise be sold or disposed of in bulk form. The applicable Federal acceptance service shall, upon request by the Department, the contracting agency or the distributing agency determine if the quality analysis meets the requirements set forth by the Agricultural Stabilization and Conservation Service (ASCS) in the original inspection of donated foods and, in the case of concentrated skim milk replacing donated nonfat dry milk, determine if the concentrated skim milk contains the amount of milk solids as specified in the contract. When donated foods are nonsubstitutable, the applicable Federal acceptance service shall ensure against unauthorized substitutions, and verify that quantities of donated foods used are as specified in the contract.

(3) When concentrated skim milk is used to replace donated nonfat dry milk, the contract shall also specify (in addition to the requirements in paragraph (c) of this section):

(i) The percent of milk solids that, at a minimum, must be contained in the concentrated skim milk;

(ii) The weight ratio of concentrated skim milk to donated nonfat dry milk;

(A) The weight ratio is the weight of concentrated skim milk which equals one pound of donated nonfat dry milk, based on milk solids;

(B) In calculating this weight, nonfat dry milk shall be considered as containing 96.5 percent milk solids;

(C) If more than one concentration of concentrated skim milk is to be used, a separate weight ratio must be specified for each concentration;

(iii) The processor's method of verifying that the milk solids content of the concentrated skim milk is as stated in the contract;

(iv) A requirement that inventory drawdowns of donated nonfat dry milk shall be limited to an amount equal to the amount of concentrated skim milk, based on the weight ratio, used to produce the end product;

(v) A requirement that the contract value of donated food for a given amount of concentrated skim milk used to produce an end product is the value of the equivalent amount of nonfat dry milk, based on the weight ratio of the two foods;

(vi) A requirement that the concentrated skim milk shall be produced in a USDA approved plant or in a plant approved by an appropriate regulatory authority for the processing of Grade A milk products; and

(vii) A requirement that documentation sufficient to substantiate compliance with the contract provisions shall be maintained in accordance with § 250.6(r)(4).

(4) Except as specified in paragraph (f)(iii) of this section, processors must receive approval from the distributing agency prior to any subsitution. Distributing agencies may approve a processor's request for substitution only when the distributing agency's inability to maintain the necessary inventory of donated food at the processors would disrupt the production of end products.

(5) Title to the substituted food shall transfer to the contracting agency upon the initiation of the processing of the end product containing the substituted food. Title to the equivalent amount of donated food shall transfer to the processor at the same time (except when the substitution is necessary to meet the 100 percent yield requirement or to otherwise replace missing or out-of-condition donated food). Once title has transferred, the processor shall use the substituted food in accordance with the terms and conditions of this Part.

(m) * * *

(2) In addition to reporting the information identified in paragraph (m)(1) of this section, processors which substitute concentrated skim milk for donated nonfat dry milk shall also report the following information for the reporting period: (i) The number of pounds of nonfat dry milk used in commercial products sold to outlets which are not recipient agencies; and (ii) the number of pounds of concentrated skim milk, and the percent of milk solids contained therein, used in end products sold to recipient agencies.

* * * * *

(n) * * *

(2) For processors substituting concentrated skim milk for donated nonfat dry milk, distributing agencies shall review the processors' monthly performance reports to ensure that:

(i) Donated nonfat dry milk inventory is being drawn down based on the amount of milk solids contained in the concentrated skim milk which was used in end products sold to eligible recipient agencies;

(ii) An amount of milk solids equivalent to the amount in the donated nonfat dry milk is contained in end products sold to eligible recipient agencies; and

(iii) Donated nonfat dry milk is not being sold in bulk form.

* * * * *

(o) * * *

(2) In addition to reporting the information identified in paragraph (o)(1) of this Section, for each processor which substitutes concentrated skim milk for donated nonfat dry milk the distributing agency shall also report the following information for the reporting period:

(i) The number of pounds of nonfat dry milk used in commercial products sold to nonprogram outlets; and

(ii) The number of pounds of concentrated skim milk and the percent of milk solids contained therein used in end products sold to recipient agencies.

* * * * *

PART 252—NATIONAL COMMODITY PROCESSING PROGRAM

5. The authority citation for Part 252 continues to read:

Authority: Sec. 416, Agricultural Act of 1949 (7 U.S.C. 1431).

6. In Section 252.2 the definition of "substitution" is revised as follows:

§ 252.2 Definition.

* * * * *

"*Substitution*" means (1) the replacement of donated food with like quantities of domestically produced

commercial food of the same generic identity and of equal or better quality (i.e., cheddar cheese for cheddar cheese, nonfat dry milk for nonfat dry milk, etc.); or (2) in the case of donated nonfat dry milk, substitution as defined under (1) of this paragraph or replacement with an equivalent amount, based on milk solids content, of domestically produced concentrated skim milk.

* * * * *

7. Section 252.3, paragraph (c) is revised as follows:

§ 252.3 Administration.

* * * * *

(c) *Substituted food.* When FNS approves the substitution of donated commodities with commercial food or when the agreement permits such substitution, title to the substituted food shall transfer to FNS upon the initiation of the processing of the end product containing the substituted food. Title to the equivalent amount of donated food shall transfer to the processor at the same time (except when the substitution is necessary to meet the 100 percent yield requirement or to otherwise replace missing or out-of-condition donated food). Once title has transferred, the processor shall use the substituted food in accordance with the terms and conditions of this Part.

* * * * *

8. In § 252.4, paragraph (c)(6) is amended by addiing a new sentence between the first and second sentences. Paragraph (c)(7) is amended by revising the second sentence and adding a new sentence between the second and third sentences. Paragraph (c)(9)(ii) is redesignated as (c)(9)(iii) and new paragraph (c)(9)(ii) is added.

§ 252.4 Application to participate and agreement.

* * * * *

(c) * * *

(6) * * * In instances in which concentrated skim milk is substituted for nonfat dry milk, the processor shall draw down donated nonfat dry milk inventory only in an amount equal to the amount of concentrated skim milk, based on milk solids content, used to produce the end product. * * *

(7) * * * If approved, the processor shall substitute for donated food only like quantities of domestically produced commercial food of the same generic identity (i.e., cheddar cheese for cheddar cheese, nonfat dry milk for nonfat dry milk, etc.) and of equal or better quality, except that donated nonfat dry milk may be replaced with an equivalent amount of domestically produced concentrated skim milk based on the amount of milk solids content. When the processor seeks FNS approval to substitute donated nonfat dry milk with concentrated skim milk, an addendum must be added to the agreement which states:

(i) The percent of milk solids that, at a minimum, must be contained in the concentrated skim milk;

(ii) The weight ratio of concentrated skim milk to donated nonfat dry milk:

(A) The weight ratio is the weight of concentrated skilk milk which equals one pound of donated nonfat dry milk, based on milk solids;

(B) In calculating this weight, nonfat dry milk shall be considered as containing 96.5 percent milk solids;

(C) If more than one concentration of concentrated skim milk is to be used, a separate weight ratio must be specified for each concentration;

(iii) The processor's method of verifying that the milk solids content in the concentrated skim milk is as stated in the agreement;

(iv) A requirement that the concentrated skim milk shall be produced in a USDA approved plant or in a plant approved by an appropriate regulatory authority for the processing of Grade A milk products; and

(v) A requirement that the contract value of donated food for a given amount of concentrated skim milk used to produce an end product is the value of the equivalent amount of donated nonfat dry milk, based on the weight ratio of the two foods. * * *

* * * * *

(9) * * *

(ii) In addition to reporting the information identified in paragraph (c)(9)(i) of this Section, processors substituting concentrated skim milk for donated nonfat dry milk shall report the following information for the reporting period:

(A) The number of pounds of nonfat dry milk used in commercial products sold to outlets which are not recipient agencies; and

(B) The number of pounds of concentrated skim milk and the percent of milk solids contained therein, used in end products sold to recipient agencies.

* * * * *

(Approved by the Office of Management and Budget under control number 0584-0325.)

Dated: June 25, 1987.

S. Anna Kondratas,

Administrator.

[FR Doc. 87-14891 Filed 7-1-87; 8:45 am]

BILLING CODE 3410-30-M

Federal Crop Insurance Corporation

7 CFR Part 400

[Amdt. No. 1; Doc. No. 4361S]

General Administrative Regulations; Late Planting Agreement Option Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends the Late Planting Agreement Option (7 CFR Part 400, Subpart A), effective with the 1987 and succeeding crop years. The intended effect of this rule is to: (1) Add Safflowers to those crops eligible for the Late Planting Agreement Option; and (2) amend the Collection of Information and Data (Privacy Act) statement. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

EFFECTIVE DATE: August 3, 1987.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is January 1, 1991.

E. Ray Fosse, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

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

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

On Wednesday, June 4, 1986, FCIC published a Final Rule in the **Federal Register** at 51 FR 20245, which revised and reissued the Late Planting Agreement Option to: (1) Delete the adverse weather condition requirement; (2) publish a corrected list of crop insurance regulations to which the Late Planting Option applies; and (3) provide availability of the Late Planting Option beginning with 1987 crop year fall-planted crops.

On Tuesday, March 24, 1987, FCIC published a final rule issuing a new Part 452 in Chapter IV, Title 7 of the Code of Federal Regulations (**Federal Register** at 52 FR 9287) for the purpose of insuring safflowers and determined that this crop is eligible for the Late Planting Agreement Option effective for the 1987 and succeeding crop years.

FCIC proposed to add Safflowers to the list of crops eligible for the Late Planting Agreement Option by a notice of proposed rulemaking published by FCIC in the **Federal Register** on Friday, April 3, 1987 (52 FR 10764), amending 7 CFR Part 400, Subpart A for this purpose. In addition, FCIC also proposed to amend the published statement relative to collection of information and data for the purposes of the Privacy Act of 1974 in the same document.

The principal changes in the Late Planting Agreement Option Regulations are:

1. Section 400.4—Add Safflower Crop Insurance Regulations (7 CFR Part 452) as a crop eligible for coverage under the provisions of the Late Planting Agreement Option.

2. Amend the Collection of Information and Data (Privacy Act) statement at the end of 7 CFR Part 400, Subpart A.

FCIC solicited written public comment on this proposed rule for 30 days after publication in the **Federal Register**, but none were received.

Therefore, the proposed rule published at 52 FR 10764 is adopted as final.

List of Subjects in 7 CFR Part 400

Crop insurance, Late Planting Agreement Option.

Final Rule

PART 400—[AMENDED]

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby amends the Late Planting Agreement Option Regulations (7 CFR Part 400, Subpart A), effective for the 1987 and succeeding crop years, in the following instances:

1. The authority citation for 7 CFR Part 400, Subpart A continues to read as follows:

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

2. Section 400.4 is revised to read as follows:

§ 400.4 Applicability to crops insured.

The provisions of this subpart shall be applicable to the provisions of FCIC policies issued under the following regulations for insuring crops:

7 CFR Part 416	Pea
7 CFR Part 418	Wheat
7 CFR Part 419	Barley
7 CFR Part 420	Grain Sorghum
7 CFR Part 421	Cotton
7 CFR Part 422	Potatoes
7 CFR Part 423	Flax
7 CFR Part 424	Rice
7 CFR Part 425	Peanuts
7 CFR Part 427	Oats
7 CFR Part 428	Sunflowers
7 CFR Part 429	Rye
7 CFR Part 430	Sugar Beets
7 CFR Part 431	Soybeans
7 CFR Part 432	Corn
7 CFR Part 433	Dry Beans
7 CFR Part 435	Tobacco (Quota Plan)
7 CFR Part 436	Tobacco (Guaranteed Production Plan)
7 CFR Part 437	Sweet Corn (Canning and Freezing)
7 CFR Part 438	Tomatoes (Canning and Processing)
7 CFR Part 443	Hybrid Seed
7 CFR Part 447	Popcorn
7 CFR Part 452	Safflowers

The Late Planting Option shall be available in all counties in which the Corporation offers insurance on these crops.

3. In § 400.5, the Collection of Information and Data (Privacy Act) statement is revised to read as follows:

§ 400.5 The Late Planting Agreement.

* * * * *

Collection of Information and Data (Privacy Act)

To the extent that the information requested herein relates to the information supplier's individual capacity as opposed to the supplier's entrepreneurial (business) capacity, the following statements are made in accordance with the Privacy Act of 1974, as amended (5 U.S.C. 552(a)). The authority for requesting information to be furnished on this form is the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*) and the Federal Crop Insurance Corporation Regulations contained in 7 CFR Chapter IV.

The information requested is necessary for the Federal Crop Insurance Corporation (FCIC) to process this form to provide insurance, determine eligibility, determine the correct parties to the agreement or contract, determine and collect premiums, and pay indemnities. Furnishing the Tax Identification Number (Social Security Number) is voluntary and no adverse action will result from the failure to furnish that number. Furnishing the information required by this form, other than the Tax identification (Social Security) Number, is also voluntary; however, failure to furnish the correct, complete information requested may result in rejection of this form, rejection of or substantial reduction in any claim for indemnity, ineligibility for insurance, and a unilateral determination of the amount of premium due. (See the face of this form for information on the consequences of furnishing false or incomplete information.)

The information furnished on this form will be used by federal agencies, FCIC employees, and contractors who require such information in the performance of their duties. The information may be furnished to: FCIC contract agencies, employees and loss adjusters; reinsured companies; other agencies within the United States Department of Agriculture; the Internal Revenue Service; the Department of Justice, or other federal or State law enforcement agencies; credit reporting agencies and collection agencies; and in response to judicial orders in the course of litigation.

Done in Washington, DC, on May 11, 1987.

E. Ray Fosse,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 87–15006 Filed 7–1–87; 8:45 am]

BILLING CODE 3410-08-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 3 and 292

[A.G. Order No. 1200-87]

Executive Office for Immigration Review; Representation and Appearances

AGENCY: Executive Office for Immigration Review, Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: These revisions change the procedure at 8 CFR 292.3 by which attorneys and representatives may be disbarred or suspended. Under this revision, the Service investigates complaints of misconduct against attorneys and representatives. If the Service believes that there is sufficient evidence to proceed, the General Counsel will cause written charges to be filed with the Office of the Chief Immigration Judge with a copy served on the attorney/representative. A response is made to the charges by the attorney/representative. The Chief Immigration Judge selects an immigration judge to preside and decide the case. A hearing is held, evidence introduced, a record created, and a decision made by the immigration judge. An appeal is available to the Board of Immigration Appeals, and within limited cricumstances, the case may be certified to the Attorney General for review. The revisions also amend relating sections, specifically 8 CFR 292.3(a) and 8 CFR 3.1(d)(3), by making changes necessary to conform to the procedure.

The revisions also modify the grounds for suspension or disbarment under 8 CFR 292.3(a)(5) by deleting the reference to advertising, generally, as an unethical or unprofessional practice.

EFFECTIVE DATE: August 3, 1987.

FOR FURTHER INFORMATION CONTACT: Gerald S. Hurwitz, Counsel to the Director, Executive Office for Immigration Review, Suite 1609, 5203 Leesburg Pike, Falls Church, Virginia 22041, telephone (703) 756-6470.

SUPPLEMENTARY INFORMATION: The revisions change the procedure for suspension and disbarment proceedings. With the creation of the Executive Office for Immigration Review, which separated the immigration judges from the Immigration and Naturalization Service, it was clear that the current suspension and disbarment process should be amended since it contains undesirable entanglements between the Service's regional commissioners and the immigration judges.

The revision sets out a procedure that generally keeps the adjudication of suspension and disbarment matters within the Executive Office for Immigration Review. The procedure provides for a hearing before an immigration judge based on charges filed by INS. The immigration judge makes a decision in the case, unlike the current procedure which calls for an officer to "preside" followed by a regional commissioner recommendation and decision by the Board. The procedure is simpler and more easily workable than the current procedure. It eliminates the undesirable entanglements between the INS regional commissioners and the EOIR adjudicators.

Appeal rights still exist to the Board as does a limited review by the Attorney General in certain situations. This was done to provide adequate due process for the parties, since an initial decision and administrative review are maintained, while streamlining the procedure by eliminating mandatory Attorney General review.

In addition to changes in the suspension and disbarment procedure itself, certain technical conforming changes were made in 8 CFR 292.3(a) and 8 CFR 3.1(d)(3). 8 CFR 292.3(a) grants the suspension/disbarment authority to the immigration judge, Board, or Attorney General. This is consistent with the procedure which contemplates possible final adjudication at any of these levels. 8 CFR 3.1(d)(3) is changed to delete the phrase "and may disbar for cause." This language would be superfluous because of the clearly stated authority of the immigration judge, Board, and Attorney General to suspend or disbar in 8 CFR 292.3(a).

Finally, the revisions delete the reference to advertising, generally, as an unethical or unprofessional practice under 8 CFR 292.3(a)(5). This is done to conform to the considerable body of caselaw which allows advertising for legal services under certain circumstances. It is not meant to eliminate any type of advertising as a possible ground for suspension or disbarment, since the courts have indicated that certain types of advertising may still be unethical or unprofessional. The general reference to unethical or unprofessional soliciting would still be applicable to certain types of misleading or otherwise improper advertising.

These regulatory revisions were offered for public review in a notice of proposed rulemaking, A.G. Order No. 1170-87 published at 52 FR 2948 (January 29, 1987). The notice invited written public comments by March 2, 1987. Public response to the proposed regulation was varied. All comments were considered and some change was made based upon them. What follows is a discussion of comments concerning this provision.

Commenters suggested adding grounds of disciplinary action, such as incompetent representation. Although these comments have some merit, such changes are outside the scope of this regulation which is basically concerned with procedural changes and updating current grounds. Further changes in disciplinary grounds will be considered later.

Commenters suggested that additional due process protections be included. For example, it was requested that only immigration judges from other cities be utilized to hold a hearing on an attorney/representative in a particular city. It is our view that the regulatory proposal contains adequate due process protection, including fair, impartial hearings, appeal rights, etc. In most cases, the Chief Immigration Judge will appoint an outside immigration judge. However, there may be situations where an immigration judge located in the same city as the attorney/representative in question could appropriately handle a disciplinary matter. For example, the allegations could be based on matters unconnected to immigration judge proceedings. It should also be stressed that under current procedures no outside immigration judge requirement exists and no significant problems have developed on this issue.

Commenters proposed that there might be an alternative to the General Counsel of the Immigration and Naturalization Service (INS) instituting disciplinary procedures. It should be noted that under the past procedure, INS has instituted these matters. We have not experienced significant due process difficulties with this approach. In fact, including the INS General Counsel in the process would tend to increase uniform treatment for those under investigation since the regional commissioners would not be free to institute proceedings themselves. Further, there are not sufficient resources to adquately staff a separate outside investigative operation. The Immigration and Naturalization Service has traditionally handled these investigations, are structured to do so, and will, therefore, continue in that function.

Other commenters raised administrative concerns. One commenter wanted a clarification as to where complaints could be filed. There is no need to limit filing locations in that way. The proposal as drafted allowed

for maximum flexibility and that will be maintained. A commenter requested that it be required in the regulations that these matters be handled expeditiously. These matters will be handled expeditiously as resources and the facts of a particular case will allow. To place such a regulatory requirement into the procedure is unnecessary. Another commenter wanted any notice of disciplinary action to be automatically referred to state bars. This may be done in appropriate cases, but there is no need to require it by regulation.

A commenter raised the issue of burden of proof stating that our proposed burden (preponderance of the evidence) was at variance with prior Board of Immigration Appeals precedent and the rule in most jurisdictions. The commenter stated that in these disciplinary proceedings, since a person's license and livelihood are at stake, a higher standard was required. After due consideration, we agree with the commenter and in our final rule have placed a standard of proof as clear, convincing, and unequivocal, as suggested. This is consistent with past practice.

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule will not have a significant impact on a substantial number of small entities. This rule, if promulgated, will not be a major rule within the meaning of paragraph 1(b) of Executive Order 12291.

List of Subjects in 8 CFR Parts 3 and 292

Administrative practice and procedure, Aliens.

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

PART 3—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

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

Authority: 28 U.S.C. 509, 510; 5 U.S.C. 301; 8 U.S.C. 1103.

2. In § 3.1, paragraph (d)(3) is revised to read as follows:

§ 3.1 [Amended]

* * * * *

(d) * * *

(3) Rules of Practices: Discipline of Attorneys and Representatives. The Board shall have authority, with the approval of the Director, EOIR, to prescribe rules governing proceedings before it. It shall also determine whether any organization desiring representation is of a kind described in § 1.1(j) of this chapter, and shall regulate the conduct of attorneys, representatives of organizations, and others who appear in a representative capacity before the Board or the Service or any special Inquiry Officer.

PART 292—REPRESENTATION AND APPEARANCES

3. The authority citation for Part 292 continues to read as follows:

Authority: 8 U.S.C. 1103, 1362.

4. In § 292.3, paragraphs (a) introductory text, (a)(5), and (b) are revised to read as follows:

§ 292.3 [Amended]

(a) *Grounds.* The immigration judge, Board, or Attorney General may suspend or bar from further practice an attorney or representative if it is found that it is in the public interest to do so. The suspension or disbarment of an attorney or representative who is within one or more of the following categories shall be deemed to be in the public interest, for the purposes of this part, but the enumeration of the following categories does not establish the exclusive grounds for suspension or disbarment in the public interest:

* * * * *

(5) Who solicits practice in any unethical or unprofessional manner, including but not limited to, the use of runners.

* * * * *

(b) *Procedure.* Complaints regarding the conduct of attorneys and representatives shall be investigated by the Service. If an investigation establishes to the satisfaction of the Service that suspension or disbarment proceedings should be instituted, the General Counsel shall cause a copy of written charges to be served upon the attorney/representative, either by personal service or by registered mail. The General Counsel shall file the written charges with the Office of the Chief Immigration Judge immediately after service of the charges upon the attorney/representative. The attorney/respesentative shall answer the charges, in writing, within thirty (30) days of service and file the answer with the Office of the Chief Immigration Judge. The attorney/representative shall serve a copy of the anser on the General Counsel. Proof of service on the opposing party must be included with all documents filed. The Chief Immigration Judge shall designate an immigration judge to hold a hearing and render a decision in the matter. The designated immigration judge shall notify the attorney/representative and the Service as to the time and the place of the hearing. At the hearing, the attorney/representative may be represented by an attorney at no expense to the Government and the Service shall be represented by an attorney. At the hearing, the attorney/representative will have a reasonable opportunity to examine and object to the evidence presented by the Service, to present evidence on his/her own behalf and to cross-examine witnesses presented by the Service. Failure of the attorney/representative to answer the written charges in a timely manner will constitute an admission that everything alleged in the written charges is correct. The Service shall bear the burden of proving the grounds for the suspension or disbarment by clear, convincing, and unequivocal evidence. The record of the hearing shall conform to the requirements of 8 CFR 242.15. The immigration judge shall consider the record and render a decision in the case. The immigration judge may find that the evidence presented does not sufficiently prove grounds for a suspension or disbarment, or that a suspension or disbarment is justified. If the immigration judge finds that a suspension is justified, an amount of time shall be set by the immigration judge for the suspension. Either party may appeal the decision of the immigration judge to the Board. The appeal must be filed within ten (10) days from the date of the decision, if oral, or thirteen (13) days from the date of mailing of the decision, if written. The appeal must be filed with the office of the immigration judge holding the hearing. If an appeal is not filed in a timely manner or if the appeal is waived, the immigration judge's decision is final. If a case is appealed in a timely manner, the Board shall consider the record and render a decision. Receipt of briefs and the hearing of oral argument shall be at the discretion of the Board. The Board's decision shall be final except when a case is certified to the Attorney General pursuant to 8 CFR 3.1(h). When the final decision is for suspension or disbarment, the attorney/representative shall not thereafter be permitted to practice until authorized by the adjudicator rendering the final decision.

Dated: June 18, 1987.

Arnold I. Burns,

Acting Attorney General.

[FR Doc. 87-14855 Filed 7-1-87; 8:45 am]

BILLING CODE 4410-10-M

8 CFR 244

[A.G. Order No. 1199-87]

Executive Office for Immigration Review; Suspension of Deportation and Voluntary Departure

AGENCY: Executive Office for Immigration Review; Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: The revisions allow INS district directors the sole authority to reinstate or extend voluntary departure after an initial grant of voluntary departure is made by an immigration judge or the Board of Immigration Appeals, except in the limited circumstances of voluntary departure granted in a deportation proceeding that has been reopened for some other purpose. In those circumstances, an immigration judge or the Board may reinstate voluntary departure. This is being done to simplify and streamline certain voluntary departure adjudications.

EFFECTIVE DATE: August 3, 1987.

FOR FURTHER INFORMATION CONTACT: Gerald S. Hurwitz, Counsel to the Director, Executive Office for Immigration Review, Suite 1609, 5203 Leesburg Pike, Falls Church, Virginia 22041, telephone (703) 756-6470.

SUPPLEMENTARY INFORMATION: The revisions give the INS district directors the sole authority to reinstate or extend voluntary departure after an initial grant by an immigration judge or the Board, except in very limited circumstances. This is being done to simplify and streamline voluntary departure adjudications.

Under the prior procedure, after an immigration judge or the Board grants voluntary departure initially, the district director has sole authority to extend voluntary departure. There are a limited number of instances in which the respondent applies for "voluntary departure anew" before an immigration judge or the Board. This application to the immigration judge or Board is not mandated by statute and can be more efficiently handled by the district director, who adjudicates most other matters relating to extensions and reinstatements of voluntary departure.

The reinstatement of voluntary departure by an immigration judge or the Board is retained in a limited circumstance of cases involving reopening for other reasons, such as applications for suspension of deportation or asylum. In these instances, since the immigration judge or the Board has reopened the matter for some other purpose, it is logical to have an immigration judge or the Board complete the matter with a determination on the issue of voluntary departure. It should be stressed, however, that the immigration judge or the Board would lack the authority to reopen the case solely for the reinstatement of voluntary departure.

These regulatory revisions were offered for public review in a notice of proposed rulemaking, A.G Order No. 1173-87, published at 52 FR 2950 (January 29, 1987). The notice invited written public comments by March 2, 1987. Public response to the proposed regulation was varied. All comments were considered. What follows is a discussion of comments concerning this provision.

Commenters stated that the district director is too restrictive in adjudicating voluntary departure and that the immigration judge should be allowed to maintain authority to grant the relief anew. It was also stated that this revision would constitute an undue restriction on immigration judge authority. The district director rules on voluntary departure applications on many occasions and is in a position to be a fair and reasonable decision maker. There is no requirement that immigration judges or other specific officers be the individuals to adjudicate these applications. For reasons of administrative ease and efficiency, the district director has been selected as the individual to grant voluntary departure anew.

Commenters mention that no empirical evidence or statistics were presented to show that the prior process had been abused or that there had been an undue workload created. This change is not based on abuse or unduly heavy workload. The change is expected to affect a limited number of cases. It is simply a designation of a particular official under the Attorney General who is to have authority to grant voluntary departure. The designation of particular officials to adjudicate certain applications is well within the discretion of the Attorney General. For purposes of administrative efficiency and ease of adjudication, it has been determined that the district director shall perform adjudications in this circumstance.

Commenters also stated that this would be an unwarranted expansion of immigration judge authority. They apparently misunderstood the regulation which does not expand immigration judge authority in any way.

In accordance with 5 U.S.C. 605(b) the Attorney General certifies that this rule will not have a significant impact on a substantial number of small entities. This rule will not be a major rule within the meaning of paragraph 1(b) of Executive Order 12291.

List of Subjects in 8 CFR Part 244

Administrative practice and procedure, Aliens, Immigration.

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

PART 244—SUSPENSION OF DEPORTATION AND VOLUNTARY DEPARTURE

1. The authority citation for Part 244 continues to read as follows:

Authority: 8 U.S.C. 1103, 1252, 1254.

2. 8 CFR 244.2 is revised to read as follows:

§ 244.2 Extension of time To depart

Authority to reinstate or extend the time within which to depart voluntarily specified initially by an immigration judge or the Board is within the sole jurisdiction of the district director, except that an immigration judge or the Board may reinstate voluntary departure in a deportation proceeding that has been reopened for a purpose other than solely making an application for voluntary departure. A request by an alien for reinstatement or an extension of time within which to depart voluntarily shall be filed with the district director having jurisdiction over the alien's place of residence. Written notice of the district director's decision shall be served upon the alien and no appeal may be taken therefrom.

Dated: June 18, 1987.

Arnold I. Burns,

Acting Attorney General.

[FR Doc. 87-14856 Filed 7-1-87; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 86-NM-180-AD; Amdt. 39-5665]

Airworthiness Directives; McDonnell Douglas Model DC-9 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to McDonnell Douglas DC-9 series airplanes, which requires the

installation of a "tailcone missing" warning system. This amendment is prompted by reports of inadvertent tailcone deployment. This condition, if not corrected, could result in a hazard to incoming or outgoing aircraft during night or IFR conditions by an inadvertently deployed tailcone being on the active runway, unknown to the flight crew.

EFFECTIVE DATE: August 8, 1987.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-750 (54-60). This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Stacho, Aerospace Engineer, Systems and Equipment Branch, ANM-131L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 514-6323.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include a new airworthiness directive (AD) which requires installation of a "tailcone unlatched/missing" warning system on DC-9 series airplanes, was published in the **Federal Register** on September 22, 1986 (51 FR 33622).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Three commenters recommended that a warning system which alerts the flight crew when the tailcone has departed the aircraft should be required, rather than a system which indicates when the tailcone is unlatched and/or missing. The commenters stated that a "tailcone missing" warning system would be less costly and complex, and would still meet the intent of the AD. The FAA concurs with this comment. Since the intent of this AD is to minimize the hazard associated with an inadvertently deployed tailcone being on the active runway, unknown to the flight crew, the AD has been revised to require a "tailcone missing" warning system. A "tailcone unlatched" warning system will also meet the intent of this AD, since it would alert the flight crew that a potential hazard exists and the crew can take appropriate action.

One commenter requested the proposed rule be withdrawn because of hazards associated with crew distraction and workload, during the critical phase of takeoff and landing operations, by a "tailcone unlatched/missing" warning indicating system. The commenter further stated that the crew distraction/workload aspect should be thoroughly considered before any regulation is adopted. Other commenters also requested that the crew distraction/workload question be addressed. The FAA does not concur with the commenter's request that the proposed rule should be withdrawn; the intent of this rule is to address an unsafe condition identified when an inadvertently deployed tailcone becomes a hazard to incoming or outgoing aircraft by being on an active runway. During the development of the rule, the FAA considered the impact of the requirements of the rule in regard to crew distractions and crew workload. As previously stated, the "tailcone missing" warning system is intented to alert the crew that the tailcone has departed the aircraft. Crew members are trained that a warning (amber caution) light does not indicate a need for immediate action. Crew distraction will be no greater than that which currently occurs when the "door open" warning indicators annunciate, which can occur during any phase of flight operations, including takeoff or landing. The FAA has determined that the addition of the "tailcone missing" warning system will not adversely impact crew workload or cause distractions to the crew which would significantly impact flight safety.

Three commenters stated that improper maintenance and rigging were the causes of most inadvertent tailcone deployments. One commenter also recommended a plastic guard over the external release handle to prevent inadvertent usage of the tailcone release system while another recommended a mechanical indicator system at the tailcone release handle. The commenters further state that FAA's objectives for the proposed rule can be met with proper maintenance and rigging instructions, along with operational checks. The FAA agrees that proper rigging, maintenance, release handle guards, mechanical indicators, and operational checks of the tailcone release system will reduce the number of inadvertent tailcone deployments. However, these means alone will not prevent inadvertent movement of the release handle during flight or at outlying ground stations. The requirements of the AD will ensure that an inadvertently deployed tailcone will not be on the active runway, unknown to the flight crew.

Five commenters, some of whom did not object to the proposed AD, objected to the proposed 18-month compliance time. Some commenters requested a 48-month compliance time, while others stated that parts for the total fleet could not be made available within the proposed 18 months. The FAA has considered this information and agrees that additional time for installation is necessary. Also, by requiring a simplified "tailcone missing" warning system, operators can develop and install their own design, once found acceptable by FAA. McDonnell Douglas has notified FAA that it intends to have a modification available for all in-service Model DC-9 series airplanes by January 1988. In view of the above, the FAA has determined that compliance within 24 months from the effective date of this AD is considered reasonable, and the final rule has been changed accordingly.

One commenter questioned the cost estimates of the modification required by this AD. The FAA has revised the cost analysis based on additional data and it is discussed below.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the following rule with the changes previously noted.

It is estimated that 800 airplanes of U.S. registry will be affected by this AD, that it will take approximately 30 manhours per airplane to accomplish the required action, that the material cost will be $1,760 per airplane, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $2,360,000.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities, because few, if any, Model DC-9 Series airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39—

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

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

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

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

McDonnell Douglas: Applies to McDonnell Douglas Model DC-9 series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent a tailcone from departing the airplane, unknown to the flight crew, accomplish the following:

A. Within 24 months after the effective date of this airworthiness directive (AD), install a visual warning means, which is approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region, that will signal the appropriate flight crew members when the tailcone is not attached to the airplane.

B. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

This Amendment becomes effective August 8, 1987.

Issued in Seattle, Washington, on June 23, 1987.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 87-15067 Filed 7-1-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 86-NM-225-AD; Amdt. 39-5666]

Airworthiness Directives; McDonnell Douglas Model DC-9-30, -40, and C-9 (Military) Series Airplanes, Fuselage Numbers 1 through 1084

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas DC-9 series airplanes, which requires inspections of the rudder drive crank assembly for cracks, and replacement, if necessary. This amendment is prompted by numerous reports of cracking found in the rudder drive crank assembly. This condition, if not corrected, could result in the loss of rudder effectiveness during critical flight regimes.

EFFECTIVE DATE: August 8, 1987.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-L65 (54-60). This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Michael N. Asahara, Sr., Aerospace Engineer, Airframe Branch, ANM-122L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 514-6319.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include a new airworthiness directive (AD) which requires the inspections for cracks in the rudder drive crank assembly, and replacement, as necessary, on certain McDonnell Douglas DC-9 series airplanes, was published in the **Federal Register** on February 2, 1987 (52 FR 3126). The comment period for the proposal closed March 23, 1987.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the five comments received.

Two commenters advised that McDonnell Douglas has made significant revisions to Service Bulletin 27-261, and that the NPRM should not be finalized until such time as the operators have reviewed the latest changes and are allowed to provide late comments. The FAA disagrees. A thorough review of Service Bulletin 27-261, Revision 1, dated April 3, 1987, indicates that revisions made are minor and clarifying, and do not change the intent or the scope of the AD. The final rule has been revised to reflect Revision 1 of the service bulletin. This change does not impose an additional burden on any operator.

The third commenter expressed concern that the proposed initial compliance period of 500 landings or 90 days is too restrictive, and suggested that the initial compliance period be extended to 1,000 landings or 150 days, whichever occurs first. The FAA concurs with the commenter's suggestion and has determined that an initial compliance period of 1,000 landings or 150 days, whichever occurs first, will not adversely affect safety. The final rule has been revised accordingly.

The last two commenters requested that the proposed repetitive inspection intervals be increased from 12 months or 3,000 landings, whichever occurs earlier, to 15 months or 3,000 cycles, whichever is later. The commenters advised that this request is based upon the ability of operators to schedule inspections required by the AD at regular "C" check intervals, and to avoid schedule disruptions. The FAA does not concur with the commenters' request. The FAA has determined the repetitive inspections schedule reflected in the rule to be appropriate based on the nature of the failure and crack growth analysis. This schedule is consistent with the manufacturer's recommendation. Safety considerations necessitate that the repetitive inspection intervals remain as proposed.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed, with the changes previously mentioned.

It is estimated that 367 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 manhour per airplane to accomplish the required inspection, and that the average labor cost is estimated to be $40 per manhour. (Replacement of the rudder drive crank assembly, if necessary, would require approximately 9.3 manhours to accomplish.) Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $14,680 for the initial required inspection.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have significant economic effect on a substantial number of small entities, because few, if any Model DC-9 series airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

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

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

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

McDonnell Douglas: Applies to McDonnell Douglas Model DC-9-30, -40, and C-9 (Military) series airplanes, Fuselage Numbers 1 through 1084, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent the failure of the rudder drive crank assembly, accomplish the following:

A. Within 1,000 landings or 150 days after the effective date of this AD, whichever occurs earlier, unless already accomplished within the last 2,000 landings or 7 months, eddy current or ultrasonically inspect the rudder drive crank assembly for cracks in accordance with McDonnell Douglas DC-9 Service Bulletin 27-261, Revision 1, dated April 3, 1987, or later FAA-approved revisions.

1. If no cracks are found, accomplish repetitive inspections at intervals not to exceed 12 months or 3,000 landings, whichever occurs earlier, until such time as the procedures described in paragraph A.3., below, are accomplished.

2. If crack(s) are found, before further flight, replace cracked rudder drive crank assembly with a new P/N 5912801-1 or -501 drive crank. If a new 5912801-1 drive crank assembly is used as a replacement part, inspect in accordance with paragraph A.1., above.

3. Installation of rudder drive crank assembly P/N 5912801-501, in accordance with McDonnell Douglas DC-9 Service Bulletin 27-261, Revision 1, dated April 3, 1987, or later FAA-approved revisions, constitutes terminating action for the repetitive inspections required by paragraph A.1., above.

B. Alternate means of compliance which provide an equivalent level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Upon the request of an operator, an FAA Maintenance Inspector, subject to prior approval of the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region, may adjust the repetitive inspection intervals specified in this AD to permit compliance at an established inspection period of the operator if the request contains substantiating data to justify the change for that operator.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-L65 (54-60). These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

This amendment becomes effective August 8, 1987.

Issued in Seattle, Washington, on June 23, 1987.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 87-15066 Filed 7-1-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 97

[Docket No. 25316; Amdt. No. 1350]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Note.—Incorporation by reference approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures Standards Branch (AFS-230), Air Transportation Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4, and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs in unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

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

List of Subjects in 14 CFR Part 97

Approaches, Standard Instrument, Incorporation by reference.

Issued in Washington, DC, on June 26, 1987.

William T. Brennan,

Acting Director of Flight Standards.

Adoption of the Amendment

PART 97—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.m.t. on the dates specified, as follows:

1. The authority citation for Part 97 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421, and 1510; 49 U.S.C. 106(g) (revised, Pub. L. 97-449, January 12, 1983; and 14 CFR 11.49(b)(2)).

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

. . . Effective September 24, 1987

St Paul Island, AK—St Paul Island, NDB/DME RWY 18 Orig.
Rugby, ND—Rugby Muni, NDB RWY 12, Amdt. 3
Rugby, ND—Rugby Muni, NDB RWY 30, Amdt. 4
McAlester, OK—McAlester Muni, LOC RWY 1, Amdt. 3
McAlester, OK—McAlester Muni, NDB RWY 1, Amdt. 2
Carrizo Springs, TX—Dimmit County, NDB RWY 31, Amdt. 1

. . . Effective August 27, 1987

Anderson, IN—Anderson Muni, VOR-A, Amdt. 8
Anderson, IN—Anderson Muni, LOC RWY 30, Amdt. 5
Anderson, IN—Anderson Muni, NDB RWY 30, Amdt. 5
Grand Isle, LA—Grand Isle Seaplane Base, VOR-A, Amdt. 6
Grand Isle, LA—Grand Isle Seaplane Base, VOR/DME-C, Amdt. 5
Grand Isle, LA—Grand Isle Seaplane Base, NDB-B, Amdt. 7
Cloquet, MN—Cloquet-Carlton County, VOR/DME-A, Amdt. 5
Cloquet, MN—Cloquet-Carlton County, NDB RWY 17, Amdt. 3
Cloquet, MN—Cloquet-Carlton County, NDB RWY 35, Amdt. 3
Caldwell, NJ—Essex County, NDB-A, Amdt. 4
Lincoln Park, NJ—Lincoln Park, NDB RWY 1, Amdt. 1
Akron, OH—Akron-Canton Regional, VOR RWY 23, Amdt. 7
Akron, OH—Akron-Canton Regional, ILS RWY 1, Amdt. 34
Akron, OH—Akron-Canton Regional, ILS RWY 19, Amdt. 4
Akron, OH—Akron-Canton Regional, ILS RWY 23, Amdt. 8
Oklahoma City, OK—Sundance Airpark, LOC RWY 17, Orig., CANCELLED
Pawtucket, RI—North Central State, VOR-B, Amdt. 4
Darlington, SC—Darlington County, NDB RWY 23, Orig.
Britton, SD—Britton Muni, NDB RWY 13, Amdt. 3
Osceola, WI—L.O. Simenstad Muni, NDB RWY 28, Amdt. 8

. . . Effective July 30, 1987

Athens, GA—Athens Muni, VOR RWY 2, Amdt. 10
Sandersville, GA—Kaolin Field, VOR/DME-A, Amdt. 2
Sandersville, GA—Kaolin Field, NDB RWY 12, Amdt. 1
Savannah, GA—Savannah International, RNAV RWY 18, Amdt. 7
Sylvania, GA—Plantation ARPK, NDB RWY 23, Amdt. 1
Washington, GA—Washington-Wilkes County, NDB RWY 13, Amdt. 1
Waynesboro, GA—Burke County, NDB RWY 7, Amdt. 1
Fort Leavenworth, KS—Sherman AAF, RNAV RWY 15, Orig.
Barnwell, SC—Barnwell County, NDB RWY 4, Amdt. 1
Camden, SC—Woodward Field, NDB RWY 23, Amdt. 5
Charleston, SC—Charleston AFB/Intl, VOR/DME or TACAN RWY 33, Amdt. 11
Charleston, SC—Charleston AFB/Intl, ILS RWY 33, Amdt. 4
Charleston, SC—Charleston Executive, NDB RWY 9, Amdt. 7
Walterboro, SC—Walterboro Muni, NDB RWY 23, Amdt. 7
Winnsboro, SC—Fairfield County, NDB RWY 4, Amdt. 2
Woodbridge, VA—Woodbridge, NDB-A, Orig., CANCELLED

. . . Effective June 24, 1987

Brunswick, GA—Glynco Jetport, VOR/DME-B, Amdt. 6
Brunswick, GA—Glynco Jetport, NDB RWY 7, Amdt. 9
Brunswick, GA—Glynco Jetport, ILS RWY 7, Amdt. 7
Brunswick, GA—Glynco Jetport, RNAV RWY 7, Amdt. 6
Brunswick, GA—Glynco Jetport, RNAV RWY 25, Amdt. 6
Brunswick, GA—Malcolm McKinnon, VOR RWY 4, Amdt. 14
Brunswick, GA—Malcolm McKinnon, RNAV RWY 22, Amdt. 5
Jekyll Island, GA—Jekyll Island, VOR-A, Amdt. 85

. . . Effective June 23, 1987

Chapel Hill, NC—Horace Williams, RADAR-1, Amdt. 6

. . . Effective June 11, 1987

Troy, AL—Troy Muni, NDB RWY 7, Amdt. 8

[FR Doc. 87-15068 Filed 7-1-87; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 35 and 389

[Docket No. RM87-4-000; Order No. 475]

Electric Utilities; Rate Changes Relating to Federal Corporate Income Tax Rates for Public Utilities

Issued: June 26, 1987.

ACTION: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: In the Tax Reform Act of 1986 Congress reduced the maximum Federal corporate income tax rate from 46 percent to 34 percent, effective July 1, 1987. The Federal Energy Regulatory Commission is adopting an abbreviated rate filing procedure that public utilities may use to reduce their rates to reflect this decrease.

EFFECTIVE DATE: June 26, 1987.

FOR FURTHER INFORMATION CONTACT: Thomas J. Lane, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357-8530.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Tax Reform Act of 1986 [1] signed on October 22, 1986, significantly lowered the Federal corporate income tax rate from 46 percent to 34 percent. The Federal Energy Regulatory Commission (Commission) is adopting a voluntary, abbreviated rate filing procedure that will allow electric public utilities to file for certain rate decreases under section 205 of the Federal Power Act (FPA),[2] to reflect this decrease in the Federal income tax tate.[3]

The reduction in rates will be based on a formula using data provided by the utility in its most recent rate filing. Under this procedure, the Commission will consider only the reduction in the Federal corporate tax rate in establishing the new rate. Any other issues which may be raised in the rate filing will be dismissed without prejudice.

For utilities which do not voluntarily reduce their rates either through this abbreviated procedure or through general rate changes filings, the Commission intends to undertake a general review of their rates, and where appropriate, to institute formal investigations under section 206 of the FPA [4] on the basis that rates reflecting the 46 percent tax rate or other previously authorized cost allowances may no longer be just and reasonable.[5]

II. Background

In response to the Tax Reform Act, the Commission, on March 12, 1987, published a Notice of Proposed Rulemaking (NOPR) [6] which proposed an abbreviated filing procedure that would allow public utilities to voluntarily reduce their rates to account for this reduction in the Federal tax rate.[7] The NOPR proposed two methods of determining the rate reduction. The primary option would permit a utility to reflect the reduction in the tax rate through a formula reduction to its existing rates. The formula would rely on data supplied by the utility inits most recent rate filing. An alternative approach was also suggested under which rates would be reduced using a generically determined fixed percentage reduction to the demand charge component of a utility's exisitng rates.

The NOPR proposed to preclude a utility from using the abbreviated filing procedure if it had a rate change application pending before the Commission on a date certain; if it had an accepted tariff providing for automatic adjustments to reflect changes in the Federal tax rate; or if it already had rates in effect which reflected the reduced Federal income tax rate.

The NOPR stated that if a utility wished to reflect in its rates other changes created by the Tax Reform Act or by other cost elements, instead of the abbreviated procedure, it should file a rate change application under section 205 of the FPA. The Commission also proposed that if a utility failed to file for rate reductions, the Commission might institute a proceeding requiring the utility to show cause why its unadjusted rates are just and reasonable under section 206 of the FPA. The NOPR also proposed that such an investigation might not be limited to issues relating to the Tax Reform Act, and might include all components of the utility's rates.

A. Overview

The Commission is concerned that large overcollections on an industry-wide basis may occur unless rates are reduced promptly to reflect the new tax rate since the reduction in the tax rate affects all utilities. The Commission is adopting a generic approach to address this concern. Through a generic reduction in rates based on a formula, a utility would be able to adjust for changes in the corporate tax rate by using an expedited procedure that would provide consumers immediate rate relief.

The Commission realizes that a formula reduction in rates may not be appropriate for all utilities under all circumstances. Therefore, a utility that chooses not to use the abbreviated procedure established in this rule may agree to a settlement with its customers, file a general section 205 rate change application, or if a utility finds that no rate reduction is warranted, it may elect to do nothing.

The Commission encourages settlement agreements and will look favorably on any proposed settlements that take into account the impact of the reduction in the tax rate.

Under a full section 205 rate change application, a utility may raise any other factors which might counterbalance the tax rate reduction. Under a full rate change application customers may also raise any relevant issues.

If a utility concludes that no rate decrease is warranted, it may refrain from filing any rate reduction. If the Commission institutes a section 206 proceeding, a utility may raise relevant issues to show that its unadjusted rates are just and reasonable.

B. Other Tax and Cost Considerations.

In the NOPR, the Commission identified three provisions of the Tax Reform Act that might affect public utilities on an industry-wide scale. These were changes in the depreciation rates, loss of investment tax credits and the reduction in the Federal income tax rate. The Commission stated in the NOPR that changes in liberalized depreciation and the loss of investment tax credits would have little immediate effect on a utility's rates.[8] It therefore

[1] I.R.C. 1-7872 (1986).

[2] 16 U.S.C. 824d (1982).

[3] Although the reduction in the Federal corporate income tax rate impacts on natural gas and oil pipelines, this rule is limited to electric public utilities. Natural gas pipeline companies' rates will automatically be adjusted since tax trackers have been included in the majority of the natural gas pipeline companies' rate settlements. Changes in oil pipeline rates will be made on a case-by-case basis.

[4] 16 U.S.C. 824e (1982).

[5] Recently, the Commission instituted 206 proceedings involving the formula rates of electric utilities. *See*, EL87-21-000 Yankee Atomic Electric Company, EL87-22-000 Vermont Yankee Nuclear Power Corporation, EL87-23-000 Connecticut Yankee Atomic Power Company, EL87-30-000 Connecticut Light & Power Company.

[6] Rate Changes Relating to Federal Corporate Income Tax Rate for Public Utilities, 52 FR 8616 (Mar. 19, 1987). FERC Stats. and Regs. ¶ 32,437.

[7] Fifty-two commenters responded to the NOPR. The list of commenters is contained in Appendix A.

[8] Changes in tax depreciation have little immediate impact on the calculation of income tax

Continued

concluded that the only changes that a utility should adjust immediately would be those to reflect the reduction in the Federal corporate income tax rate.

Many commenters faulted the Commission for concentrating solely on the reduction of the tax rate.[9] They argued that other provisions of the Tax Reform Act offset this decrease.[10]

The Commission recognizes that many of the aspects of the Tax Reform Act cited by the commenters may have an impact on a utility's cash flow. The effect, however, will differ widely from utility to utility depending upon its particular circumstances, and therefore would be inappropriate for a generic formula, which could not account for all the changes made by the Act and their effects on each utility. The one aspect of the Tax Reform Act that will have a significant effect on the rates of electric utilities on an industry-wide basis is the corporate tax rate reduction.

The Commission has determined that, to reflect this one change, the income tax component of rates under the Commission's ratemaking model should be reduced by nearly 40 percent.[11] Through this procedure, the Commission is enabling a public utility to voluntarily reduce its rates without having to file a full rate change application.

Some commenters suggested that the Commission consider changes in state income taxes.[12] Others urged the Commission to take into account other increases in cost components which might affect a utility's rates.[13] The Commission disagrees. The purpose of this final rule is to provide utilities with a simple mechanism to voluntarily reduce rates to reflect the reduction in the Federal tax rate. Consideration of these other suggested factors would unnecessarily complicate the abbreviated filing and delay rate relief.

C. Filing Options

The NOPR requested comments on two proposed abbreviated filing methods, and invited suggestions on any other alternatives. The first alternative proposed in the NOPR was a formula reduction in rates, based on data supplied by the utility in its most recent rate filing. Under the alternative option, rates would be reduced automatically, for all utilities, using a fixed percentage reduction to the demand charge.

Most commenters (even those opposed to the rulemaking) favored the formula approach over a fixed percentage reduction.[14] Most utilities favored retaining both approaches, which would enable the filing utility to select the methodology most suited to its particular situation.[15] Some utilities also suggested that the Commission provide many abbreviated filing options.[16]

The Commission is adopting only the formula alternative. The Commission agrees with many of the commenters that a formula reduction has certain advantages over a fixed percentage reduction.[17] While both may be simple, the formula approach is utility-specific. As such, it can more readily accommodate a utility's specific circumstances and, therefore, more closely approximates the actual cost-to-service impact of the lower tax rate.

Commenters also cited problems with the fixed percentage option.[18] Since it is not utility-specific, but calls for an across-the-board reduction for all utilities, it may be imprecise. In fact, it may produce excessive reductions for some utilities and allow others to receive a windfall. The Commission believes that the fixed percentage approach would be unfair to both the utility and the ratepayers. Additionally, these commenters faulted the method by which the Commission determined the fixed reduction percentage. The percentage reduction proposed in the NOPR was based on a sampling of eight rate filings which resulted in a five to eight percent reduction in the nonvariable portion of a utility's revenue requirement. Commenters argued that the sampling was too small and was not representative of the industry. The Commission recognizes that there are approximately 175 utilities subject to the Commission's jurisdiction. The Commission agrees that a determination of an appropriate fixed percentage reduction would require extensive sampling. Furthermore, the Commission believes that using any fixed percentage reduction would not yield as accurate a result as a formula reduction.

In view of the disadvantages of the fixed percentage approach, the Commission must reject the argument that a utility should have the option of using either the formula method or the fixed percentage method.

Some commenters wanted the Commission to adopt numerous filing options.[19] Others suggested that the Commission establish some type of simplified procedure that a utility could use to show that its unadjusted rates remained justified.[20] The Commission believes that multiple filing options or additional procedures would be unduly cumbersome. Allowing utilities to make simplified showings that their rates are

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allowable because of the Commission's tax normalization policy. Under normalization the calculation of allowable income tax expense is based upon the amount of book depreciation taken, not tax depreciation. The amount of book depreciation is not affected by the Tax Reform Act. *See* 18 CFR 35.25. "Regulations Implementing Tax Normalization for Certain Items Reflecting Timing Differences in the Recognition of Expenses or Revenues for Ratemaking and Income Tax Purposes," Order No. 144, 46 FR 26613 (May 14, 1981), FERC Stats. and Regs. [Regulations Preambles, 1977–1981] ¶30,254 (May 6, 1981). Similarly, loss of investment tax credits will also have a minimal effect on a utility's revenue requirements. Under current regulatory policy, the benefits of investment tax credits are shared between the ratepayer and the stockholders of the regulated entities. The ratepayer benefits by either receiving the time value of the unamortized investment tax credit or the annual amortization amount, but not both, depending upon the optional treatment elected by the utility. The rate reducing effects of previously generated investment tax credits will continue until fully amortized.

[9] *See, e.g.*, Utah Power and Light Company, Philadelphia Electric Company, Kentucky Utilities Company, Electric Utilities, Public Service Electric and Gas Company, Colorado Public Utilities Commission, Public Service Company of Colorado, Sierra Pacific Power Company.

[10] In addition to elimination of investment tax credits and changes in depreciation other provisions of the TRA cited by commenters that addressed this issue were:

- Recognition of unbilled revenues.
- Capitalization of certain construction overheads.
- Taxability of contributions in aid of construction.
- Alternative minimum tax provisions.
- Timing of deduction for sales tax, property tax, and employee benefits.
- Elimination of accrual accounting for accrued vacation pay and reserve for bad debts.

[11] The percentage change in the income tax component of a jurisdictional company's revenue requirement due to a reduction in the Federal corporate income tax rate can be measured by the incremental change in the "income tax factor." This factor, expressed as the Federal tax rate divided by one minus the Federal tax rate, is 0.85185 at the 46 percent rate and 0.51515 at the 34 percent rate. Thus, the 12 percentage point reduction in the Federal tax rate translates to nearly a 40 percent reduction in a jurisdictional company's income tax allowance.

[12] *See* Utah Power and Light Company, Idaho Power Company (state tax increases), Cities and Villages of Algoma, *et al.* (state tax decreases).

[13] *See, e.g.*, Central Illinois Public Service Company, Utah Power and Light Company.

[14] *See, e.g.*, Public Service Company of Oklahoma, Borough of Madison, New Jersey, Consumer Power Company, Saffer Utility Consultants, Inc.

[15] *See, e.g.*, Carolina Power and Light Company, Electric Utilities, Arizona Public Service Company.

[16] *See, e.g.*, American Electric Power Service Corporation, Edison Electric Institute, Southwestern Electric Power Company.

[17] *See, e.g.*, Department of Water Resources of the State of California, Coast Electric Power Association, *et al.*

[18] *See, e.g.*, Southwestern Electric Power Company, Public Systems.

[19] *See, e.g.*, Public Service Company of Oklahoma, Edison Electric Institute.

[20] *See, e.g.*, Pennsylvania Power & Light Company, Central Vermont Public Service Corporation, Public Service Company of New Mexico.

just and reasonable also poses evidentiary problems, since a utility would be free to selectively supply the Commission with data in support of its case. A more appropriate forum to make such a showing is a proceeding under either section 205 or 206 of the FPA.

D. The Formula

The adopted formula is:

$$K=\frac{D-D(E/F)}{I}$$

Where

D=Composite income taxes allowable included in rates in effect on the date that the change in the Federal corporate income tax rate becomes effective.

E=Composite income tax factor using the new Federal corporate income tax rate and the effective state income tax rate from the rate application docket upon which existing rates are based. This is computed by the following formula:

$$\frac{\text{composite marginal income tax rate}}{-\text{composite marginal income tax rate}}$$

F=Composite income tax factor using the old Federal corporate income tax rate. This is computed by the same formula used for determining E.

I=Test period billing units from the rate application docket upon which the rates that are in effect are based. Absent extraordinary circumstances a public utility shall use demand billing units. This information is usually available in Statement BG of the rate application and/or settlement or compliance documents.

K=Required rate reduction per billing demand unit.

This formula may be broken down into the following four-step process:

$$(1)\quad A\times\frac{B}{C}=D$$

$$(2)\quad D\times\frac{E}{F}=G$$

$$(3)\quad D-G=H$$

$$(4)\quad \frac{H}{I}=K$$

Where

A=Income taxes allowable (exclusive of deferred tax make-up provisions, *i.e.* "South Georgia" provisions, and investment tax credit amortizations) included in the revenue requirement of the public utility's rate application docket upon which the rates in effect on the date the Federal corporate income tax rate change becomes effective were finally accepted or approved. This information is generally included in Statement BK or BL of the filing as revised after any summary dispositions where revised rates were required to be filed.

B=Revenue level in effect on the date the change in Federal corporate income tax rate becomes effective using test period billing determinants. This information is generally available from Statement BG of the rate application and/or settlement or compliance filing documents.

C=Revenue requirement from the rate application docket which includes A. This is generally included in Statement BK or BL of the filing.

G=Income taxes allowable at the new Federal corporate income tax rate.

H=Difference between income taxes allowable at the new Federal corporate income tax rate, and at the old Federal corporate income tax rate. This is the revenue reduction required to reflect the reduction in the Federal corporate income tax rate.

The Commission will use the data provided by a public utility in the rate application supporting its current rates on file to determine the reduction in rates to reflect the change in the Federal corporate tax rate. Since a public utility's rates generally differ, depending on the type of service the utility provides (firm transmission service, full requirements service, or partial requirements service) and for each customer group, the utility must make a separate rate reduction calculation for each type of service and each customer group.

In the first step of the formula, the income tax allowable component (A) from a public utility's last rate application is multiplied by the ratio of: (B) The test period revenues from the rates actually in effect on July 1, 1987 (using billing determinants from Statement BG of the public utility's rate application) to (C) the test period revenue requirement reported by the public utility in its last rate application (Statement BK or BL of the public utility's rate application). The result (D) represents the income tax allowable component which, for purposes of this rule, the Commission is presuming is included in a public utility's rate in effect on the date that the change in Federal corporate income tax rate became effective. This figure is based on the old Federal corporate income tax rate. The calculation recognizes that the public utility's current rate level may be designed to achieve test period revenues lower than the revenue requirement originally supported by the public utility in its rate application. The difference between generated rate levels and revenue requirement may be due to a variety of reasons including reductions in rate levels due to settlement agreements, voluntary reductions, Commission orders, and Commission opinions. For those rates that were determined by Commission opinion or equivalent order following a litigated proceeding, the income tax allowance from the company's finally accepted compliance filing, exclusive of deferred tax make-up provisions and investment tax credit amortizations, must be used as (D) in the formula instead of using "A × (B/C)" as (D). For settlement rates where the utility submitted a cost of service supporting the settlement rate level, the utility must use the income tax allowable figure contained in the settlement as (D) in the formula.

In the second step, the income tax allowable component (D) is multiplied by the ratio of: (E) The income tax factor at the new Federal corporate income tax rate to (F) the income tax factor at the old Federal corporate income tax rate. The result (G) represents the income tax allowable based on the new Federal corporate income tax rate.

In the third step of the formula, the income tax allowable component based on the new Federal corporate income tax rate (G) is subtracted from the income tax allowable component based on the old Federal corporate income tax rate (D). The result (H) represents the revenue reduction necessary to reflect the new corporate income tax rate.

Finally, in the fourth step of the formula, the revenue reduction figure (H) is divided by the demand billing units reported in the public utility's last rate application to determine the revenue reduction per unit of billing demand (K). Some adjustments in the implementation of this aspect of the formula may be allowed if, for example, the utility's rate is entirely energy-based, *i.e.*, on a per-kilowatt-hour basis, or if the utility's rate design incorporates unusual features.

In applying this formula, a utility may, by affidavit setting forth the reason, deviate from the use of demand billing units under extraordinary circumstances. Under this filing

procedure intervenors may challenge this variation. The utility shall have the burden of proof in showing that a deviation from the use of demand billing units is based on extraordinary circumstances.

In order to expedite filings under this rule, a utility must provide the following in support of its rate reduction:

(A) Computations showing the application of each step of the formula methodology;

(B) Supporting workpapers including (1) all intermediate calculations necessary under the formula with narrative explanation where appropriate and (2) details on the derivation of all formula inputs together with copies of all statements and workpapers used as source documents;

(C) Detailed explanations of all adjustments to data shown on supporting statements (*e.g.*, adjustments to exclude South Georgia provisions from Federal Income Tax Allowable);

(D) Form of notice noting that the rates are to be effective as of July 1, 1987;

(E) Revised rate sheets reflecting the proposed rate reduction for every rate schedule to which the reduction is proposed;

(F) A list of any customers or services for which no reduction is proposed and the reasons for not reducing these rates.

A number of commenters raised issues regarding application of the formula. The Commission proposed to base the formula reduction on data derived from a utility's most recent rate filing. However, several commenters argued that the Commission should not rely on data in a utility's last rate filing since the data may have been filed several years ago and may no longer reflect a utility's true costs, and a formula based on the data would therefore not be valid.[21]

While a utility's specific costs may have changed since its last rate application, the data contained in this application are the most comprehensive on file at the Commission. A utility that believes that the data supporting its current rates no longer reflect its true costs should file an application for a general rate change.

The Iowa Public Service Company suggested that the Commission use data from a utility's most recent FERC annual report. The Commission disagrees since rates currently being collected are based on a utility's last cost-of-service filing and not annual report figures. Furthermore, it may not be possible to derive accurate data such as a utility's income tax allowable figure from its annual report.

In the formula, a utility's deferred tax make-up provision is excluded from the income taxes allowable component. These make-up provisions are designed to recover any deficiencies or to eliminate any excesses in the deferred tax reserves of a utility. Several commenters questioned whether the provision should be excluded in computing the appropriate reduction.[22] The Commission will consider any corrections to a utility's make-up provision amortization in conjunction with the utility's next full rate change application. The Commission believes that potentially complex questions involving any such adjustments should be dealt with in individual FPA section 205 or 206 proceedings, where all parties may question the necessary adjustment. Until that time, a utility should continue to accrue the deferred tax amortization amount in accordance with its previously approved plan of recovery.

Similarly, some commenters requested that the Commission establish a method of returning any overaccruals of a utility's unfunded future tax liability to the ratepayers.[23] The Commission is delaying consideration of any of these excess accruals until a utility's next rate application for the same reasons discussed above with regard to deferred tax make-up provisions. Utilities are required to establish a plan to return any excess accruals in rate applications. Until the next full rate change application a utility would not receive a windfall because any excess funds the utility collects for deferred income taxes are used as a rate base deduction until ultimately returned to the customers.[24]

Under the formula, reductions were to be made on a per billing demand unit basis unless there were "extraordinary circumstances" not to do so. The NORP requested comments as to the appropriate circumstances under which exceptions to the use of demand billing units should be allowed. Although two commenters addressed this issue, neither provided the Commission with specific examples of what would constitute an extraordinary circumstance.[25] Therefore, the Commission will consider these situations on a case-by-case basis. Intervenors may challenge such a deviation. A utility shall have the burden of proof in showing that a variation from the use of demand billing units is based on extraordinary circumstances.

E. Rates Affected

In the NOPR, the Commission proposed to exclude three types of utilities from the abbreviated filing procedure: A utility with rate filings pending before the Commission in which the tax component could be changed and in which the effective date of the rates at issue was no later than July 1, 1987; a utility that tendered rate applications to allow an effective date no later than July 1, 1987; or a utility whose rates already reflected the change in the Federal tax rate.

Some commenters suggested that formula reductions were unwarranted with respect to certain types of rates, specifically wheeling rates [26] and market-based rates.[27] Since the Commission is adopting only the formula rate reduction method, only rates which can be reduced by this method are included in this rule. These are requirements service rates (full or partial) and firm wheeling rates.

Several commenters argued that a formula reduction was not appropriate for settlement rates, since the income tax allowable component in these rates may not be readily determinable.[28] The formula assumes, in settlement rates, a *pro-rata* reduction in all of a utility's costs. For example, if a utility proposed revenues of $100 but settled for $75, all of the cost components submitted in support of the rate request to achieve those revenues, including income taxes allowable, would be reduced by 25 percent. The American Electric Power Service Corporation suggested a revision in the formula which would attribute the difference between the rate as filed and the settlement rate solely to a reduction in the rate of return on equity. Since it may be impossible to accurately allocate the reduction among all the different costs in a settlement rate, the Commission believes the best generic approach is to assume a *pro-rata* reduction in all the costs rather than attributing the reduction to a single

[21] *See, e.g.*, Idaho Power Company, Public Service Company of New Mexico, Utah Power and Light Company.

[22] *See, e.g.*, Allegheny Electric Cooperative, Inc., Coast Electric Power Association, *et al.*

[23] *See, e.g.*, Wholesale Distribution Customers, Arkansas Public Service Commission, Indiana Utility Consumer Counselor.

[24] *See* Order No. 144, 46 FR 26613 (May 14, 1981), FERC Stats. & Reg. [Regulations Preambles 1977–1981] ¶ 61,254 (May 6, 1981); Order No. 144–A, 47 FR 8329 (Feb. 26, 1982) and 477 FR 8991 (Mar. 2, 1981), FERC Stats. & Regs. [Regulations Preambles (1982–1985] ¶ 30,340 (Feb. 22, 1982).

[25] *See* Pacific Gas & Electric Company, Iowa Public Service Company.

[26] *See* Niagara Mohawk Power Corporation.

[27] *See* Illinois Power Company.

[28] *See, e.g.*, Detroit Edison Company, Pennsylvania Power & Light Company, Edison Electric Institute.

factor. A utility that believes that application of the formula would result in inequitable treatment is encouraged to file an application under FPA section 205.

Other commenters questioned whether the formula could be applied to settlement rates subject to moratorium provisions. For moratoriums that prohibit any rate change (increase or decrease), the Commission is adopting a procedure suggested by the Florida Power & Light Company. Adjustment to this type of rate can be made under the abbreviated procedure, but the Commission will defer the effective date of the reduction until after the moratorium term. However, if a moratorium prohibits only rate increases, the rate can be adjusted using the formula since filing for a rate decrease would not violate the moratorium.

Two commenters stated that a formula reduction in phase-in rates may not be appropriate.[29] Phase-in rates present unique problems since rates are not computed using a conventional cost-of-service. Consequently, the Commission will adjust these rates on a case-by-case basis.

F. Effective Date of Decreased Rates

The Commission proposed that, in order to use the abbreviated filing procedure, a utility would have to file by June 1 1987, so that the proposed rates would become effective July 1, 1987, when the 34 percent tax rate becomes effective.

In this final rule, the Commission is establishing a filing timetable that utilities must use. Rates under this abbreviated filing are to be effective July 1, 1987, regardless of when the rate application is filed. To implement this procedure, the Commission is waiving any notice requirements in order to make July 1 the effective date of the new rate.[30]

If a utility uses the abbreviated filing procedure, it must refund to its customers the difference between the rate unadjusted for the tax change and the new rate that reflects the tax adjustment. In order to encourage utilities to use this procedure, the Commission is not requiring that refunds be made with interest.

The Commission expects that many public utilities will file for rate reductions under this rule. In order to process these applications expeditiously, the Commission is establishing the following filing schedule which utilities must follow. The expiration of each of these filing periods will provide the Commission with an orderly and efficient basis to initiate its section 206 review of those utilities that do not file under this rule.

SCHEDULE FOR FILINGS

First letter of utility name	Filing period
A-B	No later than September 15, 1987.
C-E	No later than September 30, 1987.
F-L	No later than October 15, 1987.
M-N	No later than October 31, 1987.
O-S	No later than November 15, 1987.
T-Z	No later than November 30, 1987.

Some commenters suggested that the Commission delay the effective date of the new rates until January 1, 1988.[31] While this would be administratively simpler, the Commission is unwilling to do so since it would allow utilities to overcollect during the last six months of 1987. They further argued that the June 1 filing date proposed in the NOPR did not allow utilities sufficient time to collect the data necessary to file. The first filing period in the schedule established in the final rule gives utilities at least two months to collect this data. The Commission believes that this is sufficient time for a utility to prepare its filing.

G. Tax Rate for 1987

Since the Tax Reform Act reduced the tax rate to 34 percent effective July 1, 1987, the NOPR proposed that rate filings under the abbreviated procedure were to reflect this 34 percent tax rate.

Numerous commenters argued that if a utility were to use a split tax rate of 46 percent for the first half of 1987 and 34 percent for the remaining half, it would be violating standard accounting practices and Internal Revenue Service normalization requirements.[32] They specifically cited section 15 of the Internal Revenue Code [33] that required a blended tax rate of 40 percent for 1987. Therefore, they suggested that the Commission also use the 40 percent tax rate to determine the appropriate rate reductions.

Although the commenters are correct that income tax returns filed for the calendar year 1987 will be required to reflect the use of a blended rate, it does not necessarily follow that the blended rate is appropriate for the Commission to use for rate-making purposes. By using the split rate approach in which tax rates are assumed to change on July 1, 1987, from 46 percent to 34 percent the Commission has avoided the need to make two rate adjustments to give recognition to the tax rate change, one to reflect the blended rate of approximately 40 percent rate for calendar year taxpayers on January 1, 1987, and a second on January 1, 1988, to reflect the 34 percent rate. The split rate approach also avoids having to use a blended rate that would differ from the 40 percent rate for a utility that may have a tax year other than a calendar year. The Commission is not convinced that any distortions that may be caused by seasonal revenue patterns of a particular utility should outweigh the benefits that will be derived from the generic use of a single tax rate change date. Additionally, the Commission fails to understand those comments where concern was expressed that the use of a split rate would violate the normalization requirements of the Internal Revenue Code. The normalization requirements are annual ones that relate to certain differences between depreciation expenses on property claimed for tax purposes and that used for ratemaking and regulatory accounting purposes. The required annual normalization for property that is in service at the beginning of the year would, therefore, be provided through either one-half of the year at 46 percent and the other half at 34 percent of a full year at 40 percent since the total amount for the year under either approach would be the same. Straight line depreciation, which is used almost universally for ratemaking purposes, is simply not dependent upon seasonal patterns of revenues.[34]

[29] *See* Union Electric Company, Missouri Public Service Commission.

[30] *See* 18 CFR 35.11 (1987).

[31] *See, e.g.*, Florida Power & Light Company, Idaho Power Company.

[32] *See, e.g.*, Deloitte, Haskins & Sells, Arthur Anderson & Company, Kentucky Utilities Company, Utah Power & Light Company, Commonwealth Edison, Southern California Edison Company.

[33] I.R.C. 15(a) (1986) provides in part:

In any rate of tax imposed by this chapter changes, and if the taxable year includes the effective date of the change (unless that date is the first day of the taxable year), then

(1) Tentative taxes shall be computed by applying the rate for the period before the effective date of the change, and the rate for the period and after such date, to the taxable income for the entire taxable year; and

(2) The tax for such taxable year shall be the sum of that proportion of each tentative tax which the number of days in each period bears to the number of days in the entire taxable year.

[34] The Commission confronted this blended rate issue in West Texas Utilities. 37 FERC ¶ 61.284 (1986). In that order the Commission directed the utility to use a split tax rate approach for 1987. On rehearing, 38 FERC ¶ 61.138 (1987), the Commission allowed the use of the blended rate because the company's filing provided for rates at the 40 percent tax rate for 1987 and open-ended rates reflecting the 34 percent tax rate beginning in 1988. This rule is addressing utilities that have already been collecting at the 46 percent tax rate for the first six months of 1987.

H. Interventions

In the NOPR the Commission proposed that if any issue not directly related to the application of the formula were raised by an intervenor in the abbreviated proceeding it would be severed and automatically accorded complaint status under FPA section 206. The Central Vermont Public Service Corporation suggested that, as an inducement for utilities to file, the Commission should dismiss these issues without prejudice and require the intervenor to file the section 206 complaint separately. The Commission is adopting this suggestion. Dismissal of ancillary issues will allow utilities to make the abbreviated filing without automatically triggering FPA section 206 complaints.

I. Miscellaneous Issues

Several utility commenters suggested that the proposed rule was unnecessary because the Commission's current regulations already provide for voluntary rate reductions or Commission-initiated section 206 investigations.[35] They further suggested that the abbreviated filing procedure required too much documentation.

The Commission is promulgating this rule to encourage utilities to file for rate reductions. The formula established is easy to use and should provide accurate results. Furthermore, the scope of the Commission's review will be limited, and issues not relating to the formula will be dismissed without prejudice.

The Commission is adopting a suggestion of the Consumers Power Company to reduce the filing requirements. The Commission proposed to require utilities to file billing determinants for each of the 12 months immediately before and each of the 12 months immediately after the proposed effective date of the rate change. Billing determinants are a measure of the demand each customer group places on a utility. Instead, in this rule, the Commission is requiring utilities to file billing determinants only from the most recent 12 months available. The Commission has determined that future billing determinants are not needed to evaluate the applications tendered pursuant to this rule.

Several commenters urged the Commission to make the abbreviated filing procedure mandatory.[36] The Commission has no statutory authority to require utilities to make rate reductions under FPA section 205.[37] The Commission does intend, however, to initiate FPA section 206 proceedings against utilities that it believes are overcollecting as a result of the reduction of the tax rate.

Several commenters suggested that the Commission waive filing fees under the abbreviated procedure.[38] The Commission is adopting this suggestion and is waiving filing fees to encourage the use of this voluntary procedure.

Otter Tail Power Company suggested that the rule should exempt utilities with minimal FERC revenues from the filing requirements. Since the abbreviated filing procedure is voluntary, creating such an exemption is unneccessary.

Although commenters urged the Commission to initiate procedures to determine the effects of the tax rate change on oil pipelines as well as electric utilities, this suggestion is outside the scope of this rulemaking.[39] For the present, the Commission will continue to deal with oil pipeline rates on a case-by-case basis.

The Florida Power & Light Company suggested that the Commission establish a single formula to account for any future changes in the Federal income tax rate. The Commission declines to adopt the suggestion. If Congress changes the Federal corporate income tax rate in the future, the Commission will evaluate the change at that time.

The Central Illinois Public Service Company suggested that the Commission not take any action on the rates of a utility until the jurisdictional state commission has had an opportunity to adjust retail rates to reflect the Tax Reform Act. The Commission also declines to adopt this suggestion. The Commission has a statutory obligation to ensure that electric wholesale rates are just and reasonable. If it were to wait for states to act first, it would be abdicating that responsibility.

III. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA)[40] generally requires a description and analysis of final rules that will have a significant economic impact on a substantial number of small entities.[41] Specifically, if an agency promulgates a final rule under the Administrative Procedure Act (APA)[42], a final RFA analysis must contain (1) a statement of the need for and objectives of the rule, (2) a summary of the issues raised by the public comments in response to any initial regulatory flexibility analysis, and the agency response to those comments, and (3) a description of significant alternatives to the rule consistent with the state objectives of the applicable statute that the agency considered and ultimately rejected. An agency is not required to make an RFA analysis, however, if it certifies that a rule will not have "a significant economic impact on a substantial number of small entities."[43]

In the proposed rule the Commission certified that the rule would not have a significant impact on a substantial number of small entities. In addition, the rule is voluntary and will be beneficial to public utilities by providing an expedited filing mechanism which they might use to reflect the reduction in the Federal corporate income tax rate. Accordingly, the Commission certifies that this rule will not have a "significant economic impact on a substantial number of small entities."

IV. Paperwork Reduction Act

The Paperwork Reduction Act, 44 U.S.C. 3501–3520 (1982) and the Office of Management and Budget's (OMB) regulations, 5 CFR Part 1320 (1987), require that OMB approve certain information collection requirements imposed by agency rules. On June 8, 1987, the information collection provisions in this final rule were approved by OMB and assigned Control Number 1902–0096.

V. Effective Date

The Administrative Procedure Act permits an agency to make a substantive rule effective prior to 30 days after its publication in the **Federal Register** if the rulemaking relieves a restriction or if the agency finds good cause to waive the notice period and publishes this finding as part of the rule.[44]

The required finding of good cause for waiver of the 30–day notice period with respect to this rule is based upon the fact that the filing procedure adopted in this rule is voluntary. By making the rule effective immdiately, the Commission is allowing utilities which have already compiled the necessary data to make immediate filings. This will enable Commission staff to expedite rate

[35] *See* Electric Utilities, Cincinnati Gas & Electric Company.

[36] *See, e.g.*, Coast Electric Power Association, *et al.*, Allegheny Electric Cooperative, Inc., Borough of Madison, New Jersey.

[37] Rate filings under Section 205 of the Federal Power Act are at the discretion of the utility.

[38] *See, e.g.*, Cincinnati Gas & Electric Company, Florida Power & Light Company.

[39] *See* Air Transport Association of America, Robert Abrams, Attorney General of New York.

[40] 5 U.S.C. 601–612 (1982).

[41] *Id.* 604(a).

[42] *Id.* at 553.

[43] *Id.* 605(b).

[44] 5 U.S.C. 553(d) (1982).

reductions to customers. In addition, since the Commission is also relieving a restriction on its normal filing requirements for rate decrease filings, the Commission finds good cause to make the rule effective upon issuance.

List of Subjects

18 CFR Part 35

Electric power rates, Electric utilities, Reporting and recordkeeping requirements.

18 CFR Part 389

Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission amends Parts 35 and 389, Title 18, Chapter I, Code of Federal Regulations as set forth below.

By the Commission.

Kenneth F. Plumb,

Secretary.

PART 35—FILING OF RATE SCHEDULES

1. The authority citation for Part 35 is revised to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. No. 12009, 3 CFR 1978 Comp., p. 142; Independent Offices Appropriations Act, 31 U.S.C. 9701 (1982); Federal Power Act, 16 U.S.C. 791a–825r (1982); Public Utility Regulatory Policies Act, 16 U.S.C. 2601–2645 (1982).

2. In § 35.13, paragraph (a)(2)(ii) is revised to read as follows:

§ 35.13 Filing of changes in rate schedules.

* * * * *

(a) *General rule.* * * *

(2) *Abbreviated filing requirements.* * * *

(ii) *For rate schedule changes other than rate increases.* (A) Except as provided in paragraph (a)(2)(ii)(B) of this section, any utility that files a rate schedule change that does not provide for a rate increase or that provides for a rate increase that is based solely on change in delivery points, a change in delivery voltage, or a similar change in service, must submit with its filing only the information required in paragraphs (b) and (c) of this section.

(B) Any utility that files a rate schedule change that provides for a rate decrease under § 35.27 of this part must submit with its filing only the information required by § 35.27 of this part.

* * * * *

3. Section 35.27 is added to read as follows:

§ 35.27 Changes of rates relating to changes in the Federal corporate income tax rate.

(a) *Purpose.* The abbreviated filing procedure and formula for this section are intended to permit a public utility to make an adjustment to its rates to reflect the decrease in the Federal corporate income tax rate pursuant to the Tax Reform Act of 1986. This abbreviated filing procedure and formula would be used by a public utility in lieu of a more comprehensive rate filing under § 35.13 of this part concerning changes in rate schedules.

(b) *Applicability.* (1) Except as provided in paragraph (b)(2), and (b)(3) of this section, a public utility may use the abbreviated filing procedure and formula in this section to adjust its rates to reflect the decrease in the Federal corporate income tax rate.

(2) If a public utility has a rate case currently pending before the Commission in which the change in the Federal corporate income tax rate can be reflected, the public utility may not use this section to adjust its rates.

(3) If a public utility has a rate accepted for filing by the Commission that provides for the automatic adjustment of its rates to reflect, without prior hearing, increases or decreases in the Federal corporate income tax rate, it may not use this section to adjust its rates.

(c) *Formula for rate adjustment to reflect changes in Federal corporate income tax rate.* (1) For purposes of establishing a rate reduction designed to reflect a percentage decrease in the Federal corporate income tax rate, a public utility must use the following formula:

$$K = \frac{D - D(E/F)}{I}$$

where:

D = Income taxes allowable included in rates in effect on the date that the change in Federal corporate income tax rate becomes effective.

E = Composite income tax factor using the new Federal corporate income tax rate and the effective state income tax rate from the rate application docket upon which existing rates are based. This is computed by the following formula:

$$\frac{\text{composite marginal income tax rate}}{1 - \text{composite marginal income tax rate}}$$

F = Composite income tax factor using the old Federal corporate income tax rate. This is computed by the same formula used for determining E.

I = Test period billing units from rate application docket upon which the rates that are in effect are based. Absent extraordinary circumstances a public utility must use demand billing units. This information is usually available in Statement BG of the rate application and/or settlement or compliance documents.

K = Required rate reduction per billing demand unit.

(2) A separate rate calculation using this formula is required for each type of service a public utility provides and for each individual customer group thereunder.

(d) *Abbreviated filing requirements for rate schedule changes due to reductions in the Federal corporate income tax rate.* Any public utility that files a rate schedule change providing for a rate decrease that is based on a change in the Federal corporate income tax rate must submit with its finding only the information required in paragraphs (d)(1) and (d)(2) of this section.

(1) *General information.* Any public utility filing under this section must file the following general information:

(i) A list of documents submitted with the rate schedule change;

(ii) The date on which the public utility proposes to make the rate schedule effective;

(iii) The names and addresses of persons to whom a copy of the rate schedule change has been mailed;

(iv) A brief description of the rate schedule change;

(v) A statement of the reasons for the rate schedule change;

(vi) A showing that all requisite agreement to the rate schedule change, or to the filing of the rate schedule change, including any agreement required by contract, has in fact been obtained;

(vii) Computations showing the application of each step of the formula methodology;

(viii) Supporting workpapers including all intermediate calculations necessary under the formula with narrative explanation where appropriate, and details on the derivation of all formula inputs together with copies of all statements and workpapers used as source documents;

(ix) Detailed explanations of all adjustments to data shown on supporting statements (*e.g.*, adjustments to exclude South Georgia provisions from Federal income taxes allowable);

(x) Form of notice stating that the rates are to be effective July 1, 1987;

(xi) Revised rate sheets reflecting the proposed rate reduction for every rate schedule to which the reduction is proposed;

(xii) A list of any customers or services for which no reduction is proposed and the reasons for not reducing these rates; and

(xiii) A form of notice suitable for publication in the **Federal Register** in accordance with § 35.8 of this part.

(2) *Information relating to the effect of the rate schedule change.* Any public utility filing under paragraph (d)(1) of this section must also file the following information or materials:

(i) A table or statement comparing sales and services and revenues from sales and services under the rate schedule to be superseded or supplemented and under the rate schedule change, by applying the components of each such rate schedule to the billing determinants for each class of service, for each customer, and for each delivery point or set of delivery points that constitute a billing unit:

(A) For each of the twelve most recent available months prior to the effective date of the rate schedule change; and

(B)(*1*) If in the immediately preceding rate change filing the public utility filed Statements BG and BH under paragraph (h) of § 35.13 of this part for Period I, for each of the twelve months of Period I; and

(*2*) If in the immediately preceding rate change filing Period II is the test period, for each of the twelve months of Period II.

(ii) A comparison of the rate schedule change and the public utility's other rates for similar wholesale services.

(e) *Hearing issues.* (1) The only issues that may be raised by Commission staff or any intervenor under the procedures established in this section are:

(i) Whether or not the public utility may file under this section,

(ii) Whether or not the formula in § 35.27 has been properly applied, and

(iii) Whether or not the correct information was used in that formula.

(2) Any other issue raised will be severed from the proceeding and dismissed without prejudice.

(f) *Effective date.* Rates proposed under the filing are to have a July 1, 1987 effective date. A public utility that chooses to use the abbreviated filing procedure and formula contained in this section must make its filing according to the following schedule:

SCHEDULE FOR FILINGS

First letter of utility name	Filing period
A-B	No later than September 15, 1987.
C-E	No later than September 30, 1987.
F-L	No later than October 15, 1987.
M-N	No later than October 31, 1987.
O-S	No later than November 15, 1987.
T-Z	No later than November 30, 1987.

(g) *Refunds.* A utility filing under this procedure must refund to its customers the difference between the rates unadjusted for the tax change and the new rate that reflects the tax adjustment. These refunds will be made without interest.

(h) *Waiver of filing fees.* Any filing under this section may be filed without the filing fee required by § 35.0 of this part.

PART 389—OMB CONTROL NUMBERS FOR COMMISSION INFORMATION COLLECTION REQUIREMENTS

4. The authority citation for Part 389 continues to read as follows:

Authority: Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520) (1982).

§ 389.101 [Amended]

5. The table of OMB Control Numbers in § 389.101(b) is amended by inserting "35.27" in numerical order in the section column and "0096" in the corresponding position in the OMB Control Number column.

Appendix A

Note: This appendix will not appear in the *Code of Federal Regulations.*

1. Arthur Young
2. Public Service Company of Oklahoma
3. Cities and Villages of Algoma, *et al.*
4. American Electric Power Service Corporation
5. Air Transport Association of America
6. Borough of Madison, New Jersey
7. Cincinnati Gas & Electric Company
8. Public Service Company of New Mexico
9. Illinois Power Company
10. Philadelphia Electric Company
11. Consumers Power Company
12. Missouri Public Service Commission
13. Arkansas Public Service Commission
14. Utah Power & Light Company
15. Allegheny Electric Cooperative, Inc.
16. Mississippi Power Company
17. New England Power Company
18. Union Electric Company
19. American Public Power Association
20. Wholesale Distribution Customers
21. Public Systems
22. Niagara Mohawk Power Corporation
23. Iowa Power & Light Company
24. Department of Water Resources of the State of California
25. Kentucky Utilities Company
26. Pacific Gas & Electric Company
27. Central Illinois Public Service Company
28. Carolina Power & Light Company
29. Pennsylvania Power & Light Company
30. Saffer Utility Consultants, Inc.
31. Detroit Edison Company
32. Southwestern Electric Power Company
33. Florida Power & Light Company
34. Idaho Power Company
35. Robert Abrams, Attorney General of New York
36. Public Service Electric & Gas Company
37. Electric Utilities
38. Golden Spread Electric Cooperative, Inc., *et al.*
39. Central Vermont Public Service Corporation
40. Coast Electric Power Association, *et al.*
41. Colorado Public Utilities Commission
42. Deloitte, Haskins & Sells
43. Edison Electric Institute
44. Public Service Company of Colorado
45. Arthur Andersen & Company
46. Arizona Public Service Company
47. Iowa Public Service Company
48. Indiana Utility Consumer Counselor
49. Otter Tail Power Company
50. Commonwealth Edison Company
51. Sierra Pacific Power Company
52. Southern California Edison Company

[FR Doc. 87–15090 Filed 7–1–87; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 522 and 556

Implantation or Injectable Dosage Form New Animal Drugs Not Subject to Certification; Trenbolone Acetate

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Roussel-Uclaf, Division Agro-Veterinaire, providing for use of trenbolone acetate implant for increased rate of weight gain and improved feed efficiency in growing-finishing feedlot heifers and improved feed efficiency in growing-finishing feedlot steers. FDA is also amending the regulations to provide for safe concentrations of trenbolone residues in uncooked edible tissues of cattle.

EFFECTIVE DATE: July 2, 1987.

FOR FURTHER INFORMATION CONTACT: Jack C. Taylor, Center for Veterinary Medicine (HFV–126), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5247.

SUPPLEMENTARY INFORMATION: Roussel-Uclaf, Division Agro-Veterinaire, 163 Avenue Gambetta, 75020, Paris, France, is sponsor of NADA 138–612 which

provides for use of a slow release implanted anabolic agent, trenbolone acetate, for increased rate of weight gain and improved feed efficiency in growing-finishing feedlot heifers (Finaplix®-H) and improved feed efficiency in growing-finishing feedlot steers (Finaplix®-S). The NADA is approved and the regulations are amended by adding new 21 CFR 522.2476 to reflect the approval. In addition, the regulations are amended by adding new 21 CFR 556.739 to provide for safe concentrations of trenbolone residues in uncooked edible tissues of cattle. The basis for approval is discussed in the freedom of information summary.

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

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. This action was considered under FDA's final rule implementing the National Environmental Policy Act (21 CFR Part 25).

List of Subjects

21 CFR Part 522

Animal drugs.

21 CFR Part 556

Animal drugs, Foods.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Parts 522 and 556 are amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR Part 522 continues to read as follows:

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

2. By adding new § 522.2476 to read as follows:

§ 522.2476 Trenbolone acetate.

(a) *Specifications.* Each pellet for implanting contains 20 milligrams of trenbolone acetate.

(b) *Sponsor.* See 012579 in § 510.600(c) of this chapter.

(c) *Related tolerances.* See § 556.739 of this chapter.

(d) *Conditions of use*—(1) *Heifers* 200 milligrams trenbolone acetate (10 pellets of 20 milligrams each) for increased rate of weight gain and improved feed efficiency in growing-finishing feedlot heifers, use last 63 days prior to slaughter.

(2) *Steers.* 140 milligrams trenbolone acetate (7 pellets of 20 milligrams each) for improved feed efficiency in growing-finishing feedlot steers, use 126 days prior to slaughter, should be reimplanted once after 63 days.

(3) *Limitations.* Not for use in animals intended for subsequent breeding or in dairy animals. Implant in ear only.

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

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

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

4. By adding new § 556.739 to read as follows:

§ 556.739 Trenbolone.

A tolerance for total trenbolone residues in uncooked edible tissues of cattle is not needed. The safe concentration for total trenbolone residues in uncooked edible tissues of cattle is 50 parts per billion (ppb) in muscle, 100 ppb in liver, 300 ppb in kidney, and 400 ppb in fat. A tolerance refers to the concentration of marker residues in the target tissue used to monitor for total drug residues in the target animals. A safe concentration refers to the total residue concentration considered safe in edible tissues.

Dated: June 23, 1987.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 87-14987 Filed 7-1-87; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Lasalocid

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Hoffmann-La Roche, Inc., providing for use of a free-choice mineral-vitamin Type C lasalocid feed for pasture cattle.

EFFECTIVE DATE: July 2, 1987.

FOR FURTHER INFORMATION CONTACT: Jack C. Taylor, Center for Veterinary Medicine (HFV-126), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-5247.

SUPPLEMENTARY INFORMATION: Hoffmann-La Roche, Inc., 340 Kingsland St., Nutley, NJ 07110, is sponsor of supplemental NADA 96-298, which provides for use of a 68-gram-per-pound Bovatec (lasalocid) Type A article to make a Type C lasalocid feed for slaughter, stocker, feeder cattle, and dairy and beef replacement heifers on pasture for increased rate of weight gain. The drug is consumed at a rate of 60 to 200 milligrams per head daily in a free-choice, self-limiting supplemental feed containing 1.06 percent lasalocid.

Based on the data and information submitted, the supplement is approved and the regulations in 21 CFR 558.311 are amended by revising paragraph (b), by redesignating existing paragraph (e) as paragraph (e)(1) and by redesignating existing paragraphs (e)(1) through (e)(11) as paragraphs (e)(1)(i) through (e)(1)(xi), respectively, and by adding new paragraph (e)(2). The basis for approval is discussed in the freedom of information summary.

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

The agency has determined under 21 CFR 25.24(d)(1)(iii) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

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

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

2. Section 558.311 is amended by revising paragraph (b), by redesignating existing paragraph (e) as paragraph (e)(1) and by redesignating existing paragraphs (e)(1) through (e)(11) as paragraphs (e)(1)(i) through (e)(1)(xi), respectively, and by adding new paragraph (e)(2), to read as follows:

§ 558.311 Lasalocid.

* * * * *

(b) *Approvals.* Type A medicated articles approved for sponsors identified in § 510.600(c) of this chapter for use as in paragraph (e) of this section as follows:

(1) 3.0, 3.3, 3.8, 4.0, 4.3, 4.4, 5.0, 5.1, 5.5, 5.7, 6.0, 6.3, 6.7, 7.2, 7.5, 8.0, 8.3, 10.0, 12.5, 15, 20, and 50 percent activity to No. 000004 for use as in paragraphs (e)(1) (i), (ii), (iii), (iv), and (x) of this section.

(2) 15 percent activity to No. 000007 as provided by No. 000004 for use as in paragraph (e)(1)(v) of this section.

(3) 15, 20, 33.1, and 50 percent activity to No. 000004 for use in cattle feeds as in paragraphs (e)(1) (vi), (vii), (ix), and (xi) of this section, and for use in sheep as in paragraph (e)(1)(viii) of this section.

(4) 15 percent activity to No. 000004 for use in free-choice, mineral-vitamin Type C ruminant feeds as in paragraph (e)(2) of this section.

* * * * *

(e) * * *

(2) It is used as a free-choice mineral Type C feed as follows:

(i) *Specifications.*

Ingredient	Percent	International feed No.
Defluorinated Phosphate (20.5 percent Calcium, 18.5 percent Phosphorus)	35.9	6-01-080
Sodium Chloride (Salt)	20.0	6-04-152
Calcium Carbonate (38 percent Calcium)	18.0	6-01-069
Cottonseed Meal	10.0	5-01-621
Potassium Chloride	3.0	6-03-755
Selenium Premix (0.02 percent Selenium) [1]	3.0	.....
Dried Cane Molasses	2.5	4-04-695
Magnesium Sulfate	1.7	6-02-758
Vitamin Premix [1]	1.4	.....
Magnesium Oxide	1.2	6-02-756
Potassium Sulfate	1.2	6-06-098
Trace Mineral Premix [1]	1.04	.....
Bovatec Premix (68 grams per pound)	1.06	.....

[1] Content of the vitamin and trace mineral premixes may be varied; however, they should be comparable to those used by the firm for other free-choice feeds. Formulation modifications require FDA approval prior to marketing. The amount of selenium and ethylenediamine dihydroiodide (EDDI) must comply with published regulations. For selenium (21 CFR 573.920): up to 120 parts per million in a mixture for free-choice feeding at a rate not to exceed an intake of 3 milligrams per head per day. For EDDI (51 FR 11483; April 3, 1986): 10 milligrams per head per day.

(ii) *Amount.* 68 grams per ton (0.0075 percent).

(iii) *Indications for use.* Cattle, for increased rate of weight gain.

(iv) *Limitations.* For pasture cattle (slaughter, stocker, feeder cattle, and dairy and beef replacement heifers); feed continuously on a free-choice basis at a rate of 60 to 200 milligrams lasalocid per head per day; each use of this Type C free-choice feed must be the subject of an approved FD-1900 as provided in § 510.455 of this chapter.

(v) *Sponsor.* See No. 000004 in § 510.600(c) of this chapter.

Dated: June 25, 1987.

Donald A. Gable,

Acting Associate Director for New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 87-14986 Filed 7-1-87; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8145]

Income Tax; Allocation of Interest Expense Among Expenditures

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to the allocation of interest expense among a taxpayer's expenditures. Changes to the applicable tax law were made by the Tax Reform Act of 1986 (the "Act"). The temporary regulations affect taxpayers subject to the passive loss limitation, the investment interest limitation, or the disallowance of deductions for personal interest and provide them with the guidance needed to comply with the law. The text of the temporary regulations set forth in this document also serves as the text of the proposed regulations for the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register.**

EFFECTIVE DATE: The temporary regulations are effective with respect to interest expense paid or accrued in taxable years beginning after December 31, 1986.

FOR FURTHER INFORMATION CONTACT: Michael J. Grace of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224, Attention: CC:LR:T, (202) 566-3288 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document amends the Income Tax Regulations (26 CFR Part 1) to provide temporary rules relating to the allocation of interest expense for purposes of applying the limitations on passive activity losses and credits, investment interest, and personal interest. The temporary regulations reflect the amendment of the Internal Revenue Code of 1986 (the "Code") by sections 501 and 511 of the Act (100 Stat. 2233 and 2244), which added sections 469 (relating to the limitation on passive activity losses and credits) and 163(h) (relating to the disallowance of deductions for personal interest) and amended section 163(d) (relating to the limitation on investment interest).

Section 469 provides that deductions from passive activities generally may not offset income other than passive income. Section 163(d)(1) limits the investment interest deduction of a noncorporate taxpayer for any taxable year to the taxpayer's net investment income for the taxable year. Section 163(h)(1) disallows deductions for personal interest paid or accrued by a noncorporate taxpayer. Qualified residence interest described in section 163(h)(3) does not constitute personal interest.

Section 469(e)(1)(A)(i)(III) provides that in determining the income or loss from any passive activity there shall not be taken into account interest expense properly allocable to certain items of

gross income including gross income from interest, dividends, annuities, or royalties not derived in the ordinary course of a trade or business. Section 469(k)(4) provides that the Secretary of the Treasury shall prescribe such regulations as may be necessary or appropriate to carry out the provisions of section 469, including regulations which provide for the determination of the allocation of interest expense for purposes of section 469.

The Joint Explanatory Statement of the Committee of Conference accompanying the Act (the "Conference Report") states that the conferees anticipate the Treasury will issue regulations providing guidance to taxpayers with respect to interest allocation. The Conference Report further provides that these regulations should be consistent with the purpose of the passive loss rules to prevent sheltering of income from personal services and portfolio investments with passive losses, and that the regulations should attempt to avoid inconsistent allocations of interest deductions under different Code provisions.

Although regulations allocating interest expense are specifically authorized by section 469(k)(4), these regulations are being published under section 163 because it is believed most taxpayers seeking guidance concerning the tax treatment of interest expense will first consult the regulations under section 163.

Scope of Rules

These temporary regulations prescribe rules for allocating interest expense for purposes of applying the passive loss limitation and the limitations on investment interest and personal interest. Except as otherwise specifically provided, these rules do not control the allocation of interest for other purposes (e.g., the windfall profit tax). Other limitations on the deductibility of interest expense generally apply without regard to the manner in which interest expense is allocated under the temporary regulations. Thus, for example, section 265(a)(2) may disallow deductions for interest expense allocated under the temporary regulations to an expenditure in connection with a trade or business producing taxable income. Similarly, section 263A(f) may require the capitalization of interest allocated under the temporary regulations to a noncapital expenditure. (The temporary regulations provide, however, that interest expense allocated to a personal expenditure cannot be capitalized.) Interest expense may also be deferred to a later year by one of the other limitations on the deductibility of interest (by the operation, for example, of section 267(a)(2)). In that case, the interest expense is allocated to expenditures under the temporary regulations as it would have been had the deferral provision not applied, but is not taken into account for purposes of applying the passive loss, investment interest and personal interest limitations until the taxable year in which the deferral provision ceases to apply. Qualified residence interest is deductible without regard to the manner in which such interest is allocated under these rules.

Allocation Rules in General

Interest expense on a debt is allocated in the same manner as the debt to which the interest relates is allocated. Debt is allocated by tracing disbursements of the debt proceeds to specific expenditures. Thus, the allocation of interest is not affected by the use of an interest in any property to secure repayment of the debt to which the interest relates. The regulations provide specific rules for determining the manner in which debt is allocated if the debt proceeds are deposited to the borrower's account. Rules are also provided for cases in which debt proceeds are not disbursed to the borrower (as in the case of seller financing) or in which the borrower receives debt proceeds in cash.

Interest expense generally is subject to the limitation applicable to the expenditure to which the underlying debt is allocated. Thus, for example, if debt proceeds are allocated to an expenditure in connection with a passive activity, any otherwise allowable deduction for interest expense on the debt is subject to the passive loss limitation.

Specific Rules for Allocation of Debt

If debt proceeds are deposited to the borrower's account, and the account also contains unborrowed funds, the debt generally is allocated to expenditures by treating subsequent expenditures from the account as made first from the debt proceeds to the extent thereof. If the proceeds of two or more debts are deposited in the account, the proceeds are treated as expended in the order in which they were deposited.

There are two exceptions to this rule. First, a taxpayer may treat any expenditure made from an account within 15 days after debt proceeds are deposited in the account as made from those proceeds to the extent thereof. Second, if an account consists solely of debt proceeds and interest income on the proceeds, the taxpayer may treat any expenditure as made first from the interest income to the extent of such income at the time of the expenditure.

Special rules apply if the debt proceeds are not disbursed to the borrower. If the lender disburses the proceeds directly to a person selling property or providing services to the borrower, the disbursement is treated as an expenditure from the debt proceeds. If the debt does not involve cash disbursements (as in the case of assumptions or seller financing), the debt is treated as if the borrower had made an expenditure from the debt proceeds for the property, services, or other purpose to which the debt relates.

A taxpayer may treat any cash expenditure made within 15 days after receiving debt proceeds in cash as made from the debt proceeds. In any other case, debt proceeds received in cash are treated as used to make personal expenditures.

Treatment of Amounts Held in an Account

Amounts held in an account are treated as property held for investment, regardless of whether the account bears interest. Thus, debt is allocated to an investment expenditure when the debt proceeds are deposited in an account. Debt allocated to such an investment expenditure is reallocated in accordance with the rules described above when the debt proceeds are expended from the account. In general, the reallocation occurs on the date of the expenditure, but the taxpayer may elect to reallocate the debt as of the first day of the month in which the expenditure occurs (or the day on which the debt proceeds are deposited in the account, if later). A taxpayer may use this first-day-of-the-month convention only if all other expenditures from the account during that month are similarly treated.

Repayments and Refinancings

Debt repayments are applied against the debt in a manner intended to minimize the limitations on the deductibility of interest expense. For example, if a debt is allocated to a personal expenditure and an expenditure in connection with a passive activity, a repayment will be applied first against the portion of the debt allocated to the personal expenditure.

A special rule applies in the case of a repayment made from the proceeds of another debt. To the extent the proceeds of the other debt are used for the repayment, such debt is allocated to the expenditures to which the repaid debt was allocated. The normal allocation

rules apply, however, to the extent proceeds of the debt are used for purposes other than the repayment.

Reallocation of Debt

Debt allocated to an expenditure properly chargeable to capital account with respect to an asset must be reallocated whenever the asset is sold or the nature of the use of the asset changes. For example, if a debt-financed asset used in a trade or business is converted to personal use, the debt must be reallocated to a personal expenditure. If the proceeds from the disposition of an asset exceed the amount of debt allocated to the asset, the proceeds from the disposition are treated in the same manner as an account containing both borrowed and unborrowed funds. The extent to which expenditures from this account are made from debt proceeds is determined under the normal allocation rules. A similar rule applies in the case of deferred payment sales.

Debt in Connection with Passthrough Entities

Interest expense of partnerships and S corporations, and of partners and S corporation shareholders, is generally allocated in the same manner as the interest expense of other taxpayers. Special rules will be provided, however, for cases in which partnerships and S corporations distribute debt proceeds to interest holders in the entity, and for cases in which taxpayers incur debt to acquire or increase their interests in partnerships or S corporations. The treatment of these transactions is not addressed in these temporary regulations because the Internal Revenue Service is still studying the interest-allocation issues such transactions raise and invites public comment.

Mass Asset Situations

The temporary regulations provide that debt allocated to an asset must be reallocated when the asset is sold or the nature of the use of the asset changes (for example, from use in a passive activity to use in a former passive activity). The Internal Revenue Service realizes that the application of this rule may be difficult in the case of taxpayers who continually acquire and dispose of debt-financed inventory or other assets and invites public comment on possible ways to facilitate administrability of the rule.

Transitional Rules

The temporary regulations apply to interest expense paid or accrued in taxable years beginning after December 31, 1986, regardless of when the underlying debt was incurred. In certain cases, however, the manner in which interest expense is allocated may be determined under a transitional rule.

The first transitional rule applies to expenditures made on or before August 3, 1987. Under this transitional rule, a taxpayer may treat any expenditure made from an account within 90 days after debt proceeds are deposited in the account or any cash expenditure made within 90 days after receiving debt proceeds in cash as made from the debt proceeds to the extent thereof. As previously described, the rules applicable to expenditures made after August 3, 1987 permit taxpayers to treat an expenditure in this manner only if it is made within 15 days after the debt proceeds are deposited or received in cash.

Under the second transitional rule, debt outstanding on December 31, 1986, that is properly attributable to a business or rental activity is allocated to the assets held for use or sale to customers in such business or rental activity. Debt is properly attributable to a business or rental activity for purposes of this transitional rule if the taxpayer has properly and consistently deducted interest expense (including interest expense subject to limitation under section 163(d) before its amendment by section 511 of the Act) on the debt on Schedule C, E, or F of Form 1040 in computing income or loss from the business or rental activity for taxable years beginning before January 1, 1987.

Debt subject to the second transitional rule must be allocated among assets in a reasonable and consistent manner. Examples of allocations of debt that are not reasonable and consistent include (i) an allocation of debt to goodwill in excess of the basis of the goodwill, and (ii) an allocation of debt to an asset in excess of the fair market value of the asset if the amount of debt allocated to any other asset is less than the fair market value (lesser of basis or fair market value in the case of goodwill) of such other asset. A market value in the case of goodwill) of such other asset. A taxpayer shall specify the manner in which debt is allocated under this second transitional rule by attaching an allocation statement to the taxpayer's return for the first taxable year beginning after December 31, 1986. If the taxpayer does not file an allocation statement or fails to allocate the debt in a reasonable and consistent manner, the Commissioner will allocate the debt.

Debt allocated to an asset under the second transitional rule may be repaid or refinanced after December 31, 1986, or there may be a disposition or change in use of the asset after that date. The effect of these events is determined under the normal repayment, refinancing and reallocation rules. Thus, for example, if an asset is sold after December 31, 1986, any debt allocated to the asset under the second transitional rule must be reallocated. Similarly, a repayment or refinancing of debt subject to the transitional rule is treated in the same manner as a repayment or refinancing of any other debt.

The second transitional rule does not apply if the taxpayer elects to allocate debt outstanding on December 31, 1986, based on the use of the debt proceeds (taking into account the first transitional rule). The election not to apply the transitional rule is made by attaching an election statement to the taxpayer's return for the first taxable year beginning after December 31, 1986.

In addition, the applicability of the transitional rule may be limited in the case of debt of a partnership or S corporation used to fund a distribution or loan to a partner or shareholder. Transitional issues with respect to such debt will be addressed in the special rules to be provided for passthrough entities.

Alternative Allocation Methods and Possible Antiabuse Rules

In developing the tracing method of interest allocation in these temporary regulations, the Internal Revenue Service seriously considered allocation based on pro rata apportionment of interest expense among a taxpayer's assets. Pro rata apportionment accords with the notion that money is fungible, regardless of whether borrowed or earned, and is used in certain Code provisions such as section 864(e). Depending on the apportionment base, recordkeeping requirements may be less burdensome than under a tracing regime. An apportionment approach may also result in lower transaction costs because taxpayers would have less incentive to arrange borrowings and expenditures based on the tax consequences.

Despite these possible advantages, the Service rejected pro rata apportionment for a number of reasons. First, there is not theoretically or practically satisfactory overall apportionment base. The use of either adjusted or unadjusted basis as an apportionment base could distort the amount of debt associated with particular assets. Apportionment based

on the fair market value of assets might result in more appropriate allocations, but would also require burdensome and otherwise unnecessary appraisals of asset value.

Second, in order to apportion the proper amount of interest expense to consumer assets, taxpayers would be required to determine and report either the basis or fair market value of all consumer assets. Many taxpayers would consider such requirements unduly intrusive and burdensome. In addition, it would be extremely difficult to enforce such requirements.

Third, any general apportionment base would have to be adjusted in various ways in order to allocate a reasonable amount of interest to noncapital expenditures. For example, to maintain the integrity of the rule that personal interest is not deductible, it might be necessary to apportion some interest to personal consumption. Similarly, labor-intensive businesses would be disadvantaged relative to capital-intensive businesses unless expenditures for noncapital items such as salaries, supplies, and research and development were capitalized for interest allocation purposes.

Finally, a rule apportioning debt among all of a taxpayer's assets would distort certain economic decisions by ignoring the fact that such decisions are made by comparing the marginal cost of borrowing, the marginal return from an expenditure, and the opportunity costs of liquidating other assets in order to make the expenditure with unborrowed funds.

Despite the practical and theoretical problems that a comprehensive pro rata apportionment system would present, the Service is not foreclosing the possibility that future regulations may impose some form of pro rata apportionment.

The Service recognizes that some taxpayers will attempt to manipulate the tracing rules in the temporary regulations to maximize their interest deductions. For example, a sole proprietor may be able to maximize the amount of fully deductible interest expense allocated to trade or business expenditures by borrowing to pay business expenses and making personal expenditures from business receipts. Similarly, upper-income taxpayers may have sufficient liquidity to make business and investment expenditures from borrowed funds and personal expenditures from unborrowed funds. Finally, the fact that the allocation of interest expense is not affected by the use of any property to secure repayment of a debt may permit manipulation. For example, a taxpayer may use unborrowed funds to purchase an automobile for personal use, incur debt secured by that asset, and use the debt proceeds to replace the unborrowed funds.

The Service therefore is considering rules to prevent abuses of the tracing method. For example, taxpayers whose gross income and total interest expense exceed specified amounts might be treated as having a minimum amount of personal interest. Alternatively, such taxpayers might be required to allocate interest expense based on pro rata apportionment. The rule that the security for a debt is irrelevant for purposes of allocating interest expense on the debt might be modified in certain cases involving debt secured by an asset and incurred within a short period of time after the purchase of the asset. The Service invites comment on these approaches and on other possible methods of preventing abuses of the rules in the temporary regulations.

Special Analyses

The Commissioner of Internal Revenue has determined that this temporary rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required. A general notice of proposed rulemaking is not required by 5 U.S.C. 553 for temporary regulations. Accordingly, the temporary regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

The collection of information requirements contained in this regulation have been submitted to the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1980. These requirements have been approved by OMB.

Drafting Information

The principal author of these temporary regulations is Michael J. Grace of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing regulations on matters of both substance and style.

List of Subjects

26 CFR 1.61-1—1.281-4

Income taxes, Taxable income, Deductions, Exemptions.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of amendments to the regulations

For the reasons set out in the preamble, Subchapter A, Part 1, and Subchapter H, Part 602, of Title 26, Chapter 1 of the Code of Federal Regulations are amended as set forth below:

Income Tax Regulations

Part 1—[Amended]

Paragraph 1. The authority for Part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805. * * * Section 1.163-8T also issued under 26 U.S.C. 469 (k)(4).

Par. 2. The following new section is added to Part 1 in the appropriate place:

§ 1.163-8T Allocation of interest expense among expenditures (temporary).

(a) *In general*—(1) *Application.* This section prescribes rules for allocating interest expense for purposes of applying sections 469 (the "passive loss limitation") and 163 (d) and (h) (the "nonbusiness interest limitations").

(2) *Cross-references.* This paragraph provides an overview of the manner in which interest expense is allocated for the purposes of applying the passive loss limitation and nonbusiness interest limitations and the manner in which interest expense allocated under this section is treated. See paragraph (b) of this section for definitions of certain terms, paragraph (c) for the rules for allocating debt and interest expense among expenditures, paragraphs (d) and (e) for the treatment of debt repayments and refinancings, paragraph (j) for the rules for reallocating debt upon the occurrence of certain events, paragraph (m) for the coordination of the rules in this section with other limitations on the deductibility of interest expense, and paragraph (n) of this section for effective date and transitional rules.

(3) *Manner of allocation.* In general, interest expense on a debt is allocated in the same manner as the debt to which such interest expense relates is allocated. Debt is allocated by tracing disbursements of the debt proceeds to specific expenditures. This section prescribes rules for tracing debt proceeds to specific expenditures.

(4) *Treatment of interest expenses*—(i) *General rule.* Except as otherwise provided in paragraph (m) of this section (relating to limitations on interest

expense other than the passive loss and nonbusiness interest limitations), interest expense allocated under the rules of this section is treated in the following manner:

(A) Interest expense allocated to a trade or business expenditure (as defined in paragraph (b)(7) of this section) is taken into account under section 163 (h)(2)(A);

(B) Interest expense allocated to a passive activity expenditure (as defined in paragraph (b)(4) of this section) or a former passive activity expenditure (as defined in paragraph (b)(2) of this section) is taken into account for purposes of section 469 in determining the income or loss from the activity to which such expenditure relates;

(C) Interest expense allocated to an investment expenditure (as defined in paragraph (b)(3) of this section) is treated for purposes of section 163(d) as investment interest;

(D) Interest expense allocated to a personal expenditure (as defined in paragraph (b)(5) of this section) is treated for purposes of section 163(h) as personal interest; and

(E) Interest expense allocated to a portfolio expenditure (as defined in paragraph (b)(6) of this section) is treated for purposes of section 469(e)(2)(B)(ii) as interest expense described in section 469(e)(1)(A)(i)(III).

(ii) *Examples.* The following examples illustrate the application of this paragraph (a)(4):

Example (1). Taxpayer A, an individual, incurs interest expense allocated under the rules of this section to the following expenditures:

$6,000 Passive activity expenditure.
$4,000 Personal expenditure.

The $6,000 interest expense allocated to the passive activity expenditure is taken into account for purposes of section 469 in computing A's income or loss from the activity to which such interest relates. Pursuant to section 163(h), A may not deduct the $4,000 interest expense allocated to the personal expenditure (except to the extent such interest is qualified residence interest, within the meaning of section 163(h)(3)).

Example (2). (i) Corporation M, a closely held C corporation (within the meaning of section 469 (j)(1)) has $10,000 of interest expense for a taxable year. Under the rules of this section, M's interest expense is allocated to the following expenditures:

$2,000 Passive activity expenditure.
$3,000 Portfolio expenditure.
$5,000 Other expenditures.

(ii) Under section 163(d)(3)(D) and this paragraph (a)(4), the $2,000 interest expense allocated to the passive activity expenditure is taken into account in computing M's passive activity loss for the taxable year, but, pursuant to section 469(e)(1) and this paragraph (a)(4), the interest expense allocated to the portfolio expenditure and the other expenditures is not taken into account for such purposes.

(iii) Since M is a closely held C corporation, its passive activity loss is allowable under section 469(e)(2)(A) as a deduction from net active income. Under section 469(e)(2)(B) and this paragraph (a)(4), the $5,000 interest expense allocated to other expenditures is taken into account in computing M's net active income, but the interest expense allocated to the passive activity expenditure and the portfolio expenditure is not taken into account for such purposes.

(iv) Since M is a corporation, the $3,000 interest expense allocated to the portfolio expenditure is allowable without regard to section 163(d). If M were an individual, however, the interest expense allocated to the portfolio expenditure would be treated as investment interest for purposes of applying the limitation of section 163(d).

(b) *Definitions.* For purposes of this section—

(1) "Former passive activity" means an activity described in section 469(f)(3), but only if an unused deduction or credit (within the meaning of section 469(f)(1)(A) or (B)) is allocable to the activity under section 469(b) for the taxable year.

(2) "Former passive activity expenditure" means an expenditure that is taken into account under section 469 in computing the income or loss from a former passive activity of the taxpayer or an expenditure (including an expenditure properly chargeable to capital account) that would be so taken into account if such expenditure were otherwise deductible.

(3) "Investment expenditure" means an expenditure (other than a passive activity expenditure) properly chargeable to capital account with respect to property held for investment (within the meaning of section 163(d)(5)(A)) or an expenditure in connection with the holding of such property.

(4) "Passive activity expenditure" means an expenditure that is taken into account under section 469 in computing income or loss from a passive activity of the taxpayer or an expenditure (including an expenditure properly chargeable to capital account) that would be so taken into account if such expenditure were otherwise deductible. For purposes of this section, the term "passive activity expenditure" does not include any expenditure with respect to any low-income housing project in any taxable year in which any benefit is allowed with respect to such project under section 502 of the Tax Reform Act of 1986.

(5) "Personal expenditure" means an expenditure that is not a trade or business expenditure, a passive activity expenditure, or an investment expenditure.

(6) "Portfolio expenditure" means an investment expenditure properly chargeable to capital account with respect to property producing income of a type described in section 469(e)(1)(A) or an investment expenditure for an expense clearly and directly allocable to such income.

(7) "Trade or business expenditure" means an expenditure (other than a passive activity expenditure or an investment expenditure) in connection with the conduct of any trade or business other than the trade or business of performing services as an employee.

(c) *Allocation of debt and interest expense*—(1) *Allocation in accordance with use of proceeds.* Debt is allocated to expenditures in accordance with the use of the debt proceeds and, except as provided in paragraph (m) of this section, interest expense accruing on a debt during any period is allocated to expenditures in the same manner as the debt is allocated from time to time during such period. Except as provided in paragraph (m) of this section, debt proceeds and related interest expense are allocated solely by reference to the use of such proceeds, and the allocation is not affected by the use of an interest in any property to secure the repayment of such debt or interest. The following example illustrates the principles of this paragraph (c)(1):

Example. Taxpayer A, an individual, pledges corporate stock held for investment as security for a loan and uses the debt proceeds to purchase an automobile for personal use. Interest expense accruing on the debt is allocated to the personal expenditure to purchase the automobile even though the debt is secured by investment property.

(2) *Allocation period*—(i) *Allocation of debt.* Debt is allocated to an expenditure for the period beginning on the date the proceeds of the debt are used or treated as used under the rules of this section to make the expenditure and ending on the earlier of—

(A) The date the debt is repaid; or

(B) The date the debt is reallocated in accordance with the rules in paragraphs (c)(4) and (j) of this section.

(ii) *Allocation of interest expense*—(A) *In general.* Except as otherwise provided in paragraph (m) of this section, interest expense accruing on a debt for any period is allocated in the same manner as the debt is allocated from time to time, regardless of when the interest is paid.

(B) *Effect of compounding.* Accrued interest is treated as a debt until it is paid and any interest accruing on unpaid interest is allocated in the same

manner as the unpaid interest is allocated. For the taxable year in which a debt is reallocated under the rules in paragraphs (c) (4) and (j) of this section, however, compound interest accruing on such debt (other than compound interest accruing on interest that accrued before the beginning of the year) may be allocated between the original expenditure and the new expenditure on a straight-line basis (i.e., by allocating an equal amount of such interest expense to each day during the taxable year). In addition, a taxpayer may treat a year as consisting of 12 30-day months for purposes of allocating interest on a straight-line basis.

(C) *Accrual of interest expense.* For purposes of this paragraph (c)(2)(ii), the amount of interest expense that accrues during any period is determined by taking into account relevant provisions of the loan agreement and any applicable law such as sections 163(e), 483, and 1271 through 1275.

(iii) *Examples.* The following examples illustrate the principles of this paragraph (c)(2):

Example (1). (i) On January 1, taxpayer B, a calendar year taxpayer, borrows $1,000 at an interest rate of 11 percent, compounded semiannually. B immediately uses the debt proceeds to purchase an investment security. On July 1, B sells the investment security for $1,000 and uses the sales proceeds to make a passive activity expenditure. On December 31, B pays accrued interest on the $1,000 debt for the entire year.

(ii) Under this paragraph (c)(2) and paragraph (j) of this section, the $1,000 debt is allocated to the investment expenditure for the period from January 1 through June 30, and to the passive activity expenditure from July 1 through December 31. Interest expense accruing on the $1,000 debt is allocated in accordance with the allocation of the debt from time to time during the year even though the debt was allocated to the passive activity expenditure on the date the interest was paid. Thus, the $55 interest expense for the period from January 1 through June 30 is allocated to the investment expenditure. In addition, during the period from July 1 through December 31, the interest expense allocated to the investment expenditure is a debt, the proceeds of which are treated as used to make an investment expenditure. Accordingly, an additional $3 of interest expense for the period from July 1 through December 31 ($55×.055) is allocated to the investment expenditure. The remaining $55 of interest expense for the period from July 1 through December 31 ($1,000×.055) is allocated to the passive activity expenditure.

(iii) Alternatively, under the rule in paragraph (c)(2)(ii)(B) of this section, B may allocate the interest expense on a straight-line basis and may also treat the year as consisting of 12 30-day months for this purpose. In that case, $56.50 of interest expense (180/360×$113) would be allocated to the investment expenditure and the remaining $56.50 of interest expense would be allocated to the passive activity expenditure.

Example (2). On January 1, 1988, taxpayer C borrows $10,000 at an interest rate of 11 percent, compounded annually. All interest and principal on the debt is payable in a lump sum on December 31, 1992. C immediately uses the debt proceeds to make a passive activity expenditure. C materially participates in the activity in 1990, 1991, and 1992. Therefore, under paragraphs (c)(2) (i) and (j) of this section, the debt is allocated to a passive activity expenditure from January 1, 1988, through December 31, 1989, and to a former passive activity expenditure from January 1, 1990, through December 31, 1992. In accordance with the loan agreement (and consistent with § 1.1272-1(d)(1) of the proposed regulations, 51 FR 12022, April 8, 1986), interest expense accruing during any period is determined on the basis of annual compounding. Accordingly, the interest expense on the debt is allocated as follows:

Year	Amount		Expenditure
1988	$10,000 × .11	$1,100	Passive activity.
1989	11,100 × .11	1,221	Passive activity.
1990	12,321 × .11 = 1,355		
	1,355 × 2,321/12,321	255	Passive activity.
	1,355 × 10,000/12,321	1,100	Former passive activity.
		1,355	
1991	13,676 × .11 = 1,504		
	1,504 × 2,576/13,676	283	Passive activity.
	1,504 × 11,100/13,676	1,221	Former passive activity.
		1,504	
1992	15,180 × .11 = 1,670		
	1,670 × 2,859/15,180	315	Passive activity.
	1,670 × 12,321/15,180	1,355	Former passive activity.
		1,670	

(e) *Allocation of debt; proceeds not disbursed to borrower*—(i) *Third-party financing.* If a lender disburses debt proceeds to a person other than the borrower in consideration for the sale or use of property, for services, or for any other purpose, the debt is treated for purposes of this section as if the borrower used an amount of the debt proceeds equal to such disbursement to make an expenditure for such property, services, or other purpose.

(ii) *Debt assumptions not involving cash disbursements.* If a taxpayer incurs or assumes a debt in consideration for the sale or use of property, for services, or for any other purpose, or takes property subject to a debt, and no debt proceeds are disbursed to the taxpayer, the debt is treated for purposes of this section as if the taxpayer used an amount of the debt proceeds equal to the balance of the debt outstanding at such time to make an expenditure for such property, services, or other purpose.

(4) *Allocation of debt; proceeds deposited in borrower's account*—(i) *Treatment of deposit.* For purposes of this section, a deposit of debt proceeds in an account is treated as an investment expenditure, and amounts held in an account (whether or not interest bearing) are treated as property held for investment. Debt allocated to an account under this paragraph (c)(4)(i) must be reallocated as required by paragraph (j) of this section whenever debt proceeds held in the account are used for another expenditure. This paragraph (c)(4) provides rules for determining when debt proceeds are expended from the account. The following example illustrates the principles of this paragraph (c)(4)(i):

Example. Taxpayer C, a calendar year taxpayer, borrows $100,000 on January 1 and immediately uses the proceeds to open a noninterest-bearing checking account. No other amounts are deposited in the account during the year, and no portion of the principal amount of the debt is repaid during the year. On April 1, C uses $20,000 of the debt proceeds held in the account for a passive activity expenditure. On September 1, C uses an additional $40,000 of the debt proceeds held in the account for a personal expenditure. Under this paragraph (c)(4)(i), from January 1 through March 31 the entire $100,000 debt is allocated to an investment expenditure for the account. From April 1 through August 31, $20,000 of the debt is allocated to the passive activity expenditure, and $80,000 of the debt is allocated to the investment expenditure for the account. From September 1 through December 31, $40,000 of the debt is allocated to the personal expenditure, $20,000 is allocated to the passive activity expenditure, and $40,000 is allocated to an investment expenditure for the account.

(ii) *Expenditures from account; general ordering rule.* Except as provided in paragraph (c)(4)(iii) (B) or (C) of this section, debt proceeds

deposited in an account are treated as expended before—

(A) Any unborrowed amounts held in the account at the time such debt proceeds are deposited; and

(B) Any amounts (borrowed or unborrowed) that are deposited in the account after such debt proceeds are deposited.

The following example illustrates the application of this paragraph (c)(4)(ii):

Example. On January 10, taxpayer E opens a checking account, depositing $500 of proceeds of Debt A and $1,000 of unborrowed funds. The following chart summarizes the transactions which occur during the year with respect to the account:

Date	Transaction
Jan. 10	$500 proceeds of Debt A and $1,000 unborowed funds deposited.
Jan. 11	$500 proceeds of Debt B deposited.
Feb. 17	$800 personal expenditure.
Feb. 26	$700 passive activity expenditure.
June 21	$1,000 proceeds of Debt C deposited.
Nov. 24	$800 investment expenditure.
Dec. 20	$600 personal expenditure.

The $800 personal expenditure is treated as made from the $500 proceeds of Debt A and $300 of the proceeds of Debt B. The $700 passive activity expenditure is treated as made from the remaining $200 proceeds of Debt B and $500 of unborrowed funds. The $800 investment expenditure is treated as made entirely from the proceeds of Debt C. The $600 personal expenditure is treated as made from the remaining $200 proceeds of Debt C and $400 of unborrowed funds. Under paragraph (c)(4)(i) of this section, debt is allocated to an investment expenditure for periods during which debt proceeds are held in the account.

(iii) *Expenditures from account; supplemental ordering rules.*—(A) *Checking or similar accounts.* Except as otherwise provided in this paragraph (c)(4)(iii), an expenditure from a checking or similar account is treated as made at the time the check is written on the account, provided the check is delivered or mailed to the payee within a reasonable period after the writing of the check. For this purpose, the taxpayer may treat checks written on the same day as written in any order. In the absence of evidence to the contrary, a check is presumed to be written on the date appearing on the check and to be delivered or mailed to the payee within a reasonable period thereafter. Evidence to the contrary may include the fact that a check does not clear within a reasonable period after the date appearing on the check.

(B) *Expenditures within 15 days after deposit of borrowed funds.* The taxpayer may treat any expenditure made from an account within 15 days after debt proceeds are deposited in such account as made from such proceeds to the extent thereof even if under paragraph (c)(4)(ii) of this section the debt proceeds would be treated as used to make one or more other expenditures. Any such expenditures and the debt proceeds from which such expenditures are treated as made are disregarded in applying paragraph (c)(4)(ii) of this section. The following examples illustrate the application of this paragraph (c)(4)(iii)(B):

Example (1). Taxpayer D incurs a $1,000 debt on June 5 and immediately deposits the proceeds in an account ("Account A"). On June 17, D transfers $2,000 from Account A to another account ("Account B"). On June 30, D writes a $1,500 check on Account B for a passive activity expenditure. In addition, numerous deposits of borrowed and unborrowed amounts and expenditures occur with respect to both accounts throughout the month of June. Notwithstanding these other transactions, D may treat $1,000 of the deposit to Account B on June 17 as an expenditure from the debt proceeds deposited in Account A on June 5. In addition, D may similarly treat $1,000 of the passive activity expenditure on June 30 as made from debt proceeds treated as deposited in Account B on June 17.

Example (2). The facts are the same as in the example in paragraph (c)(4)(ii) of this section, except that the proceeds of Debt B are deposited on February 11 rather than on January 11. Since the $700 passive activity expenditure occurs within 15 days after the proceeds of Debt B are deposited in the account, E may treat such expenditure as being made from the proceeds of Debt B to the extent thereof. If E treats the passive activity expenditure in this manner, the expenditures from the account are treated as follows: The $800 personal expenditure is treated as made from the $500 proceeds of Debt A and $300 of unborrrowed funds. The $700 passive activity expenditure is treated as made from the $500 proceeds of Debt B and $200 of unborrowed funds. The remaining expenditures are treated as in the example in paragraph (c)(4)(ii) of this section.

(C) *Interest on segregated account.* In the case of an account consisting solely of the proceeds of a debt and interest earned on such account, the taxpayer may treat any expenditure from such account as made first from amounts constituting interest (rather than debt proceeds) to the extent of the balance of such interest in the account at the time of the expenditure, determined by applying the rules in this paragraph (c)(4). To the extent any expenditure is treated as made from interest under this paragraph (c)(4)(iii)(C), the expenditure is disregarded in applying paragraph (c)(4)(ii) of this section.

(iv) *Optional method for determining date of reallocation.* Solely for the purpose of determining the date on which debt allocated to an account under paragraph (c)(4)(i) of this section is reallocated, the taxpayer may treat all expenditures made during any calendar month from debt proceeds in the account as occurring on the later of the first day of such month or the date on which such debt proceeds are deposited in the account. This paragraph (c)(4)(iv) applies only if all expenditures from an account during the same calendar month are similarly treated. The following example illustrates the application of this paragraph (c)(4)(iv):

Example. On January 10, taxpayer G opens a checking account, depositing $500 of proceeds of Debt A and $1,000 of unborrowed funds. The following chart summarizes the transactions which occur during the year with respect to the account (note that these facts are the same as the facts of the example in paragraph (c)(4)(ii) of this section):

Date	Transaction
Jan. 10	$500 proceeds of Debt A and $1,000 unborrowed funds deposited.
Jan. 11	$500 proceeds of Debt B deposited.
Feb. 17	$800 personal expenditure.
Feb. 26	$700 passive activity expenditure.
June 21	$1,000 proceeds of Debt C deposited.
Nov. 24	$800 investment expenditure.
Dec. 20	$600 personal expenditure.

Assume that G chooses to apply the optional rule of this paragraph (c)(4)(iv) to all expenditures. For purposes of determining the date on which debt is allocated to the $800 personal expenditure made on February 17, the $500 treated as made from the proceeds of Debt A and the $300 treated as made from the proceeds of Debt B are treated as expenditures occurring on February 1. Accordingly, Debt A is allocated to an investment expenditure for the account from January 10 through January 31 and to the personal expenditure from February 1 through December 31, and $300 of Debt B is allocated to an investment expenditure for the account from January 11 through January 31 and to the personal expenditure from February 1 through December 31. The remaining $200 of Debt B is allocated to an investment expenditure for the account from January 11 through January 31 and to the passive activity expenditure from February 1 through December 31. The $800 of Debt C used to make the investment expenditure on November 24 is allocated to an investment expenditure for the account from June 21 through October 31 and to an investment

expenditure from November 1 through December 31. The remaining $200 of Debt C is allocated to an investment expenditure for the account from June 21 through November 30 and to a personal expenditure from December 1 through December 31.

(v) *Simultaneous deposits*—(A) *In general.* If the proceeds of two or more debts are deposited in an account simultaneously, such proceeds are treated for purposes of this paragraph (c)(4) as deposited in the order in which the debts were incurred.

(B) *Order in which debts incurred.* If two or more debts are incurred simultaneously or are treated under applicable law as incurred simultaneously, the debts are treated for purposes of this paragraph (c)(4)(v) as incurred in any order the taxpayer selects.

(C) *Borrowings on which interest accrues at different rates.* If interest does not accrue at the same fixed or variable rate on the entire amount of a borrowing, each portion of the borrowing on which interest accrues at a different fixed or variable rate is treated as a separate debt for purposes of this paragraph (c)(4)(v).

(vi) *Multiple accounts.* The rules in this paragraph (c)(4) apply separately to each account of a taxpayer.

(5) *Allocation of debt; proceeds received in cash*—(i) *Expenditure within 15 days of receiving debt proceeds.* If a taxpayer receives the proceeds of a debt in cash, the taxpayer may treat any cash expenditure made within 15 days after receiving the cash as made from such debt proceeds to the extent thereof and may treat such expenditure as made on the date the taxpayer received the cash. The following example illustrates the rule in this paragraph (c)(5)(i):

Example. Taxpayer F incurs a $1,000 debt on August 4 and receives the debt proceeds in cash. F deposits $1,500 cash in an account on August 15 and on August 27 writes a check on the account for a passive activity expenditure. In addition, F engages in numerous other cash transactions throughout the month of August, and numerous deposits of borrowed and unborrowed amounts and expenditures occur with respect to the account during the same period. Notwithstanding these other transactions, F may treat $1,000 of the deposit on August 15 as an expenditure made from the debt proceeds on August 4. In addition, under the rule in paragraph (c)(4)(v)(B) of this section, F may treat the passive activity expenditure on August 27 as made from the $1,000 debt proceeds treated as deposited in the account.

(ii) *Other expenditures.* Except as provided in paragraphs (c)(5) (i) and (iii) of this section, any debt proceeds a taxpayer (other than a corporation) receives in cash are treated as used to make personal expenditures. For purposes of this paragraph (c)(5), debt proceeds are received in cash if, for example, a withdrawal of cash from an account is treated under the rules of this section as an expenditure of debt proceeds.

(iii) *Special rules for certain taxpayers.*[Reserved.]

(6) *Special rules*—(i) *Qualified residence debt.* [Reserved.]

(ii) *Debt used to pay interest.* To the extent proceeds of a debt are used to pay interest, such debt is allocated in the same manner as the debt on which such interest accrued is allocated from time to time. The following example illustrates the application of this paragraph (c)(6)(ii):

Example. On January 1, taxpayer H incurs a debt of $1,000, bearing interest at an annual rate of 10 percent, compounded annually, payable at the end of each year ("Debt A"). H immediately opens a checking account, in which H deposits the proceeds of Debt A. No other amounts are deposited in the account during the year. On April 1, H writes a check for a personal expenditure in the amount of $1,000. On December 31, H borrows $100 ("Debt B") and immediately uses the proceeds of Debt B to pay the accrued interest of $100 on Debt A. From January 1 through March 31, Debt A is allocated, under the rule in paragraph (c)(4)(i) of this section, to the investment expenditure for the account. From April 1 through December 31, Debt A is allocated to the personal expenditure. Under the rule in paragraph (c)(2)(ii) of this section, $25 of the interest on Debt A for the year is allocated to the investment expenditure, and $75 of the interest on Debt A for the year is allocated to the personal expenditure. Accordingly, for the purpose of allocating the interest on Debt B for all periods until Debt B is repaid, $25 of Debt B is allocated to the investment expenditure, and $75 of Debt B is allocated to the personal expenditure.

(iii) *Debt used to pay borrowing costs—(A) Borrowing costs with respect to different debt.* To the extent the proceeds of a debt (the "ancillary debt") are used to pay borrowing costs (other than interest) with respect to another debt (the "primary debt"), the ancillary debt is allocated in the same manner as the primary debt is allocated from time to time. To the extent the primary debt is repaid, the ancillary debt will continue to be allocated in the same manner as the primary debt was allocated immediately before its repayment. The following example illustrates the rule in this paragraph (c)(6)(iii)(A):

Example. Taxpayer I incurs debts of $60,000 ("Debt A") and $10,000 ("Debt B"). I immediately uses $30,000 of the proceeds of Debt A to make a trade or business expenditure, $20,000 to make a passive activity expenditure, and $10,000 to make an investment expenditure. I immediately use $3,000 of the proceeds of Debt B to pay borrowing costs (other than interest) with respect to Debt A (such as loan origination, loan commitment, abstract, and recording fees) and deposits the remaining $7,000 in an account. Under the rule in this paragraph (c)(6)(iii)(A), the $3,000 of Debt B used to pay expenses of incurring Debt A is allocated $1,500 to the trade or business expenditure ($3,000 × $30,000/$60,000), $1,000 to the passive activity expenditure ($3,000 × $20,000/$60,000), and $500 ($3,000 × $10,000/$60,000) to the investment expenditure. The manner in which the $3,000 of Debt B used to pay expenses of incurring Debt A is allocated may change if the allocation of Debt A changes, but such allocation will be unaffected by any repayment of Debt A. The remaining $7,000 of Debt B is allocated to an investment expnditure for the account until such time, if any, as this amount is used for a different expenditure.

(B) *Borrowing costs with respect to same debt.* To the extent the proceeds of a debt are used to pay borrowing costs (other than interest) with respect to such debt, such debt is allocated in the same manner as the remaining debt is allocated from time to time. The remaining debt for this purpose is the portion of the debt that is not used to pay borrowing costs (other than interst) with respect to such debt. Any repayment of the debt is treated as a repayment of the debt allocated under this paragraph (c)(6)(iii)(B) and the remaining debt is the same proportion as such amount bear to each other. The following example illustrates the application of this paragraph (c)(6)(iii)(B):

Example. (i) Taxpayer J borrows $85,000. The lender disburses $80,000 of this amount to J, retaining $5,000 for borrowing costs (other than interest) with respect to the loan. J immediately uses $40,000 of the debt proceeds to make a personal expenditure, $20,000 to make a passive activity expenditure, and $20,000 to make an investment expenditure. Under the rule in this paragraph (c)(6)(iii)(B), the $5,000 used to pay borrowing costs is allocated $2,500 ($5,000 × $40,000/$80,000) to the personal expenditure, $1,250 ($5,000 × $20,000/$80,000) to the investment expenditure. The manner in which this $5,000 is allocated may change if the allocation of the remaining $80,000 of debt is changed.

(ii) Assume that J repays $50,000 of the debt. The repayment is treated as a repayment of $2,941 ($50,000 x $5,000/$85,000) of the debt used to pay borrowing costs and a repayment of $47,059 ($50,000 x $80,000/$85,000) of the remaining debt. Under paragraph (d) of this section, J is treated as repaying the $42,500 of debt allocated to the personal expenditure ($2,500 of debt used to pay borrowing costs and $40,000 of remaining debt). In addition, assuming that under paragraph (d)(2) J chooses to treat the allocation to the passive activity expenditure as having occurred before the allocation to

the investment expenditure, J is treated as repaying $7,500 of debt allocated to the passive activity expenditure ($441 of debt used to pay borrowing costs and $7,059 of remaining debt).

(iv) *Allocation of debt before actual receipt of debt proceeds.* If interest properly accrues on a debt during any period before the debt proceeds are actually received or used to make an expenditure, the debt is allocated to an investment expenditure for such period.

(7) *Antiabuse rules.* [Reserved.]

(d) *Debt repayments*—(1) *General ordering rule.* If, at the time any portion of a debt is repaid, such debt is allocated to more than one expenditure, the debt is treated for purposes of this section as repaid in the following order:

(i) Amounts allocated to personal expenditures;

(ii) Amounts allocated to investment expenditures and passive activity expenditures (other than passive activity expenditures described in paragraph (d)(1)(iii) of this section);

(iii) Amounts allocated to passive activity expenditures in connection with a rental real estate activity with respect to which the taxpayer actively participates (within the meaning of section 469(i));

(iv) Amounts allocated to former passive activity expenditures; and

(v) Amounts allocated to trade or business expenditures and to expenditures described in the last sentence of paragraph (b)(4) of this section.

(2) *Supplemental ordering rules for expenditures in same class.* Amounts allocated to two or more expenditures that are described in the subdivision of paragraph (d)(1) of this section (e.g., amounts allocated to different personal expenditures) are treated as repaid in the order in which the amounts were allocated (or reallocated) to such expenditures. For purposes of this paragraph (d)(2), the taxpayer may treat allocations and reallocations that occur on the same day as occurring in any order (without regard to the order in which expenditures are treated as made under paragraph (c)(4)(iii)(A) of this section).

(3) *Continuous borrowings.* In the case of borrowings pursuant to a line of credit or similar account or arrangement that allows a taxpayer to borrow funds periodically under a single loan agreement—

(i) All borrowings on which interest accrues at the same fixed or variable rate are treated as a single debt; and

(ii) Borrowings or portions of borrowings on which interest accrues at different fixed or variable rates are treated as different debts, and such debts are treated as repaid for purposes of this paragraph (d) in the order in which such borrowings are treated as repaid under the loan agreement.

(4) *Examples.* The following examples illustrate the application of this paragraph (d):

Example (1). Taxpayer B borrows $100,000 ("Debt A") on July 12, immediately deposits the proceeds in an account, and uses the debt proceeds to make the following expenditures on the following dates:

August 31—$40,000 passive activity expenditure #1.
October 5—$20,000 passive activity expenditure #2.
December 24—$40,000 personal expenditure.

On January 19 of the following year, B repays $90,000 of Debt A (leaving $10,000 of Debt A outstanding). The $40,000 of Debt A allocated to the personal expenditure, the $40,000 allocated to passive activity expenditure #1, and $10,000 of the $20,000 allocated to passive activity expenditure #2 are treated as repaid.

Example (2). (i) Taxpayer A obtains a line of credit. Interest on any borrowing on the line of credit accrues at the lender's "prime lending rate" on the date of the borrowing plus two percentage points. The loan documents provide that borrowings on the line of credit are treated as repaid in the order the borrowings were made. A borrows $30,000 ("Borrowing #1") on the line of credit and immediately uses $20,000 of the debt proceeds to make a personal expenditure ("personal expenditure #1") and $10,000 to make a trade or business expenditure ("trade or business expenditure #1"). A subsequently borrows another $20,000 ("Borrowing #2") on the line of credit and immediately uses $15,000 of the debt proceeds to make a personal expenditure ("personal expenditure #2") and $5,000 to make a trade or business expenditure ("trade or business expenditure #2"). A then repays $40,000 of the borrowings.

(ii) If the prime lending rate plus two percentage points was the same on both the date of Borrowing #1 and the date of Borrowing #2, the borrowings are treated for purposes of this paragraph (d) as a single debt, and A is treated as having repaid $35,000 of debt allocated to personal expenditure #1 and personal expenditure #2, and $5,000 of debt allocated to trade or business expenditure #1.

(iii) If the prime lending rate plus two percentage points was different on the date of Borrowing #1 and Borrowing #2, the borrowings are treated as two debts, and, in accordance with the loan agreement, the $40,000 repaid amount is treated as a repayment of Borrowing #1 and $10,000 of Borrowing #2. Accordingly, A is treated as having repaid $20,000 of debt allocated to personal expenditure #1, $10,000 of debt allocated to trade or business expenditure #1, and $10,000 of debt allocated to personal expenditure #2.

(e) *Debt refinancings*—(1) *In general.* To the extent proceeds of any debt (the "replacement debt") are used to repay any portion of a debt, the replacement debt is allocated to the expenditures to which the repaid debt was allocated. The amount of replacement debt allocated to any such expenditure is equal to the amount of debt allocated to such expenditure that was repaid with proceeds of the replacement debt. To the extent proceeds of the replacement debt are used for expenditures other than repayment of a debt, the replacement debt is allocated to expenditures in accordance with the rules of this section.

(2) *Example.* The following example illustrates the application of this paragraph (e):

Example. Taxpayer C borrows $100,000 ("Debt A") on July 12, immediately deposits the debt proceeds in an account, and uses the proceeds to make the following expenditures on the following dates (note that the facts of this example are the same as the facts of example (1) in paragraph (d)(4) of this section):

August 31—$40,000 passive activity expenditure #1.
October 5—$20,000 passive activity expenditure #2.
December 24—$40,000 personal expenditure #1.

On January 19 of the following year, C borrows $120,000 ("Debt B") and uses $90,000 of the proceeds of repay $90,000 of Debt A (leaving $10,000 of Debt A outstanding). In addition, C uses $30,000 of the proceeds of Debt B to make a personal expenditure ("personal expenditure #2"). Debt B is allocated $40,000 to personal expenditure #1, $40,000 to passive activity expenditure #1, $10,000 to passive activity expenditure #2, and $30,000 to personal expenditure #2. Under paragraph (d)(1) of this section, Debt B will be treated as repaid in the following order: (1) amounts allocated to personal expenditure #1, (2) amounts allocated to personal expenditure #2, (3) amounts allocated to passive activity expenditure #1, and (4) amounts allocated to passive activity expenditure #2.

(f) *Debt allocated to distributions by passthrough entities.* [Reserved]

(g) *Repayment of passthrough entity debt.* [Reserved]

(h) *Debt allocated to expenditures for interests in passthrough entities.* [Reserved]

(i) *Allocation of debt to loans between passthrough entities and interest holders.* [Reserved]

(j) *Reallocation of debt*—(1) *Debt allocated to capital expenditures*—(i) *Time of reallocation.* Except as provided in paragraph (j)(2) of this section, debt allocated to an expenditure properly chargeable to capital account with respect to an asset (the "first expenditure") is reallocated to another expenditure on the earlier of—

(A) The date on which proceeds from a disposition of such asset are used for another expenditure; or

(B) The date on which the character of the first expenditure changes (e.g., from a passive activity expenditure to an expenditure that is not a passive activity expenditure) by reason of a change in the use of the asset with respect to which the first expenditure was capitalized.

(ii) *Limitation on amount reallocated.* The amount of debt reallocated under paragraph (j)(1)(i)(A) of this section may not exceed the proceeds from the disposition of the asset. The amount of debt reallocated under paragraph (j)(1)(i)(B) of this section may not exceed the fair market value of the asset on the date of the change in use. In applying this paragraph (j)(1)(ii) with respect to a debt in any case in which two or more debts are allocable to expenditures properly chargeable to capital account with respect to the same asset, only a ratable portion (determined with respect to any such debt by dividing the amount of such debt by the aggregate amount of all such debts) of the fair market value or proceeds from the disposition of such asset shall be taken into account.

(iii) *Treatment of loans made by the taxpayer.* Except as provided in paragraph (j)(1)(iv) of this section, an expenditure to make a loan is treated as an expenditure properly chargeable to capital account with respect to an asset, and for purposes of paragraph (j)(1)(i)(A) of this section any repayment of the loan is treated as a disposition of the asset. Paragraph (j)(3) of this section applies to any repayment of a loan in installments.

(iv) *Treatment of accounts.* Debt allocated to an account under paragraph (c)(4)(i) of this section is treated as allocated to an expenditure properly chargeable to capital account with respect to an asset, and any expenditure from the account is treated as a disposition of the asset. See paragraph (c)(4) of this section for rules under which debt proceeds allocated to an account are treated as used for another expenditure.

(2) *Disposition proceeds in excess of debt.* If the proceeds from the disposition of an asset exceed the amount of debt reallocated by reason of such disposition, or two or more debts are reallocated by reason of the disposition of an asset, the proceeds of the disposition are treated as an account to which the rules in paragraph (c)(4) of this section apply.

(3) *Special rule for deferred payment sales.* If any portion of the proceeds of a disposition of an asset are received subsequent to the disposition—

(i) The portion of the proceeds to be received subsequent to the disposition is treated for periods prior to the receipt as used to make an investment expenditure; and

(ii) Debt reallocated by reason of the disposition is allocated to such investment expenditure to the extent such debt exceeds the proceeds of the disposition previously received (other than proceeds used to repay such debt).

(4) *Examples.* The following examples illustrate the application of this paragraph (j):

Example (1). On January 1, 1988, taxpayer D sells an asset for $25,000. Immediately before the sale, the amount of debt allocated to expenditures properly chargeable to capital account with respect to the asset was $15,000. The proceeds of the disposition are treated as an account consisting of $15,000 of debt proceeds and $10,000 of unborrowed funds to which paragraph (c)(4) of this section applies. Thus, if D immediately makes a $10,000 personal expenditure from the proceeds and within 15 days deposits the remaining proceeds in an account, D may, pursuant to paragraph (c)(4)(iii)(B) of this section, treat the entire $15,000 deposited in the account as proceeds of a debt.

Example (2). The facts are the same as in example (1) except that, instead of receiving all $25,000 of the sale proceeds on January 1, 1988, D receives 5,000 on that date, $10,000 on January 1, 1989, and $10,000 on January 1, 1990. D does not use any portion of the sale proceeds to repay the debt. Between January 1, 1988, and December 31, 1988, D is treated under paragraph (j)(3) of this section as making an investment expenditure of $20,000 to which $10,000 of debt is allocated. In addition, the remaining $5,000 of debt is reallocated on January 1, 1988, in accordance with D's use of the sales proceeds received on that date. Between January 1, 1989, and December 31, 1989, D is treated as making an investment expenditure of $10,000 to which no debt is allocated. In addition, as of January 1, 1989, $10,000 of debt is reallocated in accordance with D's use of the sales proceeds received on that date.

Example 3. The facts are the same as in example (2), except that D immediately uses the $5,000 sale proceeds received on January 1, 1988, to repay $5,000 of the $15,000 debt. Between January 1, 1988, and December 31, 1988, D is treated as making an investment expenditure of $20,000 to which the remaining balance ($10,000) of the debt is reallocated. The results in 1989 are as described in example (2).

(k) *Modification of rules in the case of interest expense allocated to foreign source income.* [Reserved.]

(l) *Reserved.*

(m) *Coordination with other provisions*—(1) *Effect of other limitations*—(i) *In general.* All debt is allocated among expenditures pursuant to the rules in this section, without regard to any limitations on the deductibility of interest expense on such debt. The applicability of the passive loss and nonbusiness interest limitations to interest on such debt, however, may be affected by other limitations on the deductibility of interest expense.

(ii) *Disallowance provisions.* (Interest expense that is not allowable as a deduction by reason of a disallowance provision (within the meaning of paragraph (m)(7)(ii) of this section) is not taken into account for any taxable year for purposes of applying the passive loss and nonbusiness interest limitations.

(iii) *Deferral provisions.* Interest expense that is not allowable as a deduction for the taxable year in which paid or accrued by reason of a deferral provision (within the meaning of paragraph (m)(7)(iii) of this section) is allocated in the same manner as the debt giving rise to the interest expense is allocated for such taxable year. Such interest expense is taken into account for purposes of applying the passive loss and nonbusiness interest limitations for the taxable year in which such interest expense is allowable under such deferral provision.

(iv) *Capitalization provisions.* Interest expense that is capitalized pursuant to a capitalization provision (within the meaning of paragraph (m)(7)(i) of this section) is not taken into account as interest for any taxable year for purposes of applying the passive loss and nonbusiness interest limitations.

(2) *Effect on other limitations*—(i) *General rule.* Except as provided in paragraph (m)(2)(ii) of this section, any limitation on the deductibility of an item (other than the passive loss and nonbusiness interest limitations) applies without regard to the manner in which debt is allocated under this section. Thus, for example, interest expense treated under section 265(a)(2) as interest on indebtedness incurred or continued to purchase or carry obligations the interest on which is wholly exempt from Federal income tax is not deductible regardless of the expenditure to which the underlying debt is allocated under this section.

(ii) *Exception.* Capitalization provisions (within the meaning of paragraph (m)(7)(i) of this section) do not apply to interest expense allocated to any personal expenditure under the rules of this section.

(3) *Qualified residence interest.* Qualified residence interest (within the meaning of section 163(h)(3)) is allowable as a deduction without regard to the manner in which such interest expense is allocated under the rules of this section. In addition, qualified residence interest is not taken into

account in determining the income or loss from any activity for purposes of section 469 or in determining the amount of investment interest for purposes of section 163(d). The following example illustrates the rule in this paragraph (m)(3):

Example. Taxpayer E, an individual, incurs a $20,000 debt secured by a residence and immediately uses the proceeds to purchase an automobile exclusively for E's personal use. Under the rules in this section, the debt and interest expense on the debt are allocated to a personal expenditure. If, however, the interest on the debt is qualified residence interest within the meaning of section 163(h)(3), the interest is not treated as personal interest for purposes of section 163(h).

(4) *Interest described in section 163(h)(2)(E).* Interest described in section 163(h)(2)(E) is allowable as a deduction without regard to the rules of this section.

(5) *Interest on deemed distributee debt.* [Reserved.]

(6) *Examples.* The following examples illustrate the relationship between the passive loss and nonbusiness interest limitations and other limitations on the deductibility of interest expense:

Example (1). Debt is allocated pursuant to the rules in this section to an investment expenditure for the purchase of taxable investment securities. Pursuant to section 265(a)(2), the debt is treated as indebtedness incurred or continued to purchase or carry obligations the interest on which is wholly exempt from Federal income tax, and, accordingly, interest on the debt is disallowed. If section 265(a)(2) subsequently ceases to apply (because, for example, the taxpayer ceases to hold any tax-exempt obligations), and the debt at such time continues to be allocated to an investment expenditure, interest on the debt that accrues after such time is subject to section 163(d).

Example (2). An accrual method taxpayer incurs a debt payable to a cash method lender who is related to the taxpayer within the meaning of section 267(b). During the period in which interest on the debt is not deductible by reason of section 267(a)(2), the debt is allocated to a passive activity expenditure. Thus, interest that accrues on the debt for such period is also allocated to the passive activity expenditure. When such interest expense becomes deductible under section 267(a)(2), it will be allocated to the passive activity expenditure, regardless of how the debt is allocated at such time.

Example (3). A taxpayer incurs debt that is allocated under the rules of this section to an investment expenditure. Under section 263A(f), however, interest expense on such debt is capitalized during the production period (within the meaning of section 263A(f)(4)(B)) of property used in a passive activity of the taxpayer. The capitalized interest expense is not allocated to the investment expenditure, and depreciation deductions attributable to the capitalized interest expense are subject to the passive loss limitation as long as the property is used in a passive activity. However, interest expense on the debt for periods after the production period is allocated to the investment expenditure as long as the debt remains allocated to the investment expenditure.

(7) *Other limitations on interest expense*—(i) *Capitalization provisions.* A capitalization provision is any provision that requires or allows interest expense to be capitalized. Capitalization provisions include sections 263(g), 263A(f), and 266.

(ii) *Disallowance provisions.* A disallowance provision is any provision (other than the passive loss and nonbusiness interest limitations) that disallows a deduction for interest expense for all taxable years and is not a capitalization provision. Disallowance provisions include sections 163(f)(2), 264(a)(2), 264(a)(4), 265(a)(2), 265(b)(2), 279(a), 291(e)(1)(B)(ii), 805(b)(1), and 834(c)(5).

(iii) *Deferral provisions.* A deferral provision is any provision (other than the passive loss and nonbusiness interest limitations) that disallows a deduction for interest expense for any taxable year and is not a capitalization or disallowance provision. Deferral provisions include sections 267(a)(2), 465, 1277, and 1282.

(n) *Effective date*—(1) *In general.* This section applies to interest expense paid or accrued in taxable years beginning after December 31, 1986.

(2) *Transitional rule for certain expenditures.* For purposes of determining whether debt is allocated to expenditures made on or before August 3, 1987, paragraphs (c)(4)(iii)(B) and (c)(5)(i) of this section are applied by substituting "90 days" for "15 days."

(3) *Transitional rule for certain debt*—(i) *General rule.* Except as provided in paragraph (n)(3)(ii) of this section, any debt outstanding on December 31, 1986, that is properly attributable to a business or rental activity is treated for purposes of this section as debt allocated to expenditures properly chargeable to capital account with respect to the assets held for use or for sale to customers in such business or rental activity. Debt is properly attributable to a business or rental activity for purposes of this section (regardless of whether such debt otherwise would be allocable under this section to expenditures in connection with such activity) if the taxpayer has properly and consistently deducted interest expense (including interest subject to limitation under section 163(d) as in effect prior to the Tax Reform Act of 1986) on such debt on Schedule C, E, or F of Form 1040 in computing income or loss from such business or rental activity for taxable years beginning before January 1, 1987. For purposes of this paragraph (n)(3), amended returns filed after July 2, 1987 are disregarded in determining whether a taxpayer has consistently deducted interest expense on Schedule C, E, or F of Form 1040 in computing income or loss from a business or rental activity.

(ii) *Exceptions*—(A) *Debt financed distributions by passthrough entities.* [Reserved]

(B) *Election out.* This paragraph (n)(3) does not apply with respect to debt of a taxpayer who elects under paragraph (n)(3) (viii) of this section to allocate debt outstanding on December 31, 1986, in accordance with the provisions of this section other than this paragraph (n)(3) (i.e., in accordance with the use of the debt proceeds).

(iii) *Business or rental activity.* For purposes of this paragraph (n)(3), a business or rental activity is any trade or business or rental activity of the taxpayer. For this purpose—

(A) A trade or business includes a business or profession the income and deductions of which (or, in the case of a partner or S corporation shareholder, the taxpayer's share thereof) are properly reported on Schedule C, E, or F of Form 1040; and

(B) A rental activity includes an activity of renting property the income and deductions of which (or, in the case of a partner or S corporation shareholder, the taxpayer's share thereof) are properly reported on Schedule E of Form 1040.

(iv) *Example.* The following example illustrates the circumstances in which debt is properly attributable to a business or rental activity:

Example. Taxpayer H incurred a debt in 1979 and properly deducted the interest expense on the debt on Schedule C of Form 1040 for each year from 1979 through 1986. Under this paragraph (n) (3), the debt is properly attributable to the business the results of which are reported on Schedule C.

(v) *Allocation requirement*—(A) *In general.* Debt outstanding on December 31, 1986, that is properly attributable (within the meaning of paragraph (n)(3)(i) of this section) to a business or rental activity must be allocated in a reasonable and consistent manner among the assets held for use or for sale to customers in such activity on the last day of the taxable year that includes

December 31, 1986. The taxpayer shall specify the manner in which such debt is allocated by filing a statement in accordance with paragraph (n)(3)(vii) of this section. If the taxpayer does not file such a statement or fails to allocate such debt in a reasonable and consistent manner, the Commissioner shall allocate the debt.

(B) *Reasonable and consistent manner—examples of improper allocation.* For purposes of this paragraph (n)(3)(v), debt is not treated as allocated in a reasonable and consistent manner if—

(1) The amount of debt allocated to goodwill exceeds the basis of the goodwill; or

(2) The amount of debt allocated to an asset exceeds the fair market value of the asset, and the amount of debt allocated to any other asset is less than the fair market value (lesser of basis or fair market value in the case of goodwill) of such other asset.

(vi) *Coordination with other provisions.* The effect of any events occurring after the last day of the taxable year that includes December 31, 1986, shall be determined under the rules of this section, applied by treating the debt allocated to an asset under paragraph (n)(3)(v) of this section as if proceeds of such debt were used to make an expenditure properly chargeable to capital account with respect to such asset on the last day of the taxable year that includes December 31, 1986. Thus, debt that is allocated to an asset in accordance with this paragraph (n)(3) must be reallocated in accordance with paragraph (j) of this section upon the occurrence with respect to such asset of any event described in such paragraph (j). Similarly, such debt is treated as repaid in the order prescribed in paragraph (d) of this section. In addition, a replacement debt (within the meaning of paragraph (e) of this section) is allocated to an expenditure properly chargeable to capital account with respect to an asset to the extent the proceeds of such debt are used to repay the portion of a debt allocated to such asset under this paragraph (n)(3).

(vii) *Form for allocation of debt.* A taxpayer shall allocate debt for purposes of this paragraph (n)(3) by attaching to the taxpayer's return for the first taxable year beginning after December 31, 1986, a statement that is prominently identified as a transitional allocation statement under § 1.163–8T(n)(3) and includes the following information:

(A) A description of the business or rental activity to which the debt is properly attributable;

(B) The amount of debt allocated;

(C) The assets among which the debt is allocated;

(D) The manner in which the debt is allocated;

(E) The amount of debt allocated to each asset; and

(F) Such other information as the Commissioner may require.

(viii) *Form for election out.* A taxpayer shall elect to allocate debt outstanding on December 31, 1986, in accordance with the provisions of this section other than this paragraph (n)(3) by attaching to the taxpayer's return (or amended return) for the first taxable year beginning after December 31, 1986, a statement to that effect, prominently identified as as election out under § 1.163–8T(n)(3).

(ix) *Special rule for partnerships and S corporations.* For purposes of paragraph (n)(3)(ii)(B), (v), (vii) and (viii) of this section (relating to the allocation of debt and election out), a partnership or S corporation shall be treated as the taxpayer with respect to the debt of the partnership or S corporation.

(X) *Irrevocability.* An allocation or election filed in accordance with paragraph (n)(3) (vii) or (viii) of this section may not be revoked or modified except with the consent of the Commissioner.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 3. The authority for Part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 4. Section 602.101(c) is amended by inserting in the appropriate place in the table "§ 1.163–8T . . . 1545–0995".

There is need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impractical to issue this Treasury decision with notice and public procedure under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

Approved: June 15, 1987.

J. Roger Mentz,

Assistant Secretary of the Treasury.

[FR Doc. 87–14959 Filed 7–1–87; 8:45 am]

BILLING CODE 4830–01–M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2644

Collection of Withdrawal Liability; Adoption of New Interest Rate

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This is an amendment to the Pension Benefit Guaranty Corporation's regulation on Notice and Collection of Withdrawal Liability. That regulation incorporates certain interest rates published by another Federal agency.The effect of this amendment is to add to the appendix of that regulation a new interest rate to be effective from July 1, 1987, to September 30, 1987.

EFFECTIVE DATE: July 1, 1987.

FOR FURTHER INFORMATION CONTACT: John Foster, Attorney, Regulations Division, Corporate Policy and Regulations Department (35100), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006; telephone 202–778–8850 (202–778–8859 or TTY and TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: Under Section 4219(c) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), the Pension Benefit Guaranty Corporation ("the PBGC") promulgated a final regulation on Notice and Collection of Withdrawal Liability. That regulation, codified at 29 CFR Part 2644, deals with the rate of interest to be charged by multiemployer pension plans on withdrawal liability payments that are overdue or in default, or to be credited by plans on overpayments of withdrawal liability. The regulation allows plans to set rates, subject to certain restrictions. Where a plan does not set the interest rate, § 2644.3(b) of the regulation provides that the rate to be charged or credited for any calendar quarter is the average quoted prime rate on short-term commercial loans for the fifteenth day (or the next business day if the fifteenth day is not a business day) of the month preceding the beginning of the quarter, as reported by the Board of Governors of the Federal Reserve System in Statistical Release H.15 ("Selected Interest Rates").

Because the regulation incorporates interest rates published in Statistical Release H.15, that release is the authoritative source for the rates that are to be applied under the regulation. As a convenience to persons using the regulation, however, the PBGC collects

the applicable rates and republishes them in an appendix to Part 2644. This amendment adds to this appendix the interest rate of 8¼ percent, which will be effective from July 1, 1987, through September 30, 1987. This rate is ¾ percent higher than the rate that was in effect for the second quarter of 1987. See 52 FR 10368 (April 1, 1987). This rate is based on the prime rate in effect on June 15, 1987.

The appendix to 29 CFR Part 2644 does not prescribe interest rates under the regulation; the rates prescribed in the regulation are those published in Statistical Release H.15. The appendix merely collects and republishes the rates in a convenient place. Thus, the interest rates in the appendix are informational only. Accordingly, the PBGC finds that notice of and public comment on this amendment would be unnecessary and contrary to the public interest. For the above reasons, the PBGC also believes that good cause exists for making this amendment effective immediately.

The PBGC has determined that this amendment is not a "major rule" within the meaning of Executive Order 12291, because it will not have an annual effect on the economy of $100 million or more; nor create a major increase in costs or prices for consumers, individual industries, or geographic regions, nor have significant adverse effects on competition, employment, investment, innnovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects in 29 CFR Part 2644

Employee benefit plans, Pension.

In consideration of the foregoing, Part 2644 of Subchapter F of Chapter XXVI of Title 29, Code of Federal Regulations, is amended as follows:

PART 2644—NOTICE AND COLLECTION OF WITHDRAWAL LIABILITY

1. The authority citation for Part 2644 continues to read as follows:

Authority: Secs. 4002(b)(3) and 4219(c), Pub. L. 93-496, as amended by secs. 403(1) and 104 (respectively), Pub. L. 96-364, 94 Stat. 1208, 1302 and 1236-1238 (29 U.S.C. 1302(b)(3) and 1399(c)(6)).

Appendix A [Amended]

2. Appendix A is amended by adding to the end of the table of interest rates therein the following new entry:

From	To	Date of quotation	Rate (percent)
* * *	*	* *	*
07/01/87	09/30/87	06/15/87	8.25

Issued at Washington, DC, on this 26th day of June, 1987.

Kathleeen P. Utgoff,

Executive Director.

[FR Doc. 87-14994 Filed 7-1-87; 8:45 am]

BILLING CODE 7708-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 43

Personnel; Personal Commercial Solicitation on DOD Installations

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: Due to this amendment, 32 CFR Part 43 is now applicable to Defense Agencies. Certain agencies are located on DoD installations and fall under the term "DoD Installation" as defined in this part. The amendment allows an exception to the prohibition on advertising addresses or telephone numbers of commercial sales activities for members of military families authorized to conduct such activities in family housing.

EFFECTIVE DATE: April 21, 1987.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Schoenberger, Office of the Assistant Secretary of Defense (Force Management and Personnel), Room 3C975, The Pentagon, Washington, DC 20301. Telephone (202) 697-9525.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 43

Consumer protection, Federal buildings and facilities, Government employees, Insurance, Military personnel.

PART 43—[AMENDED]

Accordingly, 32 CFR Part 43 is amended as follows:

1. The authority citation for Part 43 continues to read as follows:

Authority: 5 U.S.C. 301

§ 43.2 [Amended]

2. Section 43.2(a) is amended by changing "and the Unified Commands" to "the Unified Commands, and the Defense Agencies."

§ 43.6 [Amended]

3. Section 43.6(d)(4) is revised to read as follows:

* * * * *

(d) * * *

(14) Advertising addresses or telephone numbers of commercial sales activities conducted on the installation, except for authorized activities conducted by members of military families residing in family housing.

* * * * *

Dated: June 29, 1987.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 87-15055 Filed 7-1-87; 8:45 am]

BILLING CODE 3810-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[OW-4-FRL-3226-4]

Water Pollution Control; Ocean Dumping; Designation of Sites

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA today designates all of the existing dredged material disposal site offshore Savannah, Georgia, and part of existing dredged material disposal sites offshore Charleston, South Carolina, and Wilmington, North Carolina, as EPA approved ocean dumping sites in the Atlantic Ocean for the dumping of dredged material from these three harbor areas, respectively. These site designations are being proposed for an indefinite period of time, but are subject to continued monitoring in order to insure that adverse environmental impacts do not occur. The decision to reduce the size of the existing Charleston and Wilmington sites is based on projected future dredged material disposal volumes and the facilitation of monitoring. In addition, EPA designates, for a seven-year period following final designation, the entire existing Charleston site for use only for dredged materials from the Charleston Harbor deepening project. This action is necessary to provide acceptable ocean dumping sites for the current and future disposal of dredged material.

EFFECTIVE DATE: These designations shall become effective August 3, 1987.

ADDRESSES: Send comments to: Sally S. Turner, Marine and Estuarine Branch, Water Management Division, EPA, 345 Courtland Street NE. Atlanta, GA 30365.

The file supporting these final site designations is available for public inspection at the following locations: EPA Public Information Reference Unit (PIRU), Room 2904 (rear), 401 M Street, SW. Washington, DC, and EPA Region IV, 345 Courtland Street NE., Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: Chris Provost, 404/347-2126.

SUPPLEMENTARY INFORMATION:

A. Background

Section 102(c) of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 33 U.S.C. 1401 et seq. ("the Act"), gives the Administrator of EPA the authority to designate sites where ocean dumping may be permitted. On December 23, 1986, the Administrator delegated the authority to designate ocean dumping sites to the Regional Administrator of the Region in which the site is located. These final site designations are within Region IV and are bieng made pursuant to that authority.

The EPA Ocean Dumping Regulations (40 CFR Chapter I, Subchapter H, § 228.4) state that ocean dumping sites will be designated by promulgation in this Part 228. A list of "Approved Interim and Final Ocean Dumping Sites" was published on January 11, 1977 (42 FR 2461 *et seq.)* and was extended on August 19, 1985 (50 FR 33338). That list established the existing Savannah, Charleston, and Wilmington sites as interim sites and extended their period of use until July 31, 1988.

B. EIS Development

Section 102(c) of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.* ("NEPA"), requires that Federal agencies prepare an Environmental Impact Statement (EIS) on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment. While NEPA does not apply to EPA activities of this type, EPA has voluntarily committed to prepare EIS's in connection with ocean dumping site designations such as this [See 39 FR 16186 (May 7, 1974)].

EPA has prepared a draft and final EIS entitled "Environmental Impact Statement (EIS) for Savannah, GA, Charleston, SC, and Wilmington, NC Ocean Dredged Material Disposal Sites Designation." On October 28, 1983, a notice of availability of the final EIS for public review and comment was published in the **Federal Register** (48 FR 49918). The public comment period on the final EIS closed November 28, 1983. No comments were received on the final EIS during the comment period. Anyone desiring a copy of the EIS may obtain one from the address given above.

The final EIS includes EPA's assessment of the ten comments received during the comment period on the draft EIS. Comments correcting facts presented in the draft EIS were incorporated in the text, and the changes were noted in the final EIS. Specific comments which could not be treated as text changes were responded to point by point in the final EIS, following the letters of comment.

The action discussed in the EIS is final designation for continuing use of the ocean dredged material disposal sites near Savannah, GA, Charleston, SC, and Wilmington, NC. The purpose of the action is to provide environmentally acceptable locations for the ocean disposal of materials dredged from the Savannah, Charleston, and Wilmington Channel Systems when ocean disposal is found to be necessary for some dredged material. The need for ocean disposal is determined on a case-by-case basis as part of the process of evaluating proposed disposal projects under the criteria for ocean dumping permits specified in EPA's Ocean Dumping Regulations (40 CFR Part 227).

The EIS discusses the need for the action and examines ocean disposal site alternatives to the proposed action. The EIS presents the information needed to evaluate the suitability of ocean disposal areas for final designation and is based on one of a series of disposal site environmental studies. The environmental studies and final designation process are being conducted in accordance with the requirements of the Act, the Ocean Dumping Regulations, and other applicable Federal environmental legislation.

C. Coastal Zone Management and Endangered Species Coordination

The States of North Carolina and South Carolina have concurred with EPA's determination that these site designations are consistent with their approved State Coastal Zone Management Plans. The State of Georgia does not have such a plan. The National Marine Fisheries Service and the U.S. Fish and Wildlife Service have concurred with EPA's conclusion that the designation of these disposal sites will not affect the endangered species under their jurisdictions.

D. Site designation

Each year the entrance channels to Savannah, Charleston, and Wilmington Harbors must be dredged because natural processes cause them to shoal. Approximately one million cubic yards of sediments are dredged annually from the entrance channels to each harbor and dumped in ocean disposal sites adjacent to the respective dredging areas. Disposal at these sites shall be limited to dredged material from the three respective Harbor areas. However, these materials must be shown to meet the appropriate requirements of EPA's Ocean Dumping Regulations. The existing disposal sites were used for many years prior to their interim designation in 1977. Dredging may occur at any time of the year at the three harbors.

The action is for the final designation of the existing Savannah site and two sites of reduced area within the existing Charleston and Wilmington dredged material disposal sites. The entire existing Charleston site will receive materials from the proposed deepening project for a period of seven years after final designation. The Savannah site and reduced Charleston and Wilmington sites will receive operation and maintenance dredged material from the respective harbor areas for an indefinite period. The decision to reduce the size of the Charleston site for indefinite designation (by approximately 75 percent of the existing site's area) and the Wilmington site (by approximately 90 percent of the existing site's area) is based on past and anticipated dredging activities in the respective areas. EPA believes that the reduced size of each is sufficient for the expected disposal volumes, and reducing the designated area will facilitate monitoring activities. In addition, the reduction in size of these sites increases their distances from shore which reduces the associated potential impact to beaches or amenity areas.

Boundary coordinates for the Savannah, Charleston and Wilmington sites for indefinite designation are as follows:

Savannah

31d 55' 53"N., 80d, 44' 20"W.; 31d 57' 55"N., 80d 46' 48"W.; 31d 57' 55"N., 80d 44' 20"W.; 31d 55' 53"N., 80d 46' 48"W.

Charleston

32d 40' 27"N., 79d 47' 22"W.; 32d 39' 04"N., 79d 44' 25"W.; 32d 38' 07"N., 79d 45' 03"W.; 32d 39' 30"N., 79d 48' 00"W.

Wilmington

33d 49′ 30″N., 78d 03′ 06″W.; 33d 48′ 18″N., 78d 01′ 39″W.; 33d 47′ 19″N., 78d 02′ 48″W.; 33d 48′ 30″N., 78d 04′ 16″W.

Boundary coordinates of the Charleston Harbor deepening site (i.e. the entire existing Charleston site which will be used only to receive dredged materials from the proposed Charleston Harbor deepening project) are: 32d 38′ 06″N., 79d 41′ 57″W.; 32d 40′ 42″N., 79d 47′ 30″W.; 32d 39′ 04″N., 79d 49′ 21″W.; 32d 36′ 28″N., 79d 43′ 48″W.

On February 23, 1987, EPA proposed a rule change designating these sites for the disposal of dredged materials [52 FR 5459 (February 23, 1987)]. The preamble to this proposed rule presented the characteristics of the sites in terms of the five general and eleven specific criteria identified in Section 228 of the Ocean Dumping Regulations. These criteria, taken together, constitute an environmental assessment of the suitability of each site as a repository for dredged material. That assessment concludes that these sites are appropriate for final designation.

Two letters of comment were received on the proposed rule. The South Carolina State Ports Authority (SPA) commented that the proposed designation of the Charleston Harbor deepening project site for four years was not sufficient. The SPA suggested designating this site for the duration of the Charleston Harbor deepening project. The latest construction schedule for the deepening project was transmitted to EPA after publication of the proposed rule. That schedule indicates that the majority of the construction will be completed in seven years. Since it is EPA's intention to designate this site for the deepening project, the designation is being made for seven years to reflect this updated schedule. Throughout the project, monitoring of the disposal site will document the effects of disposal and the extent of dispersion or mounding of the material. Therefore, EPA believes that the seven year designation is sufficient for disposal of the materials from the Charleston Harbor deepening project. If after this time it is apparent that significant quantities of material from this project remain to be disposed of in the ocean, and the monitoring results indicate that the larger area is still needed, the designation of the larger site can be extended. The SPA also indicated that the proposed size of the permanent Charleston site is too small. EPA and the Corps of Engineers have determined that the reduced area of three square nautical miles is adequate capacity for this site.

The Corps of Engineers, South Atlantic Division (SAD), expressed concern regarding the responsibilities of EPA and the Corps for the management of the sites. Under the authority of the Act and the Ocean Dumping Regulations, EPA is responsible for the management of ocean disposal sites. management of the sites consists of regulating times, rates, and methods of disposal, quantities and types of materials for disposal, developing monitoring programs and conducting site evaluations. The Regulations further encourage the full participation of other federal, state, and local agencies in the development and implementation of monitoring plans. EPA, Region IV and the SAD are currently developing a Memorandum of Understanding (MOU) to facilitate joint involvement in disposal site management. The MOU will outline any joint responsibilities that EPA and the Corps will share in implementing site management plans. SAD also commented that the Corps projects are not subject to the "permitting process" referenced in the proposed rule. While it is true that federal projects are not required to have permits pursuant to Section 103 of the Act, they must, like non-federal projects, be evaluated under the criteria for ocean dumping permits specified in EPA's Ocean Dumping Regulations (40 CFR Part 227). SAD also correctly commented that the permanent Charleston site is not located directly in the center of the interim Charleston site, but still within the interim site boundaries.

E. Action

Dredged material disposal has occurred at the disposal sites for the past several years. Recent monitoring associated with the site designation process has not detected any persistent or cumulative changes in the water quality or ecology at the sites. Impacts from dumping have been found to be temporary and restricted to within the site boundary. The near-shore location of the disposal sites facilitates surveillance and monitoring and decreases the impact of sediment texture/chemistry changes resulting from disposal of dissimilar sediments.

The designation of these ocean dredged material disposal sites as EPA Approved Ocean Dumping Sites is being published as final rulemaking. Management authority of these sites will be the responsibility of the Regional Administrator of EPA Region IV. EPA Region IV, and the Corps of Engineers, South Atlantic Division, are currently preparing a Memorandum of Understanding which will outline the responsibilities of each Agency in the monitoring of the sites.

It should be emphasized that, once an ocean dumping site is designated, such a site designation does not constitute or imply EPA's approval of actual disposal of materials at the site. Before ocean dumping of dredged material from non-Federal projects at the site may commence, the Corps of Engineers must evaluate a permit application using EPA's ocean dumping criteria. If a federal project is involved, the Corps must also evaluate the proposed dumping in accordance with those criteria. In either case, EPA has the right to disapprove the actual dumping if it determines that environmental concerns under the Act have not been met.

F. Regulatory Assessments

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

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

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

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

List of Subjects in 40 CFR Part 228

Water pollution control.

Dated: June 25, 1987.

Lee A. DeHihns, III,

Acting Regional Administrator.

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

PART 228—[AMENDED]

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

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

2. Section 228.12 is amended by removing and reserving paragraph (a)1)(ii)(C) and by adding paragraphs (b)(32), (33), (34), and (35) to read as follows:

§ 228.12 Delegation of management authority for ocean dumping sites.

* * * * *

(b) * * *

(32) Savannah, GA, Dredged Material Disposal Site—Region IV.

Location: 31d, 55' 53"N., 80d 44' 20"W.; 31d 57' 55"N., 80d 46' 48"W.; 31d 57' 55"N., 80d 44' 20"W.; 31d 55' 53"N., 80d 46' 48"W.

Size: 4.26 square nautical miles.

Depth: Averages 11.4 meters.

Primary Use: Dredged material.

Period of Use: Continuing use.

Restriction: Disposal shall be limited to dredged material from the Savannah Harbor area.

(33) Charleston, SC, Dredged Material Disposal Site—Region IV.

Location: 32d 40' 27"N., 79d 47' 22"W.; 32d 39' 04"N., 79d 44' 25"W.; 32d 38' 07"N., 79d 45' 03"W.; 32d 39' 30"N., 79d 48' 00"W.

Size: 3 square nautical miles.

Depth: Averages 11 meters.

Primary Use: Dredged material.

Period of Use: Continuing use.

Restriction: Disposal shall be limited to dredged material from the Charleston Harbor area.

(34) Charleston, SC, Harbor Deepening Project Dredged Material Disposal Site—Region IV.

Location: 32d 38' 06"N., 79d 41' 57"W.; 32d 40' 42"N., 79d 47' 30"W.; 32d 39' 04"N., 79d 49' 21"W.; 32d 36' 28"N., 79d 43' 48"W.

Size: 11.8 square nautical miles.

Depth: Averages 11 meters.

Primary Use: Dredged material from the Charleston Harbor deepening project.

Period of Use: Not to exceed seven years from the initiation of the Charleston Harbor deepening project.

Restriction: Disposal shall be limited to dredged material from the Charleston Harbor deepening project.

(35) Wilmington, NC, Dredged Material Disposal Site—Region IV.

Location: 33d 49' 30"N., 78d 03' 06"W.; 33d 48' 18"N., 78d 01' 39"W.; 33d 47' 19"N., 78d 02' 48"W.; 33d 48' 30"N., 78d 04' 16"W.

Size: 2.3 square nautical miles.

Depth: Averages 13 meters.

Primary Use: Dredged material.

Period of Use: Continuing use.

Restriction: Disposal shall be limited to dredged material from Wilmington Harbor area.

[FR Doc. 87-15079 Filed 7-1-87; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[Docket No. 70355-7127]

Atlantic Tuna Fisheries

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

ACTION: Final rule.

SUMMARY: NOAA issues this final rule to amend the existing regulations governing the U.S. fishery for Atlantic bluefin tuna by making technical corrections, adding definitions and interpretive phrases, and closing loopholes by which the original intent of the regulations could be circumvented. The intended effect is to clarify the regulations.

EFFECTIVE DATE: July 2, 1987.

ADDRESS: The environmental assessment and final regulatory flexibility analysis referred to in this rule, as well as other previously published reports, are available from the National Marine Fisheries Service, Northeast Region, Services Division, P.O. Box 1109, Gloucester, MA 01930-1109.

FOR FURTHER INFORMATION CONTACT: William C. Jerome, Jr., 617-281-3600 ext. 262.

SUPPLEMENTARY INFORMATION: A complete discussion of the action is found in the proposed rule (52 FR 15517, April 29, 1987) and is not repeated here. Public comments were invited until May 15, 1987. NOAA informed the public on April 27, 1987, of the availability of the proposed rule by issuing a general press release describing the proposed changes. This notice was mailed to key industry and media representatives and to individuals who had requested to be placed on the Atlantic bluefin tuna mailing list.

NOAA received two letters commenting on the proposed rule. The issues raised by one of the commenters were not germane to any of the proposed amendments. The other commenter was concerned that the proposed § 285.31(a)(8) could be read as allowing purse seine vessels preemptory rights on the fishing grounds. It is not the intent of NOAA to allow preemption rights to any gear segment in the domestic Atlantic bluefin tuna fishery, nor is any implied in the proposed language of § 285.31(a)(8).

Classification

The Administrator of NOAA determined that this rule is not major under Executive Order 12291. He also determined that it will not have a significant economic effect on a substantial number of small entities; and, because it does not change the intent of previously adopted rules, it is categorically excluded from requirements of the National Environmental Protection Act and no environmental assessment or environmental impact statement was prepared.

This final rule clarifies the intent of the current regulations and thus will have no impacts which were not discussed in the 1983 environmental assessment, the 1982 regulatory flexibility analysis/regulatory impact review (RFA/RIR), or in the previous rules.

The information collection requirements of Part 285, previously approved by the Office of Management and Budget under OMB control numbers 0648-0097, -0031, -0013, and -0161, will not be affected by the amendments made by this final rule.

Copies of all previously published reports may be obtained from the NMFS Northeast Region Services Division (see **ADDRESS**).

List of Subjects in 50 CFR Part 285

Fisheries, Reporting and recordkeeping requirements.

Dated: June 29, 1987.

Bill Powell,

Executive Director, National Marine Fisheries Service.

PART 285—[AMENDED]

For the reasons set forth in the preamble, 50 CFR Part 285 is amended as follows:

1. The authority citation for Part 285 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.*

2. In § 285.2, the definitions for *Authorized Officer*, in paragraph (b), *Buy-boat*, and *Dealer* are revised to read as follows:

§ 285.2 Definitions.

* * * * *

Authorized officer means

* * * * *

(b) Any Special Agent of NMFS;

* * * * *

Buy-boat means any vessel or other means of conveyance used by a dealer in purchasing or receiving Atlantic bluefin tuna from any person or fishing vessel engaged in fishing for any tuna.

* * * * *

Dealer means any person who engages in a commercial activity with

respect to a regulated species or parts thereof.

* * * * *

3. In § 285.6, paragraph (a) is revised to read as follows:

§ 285.6 Civil penalties.

* * * * *

(a) Violates any provisions of § 285.3 (a), (b), or (f) of this part will be assessed a civil penalty of not more than $25,000 for a first violation and a civil penalty of not more than $50,000 for any subsequent violation;

* * * * *

4. In § 285.23, paragraph (f) is revised to read as follows:

§ 285.23 Incidental catch.

* * * * *

(f) *Longlines.* Subject to the quotas in § 285.22, any person operating a vessel using longline gear possessing an Incidental catch permit issued under § 285.21 may retain or land Atlantic bluefin tuna as an incidental catch. The amount of Atlantic bluefin tuna retained or landed may not exceed:

(1) Two fish per vessel per trip retained or landed south of 36°00′ N. latitude, and

(2) Two percent by weight of all other fish on board the vessel at the end of each fishing trip, retained or landed north of 36°00′ N.

* * * * *

5. In § 285.25(c), the first two sentences are revised to read as follows:

§ 285.25 Purse seine vessel requirements.

* * * * *

(c) *Inspection.* Any owner or operator of a purse seine vessel with a permit issued under § 285.21(b) must request an inspection of the vessel and fishing gear by an enforcement agent of NMFS before commencing any fishing trip and before offloading any Atlantic bluefin tuna. The vessel owner or operator must request such inspection at least 24 hours before commencement of a fishing trip or off-loading. Only calls made to 617-563-5721 will meet this notification requirement and result in the assignment of an agent for an inspection. * * *

* * * * *

§ 285.30 [Amended]

6. In § 285.30(c)(2), the telephone number "305-350-4132" for the Miami, Florida, office is removed and the telephone number "305-536-4323" is added in its place.

7. In § 285.31, paragraphs (a) (8) and (9) are revised to read as follows:

§ 285.31 Prohibitions.

(a) * * *

(8) For any vessel other than a vessel holding a purse seine permit issued under § 285.21(b), to approach to within 100 yards (91.5 megers) of the cork line of any purse seine net used by any vessel fishing for Atlantic bluefin tuna;

(9) Retain or land Atlantic bluefin tuna in excess of the incidental catch provisions under § 285.23;

* * * * *

[FR Doc. 87-15010 Filed 7-1-87; 8:45 am]
BILLING CODE 3510-22-M

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50 CFR Part 642

[Docket No. 70605-7141]

Coastal Migratory Pelagic Resources of the Gulf of Mexico and the South Atlantic; Total Allowable Catch and Bag Limits for King and Spanish Mackerel

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

ACTION: Notice of final total allowable catch and bag limits for king and Spanish mackerel.

SUMMARY: The Secretary of Commerce issues a notice of changes in the total allowable catch (TAC) for the Gulf migratory group of king mackerel and the Atlantic and Gulf migratory groups of Spanish mackerel and bag limits for Spanish mackerel in accordance with the framework procedure of the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and the South Atlantic (FMP). This notice (1) reduces TAC and allocations for the Gulf migratory group of king mackerel, (2) changes TAC and allocations for the Atlantic and Gulf migratory groups of Spanish mackerel, and (3) establishes bag limits for Spanish mackerel from both migratory groups. The intended effects are to protect the mackerel and still allow a catch by the important recreational and commercial fisheries that are dependent on these species.

EFFECTIVE DATE: June 30, 1987.

FOR FURTHER INFORMATION CONTACT: William N. Lindall, 813-893-3721.

SUPPLEMENTARY INFORMATION: The mackerel fisheries are regulated under the FMP, which was prepared jointly by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils), and its implementing regulations at 50 CFR Part 642. Amendment 1 to the FMP was implemented September 22, 1985 (50 FR 34843, August 28, 1985). Amendment 2 is being implemented concurrently with this notice on June 30, 1987 (52 FR 23836, June 25, 1987).

This notice specifies bag limits for Spanish mackerel that were not specified in the rule which implemented Amendment 2, increases the TACs and allocations for Spanish mackerel above those specified in Amendment 2, and reduces the TAC and allocations for the Gulf migratory group of king mackerel from those specified in Amendment 2.

A preliminary notice of the changes in TACs and bag limits for king and Spanish mackerel was published on June 10, 1987 (52 FR 21977). That notice (1) described the framework procedures of the FMP through which the Councils recommended changes in TACs, allocations, quotas, and bag limits, (2) specified the recommended changes, and (3) described the need and rationale for the recommended changes. Those descriptions are not repeated here; the specifications implemented by this final notice are the same as those proposed in the preliminary notice.

Comments and Responses

Comments on the proposed changes were received from seven sources.

The Florida Marine Fisheries Commission (FMFC) commented that for the Atlantic group of Spanish mackerel a 4-fish bag limit should be approved throughout the range rather than off Florida only because (1) the creation of new fishing zones with dual bag limits is an improper exercise of notice action authority, (2) a 10-fish bag limit off States north of Florida will violate the expressed intent of distributing the catch throughout the fishing year, and (3) the proposed zones and dual bag limits, when combined with the fishing season, violate national standard 4 by discriminating between residents of different States and violate national standard 5 because the measures have economic allocation as their sole purpose. NOAA does not agree.

These changes are being made under the framework procedure of the FMP and its implementing regulations and have involved a 15-day public comment period and a regulatory impact review.

Depending on the amount of recreational fishing effort, a 4-fish bag limit on the entire Atlantic group of Spanish mackerel could extend the open season over a longer period of the fishing year. The Councils considered this and concluded that a uniform 4-fish bag limit would provide a disproportionate share of the resource to the southern zone off Florida owing to the year-round fishing opportunity, near-shore access to the resource, and the greater number of fishermen in that zone. North of Florida, the fish are present for a shorter season and are

more widely dispersed. NOAA desires to support the allocation decisions of the Councils to the extent the decisions are consistent with the Magnuson Fishery Conservation and Management Act. In this case, NOAA finds that the decisions are consistent.

Geographical allocations are an integral part of fisheries management. The Spanish mackerel bag limits, like other allocations and quotas, are based on biological, social, and economic considerations. They do not discriminate against the citizens of any State nor do they have economic allocation as their sole purpose. Because of the more limited seasons and more dispersed resource north of Flordia, the uniform bag limit proposed by FMFC might well discriminate against citizens north of Florida. The 4-fish bag limit in the southern zone complements the 4-fish bag limit in Florida's waters, thus enhancing enforceability.

The FMFC further commented that if NOAA could not partially approve the changes then it should fully disapprove the Atlantic bag limit provision for Spanish mackerel and use whatever powers are available, including emergency regulations, to ensure that the objectives of the plan are met. NOAA cannot continue to manage the Spanish mackerel fishery under the emergency regulatory provisions of the Magnuson Act. The existing emergency regulations on Spanish mackerel expire on June 29, 1987. Thus, NOAA must either approve or disapprove the bag limit. NOAA rejects the disapproval option because, with no bag limit, the entire recreational allocation could be taken in a small geographical area, thus denying fishermen in other areas the opportunity to retain fish.

A South Carolina conservation association favored the recommended TACs and bag limits even though the bag limits represent a severe restriction on anglers. The association believes such measures are necessary for the long-term health of the resource. NOAA agrees.

Three commercial fishermen commented that the quota (0.5 million pounds) for the eastern zone of the Gulf migratory group of king mackerel is too low; that counting all mackerel that are sold against the commercial allocations and quotas, even though some are caught under a bag limit, significantly reduces the mackerel available for true commercial fishermen; and that sales of mackerel taken under a bag limit have continued after a commercial closure. These fishermen recommended that, if any fish caught under a bag limit are to be counted against the commercial allocations and quotas, separate quotas should be established for net fishermen and for hook-and-line fishermen.

The reduced quota for the eastern zone of Gulf migratory group king mackerel is within the recommended range of the allowable biological catch in the FMP, as amended. It reflects the Council's desire to implement conservation regulations which further conserve the resource and accelerate rebuilding of the stocks.

Comments regarding the inequity of including fish caught under a bag limit in the commercial allocations and the suggestion to establish separate hook-and-line and net quotas are not within the scope of this notice action. However, the allocations that were established for commercial and "recreational" harvesters took into consideration the fact that some mackerel caught under a bag limit are sold.

After a commercial closure, the sale of mackerel caught in the exclusive economic zone (EEZ) under a bag limit is illegal. Enforcement is difficult, however, since the origin of the catch in the EEZ must be proven. To help alleviate this situation and provide for equitable, uniform law enforcement, NOAA has requested that States alter their mackerel regulations so that sales of mackerel caught in State waters will be banned at the same time that such sales are banned for mackerel caught in the EEZ.

A commercial fisherman protested the reduction in the quota for the western zone of the Gulf migratory group of king mackerel. The response above regarding the reduced quota for the eastern zone is equally applicable to the western zone.

A fisherman protested the possible closure of the king or Spanish mackerel recreational fishery if a recreational allocation is reached and complained that recreational fishermen are treated inequitably.

After consulting with Councils, NOAA may reduce the bag limit to zero when the recreational allocation for a particular migratory group is reached or is projected to be reached. After such a closure, mackerel caught from that group from recreational vessels must be released. Such a closure is essential to prevent overfishing of the resource.

Allocations between commercial and recreational fishing are established by fixed percentages in the FMP. Consequently, whenever a TAC is changed, the commercial and recreational sectors are affected equally.

Changes from the Preliminary Notice

Since the preliminary notice was published, Part 642 has been amended by the rule implementing Amendment 2 to the FMP. To conform to the redesignations and revisions made by that rule, the following changes from the preliminary notice are made:

The heading of § 642.21 is changed to "*Allocations and quotas.*"

In § 642.28(a), introductory text, reference to Figure 2 is removed, reference to § 642.4 is changed to § 642.4(a)(1), and reference to § 642.24(b) is changed to § 642.24(d); and § 642.28(a)(4)(iii) is revised to clarify that the boundary between the northern and southern areas for Spanish mackerel bag limits is the Florida/Georgia border.

Because of confusion which might be caused by concurrent implementation of this notice and the rule implementing Amendment 2 to the FMP, §§ 642.21 and 642.28(a) are printed in their entirety in this notice.

Classification

This action is authorized by 50 CFR 642.27, and complies with E.O. 12291.

List of Subjects in 50 CFR Part 642

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: June 29, 1987.

James E. Douglas, Jr.,

Deputy Assistant Administrator For Fisheries, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR Part 642 is amended as follows:

PART 642—COASTAL MIGRATORY PELAGIC RESOURCES OF THE GULF OF MEXICO AND THE SOUTH ATLANTIC

1. The authority citation for Part 642 continues to read as follows:

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

2. Section 642.21 is revised to read as follows:

§ 642.21 Allocations and quotas.

(a) *Commercial allocations and quotas for king mackerel.* (1) The commercial allocation for the Gulf migratory group of king mackerel is 0.7 million pounds per fishing year. This allocation is divided into quotas as follows:

(i) 0.5 million pounds for the eastern allocation zone; and

(ii) 0.2 million pounds for the western allocation zone.

(2) The commercial allocation for the Atlantic migratory group of king mackerel is 3.59 million pounds per fishing year. No more than 0.4 million pounds may be harvested by purse seines.

(3) A fish is counted against the commercial quota or allocation when it is first sold.

(b) *Recreational allocations for king mackerel.* (1) The recreational allocation for the Gulf migratory group of king mackerel is 1.5 million pounds per fishing year.

(2) The recreational allocation for the Atlantic migratory group of king mackerel is 6.09 million pounds per fishing year.

(c) *Commercial allocations for Spanish mackerel.* (1) The commercial allocation for the Gulf migratory group of Spanish mackerel is 1.42 million pounds per fishing year.

(2) The commercial allocation for the Atlantic migratory group of Spanish mackerel is 2.36 million pounds per fishing year.

(d) *Recreational allocations for Spanish mackerel.* (1) The recreational allocation for the Gulf migratory group of Spanish mackerel is 1.08 million pounds per fishing year.

(2) The recreational allocation for the Atlantic migratory group of Spanish mackerel is 0.74 million pounds per fishing year.

(e) *Zones.* The boundary between the eastern and western zones established for the quotas under the commercial allocation of the Gulf migratory group of king mackerel in paragraph (a)(1) of this section is a line extending directly south from the Alabama/Florida boundary (87°31'06" W. longitude) to the outer limit of the EEZ (Figure 2).

3. Section 642.28(a) is revised to read as follows:

§ 642.28 Bag and possession limits.

(a) *Bag limits.* A person who fishes for king or Spanish mackerel from the Gulf or Atlantic migratory group in the EEZ, except a person fishing under a permit specified in § 642.4(a)(1) and an allocation specified in § 642.21 (a) or (c), or possessing the purse seine catch allowance specified in § 642.24(d), is limited to the following:

(1) *King mackerel Gulf migratory group.* (i) Possessing three king mackerel per person per trip, excluding the captain and crew, or possessing two king mackerel per person per trip, including the captain and crew, whichever is the greater, when fishing from a charter vessel.

(ii) Possessing two king mackerel per person per trip when fishing from other vessels.

(2) *King mackerel Atlantic migratory group.* Possessing three king mackerel per person per trip.

(3) *Spanish mackerel Gulf migratory group.* Possessing three Spanish mackerel per person per trip.

(4) *Spanish mackerel Atlantic migratory group.*

(i) Possessing four Spanish mackerel per person per trip from the southern area.

(ii) Possessing ten Spanish mackerel per person per trip from the northern area.

(iii) For the purposes of paragraph (a)(4) of this section, the boundary between the northern and southern areas is a line extending directly east from the Georgia/Florida boundary (30°42'45.6" N. latitude) to the outer limit of the EEZ.

* * * * *

[FR Doc. 87-15112 Filed 6-29-87; 5:08 pm]
BILLING CODE 3510-22-M

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50 CFR Part 652

[Docket No. 61109-7126]

Atlantic Surf Clam and Ocean Quahog Fisheries

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

ACTION: Notice of allowable surf clam fishing time.

SUMMARY: NOAA issues this notice to establish allowable fishing time for surf clams at 30 hours for the third quarter of 1987 for vessels harvesting surf clams in the Mid-Atlantic Area of the exclusive economic zone. This action will provide flexibility to operators in the use of fishing time during the period. The intended effect is to match fishing effort to the available quota for the area.

EFFECTIVE DATE: July 5 through October 2, 1987.

FOR FURTHER INFORMATION CONTACT: Bruce Nicholls, 617-281-3600 ext. 232.

SUPPLEMENTARY INFORMATION: Regulations implementing the Fishery Management Plan for the Atlantic Surf Clam and Ocean Quahog Fisheries contain at § 652.22(a)(3) a provision allowing the Regional Director to revise allowable fishing times to promote fishing for surf clams throughout the year with a minimum of changes. The Regional Director during the first quarter of 1987 decided, with the unanimous support of the Mid-Atlantic Fishery Management Council, to exercise his authority under § 652.22(a)(3) to allocate fishing time by quarter and allow each operator the maximum flexibility possible to schedule that time to his best advantage. That program was continued in the second quarter with some modifications required to promote enforcement.

Based on the rate of harvest and utilization of available quota in the first and second quarters and the projected trends in fishery activity during the third quarter, the Regional Director has decided to allocate 30 hours of fishing time for the quarter. That time must be scheduled in five 6-hour fishing periods, which may be taken on any five separate days during the normal daily and weekly fishing times established in § 652.22(a)

If fishing experience indicates that the quota for the third quarter will not be harvested, additional fishing time will be allotted later in the quarter.

The fishing trips must be scheduled with 15 days' advance, written notice to the Surf Clam Coordinator, NMFS, 2 State Fish Pier, Gloucester, MA 01930. If this publication appears too late to allow such notice for those wishing to schedule trips during the first week of the quarter, trips for that week only can be scheduled by calling 617-281-3600, ext. 232.

Other Matters

This action is taken under the authority of 50 CFR Part 652 and is taken in compliance with Executive Order 12291.

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

List of Subjects in 50 CFR Part 652

Fisheries, Reporting and recordkeeping requirements.

Dated: June 29, 1987.

Bill Powell,

Executive Director, National Marine Fisheries Service.

[FR Doc. 87-15113 Filed 7-1-87; 8:45 am]
BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 52, No. 127
Thursday, July 2, 1987

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 Crop Insurance Corporation

7 CFR Part 439

[Amd. No. 1; Doc. No. 4369S]

Almond Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the Almond Crop Insurance Regulations (7 CFR Part 439), effective for the 1988 crop year. The intended effect of this proposed rule is to maintain the effectiveness of the present Almond Crop Insurance Regulations only through the 1987 crop year. It is proposed, in another document, that the provisions currently contained in this Part may be issued as an endorsement to the newly proposed 7 CFR Part 401, General Crop Insurance Regulations (7 CFR 401.110), effective for the 1988 and succeeding crop years. 7 CFR Part 401 will be a standard set of regulations and a master policy for insuring most crops authorized under the provisions of the Federal Crop Insurance Act, as amended, and will substantially reduce: (1) The time involved in amendment or revision; (2) the necessity of the present repetitious review process; and (3) the volume of paperwork processed by FCIC. The authority for the promulgation of this rule is the Federal Crop Insurance Act, as amended.

DATE: Written comments, data, and opinions on this proposed rule must be submitted not later than August 3, 1987, to be sure of consideration.

ADDRESS: Written comments, data, and opinions on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is December 31, 1990.

E. Ray Fosse, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

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

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

FCIC has published over 40 policies to cover insurance on that many different crops. Many of the regulations and policies contain identical language, which, if changed requires that over 40 different policies be changed, both in the Code of Federal Regulations (CFR) and the printed policy language. This repetition of effort is both inefficient and expensive. FCIC, therefore, has proposed to publish in 7 CFR Part 401, one set of regulations and one master policy to contain that language which is identical in most of the policies and regulations.

As revisions on individual policies are necessary, FCIC proposes to publish a "crop endorsement" which will contain the language of the policy unique to that crop, and any exceptions to the master policy language necessary for that crop. When an endorsement is published as a subpart to Part 401, effective for a subsequent crop year, the present policy contained in a separate part of Chapter IV will be terminated at the end of the crop year then in effect.

In order to clearly establish that 7 CFR Part 439 will be effective only through the end of the 1987 crop year, FCIC herein proposes to amend the subpart heading of these regulations to specify that such will be the case.

It is proposed that the Almond Endorsement will be published as an endorsement to 7 CFR Part 401 (7 CFR 401.110), and become effective for the 1988 and succeeding crop years. Upon final publication, the provisions of the Almond Crop Insurance Regulations, now contained in 7 CFR part 439, would be superseded. Therefore, FCIC proposes to amend the subpart heading to provide that 7 CFR Part 439 be effective for the 1986 and 1987 crop years only.

FCIC is soliciting public comment on this proposed rule for 30 days after publication in the **Federal Register** Written comments will be available for public inspection in the Office of the Manager, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC during regular business hours, Monday through Firday.

List of Subjects in 7 CFR Part 439

Crop insurance, Almond.

Proposed Rule

PART 439—[AMENDED]

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby proposes to amend the Subpart

heading to the Almond Crop Insurance Regulations (7 CFR Part 439), as follows:

1. The Authority citation for 7 CFR Part 439 continues to read as follows:

Authority: Secs. 506, 516, Pub. L. 75-430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

2. The Subpart heading in 7 CFR Part 439 is revised to read as follows:

Subpart—Regulations for the 1986 and 1987 Crop Years

Done in Washington, DC, on June 3, 1987.

E. Ray Fosse,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 87-15007 Filed 7-1-87; 8:45 am]

BILLING CODE 3410-08-M

Agricultural Marketing Service

7 CFR Part 945

[Docket No. AO-150-A5]

Idaho-Eastern Oregon Potato Marketing Order; Secretary's Decision on Proposed Further Amendment of Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule and referendum order.

SUMMARY: This decision recommends amendments to the marketing agreement and order for potatoes grown in certain counties in Idaho and Malheur County, Oregon, and directs that a referendum be conducted to determine if potato producers favor the various amendment proposals. The proposed amendments would authorize the appointment by the committee of public advisors, change the term of office for committee members to two years, and limit committee member tenure to three consecutive terms. In addition, the proposed amendments would change nomination procedures for nominating committee members to permit nominations by mail and allow selection of dates, other than those specified in the order, for performing the procedures in the nomination process. Changes are also proposed that would revise the written acceptance procedures required of persons appointed as committee members; remove the limit on compensation to committee members; remove the limit on handler assessments by permitting assessments to be charged on a per unit basis; and provide for a larger operating reserve for excess funds. Provision would also be made for periodic continuance referenda. All of these proposed changes would improve the committee's operations and procedures.

DATE: The voting period for purposes of the referendum herein ordered is July 10-24, 1987.

FOR FURTHER INFORMATION CONTACT: James M. Scanlon, Acting Chief, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Washington, DC 20250, phone (202) 475-3914.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding—Notice of Hearing issued November 8, 1985, and published in the November 15, 1985, issue of the **Federal Register** (50 FR 47226). The Recommended Decision was issued March 27, 1987, and published in the **Federal Register** April 6, 1987 (52 FR 10893). This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and therefore is excluded from the requirements of Executive Order 12291.

Preliminary statement

This proposed amendment was formulated on the record of a public hearing held at Pocatello, Idaho, December 10, 1985, to consider the proposed amendment of the Marketing Agreement and Marketing Order No. 945, both as amended, regulating the handling of potatoes grown in designated counties in Idaho and Malheur County, Oregon, hereinafter referred to collectively as the "order." The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), hereinafter referred to as the "Act," and the applicable rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders (7 CFR Part 900). The Notice of Hearing contained several amendment proposals submitted by the Idaho-Eastern Oregon Potato Committee established under the order, hereinafter referred to as the "committee." The proposals pertained to adding a public advisor to the committee, limiting the tenure of committee members, changing the term of office, changing nomination procedures, making changes in fiscal operations, and requiring periodic continuance referenda. The Department of Agriculture proposed that it make any necessary conforming changes.

Upon the basis of evidence introduced at the hearing and the record thereof, the Administrator, on March 27, 1987, filed with the Hearing Clerk, U.S. Department of Agriculture, the Recommended Decision containing the notice of the opportunity to file written exceptions thereto by May 6, 1987. Three exceptions were received. One exception was received from a grower who objected to the proposals concerning changes to fiscal procedures. Another exceptor, the Potato Growers of Idaho, Inc. (PGI), opposed the proposed increase in the operating reserve and the requirement for a continuance referendum every six years and the standards for evaluating the merits for termination after such a vote is conducted. The PGI is a voluntary cooperative of some 1,250 members who grow potatoes at various locations across the southern portion of Idaho. Finally, an exception was received from the committee opposing the six-year interval for continuance referenda, the standards for evaluating the merits of continuing the order, and the proposal regarding committee member and alternate member tenure. These three exceptions are discussed in detail later in this document.

The Administrator of the Agricultural Marketing Service has determined that this action would not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*). As stated in the notice of hearing, interested persons were invited to present evidence at a hearing on the probable regulatory and informational impact of the proposed rule on small businesses for the purpose of the RFA.

The Agricultural Marketing Agreement Act of 1937 (7 U.S.C. 601-674) requires the application of uniform rules to regulated handlers. Since handlers covered under M.O. 945 are predominantly small businesses, the order itself is tailored to the size and nature of these small businesses.

During the 1985-1986 crop year, 106 handlers were regulated under M.O. 945 and handled potatoes for fresh market with an estimated crop value of $34.2 million. Given the applicable definition of a small business concern (i.e., for purposes of review pursuant to the Regulatory Flexibility Act, an agricultural services firm with average annual receipts not exceeding $3,500,000), almost all of the handlers of potatoes would fall within that definition. In addition, there are about 2,150 producers of potatoes in the production area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having average gross annual revenues for the last three years of less than $100,000. The majority of handlers and producers may be classified as small entities.

The proposed amendments to the agreement and order include provisions

pertaining to operations of the committee (tenure and periodic referenda) which will provide more frequent opportunity for producer votes and opportunity for a broader based representation on the committee. The addition of a public advisor would formalize the current practice of providing consumer input to committee deliberations. This would provide the committee with information on consumer or non-industry related concerns with respect to the operation of the order. The change in the term of office from one to two years would provide continuity for committee operations, since only half of the members would be selected in a given year. The change proposing that committee nominations could be held by mail would have a positive impact on small businesses. Production area growers and handlers could avoid spending up to a day in travel and attending nomination meetings, allowing them to spend the time and resources saved at their farms or businesses. These changes are designed to enhance the administration and functioning of the marketing agreement and order and would have negligible, if any, economic impact on small businesses.

The proposed change that would allow the committee to recommend increased reimbursement to members attending meetings would impact on growers and handlers in a positive way. Increased reimbursement to members would be defrayed through assessments on all handlers. However, program operations benefit all handlers and growers and it is appropriate to provide a minimum level of compensation to members who serve in the industry's general interest.

The proposed change to allow the rate of assessment to be based on other than a fixed amount per carlot and to allow a reserve of approximately one year's budgeted expenses would improve the financial operations of the agreement and order and not adversely impact on small business. These changes would provide for more efficient funding of order operations and activities. Fresh potato shipments have stabilized in recent years and the current maximum rate specified will not be sufficient to properly fund committee operating costs in future years. Moreover, the current reserve limitation has required the committee to refund small amounts of money to handlers at comparatively high cost. Authorization of a larger reserve should eliminate these expenses.

Finally, the proposed amendments to the order would have no significant impact on small businesses' recordkeeping and reporting requirements.

Findings and conclusions

The material issues, findings and conclusions, rulings, general findings, and regulatory provisions of the Recommended Decision published in the **Federal Register** (52 FR 10893, April 6, 1987) are hereby incorporated herein and made a part hereof subject to the following clarifications and discussion:

Material issue (1), dealing with the appointment of a public advisor or advisors, should be amended by the addition of the following at the end thereof:

"Proposed § 945.20 should be revised to clarify that the expenses for the public advisor should be reasonable and that this compensation should be determined with the approval of the Secretary."

Material issue (2), dealing with a change in the term of office, and member tenure, should be amended by the addition of the following two paragraphs at the end thereof:

"In its exception, the committee stated that it intended to have persons serve as alternate members for up to three terms (a total of six years) as a method of indoctrinating and exposing them to the various operations and deliberations of the committee, and then serve as members, if nominated and selected, without a waiting period between terms. Such members could then serve up to three consecutive terms as a member, but would have to wait one term before serving again unless a position would remain vacant for lack of eligible nominees or eligible persons willing to serve. This change should improve efficiency and promote program operations. Hence, the proposal is changed to reflect the intent of the committee as stated in its exception.

Therefore, § 945.21(b) should be revised to read as follows: 'Committee members and alternates shall serve during the term of office for which they are selected and have qualified and continue until their successors are selected and have qualified. Beginning with the 1987 term of office, no member or alternate shall serve more than three full consecutive terms: *Provided,* That an alternate member may serve up to three consecutive terms and then serve as a member for up to three consecutive terms without a break in service. Members serving three consecutive terms could again be eligible to serve on the committee by not serving for one full term as either a member or an alternate member: *Provided,* That in the event a position would otherwise remain vacant for lack of eligible nominees or eligible persons willing to serve, the Secretary may authorize a member or alternate member to serve more than three full consecutive terms.' "

Material issue (5), concerning expenses and compensation, should be amended by the addition of the following two sentences at the end thereof: "One exceptor objected to this proposed change stating that it would give the committee excessive power concerning compensation decisions. This argument is without merit since committee actions in this area will be subject to the Secretary's review and approval."

Material issue (6) concerning assessments should be amended by the addition of the following paragraph at the end thereof: "An exceptor opposed this proposed change. The exceptor was concerned about basing any funding increase on a rate per acre because different growers have different yields and inequities could result. The concerns are without basis because the assessment rate would be based on a unit handled, the carlots or cartons, not acreage. In any case, it is the handlers who are assessed since growers are, by statute, not regulated in their capacities as growers."

Material issue (7) relating to excess funds should be amended by adding the following paragraph: "Two exceptors objected to the change authorizing the committee to maintain an operating reserve not to exceed one fiscal period's budgeted expenses in lieu of the current one-half year's expenses. One exceptor felt that it gave the committee too much power on the establishment of reserves. The other felt that the committee should be able to operate on less than a one-half year reserve limit by adjusting its budget and spending plans. It is expected that committee management will maintain prudent fiscal controls in the administration of the program. However, the evidence clearly indicates that despite such controls, circumstances may arise which require a larger reserve to defray necessary expenses. Hence, these objections are denied.

However, the proposed § 945.44(a) is revised to clarify that any carryover of excess funds from one fiscal period to the next is to be done with the approval of the Secretary."

Material issue (8) concerning periodic continuance referenda should be amended by adding the following two paragraphs: "One exceptor questioned the proposal to require the referendum every six years instead of the 10 year interval recommended by proponents.

Conducting such referenda at six year intervals rather than at ten year intervals will allow producers to vote for or against the program as the industry changes yet will not be wasteful of the committee's resources. Another questioned the need of specifying a time for a continuance referendum in the order, since the Secretary can call such a referendum any time it is determined that one is warranted. Although the Secretary has the authority to call a referendum at any time, periodic continuance referenda should be conducted at reasonable intervals. For the reasons previously set forth, six years is a more appropriate period for conducting continuance referenda, therefore, the recommendation to change from a six-year to a 10-year interval and for not including such provisions in the order is denied.

The exceptors also objected that the Secretary would consider terminating the program if fewer than two-thirds of the growers voting favored continuance and if those growers voting for continuance produced less than two-thirds of the total volume of potatoes produced by all voting growers. In lieu of the two-thirds standard, the exceptors recommended that termination be considered by the Secretary whenever a majority of the growers, who also produced at least one-half of the crop, favor termination. However, as stated earlier, since less than 50 percent of all producers usually participate in marketing order referenda, it is difficult to determine producer support for an order using the 50 percent standard. Accordingly, as stated earlier the Secretary would consider termination of the order if less than two-thirds of the producers voting in the referendum and producers of less than two-thirds of the volume of potatoes represented in the referendum favor continuance. Furthermore, the Secretary would consider other relevant information concerning the operation of the order, not only the referendum results, in determining whether or not the order should be terminated. Hence, the recommendation to change the two-thirds standard is denied."

Rulings on exceptions

In arriving at the findings and conclusions and the regulatory provisions of this decision, the exceptions to the recommended decision were carefully considered in conjunction with the record evidence. To the extent that the findings and conclusions and the regulatory provisions of this decision are at variance with the exceptions, such exceptions are hereby denied for the reasons previously stated in this decision.

Marketing agreement and order. Annexed hereto and made a part hereof are two documents entitled, respectively, "Marketing Agreement, as Amended, Regulating the Handling of Potatoes Grown in Certain Designated Counties in Idaho and Malheur County, Oregon," and "Order Amending the Order, As Amended, Regulating the Handling of Potatoes Grown in Certain Designated Counties in Idaho and Malheur County, Oregon." These documents have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, That this entire decision, except the annexed marketing agreement, be published in the **Federal Register.** The regulatory provisions of the marketing agreement are identical with those contained in the order as hereby proposed to be amended by the annexed order which is published with this decision.

Referendum order. It is hereby directed that a referendum be conducted in accordance with the procedure for the conduct of referenda (7 CFR 900.400 *et seq.*), to determine whether the issuance of the annexed order amending the order regulating the handling of Irish potatoes grown in certain designated counties of Idaho and Malheur County, Oregon, is approved or favored by producers, as defined under the terms of the order, who during the representative period were engaged in the production area in the production of the regulated commodity for market. The representative period for the conduct of such referendum is hereby determined to be August 1, 1986, through June 30, 1987.

The agent of the Secretary to conduct such a referendum is hereby designated to be Joseph C. Perrin, Fruit and Vegetable Division, Agricultural Marketing Service, USDA, Green/Wyatt Federal Building, Room 369, 1220 S.W. Third Avenue, Portland, Oregon 97204.

List of Subjects in 7 CFR Part 945

Marketing agreements and orders, Potatoes, Idaho, Oregon.

Signed at Washington, DC, on June 29, 1987.

Karen K. Darling,

Deputy Assistant Secretary, Marketing and Inspection Services.

Order Amending the Order Regulating the Handling of Irish Potatoes Grown in Certain Designated Counties in Idaho and Malheur County, Oregon [1]

Findings and determinations. The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determination previously made in connection with the issuance of the aforesaid order; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

Findings upon the basis of the hearing record. Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon proposed amendment of the Marketing Agreement and Marketing Order No. 945 (7 CFR Part 945) regulating the handling of Irish potatoes grown in certain designated counties in Idaho and Malheur County, Oregon.

Upon the basis of the record, it is found that: (1) The order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The order, as hereby amended, regulates, the handling of Irish potatoes grown in the production area in the same manner as, and is applicable only to persons in the respective classes of commercial and industrial activity specified in, the marketing agreement and order upon which hearings have been held;

(3) The order, as hereby amended, is limited in its application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

(4) There are no differences in the production and marketing of Irish potatoes grown in the production area which make necessary different terms

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

and provisions applicable to different parts of such area; and

(5) All handling of Irish potatoes grown in the production area is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

Order Relative to Handling

It is therefore ordered, That on and after the effective date hereof the handling of Irish potatoes grown in certain designated counties in Idaho and Malheur County, Oregon, shall be in conformity to and in compliance with the terms and conditions of the order, as hereby amended, as follows:

Except for the previously noted modifications, the provisions of the proposed marketing agreement and order amending the order contained in the Recommended Decision issued by the Administrator on March 27, 1987, and published in the **Federal Register** (52 FR 10293, April 6, 1987), shall be and are the terms and provisions of this order, amending the order, and are set forth in full herein.

1. The authority citation for 7 CFR Part 945 continues to read as follows:

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

PART 945—IRISH POTATOES GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO, AND MALHEUR COUNTY, OREGON

2. Add a new § 945.20(d) as follows:

§ 945.20 Establishment and membership.

* * * * *

(d) The committee may appoint such public advisors as it deems appropriate and determine reasonable expenses, compensation as approved by the Secretary, and define the duties of such advisors. Each person appointed as a public advisor shall be a resident of the production area. Also, each shall at the time of appointment and during the term of office not be engaged in the commercial production, buying, grading, or processing of any agricultural commodity, except as a consumer, nor shall such person be a director, officer, or employee of any firm so engaged.

3. Revise § 945.21 to read as follows:

§ 945.21 Term of office.

(a) Except as otherwise provided in this section, the term of office of committee members and alternates shall be for two years beginning June 1 or such other date as recommended by the committee and approved by the Secretary. The term of office of members and alternates shall be so determined that approximately one-half of the total producer and handler committee membership shall terminate each year.

(b) Committee members and alternates shall serve during the term of office for which they are selected and have qualified and continue until their successors are selected and have qualified. Beginning with the 1987 term of office, no member or alternate shall serve more than three full consecutive terms: *Provided,* That an alternate member may serve up to three consecutive terms and then serve as a member for up to three consecutive terms without a break in service. Members serving three consecutitve terms could again become eligible to serve on the committee by not serving for one full term as either member or alternate member: *Provided,* That in the event a position would otherwise remain vacant for lack of eligible nominees or eligible persons willing to serve, the Secretary may authorize a member or alternate member to serve more than three full consecutive terms.

4. Amend § 945.25 as follows:

(1) Revise paragraphs (a) and (c).

(2) Redesignate paragraph (f) as paragraph (e).

(3) Redesignate paragraph (g) as paragraph (f).

(4) Revise paragraph (e) and redesignate it as paragraph (g).

§ 945.25 Nominations.

* * * * *

(a) In order to provide nominations for producer and handler committee members and alternates, the committee shall hold, or cause to be held, prior to April 1 of each year, or such other date as the Secretary may designate, one or more meetings of producers and of handlers in each district to nominate such members and alternates; or the committee may conduct nominations by mail in a manner recommended by the committee and approved by the Secretary.

* * * * *

(c) At least one nominee shall be designated for each position as member and for each position as alternate member on the committee.

* * * * *

(g) Nominations shall be supplied to the Secretary in such manner and form as the Secretary may prescribe, not later than May 1 of each year, or such other date as the Secretary may specify.

5. Revise § 945.27 as follows:

§ 945.27 Acceptance.

Any person nominated to serve on the committee as a member or as an alternate shall qualify by filing a statement of willingness to serve with the Secretary.

6. Revise § 945.31 to read as follows:

§ 945.31 Expenses.

Committee members and alternates shall be reimbursed for reasonable expenses necessarily incurred by them in the performance of their duties and in the exercise of their powers under this subpart, and may receive compensation at a rate determined by the committee, and approved by the Secretary, for each day or portion thereof, spent in conducting committee business.

7. Revise paragraph (b) of § 945.42 to read as follows:

§ 945.42 Assessment.

* * * * *

(b) Assessments shall be levied upon handlers at a rate per unit established by the Secretary. Such a rate may be established by the Secretary upon the basis of the committee's recommendation or other available information.

* * * * *

8. In § 945.44 revise the heading; delete the introductory paragraph; revise paragraph (b) and redesignate it as paragraph (a); revise paragraph (a) and redesignate it as paragraph (b) to read as follows:

§ 945.44 Excess funds.

(a) The funds remaining at the end of a fiscal period which are in excess of the expenses necessary for committee operations during such period may be carried over, with the approval of the Secretary, into followig periods as a reserve. Such reserve shall be established at an amount not to exceed approximately one fiscal period's budgeted expenses. Funds in such reserve shall be available for use by the committee for expenses authorized under § 945.40.

(b) Funds in excees of those placed in the operating reserve shall be credited proportionately against a handler's operations of the following fiscal peirod, except that if the handler demands payment, such proportionate refund shall be paid to such handler.

* * * * *

9. Section 945.83 is amended by redesignating paragraph (d) as paragraph (e) and adding a new paragraph (d) to read as follows:

945.83 Termination.

* * * * *

(d) The Secretary shall conduct a referendum as soon as practicable after July 31, 1992, and at such time every sixth year thereafter, to ascertain whether continuance of this order is favored by potato producers. The

Secretary may terminate the provisions of this order at the end of any fiscal period in which the Secretary has found that continuance of this order is not favored by producers who, during a representative period determined by the Secretary, have been engaged in the production for market of potatoes in the production area. Termination of the order shall be effective only if announced on or before July 1 of the then current fiscal period.

* * * * *

[FR Doc. 87-15077 Filed 6-30-87; 9:22 am]

BILLING CODE 3410-02-M

7 CFR Part 1076

Milk in the Eastern South Dakota Marketing Area; Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rule.

SUMMARY: This notice invites written comments on a proposal to suspend portions of the Eastern South Dakota Federal milk order. The provisions relate to the limits on the amount of milk not needed for fluid (bottling) use that may be moved directly from farms to nonpool manufacturing plants and still be priced under the order. Suspension of the provisions was requested by a cooperative association representing most of the producers supplying the market to prevent uneconomic movements of milk. The proposed suspension would be for the months of August 1987 through February 1988.

DATE: Comments are due on or before July 17, 1987.

ADDRESS: Comments (two copies) should be filed with the Dairy Division, AMS, Room 2968, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-7183.

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

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), the suspension of the following provisions of the order regulating the handling of milk in the Eastern South Dakota marketing area is being considered for August 1987 through February 1988:

In § 1076.13, paragraphs (c) (2) and (3).

All persons who want to send written data, views, or arguments about the proposed suspension should send two copies of them to the Dairy Division, AMS, Room 2968, South Building, U.S. Department of Agriculture, Washington, DC 20250 by the 15th day after publication of this notice in the **Federal Register.** The comments that are sent will be made available for public inspection in the Hearing Clerk's office during normal business hours (7 CFR 1.27(b)).

Statement of Consideration

Land O' Lakes Inc. (LOL), an association of producers that supplies most of the market's fluid milk needs and handles most of the market's reserve milk supplies, requested the suspension. The suspension would remove for August 1987 through February 1988 the limit on the amount of producer milk that a cooperative association or other handlers may divert from pool plants to nonpool plants.

The order now provides that a cooperative association may divert up to 35 percent of its total member milk received at all pool plants or diverted therefrom during the months of August through February. Similarly, the operator of a pool plant may divert up to 35 percent of its receipts of producer milk (for which the operator of such plant is the handler during the month) during the months of August through February.

LOL indicates that operation of the 35-percent diversion limit during August through February would mean that at least 65 percent of its milk would have to be delivered to pool plants. LOL estimates, moreover, that only 45 to 55 percent of its milk will be needed at distributing plants. The balance would have to be delivered to a pool plant, unloaded, reloaded and then shipped to other plants merely to qualify the milk for pooling. The additional handling and hauling costs would be incurred by LOL with no offsetting benefits to other market participants, according to LOL.

List of Subjects in 7 CFR Part 1076.

Milk marketing orders, Milk, Dairy products.

The authority citation for 7 CFR Part 1076 continues to read as follows:

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

Signed at Washington, DC, on: June 26, 1987.

J. Patrick Boyle,

Administrator.

[FR Doc. 87-15075 Filed 7-1-87; 8:45 am]

BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 87-063]

Swine, Pork, and Pork Products Imported From Great Britain; Addition to List

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations concerning the entry into the United States of pork and pork products and the movement into the United States of swine by adding Great Britain to the list of countries in which hog cholera is not known and not determined to exist. We have determined that hog cholera has now been eradicated from Great Britain. The adoption of this proposal would relieve certain restrictions on the entry into the United States of pork and pork products and the movement into the United States of swine from Great Britain.

DATE: Consideration will be given only to comments postmarked or received on or before August 3, 1987.

ADDRESSES: Send written comments to Steven B. Farbman, Assistant Director, Regulatory Coordination, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 87-063. Comments may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m. Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Mark Dulin, Senior Staff Veterinarian, Animal Products and Byproducts, Import-Export and Emergency Planning Staff, VS, APHIS, USDA, Room 805, Federal Building, 6505 Belcrest Road, Hyattsville, Md 20782, (301) 436-8499.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR Part 94 (referred to below as the regulations) regulate the entry and movement into the United States of specified animals and animal products in order to prevent the introduction into the United States of various diseases, including hog cholera.

Section 94.9 of the regulations restricts the entry into the United States of pork and pork products from countries where hog cholera is known to exist. The restrictions include cooking, heating, or curing and drying procedures designed to ensure that the pork or pork products have been treated in a manner adequate to destroy organisms that could spread hog cholera. Section 94.10 of the regulations, with certain exceptions, prohibits the movement into the United States of swine that originate in, are shipped from, or transit any country in which hog cholera is determined to exist. Section 94.9 lists all countries of the world where hog cholera is not known to exist; section 94.10 lists all countries of the world where hog cholera is not determined to exist.

Based on surveys conducted by the government of Great Britain, we have determined that there is no reason to believe that hog cholera exists in Great Britain. No case of hog cholera has been reported in Great Britain since it had been eradicated in June 1986.

Therefore, we propose to amend § 94.9 by adding Great Britain to the list of countries in which hog cholera is not known to exist; we also propose to amend § 94.10 by adding Great Britain to the list of countries in which hog cholera is not determined to exist. The adoption of this proposal would relieve restrictions on the entry into the United States of pork and pork products and the movement into the United States of swine from Great Britain.

Miscellaneous

On July 27, 1973, we amended § 94.9(a) (See 38 FR 20065, Docket Number 73–085), to add Sweden to the list of countries in which hog cholera is not known to exist. However, Sweden was inadvertently left out in the first sentence, and should have been added after "New Zealand". Therefore, this document would correct the list to include Sweden.

This document would also make nonsubstantive changes in § 94.9(a) by deleting surplusage.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this proposed rule would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

Our proposal would affect U.S. swine producers, since they would be eligible to import breeding stock. However, we anticipate that the amount of swine, pork, or pork products imported into the United States from Great Britain as a result of the adoption of this proposal would be less than one percent of the amount of these items imported into the United States annually. Moreover, while individuals would be allowed to import small quantities of pork and pork products for personal consumption, commercial shipments would still be ineligible for importation.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 9 CFR Part 94

Animal diseases, Hog cholera, Import, Livestock and livestock products, Meat and meat products, Milk, Poultry and poultry products.

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), NEWCASTLE DISEASE (AVIAN PNEUMOENCEPHALITIS), AFRICAN SWINE FEVER, AND HOG CHOLERA: PROHIBITED AND RESTRICTED IMPORTATIONS

Accordingly, we propose to amend 9 CFR Part 94 as follows:

1. The authority citations for Part 94 would continue to read as follows:

Authority: 7 U.S.C. 147a, 150ee, 161, 162, 450; 19 U.S.C. 1306, 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f; 42 U.S.C. 4331, 4332; 7 CFR 2.17, 2.51, and 371.2(d).

2. Paragraph (a) of § 94.9 would be revised as follows:

§ 94.9 Pork and pork products from countries where hog cholera exists.

(a) Hog cholera is known to exist in all countries of the world except Australia, Canada, Denmark, Dominican Republic, Finland, Great Britain (England, Scotland, Wales, and Isle of Man), Iceland, New Zealand, Northern Ireland, Norway, the Republic of Ireland, Sweden, and Trust Territory of the Pacific Islands.[8]

* * * * *

§ 94.10 [Amended]

3. Section 94.10 would be amended by adding "Great Britain (England, Scotland, Wales, and Isle of Man)," after "Finland,".

Done in Washington, DC, this 26th day of June, 1987.

B.G. Johnson,

Acting Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service.

[FR Doc. 87–15076 Filed 7–1–87; 8:45 am]

BILLING CODE 3410-34-M

[8] See also other provisions of this part and Parts 92, 95, 96, and 327 of this chapter for other prohibitions and restrictions upon importation of swine and their products.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 350

Disclosure of Financial and Other Information by FDIC Insured State Nonmember Bank; Correction

AGENCY: Federal Desposit Insurance Corporation (the "FDIC").

ACTION: Proposed rule; correction.

SUMMARY: This document corrects § 350.2 of proposed Part 350 of the FDIC's regulations, as published on page 23556 of the June 23 edition of the **Federal Register** (52 FR 23554, June 23, 1987, FR Doc. 87–14256). The version of § 350.2 as originally published was not the version adopted by the FDIC Board of Directors. A typographical error on the same page is also being corrected.

FOR FURTHER INFORMATION CONTACT: William P. Carley or Robert F. Storch, (202) 898–6903.

1. In the first column of page 23556, § 350.2 is correctly added to read as follows:

§ 350.2 Scope.

This part applies to FDIC insured state-chartered organizations (including commercial banks, savings banks and other institutions) that are not members

of the Federal Reserve System. For purposes of this part, the term "bank" refers to such organizations.

2. In the second column of page 23556, the last word in § 350.4(c) is changed from "register" to "requester."

Dated: June 25, 1987.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 87-14882 Filed 7-1-87; 8:45 am]

BILLING CODE 6714-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-NM-70-AD]

Airworthiness Directives; Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to certain Boeing Model 727 series airplanes, which would require the modification of the main landing gear (MLG) door ground release lever. This proposal is prompted by a recent report of a left MLG door ground release lever that vibrated into the door open position during flight. This prevented the extension of the left MLG and resulted in the airplane landing with the left MLG retracted.

DATE: Comments must be received no later than August 22, 1987.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-70-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, wAshington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Martinal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Stanton R. Wood, Airframe Branch, ANM-120S; telephone (206) 431-1924. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-70-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The FAA has recently received a report of the left main landing gear (MLG) ground release lever on a Boeing Model 727 airplane that vibrated into the door open position during flight. This prevented extension of the left MLG and resulted in the airplane landing with the left MLG retracted. A review of service records disclosed one previous left MLG-up landing caused by the ground release lever which vibrated into the door-open position during flight. Two similar incidents concerning the right MLG were previously reported, but, during these incidents, the flight crew was able to extend the affected gear by conducting non-routine flight maneuvers.

The FAA has reviewed and approved Boeing Service Bulletin 727-32-267, Revision 1, dated June 15, 1984, which describes a modification to the left and right main landing gear door ground release levers to reinforce the upper end of the door release guide assembly, and prevent vibration of the levers into the open position during flight.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require the modification of the main landing gear door release levers in accordance with the service bulletin previously mentioned.

It is estimated that 1,188 airplanes of U.S. registry would be affected by this AD, that it would take approximately 10 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The cost of the modification kit is $148. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $651,000.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Model 727 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

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

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

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 727 series airplanes, as listed in Boeing Service Bulletin 727-32-267, Revision 1, dated June 15, 1984, certificated in any category. Compliance required within the next 3,000 hours time-in-service or 2 years after the effective date of this AD, whichever occurs first, unless previously accomplished.

To prevent the main landing gear door release lever from moving to the door open position during flight, accomplish the following:

A. Modify the left and right main landing gear door release levers in accordance with the Accomplishment Instructions of Boeing Service Bulletin 727-32-267, Revision 1, dated June 15, 1984, or later FAA-approved revision.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 13707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on June 24, 1987.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 87-15124 Filed 7-1-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 87-NM-68-AD]

Airworthiness Directives; Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to certain Boeing Model 727 series airplanes, which would require inspection and repair, if necessary, of the elevator rear spar. This proposal is prompted by reports of cracks in the elevator rear spar at the control tab hinge fitting attachment, and loose hinge fittings at the crack locations. Cracking of the rear spar and loose hinge fittings, if not corrected, could result in excessive free play of the elevator control tab and possible tab flutter.

DATES: Comments must be received no later than August 22, 1987.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-68-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Stanton R. Wood, Airframe Branch, ANM-120S; telephone (206) 431-1924. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-68-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

There have been seven reported cases of fatigue cracks in the elevator rear spar at the control tab hinge fitting attachment on Boeing Model 727 series airplanes. Four of the hinge fittings at the crack locations were found to be loose. Cracking of the rear spar and loose hinge fittings, if not corrected, could result in excessive free play of the elevator control tab and possible tab flutter.

The FAA has reviewed and approved Boeing Service Bulletin 727-55-0087, dated June 20, 1986, which describes procedures for inspection for cracks of the elevator rear spar and loose elevator control tab hinge fittings, and repair, if necessary. The service bulletin also describes an optional preventative modification.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require inspection and repair, if necessary, in accordance with the service bulletin previously mentioned.

It is estimated that 1,100 airplanes of U.S. registry would be affected by this AD, that it would take approximately 12 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $528,000.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, it any, Model 727 airplanes are operated for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

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

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

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 727 series airplanes, listed in Boeing Service Bulletin 727-55-0087, dated June 20, 1986, certificated in any category. Compliance required as indicated, unless previously accomplished.

To detect cracks in the elevator rear spar and loose elevator control tab hinge fittings, accomplish the following:

A. Prior to the accumulation of 27,000 hours time-in-service or within the next 1,600 hour time-in-service after the effective date of this AD, whichever occurs later, visually inspect the elevator rear spar for cracks in accordance with Part I of the Accomplishment Instructions in Boeing Service Bulletin 727-55-0087 dated June 20, 1986, or later FAA-approved revisions. Repeat the inspection at intervals not to exceed 3,200 hours time-in-service.

B. If cracked parts are found as a result of the inspections required by paragraph A., above, repair prior to further flight, in accordance with Part III of the Accomplishment Instructions in Boeing Service Bulletin 727-55-0087 dated June 20, 1986, or later FAA-approved revisions. Cracks within the limits specified in the service bulletin may be stop drilled in accordance with Part I of the Accomplishment Instructions in the aforementioned service bulletin as an interim repair. All stop drilled cracks must be reinspected at intervals not to exceed 1,600 hours time-in-service after stop drilling and must be repaired in accordance with Part III of the Accomplishment Instructions in the service bulletin within 3,200 hours time-in-service after stop drilling. If any crack growth is detected after stop drilling, repair prior to further flight in accordance with Part III of the Accomplishment Instructions in the service bulletin.

C. Modification or repair in accordance with Parts II and III of the Accomplishment Instructions in Boeing Service Bulletin 727-55-0087 dated June 20, 1986, or later FAA-approved revisions, constitutes terminating action for the repetitive inspection requirements of this AD.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

E. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on June 24, 1987.

Frederick M. Isaac,
Acting Director, Northwest Mountain Region.

[FR Doc. 87-15125 Filed 7-1-87; 8:45 am]
BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 87-NM-77-AD]

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposed a new airworthiness directive (AD), applicable to certain Model 737 series airplanes, which would require certain modifications to improve the Instrument Landing System (ILS) immunity to electromagnetic interference (EMI). This proposal is prompted by reports of several airplane models in which EMI generated by various digital electronic equipment has been shown to be a source of false localizer signals which can cause apparently normal operation of the localizer deviation bars when no ILS signal is present. This condition, if not corrected, could lead to erroneous ILS deviation displayed to the flight crew and abnormal operation of the autopilot.

DATE: Comments must be received no later than August 2, 1987.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-77-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth J. Schroer, Aerospace Engineer, Systems and Equipment Branch, ANM-130S; telephone (206) 431-1943. Mailing address: FAA, Northwest Mountain Regional, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-77-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

An operator of a Boeing Model 737 airplane reported a condition where selection of certain ILS frequencies, with no operating ILS ground transmitter, resulted in localizer deviation indication and retraction of warning flags on the radio digital distance magnetic indicator indicating a valid response. Further investigation found this condition to exist on several airplane models which have localizer antenna located on the nose bulkhead. The degree of interference varies from one airplane model to another. The problem on certain Model 737 airplanes results from emissions of radio frequency interference within the VHF frequency band from the digital weather radar receiver-transmitter units and the electronic flight instrument system (EFIS) Symbol Generator for those airplanes with that equipment installed. These emissions are greater than the minimum sensitivity of the ILS receiver and have a frequency composition which leads the receivers to interpret them as valid signals.

If an ILS frequency should be selected which corresponds to one of these radiated emissions and the ground transmitter is out of range or out of

service, erroneous ILS deviation could be displayed to the flight crew and abnormal operation of the autopilot system may occur.

The FAA has reviewed and approved Boeing Service Bulletin 737-34A1208, Revision 1, dated May 14, 1987 which describes the replacement of the weather radar receiver-transmitters, replacement of certain model VHF Navigation Receivers, and modification of the airplane wire bundle for each affected airplane model to reduce susceptibility to this interference problem.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require replacement of the weather radar receiver-transmitters with modified units, replacement of certain VHF Navigation Receivers with modified units, installation of 10 db attenuators in line with the localizer coaxial cables, and, for certain Model 737-300 airplanes with EFIS installed, modification of specific wire bundles and their routing in accordance with the service bulletin previously mentioned.

It is estimated that 230 airplanes of U.S. registry would be affected by this AD. For 228 of the subject airplanes, it is estimated that an average of 4 manhours per airplane would be necessary to accomplish the required actions. For the remaining 2 subject airplanes, it is estimated that 74 manhours per airplane would be necessary to accomplish the required actions. The average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $42,400.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regualtory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Boeing Model 737 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

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

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

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 737 series airplanes, specified in Boeing Service Bulletin 737-34A1208, Revision 1, dated May 14, 1987, certificated in any category. Compliance required within one year after the effective date of this AD, unless previously accomplished.

To minimize the possibility of misleading localizer deviation indication to the flight crew caused by electromagnetic inerference, accomplish the following:

A. Replace the existing weather radar receiver-transmitters with modified receiver-transmitters; install 10 db attenuators in line with the localizer coaxial cables; if Bendix VHF navigation receivers are installed, replace with modified receivers; and, for Model 737-300 airplanes equipped with electronic flight instruments system (EFIS), modify specific wire bundles and their routing, in accordance with Boeing Service Bulletin 737-34A1208, Revision 1, dated May 14, 1987, or later FAA-approved revision.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modification required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124-2207. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on June 24, 1987.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 87-15122 Filed 7-1-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 87-NM-76-AD]

Airworthiness Directives; Boeing Model 747 and 767 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to certain Boeing Model 747 and 767 series airplanes, which would require a modification to the weather radar receiver-transmitters to correct for the Instrument Landing System (ILS) susceptibility to electromagnetic interference (EMI). This proposal is prompted by reports of several airplanes models in which EMI generated by various digital electronic equipment has been shown to be a source of false localizer signals that can cause apparently normal operation of the localizer deviation bars. This condition, if not corrected, could lead to erroneous ILS deviation information displayed to the flight crew and abnormal operation of the autopilot.

DATE: Comments must be received no later than August 22, 1987.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-76-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth J. Schroer, Aerospace Engineer, Systems and Equipment Branch, ANM-130S; telephone (206) 431-1943. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-76-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

An operator of a Boeing Model 737 airplane reported a condition where selection of certain ILS frequencies with no operating ILS ground transmitter resulted in a localizer deviation indication and retraction of warning flags on the radio digital distance magnetic indicator, indicating a valid response. Further investigation found this condition to exist on several other airplane models which have the localizer antenna located on the nose bulkhead. The degree of interference varies from one airplane model to another. The problem detected on certain Model 747 and 767 airplanes results from emissions of radio frequency interference within the VHF frequency band from the digital weather radar receiver-transmitter units. These emissions are greater than the minimum sensitivity of the ILS receiver and have a frequency composition which leads the receivers to interpret them as valid signals.

If an ILS frequency should be selected which corresponds to one of these radiated emissions and the ground transmitter is out of range or out of service, erroneous ILS deviation would be displayed to the flight crew and abnormal operation of the autopilot system may occur.

The FAA has reviewed and approved Boeing Service Bulletins 747-34A2286, dated April 30, 1987 and 767-34A0055 dated April 30, 1987, which describe modifications to the weather radar receiver-transmitters to reduce their susceptibility to this interference problem.

Since this condition is likely to exist or develop on other airplanes of these same type designs, an AD is proposed which would require modification to the weather radar receiver-transmitters in accordance with the service bulletins previously mentioned.

It is estimated that 47 airplanes of U.S. registry would be affected by this AD, that it would take approximately 1 manhour per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,880.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Boeing Model 747 and Model 767 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

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

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

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 747 and Model 767 series airplanes, specified in Boeing Service Bulletins 747-34A2286 and 767-34A0055, both dated April 30, 1987, certificated in any category. Compliance required within 6 months after the effective date of this AD, unless previously accomplished.

To minimize the possibility of misleading localizer deviation indication to the flight crew caused by electromagnetic interference, accomplish the following:

A. Replace the existing weather radar receiver-transmitters with modified receiver-transmitters in accordance with the appropriate Boeing Service Bulletin 747-34A2286, or 767-34A0055, both dated April 30, 1987, or later FAA-approved revision.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modification required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124-2207. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on June 24, 1987.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 87-15123 Filed 7-1-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 85-ANE-21]

Airworthiness Directives; Pratt & Whitney (PW) JT9D-3A, -7, -7H, -7A, -7AH, -7F, -7J, -20, -59A, -70A, -7Q, and -7Q3 Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to amend an existing airworthiness directive (AD) to add requirements for a radioisotope inspection. This proposed inspection is applicable to JT9D-3A, -7, -7H, -7A, -7AH, -7F, -7j, and -20 turbofan engines. The proposed

amendment would require a radioisotope inspection of the low pressure turbine (LPT) vane antirotation pins. The proposal is needed to prevent LPT antirotation pin failures that can cause uncontained engine failures.

DATE: Comments must be received on or before August 14, 1987.

ADDRESSES: Comments on the proposal may be mailed in duplicate to: Federal Aviation Administration, New England Region, Office of the Regional Counsel, Attention: Rules Docket Number 85-ANE-21, 12 New England Executive Park, Burlington, Massachusetts 01803, or delivered in duplicate to Room 311 at the above address.

Comments delivered must be marked: "Docket Number 85-ANE-21".

Comments may be inspected at the New England Region, Office of the Regional Counsel, Room 311, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

The applicable service bulletin (SB) may be obtained from Pratt & Whitney, Publication Department, P.O. Box 611, Middletown, Connecticut 06457.

A copy of the SB is contained in Rules Docket Number 85-ANE-21, in the Office of the Regional Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Chris Gavriel, Engine Certification Branch, ANE-141, Engine Certification Office, Aircraft Certification Division, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273-7084.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Director before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket, at the address given above, for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of the proposed AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 85-NAE-21". The postcard will be date/time stamped and returned to the commenter.

This notice proposes to amend AD 86-09-01, Amendment 39-5268 (51 FR 12509; April 11, 1986), by adding requirements for a LPT antirotation pin radioisotope inspection in accordance with the requirements of PW SB 5735. On March 21, 1986, Amendment 39-5268 was issued requiring (1) replacement of the stainless steel antirotation pins installed in the LPT module of PW JT9D-3A, -7, -7H, -7A, -7AH, -7F, -7J, and -20 turbofan engines with nickel alloy antirotation pins, and (2) incorporation of additional nickel alloy antirotation pins in the LPT module of PW JT9D-59A, -70A, -7Q, and -7Q3 series turbofan engines. Four uncontained failures and twenty-seven contained failures initiated by the LPT antirotation pins occurred in PW JT9D-3A, -7, -7H, -7A, -7AH, -7F, -7J, and -20 series turbofan engines; and one uncontained failure and six contained failures initiated by LPT antirotation pins installed in PW JT9D-59A, -70A, -7Q, and -7Q3 series turbofan engines occurred before issuance of the AD. Since issuance of the AD, one uncontained failure in the LPT module of a JT9D-7J engine and one contained failure in the LPT module of a JT9D-7Q engine have occurred, both initiated by failure of the LPT antirotation pins. Therefore, an inspection procedure has been developed to detect broken antirotation pins which further reduces the probability of additional uncontained failures in PW JT9D-3A, -7, -7H, -7A, -7AH, -7F, -7J, and -20 series turbofan engines. The FAA has determined that the original compliance schedule for the PW JT9D-59A, -70A, -7Q, and -7Q3 series turbofan engines provides an adequate level of safety without the radioisotope inspection requirements.

Since this condition is likely to exist or develop on other engines of the same type design, the proposed AD would amend AD 86-09-01, Amendment 39-5268 (51 FR 12509; April 11, 1986), to add a requirement for a radioisotope inspection of the antirotation pins installed in certain PW JT9D-3A, -7, -7H, -7A, -7AH, -7F, -7J, and -20 series turbofan engines.

Conclusion

The FAA has determined that this proposed regulation involves 1,050 PW JT9D-3A, -7, -7H, -7A, -7AH, -7F, -7J, and -20 series turbofan engines at an approximate total cost of 252,000 dollars. It has also been determined that less than 11 small entities will be affected by this proposed regulation. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT"**.

List of Subjects in 14 CFR Part 39

Engines, Air Transportation, Aircraft, Aviation safety.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) proposes to amend Part 39 of the Federal Aviation Regulations (FAR) as follows:

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

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.85.

§ 39.13 [Amended]

2. By amending §39.13, Amendment 39-5268 (51 FR 12509; April 11, 1986), Airworthiness Directive (AD) 86-09-01. The amended AD is restated in its entirety for clarity as follows:

Pratt & Whitney: Applies to Pratt & Whitney (PW) JT9D-3A, -7, -7H, -7A, -7AH, -7F, -7J, -20, -59A, -70A, -7Q, and -7Q3 series turbofan engines.

Compliance is required as indicated, unless already accomplished. To prevent low pressure turbine (LPT) case penetration as a result of turbine vane antirotation pin failure, accomplish the following:

(a) Radioisotope inspect for broken LPT stage three, four, five, and six turbine vane stainless steel (AMS 5735) antirotation pins installed in PW JT9D-3A, -7, -7H, -7A, -7AH, -7F, -7J, and -20 series turbofan engines in accordance with PW Service Bulletin (SB) 5735, dated February 20, 1987, within the next 500 hours time in service (TIS) after the effective date of this AD or within 4,000 hours TIS since the last LPT module disassembly, whichever occurs later. Remove engines

containing broken antirotation pins from service and replace with nickel alloy (AMS 5660/5661) pins in accordance with paragraph (b) below.

(b) Remove from service the entire set of stainless steel (AMS 5735) antirotation pins inspected in accordance with paragraph (a) above, installed in PW JT9D-3A, -7, -7H, -7A, -7AH, -7F, -7J, and -20 series turbofan engines, and replace with nickel alloy (AMS 5660/5661) antirotation pins in accordance with PW SB 5292, Revision 3, dated June 24, 1985, as follows:

(1) Prior to further flight for engines with LPT modules found to contain 12 or more broken pins in any stage, or 5 or more consecutive broken pins in any stage.

(2) Within the next 500 hours TIS since the inspection for engines with LPT modules found to contain 6 or more, but less than 12 broken pins in any stage, or 2 or more, but less than 5 consecutive broken pins in any stage.

(3) Within the next 2,500 hours TIS since the inspection for engines with LPT modules found to contain less than 6 broken pins in any stage.

(c) Remove from service all PW JT9D-3A, -7, -7H, -7A, -7AH, -7F, -7J, and -20 series turbofan engines containing LPT modules with stainless steel (AMS 5735) antirotation pins and replace with nickel alloy (AMS 5660/5661) pins in accordance with PW SB 5292, Revision 3, dated June 24, 1985, as required by paragraph (b) above, or at the next LPT module disassembly after May 13, 1986, or by December 31, 1989, whichever occurs first.

(d) Incorporate additional LPT antirotation pins in the fourth, fifth, and sixth satage stator locations on PW JT9D-59A, -70A, -7Q, and -7Q3 series turbofan engines at the next LPT module disassembly after May 13, 1986, or by December 31, 1989, whichever occurs first, in accordance with the Accomplishment Instructions contained in PW SB 5507, Revision 3, dated December, 5, 1984.

Note: For the purpose of this AD, LPT module disassembly occurs when the LPT rotor is separated from the LPT case and vane assembly.

Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

Upon request, an equivalent means of compliance may be approved by the Manager, Engine Certification Office, Aircraft Certification Division, New England Region, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803.

Upon submission of substantiating data by an owner or operator through an FAA maintenance inspector, the Manager, Engine Certification Office, New England Region, may adjust the compliance times specified in this AD.

Should this proposed rule be made final, the FAA will request the approval of the **Federal Register** to incorporate by reference the manufacturer's SB identified and described in this document.

Issued in Burlington, Massachusetts, on June 19, 1987.

Robert E. Whittington,

Director, New England Region.

[FR Doc. 87-15141 Filed 7-1-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 87-NM-43-AD]

Airworthiness Directives; SAAB Fairchild Model SF-340A Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to amend an existing airworthiness directive (AD), applicable to all SAAB Fairchild Model SF-340A series airplanes, which currently applies limitations to the operation of the cabin lighting system, to eliminate an unsafe condition created by the potential for electrical arcing. This proposal would limit the applicability to specific airplanes and would also provide for terminating action.

DATE: Comments must be received no later than August 23, 1987.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-43-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from SAAB Aircraft, Product Support, S-58188, Linkoping, Sweden. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Golder, Standardization Branch, ANM-113; telephone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-43-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

On July 9, 1986, the FAA issued AD 85-25-54, Amendment 39-5359 (51 FR 25682; July 16, 1986), applicable to all U.S.-registered Model SF-340 airplanes, to require deactivation of certain non-essential circuits providing power to the cabin florescent lights, so as to prevent the potential for electrical arcing. That AD was prompted by a report of electrical arcing, caused by a short circuit in the overhead lighting system wiring, which resulted in smoke in the cabin during flight. The Board of Civil Aviation of Sweden (BCA) issued Swedish Airworthiness Directive 1-016 to require similar actions by its operators.

Since issuance of those directives, SAAB has redesigned the lighting system on Model SF-340A series airplanes, serial numbers 340A-065 and subsequent, so that the unsafe condition addressed in the directives does not exist. In addition, SAAB-SCANIA has issued Service Bulletin SF-340-33-016, Revision 1, dated April 3, 1987, which provides instructions for replacing the existing cabin lighting system with a new system designed to prevent the unsafe condition created by electrical arcing.

Recently, the BCA, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an amendment made to its Airworthiness Directive 1-106 to limit the applicability to only those SAAB Fairchild Model SF-340 airplanes that

have the original cabin lighting design installed (not modified in production) and to provide terminating action for the operational limitations.

This airplane model is manufactured in Sweden and type certificated in the United States under the provisions of section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

For the foregoing reasons, an AD is proposed that would amend AD 85-25-54 to limit applicability only to those airplanes with lighting systems that have not been modified by the manufacturer. The proposal would also provide terminating action for airplanes that have been modified in accordance with the previously mentioned service bulletin.

It is estimated that 15 airplanes of U.S. registry would be affected by this AD. Since this amendment would only limit the number of affected airplanes and provide an optional termination action, it would not impose any additional monetary or regulatory burden on any operator.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because it imposes no additional burden. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

PART 39—[AMENDED]

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

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

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

§ 39.13 [Amended]

2. By amending AD 85-25-54, Amendment 39-5359 (51 FR 25682; July 16, 1986) as follows:

A. Change the applicability statement to read:

"SAAB-Fairchild: Applies to Model SF-340 airplanes, airliner version, listed in SAAB-SCANIA Service Bulletin SF340-33-016, Revision 1, dated April 3, 1987, certificated in any category."

B. Add a new paragraph D. that reads:

"D. Installation of Modification 1422, as described in SAAB-SCANIA Service Bulletin SF340-33-016, Revision 1, dated April 3, 1987, constitutes terminating action for the requirements of paragraph A. of this AD."

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to SAAB Aircraft, Product Support, S-58188, Linkoping, Sweden. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on June 26, 1987.

George C. Paul,
Acting Director, Northwest Mountain Region.

[FR Doc. 87-15129 Filed 7-1-87; 8:45 am]
BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 87-ANM-11]

Proposed Alteration of Transition Area, Missoula, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to provide additional controlled airspace in the vicinity of Missoula, Montana. This revision to the 1,200 foot transition area will provide the user with the benefit of radar vectors at altitudes compatible with the instrument approach procedures. This action would not change the existing 700 foot transition area.

DATE: Comments must be received on or before August 17, 1987.

ADDRESSES: Send comments on the proposal to: Manager, Airspace & System Management Branch, ANM-530, Federal Aviation Administration, Docket No. 87-ANM-11, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

The official docket may be examined in the Office of Regional Counsel at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Robert L. Brown, ANM-535, Federal Aviation Administration, Docket No. 87-ANM-11, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168, Telephone: (206) 431-2535.

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 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 87-ANM-11". 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 any 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 at the address listed above 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, Airspace & System Management Branch, 17900 Pacific Highway South, C-68966, Seattle, Washington, 98168. 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 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to provide additional controlled airspace in the vicinity of Missoula, Montana. Changes to IFR procedures

have caused the Missoula ATCT to require the Salt Lake City ARTCC to position arriving aircraft on a published route or approach transition prior to release of control. Due to restrictions in service volume for the Missoula VORTAC, the positioning of aircraft must therefore be accomplished by radar vectors. The absence of uniform controlled airspace restricts arriving aircraft below 15,000 feet AMSL to fly nonradar routes which increases their flying time; and aircraft arriving at 15,000 feet AMSL or above are required to remain high until established on an approach transition. The revision to the 1,200 foot transition area will provide the user with the benefit of radar vectors at altitudes compatible with the instrument approach procedures. This action would not change the existing 700 foot transition area.

Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C January 2, 1987.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

PART 39—[AMENDED]

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

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

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 94-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Missoula, Montana [Revised]

That airspace extending upward 700 feet above the surface within a 23.5 mile radius of the Missoula VORTAC (lat. 46°54'29" N, long. 114°04'58" W) extending from the Missoula VORTAC 190° radial clockwise to the 290° radial; within 9.5 miles southwest and 5.5 miles northeast of the Missoula VORTAC 312° radial extending from the VORTAC to 38 miles northwest of the VORTAC; within 3 miles each side of the Missoula VORTAC 172° radial extending from the VORTAC to 19.5 miles southeast; and that airspace extending upward from 1,200 feet above the surface bounded by a line beginning at lat. 47°30'00" long. 115°15'00" W to lat. 47°30'00" N/long. 112°40'53" W to lat. 46°44'00" N/long. 112°19'58" W to lat. 46°44'00" N/long. 112°19'00" W to lat. 46°44'00" N/long. 112°54'00" W to lat. 46°33'00" N/long. 113°05'00" W to lat. 46°00'00" N/long. 113°05'00" W to lat. 46°00'00" N/long. 115°15'00" W to point of beginning and excluding the portion within the Great Falls, Montana, and Helena, Montana, and Coppertown, Montana, 1,200 foot transaction areas.

Issued in Seattle, Washington, on June 23, 1987.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 87-15127 Filed 7-1-87; 8:45 am]

BILLING CODE 4910-13-M

UNITED STATES INFORMATION AGENCY

22 CFR Part 512

Collection of Debts by the Government Under the Debt Collection Acts

AGENCY: United States Information Agency (USIA).

ACTION: Proposed Rule.

SUMMARY: The USIA is proposing to amend its rules by introducing Part 512 of 22 CFR establishing rules for the collection of debts owed to the United States. The proposed rules implement the collection procedures authorized by the Federal Claims Collection Act (31 U.S.C. 3701-3719) as amended by the Debt Collection Act of 1982 (Pub. L. 97-365, 96 Stat. 1749). These laws have been implemented by the Federal Claims Collection Standards issued jointly by the General Accounting Office and the Department of Justice (4 CFR Parts 101-105), regulations issued by the Office of Personnel Management (5 CFR Part 550) and the procedures prescribed by the Office of Management and Budget in Circular A-129 of May 9, 1985.

DATES: Comments must be submitted on or before August 3, 1987.

ADDRESS: Send comments to Kenn Goodman, Planning, Presentations and Systems Division, United States Information Agency, Room 664, 301 4th Street, SW., Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Kenn Goodman, Planning, Presentations and Systems Division, United States Information Agency, Room 664, 301 4th Street, SW., Washington, DC 20547, phone (202) 485-6327.

SUPPLEMENTARY INFORMATION: The Debt Collection Act of 1982 (the Act) authorizes procedures for the collection of debts owed to the United States, including (1) contracting for collection services to recover debts; (2) administrative offset; and (3) salary offset. Although these are separate procedures, any procedure may be used by itself or in conjunction with other procedures.

Contracts for Collection Services

Section 13 of the Debt Collection Act (codified at 31 U.S.C. 3718) authorizes Agencies to enter into contracts for collection services to recover debts owed the United States. The Act requires that certain provisions be contained in such contracts including:

(1) The Agency retains the authority to resolve a dispute, including the authority to terminate a collection action or refer the matter to the Attorney General for civil remedies; and

(2) The contractor is subject to the Privacy Act of 1974, as it applies to private contractors, as well as subject to State and Federal laws governing debt collection practices.

Administrative Offset

The procedures authorized for administrative offset are contained in section 10 of the Debt Collection Act codified at (31 U.S.C. 3716). As with the provision for disclosure to a collection agency, the Act requires that notice procedures be observed by the agency.

The debtor is also afforded an opportunity to inspect and copy Government records pertaining to the claim, enter into an agreement for repayment, and to a review of the claim (if requested). Agencies of the Government may cooperate with one another in order to effectuate recovery of the claim.

Salary Offset

Section 5 of the Debt Collection Act (codified at 5 U.S.C. 5514) establishes new procedures to be used when an Agency collects money owed it by offsetting the salary of a Federal employee. Like administrative offset,

agencies may cooperate with one another in order to recover the debt.

Salary offset procedures permit an employee to review the determination of indebtedness before offset is implemented, and an employee against whom an offset is sought is automatically entitled to a hearing on matters surrounding the determination of the debt, or the percentage of disposable pay to be deducted each pay period.

Executive Order 12291

This proposed rule is not a "major rule" as defined under Executive Order 12291 because it will not result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographical 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. Accordingly, no regulatory impact analysis is required.

Regulatory Flexibility Act

The USIA finds that the proposed rule will have no "significant economic impact upon a substantial number of small entities" within the meaning of section 3(a) of the Regulatory Flexibility Act. Public Law 96-354, 94 Sat. 1164 (5 U.S.C. 605(b)). This conclusion has been reached because the proposed rule does not in itself impose any additional requirements upon small entities. Accordingly, no regulatory flexibility analysis is required.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Public Law 96-511), any reporting recordkeeping provisions that are included in this rule will be submitted for approval to the Office of Management and Budget (OMB).

List of Subjects in 22 CFR Part 512

Administrative practices, procedures, debt, claims.

Accordingly it is proposed to amend Title 22 CFR Chapter V as follows:

Part 512 is added to read as follows:

PART 512—COLLECTION OF DEBTS UNDER THE DEBT COLLECTION ACT OF 1982

Subpart A—General Provisions

Sec.
512.1 Definitions.
512.2 Exceptions.
512.3 Use of procedures.
512.4 Conformance of law and regulations.
512.5 Others procedures.
512.6 Informal action.
512.7 Return of Property.
512.8 Omissions not a defense.

Subpart B—Administrative Offset and Referral to Collection Agencies

512.9 Demand for payment.
512.10 Collection by administrative offset.
512.11 Administrative offset against amounts payable from Civil Service Retirement and Disability Fun.
512.12 Collection in installments.
512.13 Exploration of compromise.
512.14 Suspending or terminating collection action.
512.15 Referrals to the Department of Justice of the General Accounting Office.
512.16 Collection services.

Subpart C—Salary Offset

512.17 Purpose.
512.18 Scope.
512.19 Definitions.
512.20 Notification.
512.21 Hearing.
512.22 Deduction from pay.
512.23 Liquidation from final check or recovery from other payments.
512.24 Non-waiver of rights by payments.
512.25 Refunds.
512.26 Interest, penalties, and administrative costs.
512.27 Recovery when paying Agency is not creditor.

Subpart D—Interest, Penalties, and Administrative Costs.

512.28 Assessment.
512.29 Exemptions.

Authority: 31 U.S.C. 3701; 31 U.S.C. 3711 et seq.; 5 U.S.C. 5514; 4 CFR Parts 101-105; 5 CFR Part 550.

Subpart A—General Provisions

§ 512.1 Definitions.

(a) The term "Agency" means the United States Information Agency.

(b) The term "Agency head" means the Director, United States Information Agency.

(c) The term "appropriate Agency official" or "designee" means the Chief, Financial Operations Division of such other official as may be named in the future by the Director, USIA.

(d) The terms "debt" or "claim" refer to an amount of money which has been determined by an appropriate Agency official to be to be owed to the United States from any person, organization or entity, except another Federal Agency.

(e) a debt is considered "delinquent" if it has not been paid by the date specified in the Agency's written notification or applicable contractual agreement, unless other satisfactory arrangements have been made by that date, or at any time thereafter the debtor fails to satisfy obligations under a payment agreement with the Agency.

(f) The term "referral for litigation" means referral to the Department of Justice for appropriate legal proceedings.

§ 512.2 Exceptions.

(a) Claims arising from the audit of transportation accounts pursuant to 31 U.S.C. 3726 shall be determined collected, compromised, terminated, or settled in accordance with the regulations published under 31 U.S.C. 3726 (refer to 41 CFR Part 101-41).

(b) Claims arising out of acquisition contracts subject to the Federal Acquisition Regulation (FAR) shall be determined collected, compromised, terminated or settled in accordance with those regulations. (see 48 CFR 32). It not otherwise provided for in the FAR system, contract claims that have been the subject of a contracting officer's final decision in accordance with section 6(a) of the Contracts Disputes Act of 1978 (41 U.S.C. 605(a)), may be determined collected, compromised, terminated, or settled under the provision of this regulation, except no additional review of the debt shall be granted beyond that provided by the contracting officer in accordance with the provisions of section 6 of the Contract Disputes Act of 1978 (41 U.S.C. 605), and the amount of any interest, administratives charge, or penalty charge shall be subject to the limitations, if any, contained in the contract out of which the claim arose.

(c) Claims based in whole or in part on conduct in violation of the antitrust laws, or in regard in which there is an indication of fraud, presentation of a false claim, or misrepresentation on the part of the debtor or any other party having an interest in the claim, shall be referred to the Department of Justice (DOJ) as only the DOJ has the authority to compromise, suspend or terminate collection action on such claims.

(d) Tax claims are excluded from the coverage of this regulation.

§ 512.3 Use of procedures.

Procedures authorized by this regulation (including but not limited to referral to a debt collection agency, administrative offset, or salary offset) may be singly or in combination, providing the requirements of the applicable law and regulation are satisfied.

§ 512.4 Conformance to law and regulations.

(a) The requirements of applicable law (31 U.S.C. 3701-3719 as amended by Pub. L. 97-365, 96 Stat. 1749) have been

implemented in Government-wide standards:

(1) The Regulations of the Office of Personnel Management (5 CFR Part 550),

(2) The Federal Claims Collection Standards issued jointly by the General Accounting Office and the Department of Justice (4 CFR Parts 101–105), and

(3) The procedures prescribed by the Office of Management and Budget in Circular A–129 of May 9, 1985.

(b) Not every item in the above described standards has been incorporated or referenced in this regulation. To the extent, however, that circumstances arise which are not covered by the terms stated in this regulation, USIA will proceed in any actions taken in accordance with applicable requirements found in the sources referred to in paragraphs (a) (1) (2) and (3) of this section.

§ 512.5 Other procedures.

Nothing contained in this regulation is intended to require USIA to duplicate administrative proceedings required by contract or other laws or regulations.

§ 512.6 Informal action.

Nothing in this regulation is intended to preclude utilization of informal administrative actions or remedies which may be available.

§ 512.7 Return of property.

Nothing contained in this regulation is intended to deter USIA from demanding the return of specific property or from demanding the return of the property or the payment of its value.

§ 512.8 Omissions not a defense.

The failure of USIA to comply with any provision in this regulation shall not serve as a defense to the debt.

Subpart B—Administrative Offset and Referral to Collection Agencies

§ 512.9 Demand for payment.

Prior to initiating administrative offset, demand for payment will be made as follows:

(a) Written demands will be made promptly upon the debtor in terms which inform the debtor of the consequences of failure to cooperate. A total of three progressively stronger written demands at not more than 30-day intervals will normally be made unless a response to the first or second demand indicates that further demand would be futile and the debtor's response does not require rebuttal. In determining the timing of demand letters, USIA will give due regard to the need to act promptly so that, as a general rule, debt referrals to the Department of Justice for litigation, where necessary, can be made within one year of the Agency's final determination of the fact and the amount of the debt. When necessary to protect the Government's interests (e.g., to prevent the statute of limitations, 28 U.S.C. 2415, from expiring) written demand may be preceded by other appropriate actions under this chapter, including immediate referral for litigation.

(b) The initial demand letter will inform the debtor of: The basis for the indebtedness and the right of the debtor to request review within the Agency; the applicable standards for assessing interest, penalties, and administrative costs (Subpart D of this regulation) and; the date by which payment is to be made, which normally will not be more than 30 days from the date that the initial demand letter was mailed or hand delivered. USIA will exercise care to insure that demand letters are mailed or hand-delivered on the same day that they are actually dated.

(c) As appropriate to the circumstances, USIA will include in the demand letters matters relating to alternative methods of payment, policies relating to referral to collection agencies, the Agency's intentions relative to referral of the debt to the Department of Justice for litigation, and, depending on the statutory authority, the debtor's entitlement to consideration of waiver.

(d) USIA will respond promptly to communications from the debtor and will advise debtors who dispute the debt that they must furnish available evidence to support their contention.

§ 512.10 Collection by administrative offset.

(a) Collection by administrative offset will be undertaken in accordance with these regulations on all claims which are liquidated and certain amount, in every instance where the appropriate Agency official determines such collection to be feasible and not otherwise prohibited.

(1) For purpose of this section, the term "administrative offset" has the same meaning as provided in 31 U.S.C. 3716(a)(1).

(2) Whether collection by administrative offset is feasible is a determination to be made by the Agency on a case-by-case basis, in the exercise of sound discretion. USIA will consider not only the practicalities of administrative offset, but whether such offset is best suited to protect and further all of the Government's interests. USIA will give consideration to the debtor's financial condition, and is not required to use offset in every instance where there is an available source of funds. USIA will also consider whether offset would tend to substantially disrupt or defeat the purpose of the program authorizing the payments against which offset is contemplated.

(b) Before the offset is made, a debtor shall be provided with the following: written notice of the nature and the amount of the debt and the Agency's intention to collect by offset; opportunity to inspect and copy Agency records pertaining to the debt; opportunity to obtain review within the Agency of the determination of indebtedness; and opportunity to enter into written agreement with the Agency to repay the debt. USIA may also make requests to other agencies holding funds payable to the debtor, and process requests for offset that are received from other agencies.

(1) USIA will exercise sound judgment in determining whether to accept a repayment agreement in lieu of offset. The determination will weigh the Government's interest in collecting the debt against fairness to the debtor.

(2) In cases where the procedural requirements specified in this paragraph (b) have previously been provided to the debtor in connection with the same debt under some other statutory or regulatory authority, such as pursuant to an audit allowance, the Agency is not required to duplicate those requirements before taking administrative offset.

(3) USIA may not initiate administrative offset to collect a debt more than 10 years after the Government's right to collect the debt first accrued, unless facts material to the Government's right were not known and could not be reasonably have been known by the official or officials of the Government who were charged with the responsibility to discover and collect the debt. When the debt first accrued is to be determined according to existent law regarding the accrual of debts (e.g., 28 U.S.C. 2415).

(4) USIA is not authorized by 31 U.S.C. 3716 to use administrative offset with respect to: Debts owed by any State or local Government; debts arising under or payments made under the Social Security Act, the Internal Revenue Code of 1954 or the tariff laws of the United States; or any case in which collection of the type of debt involved by administrative offset is explicitly provided for or prohibited by another statute. Unless otherwise provided by contract or law, debts or payments which are not subject to administrative offset under 31 U.S.C. 3716 may be collected by administrative offset under the common law or other applicable statutory, authority.

(5) USIA may effect administrative offset against a payment to be made to a debtor prior to completion of the procedures required by paragraph (b) of this section if: Failure to take offset would substantially prejudice the government's ability to collect the debt, and the time before the payment is to be made does not reasonably permit the completion of those procedures. Amounts recovered by offset but later determined not to be owed to the Government shall be promptly refunded.

(c) *Type of hearing or review.* (1) For purposes of this section, whenever USIA is required to afford a hearing or review within the Agency, the Agency will provide the debtor with a reasonable opportunity for an oral hearing when: An applicable statute authorizes or requires the Agency to consider waiver of the indebtedness involved, the debtor requests waiver of the indebtedness, and the waiver determination turns on an issue of veracity; or the debtor requests reconsideration of the debt and the Agency determines that the question of the indebtedness cannot be resolved by review of the documentary evidence. Unless otherwise required by law, an oral hearing under this section is not required to be a formal evidentiary type hearing.

(2) This section does not require an oral hearing with respect to debt collection systems in which determinations of indebtedness or waiver rarely involve issues of veracity and the Agency has determined that the review of the written record is ordinarily enough to correct prior mistakes.

(3) In those cases where an oral hearing is not required by this section, the Agency will make its determination on the request for waiver or reconsideration based upon a review of the written record.

(d) Appropriate use will be made of the cooperative efforts of other agencies in effecting collection by administrative offset. USIA will not refuse to initiate administrative offset to collect debts owed the United States, unless the requesting agency has not complied with the applicable provisions of these standards.

(e) Collection by offset against a judgment obtained against the United States shall be accomplished in accordance with 31 U.S.C. 3728.

(f) Whenever the creditor agency is not the agency which is responsible for making the payment against which offset is sought, the latter agency shall not initiate the requested offset until it has been provided by the creditor agency with an appropriate written certification that the debtor owes debt (including the amount) and that full compliance with the provisions of this section have taken place.

(g) When collecting multiple debts by administrative offset, USIA will apply the recovered amounts to those debts in accordance with the best interests of the United States, as determined by the facts and circumstances of the particular case, paying particular attention to the applicable statutes of limitations.

§ 512.11 Administrative offset against amounts payable from Civil Service Retirement and Disability Fund.

(a) Unless otherwise prohibited by law, USIA may request that monies that are due and payable to a debtor from the Civil Service Retirement and Disability Fund be administratively offset in reasonable amounts in order to collect in one full payment, or a minimal number of payments, debts owed the United States by the debtor. Such requests shall be made to the appropriate officials within the Office of Personnel Management in accordance with such regulations as may be prescribed by the Director of that Office.

(b) When making a request for administrative offset under paragraph (a) of this section USIA shall include written statements that:

(1) The debtor owes the United States a debt, including the amount of the debt;

(2) The USIA has compiled with the applicable statutes, regulations, and procedures of the Office of Personnel Management; and

(3) The USIA has compiled with the requirements of § 512.10 of this part, including any required hearing or review.

(c) Once USIA decides to request offset under paragraph (a) of this section, it will make the request as soon as practical after completion of the applicable procedures in order that the Office of Personel Management may identify the debtor's account in anticipation of the time when the debtor requests or becomes eligible to receive payments from the Fund. This will satisfy any requirement that offset be initiated prior to expiration of the applicable statute of limitations.

(d) If USIA collects part or all of the debt by other means before deductions are made or completed pursuant to paragraph (a) of this section, USIA shall act promptly to modify or terminate its request for offset under paragraph (a) of this section.

(e) This section does not require or authorize the Office of Personnel Management to review the merits of the USIA determination relative to the amount and validity of the debt, its determination on waiver under an applicable statute, or its determination to provide or not provide an oral hearing.

§ 512.12 Collection in installments.

(a) Whenever feasible, and except as otherwise required by law, debts owed to the United States, together with interest, penalties, and administrative costs as required by this regulation, should be collected in one lump sum. This is true whether the debt is being collected under administrative offset or by another method, including voluntary payment. However, if the debtor is financially unable to pay the indebtedness in one lump sum, payment may be accepted in installments. If USIA agrees to accept payment in installments, it will obtain a legally enforceable written agreement from the debtor that specifies all of the terms of the arrangement and which contains a provision accelerating the debt in the event the debtor defaults. The size and frequency of the payments should bear a reasonable relation to the size of the debt and ability of the debtor to pay. If possible the installment payments should be sufficient in size and frequency to liquidate the Government's claim within 3 years.

(b) If the debtor owes more than one debt and designates how a voluntary installment plan is to be applied among those debts, the Agency will follow that designation. If no such designation is made, the Agency will apply payments to the various debts in accordance with the best interest of the United States as if determined by the facts and circumstances of each case, with particular attention to applicable statutes of limitation.

§ 512.13 Exploration of compromise.

USIA may attempt to effect compromise in accordance with the standards set forth in Part 103 of the Federal Claims Collection Standards (4 CFR Part 103).

§ 512.14 Suspending or terminating collection action.

The suspension or termination of collection action shall be made in accordance with the standards set forth in Part 104 of the Federal Claims Collection Standards (4 CFR Part 104).

§ 512.15 Referrals to the Department of Justice or the General Accounting Office.

Referrals to the Department of Justice or the General Accounting Office shall be made in accordance with the standards set forth in Part 105 of the Federal Claims Collection Standards (4 CFR Part 105).

§ 512.16 Collection services.

(a) USIA has authority to contract for collection services to recover delinquent debts in accordance with 31 U.S.C. 3718(c) and 4 CFR 102.6.

(b) Contracts with collection agencies will provide that:

(1) The authority to resolve disputes, compromise claims, suspend or terminate collection action, and refer the matter to the Justice Department for litigation will be retained by USIA;

(2) Contractors are subject to 5 U.S.C. 552a, the Privacy Act of 1974, as amended to the extent specified in 5 U.S.C. 552a(m) and to applicable Federal and State laws and regulations pertaining to debt collection practices, such as the Fair Debt Collection Practices Act, 15 U.S.C. 1692;

(3) The contractor is required to strictly account for all amounts collected;

(4) The contractor must agree that uncollectible accounts shall be returned with appropriate documentation to enable USIA to determine whether to pursue collection through litigation or to terminate collection;

(5) The contractor must agree to provide any data in its files relating to paragraphs (a) (1), (2), and (3) of 105.2 of the Federal Claims Collection Standards (4 CFR Part 105) upon returning the account to USIA for subsequent referral to the Department of Justice for litigation.

(c) USIA will generally not use a collection agency to collect a debt owed by a currently employed or retired Federal employee, if collection by salary or annuity offset is available.

Subpart C—Salary Offset

§ 512.17 Purpose.

This subpart provides the standards to be followed by USIA in implementing 5 U.S.C. 5514 to recover a debt from the pay of an Agency employee, and establishes the procedural guidelines to recover debts when the employee's creditor and paying agencies are not the same.

§ 512.18 Scope.

(a) *Coverage.* This subpart applies to Executive agencies and employees as defined by § 512.19.

(b) *Applicability.* This subpart and 5 U.S.C. apply in recovering debts by offset without the employee's consent from the current pay of that employee. Debt collection procedures which are not specified in U.S.C. 5514 and these regulations will be consistent with the Federal Claims Collection Standards (4 CFR Parts 101/105).

(1) The procedures contained in this subpart do not apply to debts or claims arising under the Internal Revenue Code of 1954 as amended (26 U.S.C. 1 et seq.), the Social Security Act (42 U.S.C. 301 et seq.), or the tariff laws of the United States or to any case where collection of a debt is explicitly provided for or prohibited by another statute (e.g., travel advances in 5 U.S.C. 5705).

(2) This subpart does not preclude an employee from requesting a waiver of a salary overpayment under 5 U.S.C. 5584, 10 U.S.C. 2774, or 32 U.S.C. 716, or in any way questioning the amount or validity of a debt by submitting a subsequent claim to the General Accounting Office in accordance with procedures prescribed by the General Accounting Office, nor does it preclude an employee from requesting waiver when waiver is available under any statutory provision.

§ 512.19 Definitions.

For purposes of this subpart:

"Agency" means the United States Information Agency (USIA).

"Creditor Agency" means the agency to which the debt is owed.

"Debt" means an amount owed to the United States.

"Disposable Pay" means that part of current basic pay, special pay, incentive pay, retired pay, retainer pay or authorized pay remaining after the deduction of any amount required to be withheld by law. The Agency will exclude deductions described in 5 CFR 581.105 (b) through (f) to determine disposable pay subject to salary offset.

"Employee" means a current employee of USIA or of another Executive Agency.

"Executive Agency" means an agency as defined by section 105 of title 5 of the U.S. Code.

"FCCS" means the Federal Claims Collection Standards jointly published by the Justice Department and the General Accounting Office at 4 CFR Parts 101–105.

"Paying agency" means the agency employing the individual and authorizing the payment of his or her current pay.

"Salary offset" means an administrative offset to collect a debt under 5 U.S.C. 5514 by deductions at one or more officially established pay intervals from the current pay account of an employee without his or her consent.

"Waiver" means the cancellation, remission, forgiveness, or non-recovery of a debt allegedly owed by an employee to an agency as permitted or required by 5 U.S.C. 5584, 10 U.S.C. 2774, or 32 U.S.C. 710 5 U.S.C. 8346(b), or any other law.

§ 512.20 Notification.

(a) Salary offset deductions shall not be made unless the Director, Financial Operations Division of USIA, or such other official as may be named in the future by the Director of USIA, provides to the employee a written notice, 30 days prior to any deduction, stating at a minimum:

(1) The Agency's determination that a debt is owed including the nature, origin, and amount of the debt;

(2) The Agency's intent to collect the debt by means of deduction from the employee's current disposable pay account;

(3) The amount, frequency and proposed beginning date and duration of the intended deductions;

(4) An explanation of the Agency's policy concerning interest, penalties, and administrative costs;

(5) The employee's right to inspect and copy Government records pertaining to the debt;

(6) The opportunity to establish a schedule for the voluntary repayment of the debt or to enter into a written agreement to establish a schedule for repayment in lieu of offset per the requirements of 4 CFR 102.2(e).

(7) The employee's right to a hearing arranged by the Agency and conducted by an administrative law judge or, alternatively, an official not under the control of the head of the Agency;

(8) The method and time period for petitioning a hearing;

(9) That timely filing of the petition will stay the commencement of collection proceedings;

(10) That final decision on the hearing will be issued not later than 60 days after the filing of the petition for hearing unless the employee requests and the hearing officer grants a delay in the proceedings.

(11) That knowingly false, misleading, or frivolous statements, representations or evidence may subject the employee to:

(i) Disciplinary procedures under chapter 75 of title 5, United States Code or any other applicable statutes;

(ii) Penalties under the False Claims Act, sections 3729–3731 of title 31 U.S.C. or any other applicable statutes.

(C) Criminal penalties under sections 286, 287, 1001, 1002, of title 18 United States Code or any other applicable statutes.

(12) Any other rights or remedies available to the employee under the statutes or regulations governing the program for which collection is being made.

(13) That amounts paid on or deducted for the debt that are later

waived or found not owed to the United States will be promptly refunded to the employee.

(b) Notifications under this section shall be hand delivered with a record made of the delivery, or shall be mailed certified mail with return receipt requested.

(c) No notification hearing, written responses or final decisions under this regulation are required of USIA for any adjustment to pay arising from an employee's election of coverage under a Federal benefit program requiring periodic deductions from pay, if the amount to be recovered was accumulated over four pay periods or less.

§ 512.21 Hearing.

(a) *Petition for hearing.* (1) A hearing may be requested by filing a written petition with the Director, Financial Operations Division of USIA, or such other official as may be named in the future by the Director of USIA, stating why the employee believes the Agency's determination of the existence or amount of the debt is in error.

(2) The petition must be signed by the employee and fully identify and explain with reasonable specificity all the facts, evidence and witnesses which the employee believes support his position.

(3) The petition must be filed no later than fifteen (15) calendar days from the date the notification was hand delivered or the date of delivery by certified mail.

(4) Where petition is received after the 15 calendar day limit, USIA will accept the petition if the employee can show that the delay was beyond his or her control or because of failure to receive notice.

(5) If petition is not filed within the time limit, and is not accepted pursuant to paragraph (a)(4) of this section, the employee's right to hearing will be considered waived, and salary offset will be implemented.

(b) *Type of hearing.* (1) The form and content of the hearing will be determined by the hearing official who shall be a person outside the control or authority of USIA.

(2) The employee may represent him or herself, or may be represented by counsel.

(3) The hearing official shall maintain a summary record of the hearing.

(4) The hearing official will prepare a written decision which will state:

(i) The facts purported to evidence nature and origin of the alleged debt;

(ii) The hearing official's analysis, findings, and conclusions relative to:

(A) The employee's and/or the Agency's grounds;

(B) The amount and the validity of the alleged debt;

(C) The repayment schedule, if applicable.

(5) The decision of the hearing official shall constitute the final administrative decision of the Agency.

§ 512.22 Deduction from pay.

(a) Deduction by salary offset, from an employee's disposable current pay, shall be subject to the following circumstances:

(1) When funds are available, the Agency will collect debts owed the United States in full in one lump-sum. If funds are not available or the debt exceeds 15% of disposable pay for an officially established pay interval, collection will normally be made in installments.

(2) The installments shall not exceed 15% of the disposable pay from which the deduction is made, unless the employee has agreed in writing to a larger amount.

(3) Deduction will commence with the next full pay interval following consent by the employee, waiver of offset or decision issued by the hearing official.

(4) Installment deductions will not be made over a period greater than the anticipated period of employment.

§ 512.23 Liquidation from final check or recovery from other payment.

(a) If an employee retires or resigns before collection of the debt is completed, offset of the entire remaining balance may be made from a final payment of any nature to such extent as is necessary to liquidate the debt.

(b) Where debt cannot be liquidated by offset from final payment, offset may be made from later payments of any kind due from the United States inclusive of Civil Service Retirement and Disability Fund pursuant to § 512.11 of this regulation.

§ 512.24 Non-waiver of rights by payments.

An employee's involuntary payment of all or part of a debt being collected under 5 U.S.C. 5514 shall not be construed as a waiver of any rights which the employee may have under 5 U.S.C. or any other provision of contract or law, unless statutory or contractual provisions provide to the contrary.

§ 512.25 Refunds.

(a) Refunds shall be promptly made when:

(1) A debt is waived or otherwise found not be owed the United States; or

(2) The employee's paying agency is directed by an administrative or judicial order to refund amounts deducted from his or her current pay.

(b) Refunds do not bear interest unless required or permitted by law or contract.

§ 512.26 Interest, penalties, and administrative costs.

The assessment of interest, penalties and administrative costs shall be in accordance with Subpart D of this regulation.

§ 512.27 Recovery when paying agency is not creditor agency.

(a) Format for request for recovery.

(1) Upon completion of the procedures prescribed under 5 U.S.C. 5514, the creditor agency shall complete and certify the appropriate debt claim form specified by OPM.

(2) The creditor agency shall certify in writing that the employee owes the debt, the amount and basis of the debt, the date on which payment is due, the date the Government's right to collect first accrued, and that the creditor agency's regulations implementing section 5514 have been approved by OPM.

(3) If collection must be made in installments, the creditor agency must advise the paying agency of the number of installments to be collected, the amount of each installment, and the commencing date of the first installment.

(b) Submitting the request for recovery.

(1) Current employees. The creditor agency shall submit the appropriate debt claim form, agreement, or other instruction on the payment schedule to the employee's paying agency.

(2) Separated employees.

(i) Employees who are in the process of separating. If the employee is in the process of separating, the creditor agency will submit its debt claim to the employee's paying agency for collection as provided in §§ 512.22 and 512.23. The paying agency shall certify the total amount of its collection and notify the creditor agency and the employee as provided in paragraph (b)(2) of this section. Where the paying agency is aware that the employee is entitled to payments from the Civil Service Retirement and Disability Fund, it will send a copy of the debt claim and certification to the agency responsible for making such payments as notice that a debt is outstanding.

(ii) Employees who have already separated. If the employee is already separated and all payments due from his or her former paying agency have been paid, the creditor agency may request that monies which are due and payable to the employee from the Civil Service Retirement and Disability Fund (5 U.S.C. 831.1801) or other similar funds be

administratively offset in order to collect the debt (31 U.S.C. 3716 and the FCCS).

(iii) Employees who transfer from one paying agency to another. If an employee transfers to a position served by a different paying agency subsequent to the creditor agency's debt claim but before complete collection, the paying agency from which the employee separates shall certify the total amount of collection made on the debt. One copy of the certification will be supplied to the employee, and another to the creditor agency with notice of the employee's transfer. The original shall be inserted in the employee's official personnel folder and the new paying agency will resume collection from the employee's current pay account, and notify the employee and the creditor agency of the resumption. The creditor agency will not need to repeat the due process procedure described by 5 U.S.C. 5514.

(c) Processing the debt claim upon receipt by the paying agency:

(1) *Incomplete claims.* If the paying agency receives an improperly completed debt claim form, it shall return the request with a notice that procedures under 5 U.S.C. 5514 and this subpart must be provided and a properly completed debt claim form received before action will be taken to effect collection.

(2) *Complete claim.* If the paying agency receives a properly completed debt form, deductions will begin prospectively at the next officially established pay interval. A copy of the debt form will be given to the debtor along with notice of the date deductions will commence.

(3) The paying agency is not required or authorized to review the merits of the creditor agency's determination with respect to the amount or validity of the debt as stated in the debt claim form.

Subpart D—Interest, Penalties, and Administrative Costs

§ 512.28 Assessment.

(a) Except as provided in paragraph (h) of this section, or section 512.29, USIA shall assess interest, penalties, and administrative costs on debts owed to the United States pursuant to 31 U.S.C. 3717. Before assessing these charges, USIA will mail or hand deliver a written notice to the debtor. This notice will include a statement of the Agency's requirements concerning (§§ 512.9 and 512.21).

(b) Interest shall accrue from the date on which notice of the debt is first mailed or hand-delivered to the debtor, using the most current address available to the Agency.

(c) The rate of interest assessed shall be the rate of the current value of funds to the United States Treasury (i.e., the Treasury Tax and Loan account rate), as prescribed and published by the Secretary of the Treasury in the **Federal Register** and the Treasury Fiscal Requirements Manual Bulletins annually or quarterly, in accordance with 31 U.S.C. 3717. The rate of interest as initially assessed shall remain fixed for the duration of the indebtedness. However, in cases where the debtor has defaulted on a repayment agreement and seeks a new agreement, USIA may set a new rate which reflects the current value of funds to the treasury at the time the agreement is executed. Interest will not be assessed on interest, penalties, or administrative costs required by this section.

(d) USIA shall assess charges to cover administrative costs incurred as a result of a delinquent debt. Calculation of administrative costs shall be based upon actual costs incurred. Administrative costs include costs incurred to obtain credit reports or in using a private debt collector.

(e) USIA shall assess a penalty charge not to exceed 6% per year on any portion of a debt that is delinquent for more than 90 days. This charge need not be calculated until the 91st day of delinquency, but shall accrue from the date that the debt became delinquent.

(f) When a debt is paid in partial or installment payments, amounts received shall be applied first to the outstanding penalty and administrative cost charges, second to accrued interest and third to outstanding principal.

(g) USIA will waive the collection of interest on the debt or any portion of the debt that is paid within 30 days after the date on which interest began to accrue. USIA may extend this 30-day period, on a case-by-case basis, if it reasonably determines such action is appropriate. USIA may also waive in whole or in part the collection of interest, penalties, and administrative costs assessed under this section per the criteria specified in part 103 of the Federal Claims Collection Standards (4 CFR Part 103) relating to the compromise of claims or if the Agency determines that collection of these charges is not in the best interest of the United States. Waiver under the first sentence of this paragraph is mandatory. Under the second and third sentences, it may be exercised under the following circumstances:

(1) Waiver of interest pending consideration of a request for reconsideration, administrative review, or waiver of the underlying debt under a permissive statute, and

(2) Waiver of interest where USIA has accepted an installment plan under § 512.12, there is no indication of fault or lack of good faith on the part of the debtor and the amount of the interest is large enough in relation to the size of the installments that the debtor can reasonably afford to pay, that the debt will never be repaid.

(h) Where a mandatory waiver or review statute applies, interest and related charges may not be assessed for those periods during which collection must be suspended under § 104.2(c)(1) of the Federal Claims Collection Standards (4 CFR Part 104).

§ 512.29 Exemptions.

(a) The provisions of 31 U.S.C. 3717 do not apply:

(1) To debts owed by any State or local government;

(2) To debts arising under contracts which were executed prior to, and were in effect on October 25, 1982;

(3) To debts where an applicable statute, loan agreement, or contract either prohibits such charges or explicitly fixes the charges that apply to the debts arising under the Social Security Act, the Internal Revenue Code of 1954, or the tariff laws of the United States.

(b) However USIA is authorized to assess interest and related charges on debts which are not subject to 31 U.S.C. 3717 to the extent authorized under the common law or other applicable statutory authority.

Dated: June 25, 1987.

Stanley M. Silverman,

Comptroller.

[FR Doc. 87-15037 Filed 7-1-87; 8:45 am]

BILLING CODE 6230-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[LR-10-87]

Allocation of Interest Expense Among Expenditures

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations portion of this issue of the **Federal Register**, the Internal Revenue Service is issuing temporary regulations relating to

the allocation of interest expense among expenditures. The text of those temporary regulations also serves as the comment document for this proposed rulemaking.

DATE: The amendments to the regulations are proposed to be effective with respect to interest expense paid or accrued in taxable years beginning after December 31, 1986. Written comments and requests for a public hearing must be delivered or mailed by August 31, 1987.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR-10-87), Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Michael J. Grace of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, Attention: CC:LR:T, (202) 566-3288 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations (designated by a T following the section citation) in the Rules and Regulations portion of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR Part 1) to provide rules relating to the allocation of interest expense for purposes of applying the limitations on passive activity losses and credits, investment interest, and personal interest. The temporary regulations reflect the amendment of the Internal Revenue Code of 1986 by sections 501 and 511 of the Act (100 Stat. 2233 and 2244), which added sections 469 (relating to the limitation on passive activity losses and credits) and 163(h) (relating to the disallowance of deductions for personal interest) and amended section 163(d) (relating to the limitation on investment interest). This document proposes to adopt the temporary regulations as final regulations. Accordingly, the text of the temporary regulations serves as the comment document for this notice of proposed rulemaking. In addition, the preamble to the temporary regulations explains the proposed and temporary rules.

For the text of the temporary regulations, see FR Doc. (T.D. 8145) published in the Rules and Regulations portion of this issue of the **Federal Register**.

Special Analyses

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis is not required. Although this document is a notice of proposed rulemaking that solicits public comments, the Internal Revenue Service has concluded that the proposed regulations are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations are not subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who submitted comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register**.

The collection of information requirements contained herein have been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act. Comments on the requirements should be sent to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Internal Revenue Service, New Executive Office Building, Washinton, DC 20503. The Internal Revenue Service requests that persons submitting comments to OMB also send copies of the comments to the Service.

Drafting Information

The principal author of these proposed regulations is Michael J. Grace of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury participated in developing the regulations on matters of both substance and style.

List of Subjects

26 CFR 1.61-1—1.281-4

Income taxes, Taxable income, Deductions, Exemptions.

26 CFR Part 602

Reporting and recordkeeping requirements

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

[FR Doc. 87-14960 Filed 7-1-87; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

Public Comment and Opportunity for Public Hearing on a Modification to the Pennsylvania Permanent Regulatory Program

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

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing procedures for the public comment period and for a public hearing on the substantive adequacy of a program amendment submitted by the Commonwealth of Pennsylvania as a modification to the Pennsylvania Permanent Regulatory Program (hereinafter referred to as the Pennsylvania Program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment includes revisions to the Pennsylvania inspection and enforcement policy and civil penalty program.

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

DATES: Written comments not received on or before 4:00 p.m. August 3, 1987, will not necessarily be considered in the decision process.

If requested, a public hearing on the adequacy of the proposed amendment will be held on July 27, 1987, beginning at 9:00 a.m. at the location shown below under "**ADDRESSES**".

Persons wishing to comment at a public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by the close of business, July 17, 1987.

ADDRESSES: Written comments should be mailed or hand delivered to: Robert J. Biggi, Harrisburg Field Office, Office of Surface Mining Reclamation and Enforcement, 101 South 2nd Street, Suite L-4, Harrisburg, Pennsylvania 17101.

If a public hearing is held, its location will be at: The Penn Harris Motor Inn and Convention Center at the Camp Hill Bypass and U.S. 11 and 15, Camp Hill, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: Robert J. Biggi, Harrisburg Field Office,

Office of Surface Mining Reclamation and Enforcement, 101 South 2nd Street, Suite L-4, Harrisburg, Pennsylvania 17101, Telephone (717) 782-4036.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

Availability of Copies

Copies of the Pennsylvania program, the proposed amendment to the program, a listing of any scheduled public meeting and all written comments received in response to this notice will be available for review at the OSMRE office and the State regulatory authority listed below, Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding holidays. Each person may receive free of charge, one single copy of the proposed modifications by contacting the OSMRE Harrisburg Field Office.

Harrisburg Field Office, Office of Surface Mining Reclamation and Enforcement, 101 South 2nd Street, Suite L-4, Harrisburg, Pennsylvania 17101

Office of Surface Mining Reclamation and Enforcement, 1100 "L" Street NW., Room 5124, Washington, DC 20240

Pennsylvania Department of Environmental Resources, Fulton Bank Building, Third and Locust Streets, Harrisburg, Pennsylvania 17120

Written Comments

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

Public Hearing

Persons wishing to comment at a public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**". If no one requests to comment at a public hearing, the hearing will not be held.

If only one person requests to comment, a public meeting, rather than a public hearing may be held and the results of the meeting included in the Administrative Record.

Filing of a written statement at the time of the hearing is requested and will greatly assist the transcriber.

Submission of written statements in advance of the hearing will allow OSMRE officials to prepare appropriate questions.

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

Public Meeting

Persons wishing to meet OSMRE representatives to discuss the proposed amendment may request a meeting at the OSMRE office listed under "**ADDRESSES**" by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT**".

All such meetings are open to the public and, if possible, notices of meetings will be posted in advance in the Administrative Record. A written summary of each public meeting will be made a part of the Administrative Record.

II. Background on the Pennsylvania State Program

On February 29, 1980, the Secretary of the Interior received a proposed regulatory program from the State of Pennsylvania. On October 22, 1980, following a review of the proposed program as outlined in 39 CFR Part 732, the Secretary disapproved the Pennsylvania program. The State resubmitted its program on January 25, 1982, and subsequently the Secretary approved the program subject to the correction of minor deficiencies. Information pertinent to the general background, revisions, modifications, and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Pennsylvania program can be found in the July 30, 1982 **Federal Register** (47 FR 33050).

III. Submission of Program Amendment

By letter dated April 14, 1987, (Administrative Record No. PA 638) Pennsylvania submitted for OSMRE's review and approval a proposed amendment to the Pennsylvania approved regulatory program. The amendment was submitted in accordance with the conditions of program amendment approval of September 8, 1986. This proposed amendment modifies the State's inspection and enforcement policy and civil penalty program as follows:

1. Establishes individual civil penalties as one of the alternative enforcement actions to be pursued subsequent to imposing a 30 day cap for failure to abate civil penalties in conformance with 30 CFR 938.16(g). This proposal amends Section II of Department of Environmental Resources (DER) inspection and enforcement policy to include individual civil penalties as an alternative enforcement action.

2. Establishes a 30 day time frame within which DER must initiate individual civil penalties or other alternative enforcement action following the termination of a failure to abate penalty. The total time frame for initiating alternative enforcement is 60 days following the expiration of the prescribed abatement period. This modification is conformance with requirement specified in 30 CFR 938.16(h).

The Director is seeking comment on the adequacy of the proposed amendments in satisfying the criteria for approval of State program amendments set forth at 30 CFR 732.15 and 732.17. With respect to the proposed penalty provisions, the Director must find that the State's rules incorporate penalties no less stringent than those set forth under section 518 of SMCRA and 30 CFR Part 845 of the Federal regulations and contain the same or similar procedural requirements relating thereto.

The full text of the proposed amendment is available for reivew in the OSMRE Administrative Record under No. PA 638 at the addresses listed above.

IV. Procedural Determinations

1. Compliance with the National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order No. 12291 and the Regulatory Flexibility Act

On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a regulatory Impact Analysis and regulatory review of OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules would be met by the State.

3. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 938

Coal mining, Intergovernment relations, Surface mining, Underground mining.

30 U.S.C. 1201 *et seq.*

Dated: June 19, 1987.

Carl C. Close,

Assistant Director/Eastern Field Operations.

[FR Doc. 87-14805 Filed 7-1-87; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 166

[CGD 87-038]

Port Access Routes; Approach to Freeport, TX

AGENCY: Coast Guard, DOT.

ACTION: Notice of study.

SUMMARY: The Coast Guard is undertaking a study of the fairway anchorage sites and areas adjacent to the fairway in the approach to Freeport, Texas. A modification of the existing fairway anchorages is being considered. As a result of this study, new or modified fairway anchorage sites may be proposed in the Federal Register. Also, the results of this study could cause restrictions in the manner in which specific offshore areas leased after the date of this notice may be explored or developed.

DATE: Comments must be received on or before August 31, 1987.

ADDRESS: Commander (mps), Eight Coast Guard District, Room 1341, Hale Boggs Federal Building, 500 Camp Street, New Orleans, Louisiana, 70130-3396.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Frederick V. Newman, (504) 589-6901.

SUPPLEMENTARY INFORMATION: This study is being conducted in accordance with the standards contained in the Ports and Waterways Safety Act (PWSA) (33 U.S.C. 1223 and 1224). The area to be examined during the study is bounded by a line connecting the following geographic positions:

	Latitude	Longitude
(1)	28°55'19"N	95°17'46"W.
(2)	28°50'42"N	95°20'07"W.
(3)	28°36'36"N	95°09'46"W.
(4)	28°44'30"N	94°55'00"W.
(5)	28°58'39"N	95°06'08"W.
(6)	28°55'59"N	95°16'55"W.

This area encompasses part of the present Freeport Harbor Safety Fairway, the present and proposed Freeport Harbor Anchorage Areas, and parts of adjacent safety fairways in the offshore approach to Freeport, Texas. Safety fairways are areas in which no fixed structures are permitted and therefore may inhibit exploration and exploitation of mineral resources in the area so designated. A fairway anchorage is an anchorage area contiguous to and associated with a fairway, in which fixed structures may be permitted with a two-mile spacing limitation (33 CFR 166.200(c)(1)).

Port access routing needs in the Freeport approach area were previously studied in 1980, and the results were published in the Federal Register on October 8, 1981, (46 FR 49989). On the basis of that study no change to the existing shipping safety fairway or fairway anchorage areas in the approach to Freeport was recommended.

The Coast Guard is initiating this study in response to a request from the Amoco Production Company (USA) to modify the existing Freeport Harbor Anchorage Areas in order to open an area presently within the fairway anchorage area to exploration and production drilling without any spacing limitations. During the study the Coast Guard will evaluate any reasonable alternatives. One specific alternative presented by the Amoco Production Company (USA) would not reduce the net size of the Freeport Harbor Anchorage Areas, but would delete 18.40 nautical square miles from the southwestern anchorage area and add 18.40 nautical square miles to the northeastern anchorage area. The modified Freeport Harbor Anchorage Areas boundary would be enclosed by rhumb lines joining points at:

Latitude	Longitude
28°47'42"N	95°15'44"W.
28°42'24"N	95°12'00"W.
28°44'52"N	95°07'43"W.
28°49'33"N	95°12'36"W.

and rhumb lines joining points at:

Latitude	Longitude
28°54'05"N	95°14'10"W.
28°57'36"N	95°08'05"W.
28°48'23"N	95°01'28"W.
28°45'58"N	95°05'48"W.

Although the above specific alternative will be examined during this study, comments and recommendations or other information need not be limited to this alternative.

This proposed modification would affect the following Federal and/or State lease blocks: 276, 277, 279, 280, 303, 304, 307. 309, 310, 311, 314, 315, 330, 334, 386, 387, 401, and 402.

Vessel operators are invited to comment on any positive or negative impacts and offshore developers are encouraged to identify and support any foreseeable cost or benefits from possible modification of fairway anchorages in the study area. Likewise, offshore developers are encouraged to identify and support any foreseeable cost or benefits from possible modfication of fairway anchorages in the study area.

Particular issues to be examined during the study on which information and public comment are invited are as follows:

1. The existing and potential vessel traffic (i.e., types of vessels, traffic patterns, number of vessels, variations in the traffic density, etc.).

2. The need for a anchorage area adjustment (i.e., identification of the conflicting uses of the area which cannot be reasonabley accommodated without an adjustment, and whether those needs can be accommodated without an adverse impact on navigation safety).

3. Alternative configuration which can reasonably accommodate the needs of other users.

4. The effect on vessel traffic of the proposed fairway anchorage modification, or alternative fairway anchorage/safety fairway configuration, taking into account the location and angle of turns, length of reaches between turns, and maneuverability of vessels expected to transit and/or anchor in the area. Also to be considered is any service vessel traffic to be generated by the construction and operation of structures in the area of modification.

5. Present needs for anchorage areas and whether the anchorage can accomplish its orginal purpose if it is modified as proposed.

6. Impacts on adjacent leaseholders, future leaseholders, and the State and Federal leasing process where tracts are located in anchorages and/or fairways. One aspect of this issue is how the

existence of the anchorage/fairway restictions is factored into the value of a lease.

7. Local conditions (e.g., climate, current, hydrography, conditions of limited visibility, and the effect of shoaling on vessel traffic since the anchorages and the fairway were originally established).

8. Adequacy of the aids to navigation system in the vicinity, including public or private aids required on structures to be sited in the area of the modification, and any relocation of existing aids which may be necessary as a result of an anchorage or fairway modification.

9. Adequacy of advance information available to mariners, including scheduled revisions of affected nautical charts.

10. The need for a safety zone or buffer zone around structures to be sited in the area of the modification.

11. Long term port development plans, including Corps of Engineers dredging and channel-deepening projects.

The Eighth Coast Guard District will be conducting the study and developing recommendations. Following is the name, address and telephone number of the project officer who will be responsible for the study of this area: Lieutenant Commander Frederick V. Newman, Jr., c/o Commander (mps), Eigth Coast Guard District, Hale Boggs Federal Building, 500 Camp Street, New Orleans, Louisiana 70130-3396, (504) 589-6901.

The Coast Guard is interested in receiving information and opinions from persons who have an interest in safe routing of ships as affected by other uses of the area. Written comments should be mailed to the above address. In accordance with the PWSA, the Coast Guard will consult with the Department of State, the Interior, Commerce, Army, and with the Governor of Texas during the study. In order to be most useful, any relevant information should be made available to the Eighth District office by the end of the comment period.

Procedural Requirements

In conducting this study, the Coast Guard will be governed by certain procedural requirements which are emphasized here to assist those who wish to submit comments. These requirements are based on the mandates of the PWSA. The Coast Guard will also apply its experience in the areas of vessel traffic management, navigation, shiphandling, the effects of weather, and prior analysis of the traffic density in certain regions in conducting this study.

The PWSA directs that "in order to provide safe access routes for movement of vessel traffic proceeding to and from ports . . . the Secretary shall designate necessary fairways and traffic separation schemes" in which the "paramount right of navigation over all other uses" shall be recognized. Before a designation can be made, the Coast Guard is required to "undertake a study of the potential traffic density and the need for safe access routes." In accordance with 33 U.S.C. 1223, the Coast Guard will "to the extent practicable, reconcile the need for safe routes with the needs of all other reasonable uses of the area involved."

During the study, the Coast Guard is directed to consult with Federal and State agencies and to "consider the views of representatives of the maritime community, port and harbor authorities or associations, environmental groups, and other parties who may be affected by the proposed action.

In accordance with the PWSA, the Secretary has the discretion to modify the location or limits of designated safety fairways or safety fairway anchorages, where an adjustment is necessary to accommodate the needs of other uses which cannot be reasonably accommodated otherwise. The PWSA also stipulates that such an adjustment should not, in the judgment of the Secretary, "unacceptably adversely affect the purpose for which the existing designation was made and the need for which continues."

The results of this study will be published in the **Federal Register.** If the Coast Guard determines that new or modified fairway anchorage sites are needed, a notice of proposed rulemaking will be published.

It is anticipated that the study will be concluded by June 1988.

Dated: June 24, 1987.

Martin H. Daniell,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation.

[FR Doc. 87-15056 Filed 7-1-87; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 372

[OPTS—400007; FRL—3226-5]

Superfund Program; Toxic Chemical Release Inventory; Public Meetings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meetings.

SUMMARY: The EPA has scheduled three public meetings to receive comment on the proposed rule to implement Section 313 of Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA).

DATES: The public meetings are scheduled as follows:

1. July 24, 1987, 9:00 a.m. to 4:00 p.m., Washinton, DC.
2. July 27, 1987, 9:00 a.m. to 4:00 p.m., Chicago, Illinois.
3. August 4, 1987, 9:00 a.m. to 4:00 p.m., San Francisco, California.

ADDRESSES: The public meetings will be held at the following locations:

1. Washinton DC—Skyline Inn, South Capitol and I Streets, Washinton, DC 20024 [Call (202) 554-1411 to reserve a time for oral presentation.]
2. Chicago—John C. Kluczenski Federal Bldg. (Room 3864), 230 S. Dearborn St., Chicago, IL 60604 [Call (312) 886-6418 to reserve a time for oral presentation.]
3. San Francisco—215 Freemont St. (6th Floor Conference Room) San Francisco, CA 94105 [Call (415) 974-7054 to reserve a time for oral presentation.]

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), 401 M St. SW., Washinton, DC 20460, Telephone: (202) 554-1411.

SUPPLEMENTARY INFORMATION: On June 4, 1987 EPA published in the **Federal Register** (52 FR 21152) a proposed rule to implement Section 313 of Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA). Title III is also known as the Emergency Planning and Community Right-To-Know Act of 1986. Section 313 requires certain manufactures, processors, and users of designated toxic chemicals to report their releases of these chemicals to all environmental media. Further, EPA must make this data available to the public through computer telecommunications and other means. The proposed rule contains the required uniform reporting form plus instructions. In addition EPA has develop a draft technical guidance document to aid subject facilities in developing the required estimates of emissions and treatment efficiencies. Also available for review and comment is the Regulatory Impacts Analysis on this proposed rulemaking.

EPA Is holding meetings in Washinton, DC, Chicago, Illinois, and San Francisco, California to receive comment on the provisions of the proposed rule, the draft technical guidance, and the Regulatory Impacts Analysis.

EPA encourages anyone interested in attending these public meetings to

obtain copies of the above referenced documents. Contact the TSCA Assistance Office (TAO) at the telephone number listed under "**FOR FURTHER INFORMATION CONTACT.**" Persons desiring to present oral comments at either meeting are urged to contact the telephone number associated with each meeting as listed under "**ADDRESSESS**" as soon as possible. Time slots of approximately 10 minutes each for such oral presentations will be allocated on a first come, first served basis. Written comments will also be welcome at these meetings.

Dated: June 24, 1987.

Margo T. Oge,

Deputy Director, Economics and Technology Division, Office of Toxic Substances.

[FR Doc. 87-15081 Filed 7-1-87; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 763

[OPTS-00084; FRL-3227-2]

Toxic Substances; Asbestos-Containing Materials in Schools; Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: EPA and the National Bureau of Standards (NBS) will hold a meeting of a select panel of experienced electron microscopists to consider comments received on the Interim Transmission Electron Microscope (TEM) Method during the comment period for the proposed regulation entitled "Asbestos-Containing Materials in Schools" (40 CFR Part 763).

DATES: The meeting will be held on Monday, Tuesday, and Wednesday, July 27, 28, and 29, 1987.

ADDRESS: The meeting will be held at the National Bureau of Standards in Gaithersburg, Maryland, Materials Building, Rm. B267.

FOR FURTHER INFORMATION CONTACT: Betsy Dutrow, Office of Toxic Substances (TS-798), Environmental Protection Agency, Rm. NE-G012, 401 M St., SW., Washinton, DC 20460 (202-382-3569)

SUPPLEMENTARY INFORMATION: In March 1987, EPA and NBS assembled a panel of experienced electron microscopists for the purpose of providing a state-of-the-art methodology for analyzing clearance samples following an asbestos abatement project. The resultant methodology was incorporated into the Agency's proposed regulation "Asbestos-Containing Materials in Schools" (40 CFR Part 763) published in the **Federal Register** April 30, 1987 (52 FR 15875). The public comment period extends through June 29, 1987. EPA, in its evaluation of the comments received on the TEM method, will reconvene the panel of microscopists to consider comments and recommendations.

Dated: June 23, 1987.

Charles L. Elkins,

Director, Office of Toxic Substances.

[FR Doc. 87-15080 Filed 7-1-87; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 650

[Docket No. 70618-7118]

Atlantic Sea Scallop Fishery

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

ACTION: Proposed rule.

SUMMARY: NOAA issues this proposed rule to amend the regulations implementing the Fishery Management Plan for the Atlantic Sea Scallop Fishery (FMP) by revising the expiration date of fishing permits. The intended effect is to provide consistency with annual permitting procedures recently adopted in the Northeast Region, NMFS.

DATE: Comments are invited until August 3, 1987.

ADDRESSES: Comments should be sent to the Federal Building, 14 Elm Street, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Carol J. Kilbride, Resource Policy Analyst, 617-281-3600, extension 331.

SUPPLEMENTARY INFORMATION: The FMP was prepared by the New England Fishery Management Council in consultation with the Mid-Atlantic and South Atlantic Fishery Management Councils. The final rule implementing the FMP was published on August 18, 1982 (47 FR 35990). Amendment 1 to the FMP was prepared and approved, but the implementing regulations never went into effect and were withdrawn by the Secretary of Commerce by a Secretarial Amendment. A full discussion can be found in the preamble of the proposed rule to implement the Secretarial Amendment (51 FR 40468, November 7, 1986). The final rule implementing the Secretarial Amendment (52 FR 1462, January 14, 1987) continues the management measures established in the original FMP.

All final regulations implementing management programs for the various fisheries under the jurisdiction of the Northeast Region, NMFS, contain a fishing permit requirement. In general, a permit remains in effect until the owner or name of a vessel changes, or it is revoked or suspended. However, recently both the New England and the Mid-Atlantic Fishery Management Councils have revised the permit requirement in the Multzspecies FMP and the Squid, Mackerel and Butterfish FMP, respectively, to specify that fishing permits are to be issued on an annual basis. The Councils believe that annual permits will provide a more accurate accounting of fishery participants and assist in monitoring the effectiveness of the FMPs.

The Northeast Region began to implement the annual permit requirements for those two fisheries during 1987. However, because fishermen generally participate in more than one fishery, the Region faces a potentially confusing situation by requiring annual fishing permits in only selected fisheries. In order to achieve a consistent regulatory burden throughout all fisheries, the Region decided to require a single annual permit that may be endorsed for specific managed fisheries.

Language contained in the FMP only specifies that a permit is required to fish for sea scallops; it is silent regarding the expiration date of such permit. As a result, NOAA believes that the frequency of issuing fishing permits has been left to the administrative discretion of the agency. NOAA has determined that an annual permit requirement for the sea scallop fishery falls within the scope and objectives of the approved FMP.

This proposed rule would make all permits expire on December 31, or when the owner or the name of the vessel changes.

Classification

The Assistant Administrator for Fisheries, NOAA, has determined that this rule is consistent with the Magnuson Fishery Conservation and Management Act and other applicable laws.

This action is categorically excluded, by NOAA Directive 02-10, from the requirement to prepare an environmental assessment because the proposed regulatory measure will have no significant effect on the environment.

The Administrator of NOAA has determined that this rule is not a major rule requiring a regulatory impact analysis under Executive Order 12291. The current regulatory measures of the FMP and their impacts are not changed by this action.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities because minimum time is required for annual renewal of a permit. As a result, a regulatory flexibility analysis was not prepared.

The Assistant Administrator for Fisheries, NOAA, has determined that this rule does not directly affect the coastal zone of any State with an approved coastal zone management plan.

Information collection required for the vessel permit application has been approved by the Office of Management and Budget, under OMB Control Number 0648-0097, in accordance with the Paperwork Reduction Act.

List of Subjects in 50 CFR Part 650

Fisheries, Reporting and recordkeeping requirements.

Dated: June 29, 1987.

Bill Powell,

Executive Director, National Marine Fisheries Service.

PART 650—[AMENDED]

For the reasons set forth in the preamble, 50 CFR Part 650 is proposed to be amended as follows:

1. The authority citation for Part 650 continues to read as follows:

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

2. In § 650.4, paragraph (d) is revised, to read as follows:

§ 650.4 Vessel permits.

* * * * *

(d) *Expiration.* A permit expires on December 31, or when the owner or name of the vessel changes.

* * * * *

[FR Doc. 87-15013 Filed 7-1-87; 8:45 am]

BILLING CODE 3510-22-M

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50 CFR Part 652

[Docket No. 70617-7117]

Atlantic Surf Clam and Ocean Quahog Fisheries

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

ACTION: Proposed rule.

SUMMARY: NOAA proposes to amend the regulations implementing the Fishery Management Plan for the Atlantic Surf Clam and Oceam Quahog Fisheries (FMP) to be consistent with Amendment 5 to the FMP. Amendment 5 created a range within which the allowable minimum surf clam size could vary. This proposed amendment to the regulations will allow the Secretary of Commerce to reopen areas, which were closed because of a predominance of small surf clams, when the dominant size of the surf clams is at least the prevailing legal minimum size.

DATE: Comments on the proposed rule are invited until August 3, 1987.

ADDRESSES: A copy of the environmental assessment for this rule may be requested from the Northeast Regional Office, National Marine Fisheries Service, 14 Elm Street, Gloucester, MA 01930-3097.

Comments should be sent to Mr. Bruce Nicholls, Plan Coordinator, Northeast Regional Office, National Marine Fisheries Service, 2 State Fish Pier, Gloucester, MA 01930-3799.

FOR FURTHER INFORMATION CONTACT: Bruce Nicholls, 617-281-3600, extension 232.

SUPPLEMENTARY INFORMATION: One provision of the regulations implementing the FMP would be amended by this rule.

Amendment 5 to the FMP and its implementing regulations (50 FR 11166, March 20, 1985) included a number of provisions revising the minimum surf clam size limit. Neither Amendment 5 nor its implementing regulations addressed the effect of these revisions on an existing section of the regulations, which is dependent on the size of surf clams. Section 652.23 includes a procedure whereby the Secretary may reopen an area which has been closed due to the predominance of small surf clams if, among other criteria, the predominant size class in terms of weight is greater than 5½ inches. Until the adoption of Amendment 5, this criterion was consistent with the minimum size for surf clams, 5½ inches. However, as revised in Amendment 5 and its implementing regulations at § 652.25, the minimum surf clam size may be set within a range of 5½ inches and 4¾ inches when specific events occur; the reopening criterion therefore should have been revised to refer to the prevailing minimum size instead of the fixed 5½ inches.

Late in 1986, the Mid-Atlantic Fishery Management Council (Council) examined the circumstances of three surf clam areas which are currently closed and concluded that production of the entire surf clam resources might be enhanced through reopening of these areas. At this point, the Council recognized that the reopening criteria might not be met even if all the surf clams in a closed area were larger than the prevailing legal minimum size. The Council asked NOAA to amend the language of the reopening provision to be consistent with the terms of Amendment 5. This proposed rule would accomplish the amendment. The surf clam size criterion which must be met before an area can be reopened would be the prevailing minimum surf clam size and not 5½ inches.

Classification

The Assistant Administrator for Fisheries, NOAA, has determined that this rule is consistent with the Magnuson Fishery Conservation and Management Act and other applicable laws.

The Assistant Administrator finds no potential negative impact on the surf clam resource as a result of this proposed change. An environmental assessment is available at the address given above which explains the projected effects of the rule and finds that this action is non-significant under the National Environmental Policy Act.

The Assistant Administrator has determined that this rule does not directly affect the coastal zone of any State with an approved coastal zone management program.

The Administrator of NOAA has determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291.

The Administrator of NOAA has determined that this proposed rule will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, since it does not adversely affect the surf clam resource and essentially no incremented economic impacts are expected at this time.

This proposed rule does not contain a collection of information requirement subject to the Paperwork Reduction Act.

List of Subjects in 50 CFR Part 652

Fisheries, Reporting and recordkeeping requirements.

Dated: June 29, 1987.

Bill Powell,

Executive Director, National Marine Fisheries Service.

PART 652—ATLANTIC SURF CLAM AND THE OCEAN QUAHOG FISHERIES

For the reason set forth in the preamble, 50 CFR Part 652 is proposed to be amended as follows:

1. The authority citation for Part 652 continues to read as follows:

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

2. In § 652.23, paragraph (b)(2)(i) is revised to read as follows:

§ 652.23 Closed areas.

* * * * *

(b) * * *

(b) * * *

(1) The average length of the dominant (in terms of weight size class in the area to be reopened is equal to or greater than the prevailing minimum surf clam size established in accordance with § 652.25 of these regulations.

* * * * *

[FR Doc. 87-15011 Filed 7-1-87; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 52, No. 127
Thursday, July 2, 1987

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

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Sourcebook; Federal Agency Use of Alternative Means of Dispute Resolution; Announcement of Availability

The Administrative Conference of the United States has prepared a compilation of materials on federal agency use of alternative dispute resolution. It is entitled *Sourcebook: Federal Agency Use of Alternative Means of Dispute Resolution.* The *Sourcebook* is part of a broader effort to focus attention within the government on the possibilities and potential problems of using ADR mechanisms in controversies involving the federal government. The *Sourcebook* should familiarize government representatives with various dispute resolution dispute resolution alternatives, some of the issues unique to use of ADR by agencies, and the experiences of some agencies that have initiated ADR policies or programs. It also contains sample forms and policies that some agencies have used to promote ADR. Certain items provide an historical perspective on the subject while others reflect recent activity and thinking *Sourcebook: Federal Agency Use of Alternative of Dispute Resolution,* edited by Marguerite Millhauser of Steptoe and Johnson and Charles Pou of the Administrative Conference, was prepared in conjunction with the Conference's colloquium, "Improving Dispute Resolution: Options for the Federal Government" held at the Marvin Center of George Washington University on June 1st.

Sourcebook: Federal Agency Use of Alternative Means of Alternative Dispute Resolution may be ordered from the Superintendent of Documents, U.S. Government Printing Office by Calling (202)783-3238. Its stock number is 052-003-01070-4. A very limited number of single copies are available from the Administrative Conference for federal agencies and others with a special interest in government use of ADR. For more information, write or call the Conference at 2120 L Street, NW., Suite 500, Washington, DC 20037, (202)254-7020.

The Administrative Conference, a federal agency, makes recommendations to administrative agencies, to the President, Congress, and the Judicial Conference of the United States regarding the efficiency, adequacy, and fairness of the procedures which administrative agencies use in carrying out their programs.

Dated: June 24, 1987.

Jeffrey S. Lubbers,

Research Director.

[FR Doc. 87-15051 Filed 7-1-87; 8:45 am]

BILLING CODE 6110-01-M

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Programmatic Agreement Regarding Alaska Native Allotments

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice.

SUMMARY: The Advisory Council on Historic Preservation proposes to execute a Programmatic Agreement pursuant to § 800.13 of the Council's regulations, "Protection of Historic Properties" (36 CFR Part 800), with the Department of the Interior's Bureaus of Land Management (BLM) and Indian Affairs (BIA), and the Alaska State Historic Preservation Officer, concerning the treatment of historic properties in connection with BLM's program of Alaska Native Allotments. This program is carried out under the Act of May 17, 1906 as amended by the Act of August 2, 1956, which authorizes the Secretary of the Interior to allot up to 160 acres to any qualified Alaska Native upon proof of the applicant's substantially continuous use and occupany of the land for a period of five years. The proposed Programmatic Agreement will establish mechanisms for the identification and treatment of historic properties by BIA prior to approval of proposed capital improvements and developments on, or alienation of interest in, allotments, and will provide for BLM to proceed with the adjudication of the approximately 4,000 allotment applications now outstanding. The BLM and BIA have proposed the Agreement in order to meet the requirements of Section 106 of the National Historic Preservation Act (16 U.S.C. 470f) in a manner compatible with their ongoing programs.

DATES: Comments Due: August 3, 1987.

ADDRESS: Executive Director, Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue, NW., Washington, DC 20004 [Attn: Dr. Thomas F. King] Telephone Number: (202) 786-0505.

Dated: June 22, 1987.

Robert D. Bush,

Executive Director.

[FR Doc. 87-5018 Filed 7-1-87; 8:45 am]

BILLING CODE 4310-10-M

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Child Care Food Program; National Average Payment Rates, Day Care Home Food Service Payment Rates and Administrative Reimbursement Rates for Sponsors of Day Care Homes for the Period July 1, 1987-June 30, 1988

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the annual adjustments to the national average payment rates for meals served in child care and outside-school-hours care centers, the food service payment rates for meals served in day care homes, and the administrative reimbursement rates for sponsors of day care homes to reflect changes in the Consumer Price Index. Further adjustments are made to these rates to reflect the higher costs of providing meals in the States of Alaska and Hawaii. The adjustments contained in this notice are required by the statutes and regulations governing the Child Care Food Program (CCFP).

EFFECTIVE DATE: July 1, 1987.

FOR FURTHER INFORMATION CONTACT: Lou Pastura, Branch Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition

Service, USDA, Alexandria, Virginia 22302, (703) 756-3620.

SUPPLEMENTARY INFORMATION:

Classification

This notice has been reviewed under Executive Order 12291, and has been classified as not major because it does not meet any of the three criteria identified under Executive Order. The action announced in the notice will not have an annual effect on the economy of $100 million, will not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions, and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This notice is subjct to the provisions of Executive Order 12372 which requires intergovernmental consultant with State and local officials. (See 7 CFR Part 3015, Subpart V and final rule related notice published at 48 FR 29114, June 24, 1983).

This notice imposes no new reporting or recordkeeping provisions that are subject to Office of Management and Budget review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3587).

This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601-612) and thus is exempt from the provisions of that Act.

Definitions

The terms used in this notice shall have the meanings ascribed to them in the regulations governing the CCFP (7 CFR Part 226).

Background

Pursuant to sections 11 and 17 of the National School Lunch Act (42 U.S.C. 1753 and 1759a), section 4 of the Child Nutrition Act (42 U.S.C. 1773) and §§ 226.4, 226.12 and 226.13 of the regulations governing the CCFP (7 CFR Part 226), notice is hereby given of the new payment rates for participating institutions. These rates shall be in effect during the period July 1, 1987-June 30, 1988.

As provided for under the National School Lunch Act and the Child Nutrition Act, all rates in the CCFP must be prescribed annually on July 1 to reflect changes in the Consumer Price Index (CPI) for the most recent 12-month period. In accordance with this mandate, the Department last published the adjusted national average payment rates for centers, the food service payment rates for day care homes and the administrative reimbursement rates for sponsors of day care homes on June 30, 1986 (for the period July 1, 1986-June 30, 1987).

All States Except Alaska and Hawaii

Meals served in centers—per meal payment rates in cents:	
Breakfasts:	
Paid	13.50
Free	76.25
Reduced	46.25
Lunches and suppers:	
Paid	[1] 13.50
Free	[1] 140.50
Reduced	[1] 100.50
Supplements:	
Paid	3.50
Free	38.50
Reduced	19.25
Meals served in day care homes—per meal payment rates in cents:	
Breakfasts	64.50
Lunches and Suppers	120.50
Supplements	36.00
Administrative reimbursement rates for sponsoring organization of day care homes—per home/per month rates in dollars:	
Initial 50 day care homes	$53
Next 150 day care homes	40
Next 800 day care homes	31
Additional day care homes	28

[1] These rates do not include the value of commodities (or cash-in-lieu of commodities) which institutions receive as additional assistance for each lunch or supper served to children under the program. Notices announcing the value of commodities and cash-in-lieu of commodities are published separately in the Federal Register.

Pursuant to section 12(f) of the NSLA (42 U.S.C. 1760(f)), the Department adjusts the payment rates for participating institutions in the States of Alaska and Hawaii. The new payment rates for Alaska are as follows:

Alaska

Alaska—meals served in centers—per meal payment rates in cents:	
Breakfasts:	
Paid	20.25
Free	121.75
Reduced	91.75
Lunches and Suppers:	
Paid	[1] 22.00
Free	[1] 227.75
Reduced	[1] 187.75
Supplements:	
Paid	5.75
Free	62.50
Reduced	31.25
Alaska—meals served in day care homes—per meal payment rates in cents:	
Breakfasts	102.50
Lunches and suppers	195.25
Supplements	58.25

Alaska—Continued

Alaska—administrative reimbursement rates for sponsoring organizations of day care homes—per home/per month rates in dollars:	
Initial 50 day care homes	$86
Next 150 day care homes	65
Next 800 day care homes	51
Additional day care homes	45

[1] These rates do not include the value of commodities (or cash-in-lieu of commodities) which institutions receive as additional assistance for each lunch or supper served to children under the program. Notices announcing the value of commodities and cash-in-lieu of commodities are published separately in the Federal Register.

The new payment rates for Hawaii are as follows:

Hawaii

Hawaii—meals served in centers—per meal payment rates in cents:	
Breakfasts:	
Paid	15.50
Free	99.75
Reduced	58.75
Lunches and Suppers:	
Paid	[1] 15.75
Free	[1] 164.50
Reduced	[1] 124.50
Supplements:	
Paid	4.25
Free	45.25
Reduced	22.50
Hawaii—meals served in day care homes—per meal payment rates in cents:	
Breakfast	74.75
Lunches and Suppers	141.00
Supplements	42.00
Hawaii—administrative reimbursement rates for sponsoring organizations of day care homes—per home/per month rates in dollars:	
Initial 50 day care homes	$62
Next 150 day care homes	47
Next 800 day care homes	37
Additional day care homes	32

[1] These rates do not include the value of commodities (or cash-in-lieu of commodities) which institutions receive as additional assistance for each lunch or supper served to children under the program. Notices announcing the value of commodities and cash-in-lieu of commodities are published separately in the Federal Register.

The changes in the national average payment rates and the food service payment rates for day care homes reflect a 3.76 percent increase during the 12-month period May 1986 to May 1987 (from 358.8 in May 1986 to 372.3 in May 1987) in the food away from home series of the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor. The changes in the administrative reimbursement rates for sponsoring organizations of day care homes reflect a 3.80 percent increase during the 12-month period May 1986 to May 1987 (from 326.3 in May 1986 to

338.7 in May 1987) in the series for all items of the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.

The total amount of payment available to each State agency for distribution to institutions participating in the program is based on the rates contained in this notice.

Authority: Sections 4, 8, 11 and 17 of the National School Lunch Act, as amended, (42 U.S.C. 1753, 1757, 1759(a), 1766) and section 4 of the Child Nutrition Act, as amended, (42, U.S.C. 1773).

(Catalog of Federal Domestic Assistance Program No. 10.558)

* * * * *

Dated: June 29, 1987.

Anna Kondratas,

Administrator.

[FR Doc. 87-15116 Filed 7-1-87; 8:45 am]

BILLING CODE 3410-30-M

National School Lunch, Special Milk, and School Breakfast Programs; National Average Payments/Maximum Reimbursement Rates

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This Notice announces the annual adjustments to: (1) The "national average payments," the amount of money the Federal Government provides States for lunches and breakfast served to children participating in the National School Lunch Breakfast Programs; (2) the "maximum reimbursement rates," the maximum per lunch rate from Federal funds that a State can provide a school food authority for lunches served to children participating in the school lunch program; and (3) the rate of reimbursement for a half-pint of milk served to nonneedy children in a school or institution which participates in the Special Milk Program for Children. The payments and rates are prescribed on an annual basis each July. The annual payments and rates adjustments for the school lunch and school breakfast programs reflect changes in the food away from home series of the Consumer Price Index for All Urban Consumers. The annual rate adjustment for milk reflects changes in the Producer Price Index for Fresh Processed Milk. These payments and rates are in effect from July 1, 1987 to June 30, 1988.

EFFECTIVE DATE: July 1, 1987.

FOR FURTHER INFORMATION CONTACT: Lou Pastura, Chief, Policy and Program Development Branch, Child Nutrition Division, FNS, USDA, Alexandria, Virginia 22302, (703) 756-3620.

SUPPLEMENTARY INFORMATION: This Notice has been reviewed under Executive Order 12291 and has been classified not major. This Notice will not have an annual effect on the economy of $100 million or more, nor will it result in major increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies or georgraphic regions. This action will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

These programs are listed in the Catalog of Federal Domestic Assistance under No. 10.553, No. 10.555 and No. 10.556 and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V, and final rule related notice published at 48 FR 29114, June 24, 1983.

This Notice imposes no new reporting or recordkeeping provisions that are subject to OMB review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601-612) and thus is exempt from the provisions of that Act.

Definitions

The terms used in this Notice shall have the meanings ascribed to them in the regulations governing the National School Lunch Program (7 CFR Part 210), the regulations for the Special Milk Program (7 CFR Part 215), the regulations for School Breakfast Program (7 CFR Part 220 and the regulations for Determining Eligibility for Free and Reduced Price Meals and Free Milk in Schools (7 CFR Part 245).

Background

Special Milk Program for Children

Pursuant to section 3 of the Child Nutrition Act, as amended (42 U.S.C. 1772), the Department announces the rate of reimbursement for a half-pint of mild served to nonneedy children in a school or institution which participates in the Special Milk Program for Children. This rated is adjusted annually to reflect changes in the Producer Price Index for Fresh Processed Milk, published by the Bureau of Labor Statistics of the Department of Labor.

For the period July 1, 1987 to June 30, 1988, the rate of reimbursement for a half-pint of milk served to a nonneedy child in a school or institution which participates in the Special Milk Program is 9.50 cents. This reflects an increase of 1.6 percent in the Producer Price Index for Fresh Processed Milk from May 1986 to May 1987.

As a reminder, schools or institutions with pricing programs which elect to serve milk free to eligible children continue to receive the average cost of a half-pint of milk (the total cost of all milk purchased during the claim period divided by the total number of purchased half-pints) for each half-pint seved to an eligible child.

National School Lunch and School Breakfast Programs

Pursuant to section 11 of the National School Lunch Act, as amended (42 U.S.C. 1759a), and section 4 of the Child Nutrition Act of 1966, as amended (42 U.S.C. 1773), the Department annually announces the adjustments to the National Average Payment Factors, and to the maximum Federal reimbursement rates for lunches served to children participating in the National School Lunch Program. Adjustments are prescribed each July 1, based on changes in the food away from home series of the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.

Lunch Payment Factors

Section 4 of the National School Lunch Act (42 U.S.C. 1753) provides general cash for food assistance payments to States to assist schools in purchasing food. There are two section 4 National Average Payment Factors (NAPFs) for lunches served under the National School Lunch Program. The lower payment factor applies to lunches served in school food authorities in whch less than 60 percent of the lunches served in the school lunch program during the second preceding school year were served free or at a reduced price. The higher payment factor applies to lunches served in school food authorities in which 60 percent or more of the lunches served during the second preceding school year were served free or at a reduced price.

To supplement these section 4 payments, section 11 of the National School Lunch Act provides special cash assistance payments to aid schools in providing free and reduced price lunches. The section 11 NAPF for each reduced price lunch served is set at 40 cents less than the factor for each free

lunch. As authorized under sections 8 and 11 of the National School Lunch Act, maximum reimbursement rates for each type of lunch are prescribed by the Department in this Notice. These maximum rates ensure equitable disbursement of Federal funds to school fool authorities.

Breakfast Payment Factors

Section 4 of the Child Nutrition Act of 1966, as amended, establishes National Average Payment Factors for free, reduced price and paid breakfasts served under the School Breakfast Programs and additional payments for schools determined to be in "severe need" because they serve a high percentage of needy children.

Revised Payments

The following specific section 4 of section 11 National Average Payment Factors and maximum payments are in effect through June 30, 1988. Due to a higher cost of living, the average payments and maximum reimbursements for Alaska and Hawaii are higher than those for all other States. The Virgin Islands, Puerto Rico and the Pacific Territories use the figures specified for the contiguous States.

National School Lunch Program Payments

Section 4 National Average Payment Factors

In school food authorities which served *less than 60 percent* free and reduced price lunches in School Year 1985–86, the payment are: *Contiguous States*—13.50 cents, maximum rate 21.50 cents; *Alaska*—22.00 cents, maximum rate 33.50 cents; *Hawaii*—15.75 cents, maximum rate 24.75 cents.

In school food authorities which served *60 percent or more* free and reduced price lunches in School Year 1985–86, payments are: *Contiguous States*—15.50 cents; maximum rates 21.50 cents; *Alaska*—24.00 cents, maximum rate 33.50 cents; *Hawaii*—1775 cents, maximum rate 24.75.

Section 11 National Average Payment Factors

Contiguous States—free lunch 127.00 cents, reduced price lunch 87.00 cents; Alaska—free lunch 205.75 cents, reduced price lunch 165.75 cents; *Hawaii*—free lunch 148.75 cents, reduced price lunch 108.75 cents.

School Breakfast Program Payments

For schools "not in severe need" the payments are: *Contiguous States*—free breakfast 76.25 cents, reduced price breakfast 46.25 cents, paid breakfast 13.50 cents; *Alaska*—free breakfast 121.75 cents, reduced price breakfast 91.75 cents, paid breakfast 20.25 cents; *Hawaii*—free breakfast 88.75 cents, reduced price breakfast 58.75 cents, paid breakfast 15.50 cents.

For schools in "severe need" the payments are: *Contiguous States*—free breakfast 91.25 cents, reduced price breakfast 61.25 cents, paid breakfast 13.50 cents; *Alaska*—free breakfast 145.75 cents, reduced price breakfast 115.75 cents, paid breakfast 20.25 cents: *Hawaii*—free breakfast 106.25 cents, reduced price breakfast 76.25 cents, paid breakfast 15.50 cents.

Payment Chart

The following chart illustrates: the lunch National Average Payment Factors with the sections 4 and 11 already combined to indicate the per meal amount; the maximum lunch reimbursement rates; the breakfast National Average Payment Factors incuding "severe need" schools; and the milk reimbursement rate. All amounts are expressed in dollars of fractions thereof. The payment factors and reimbursement rates used for the Virgin Islands, Puerto Rico and the Pacific Territories are those specified for the contiguous States.

SCHOOL PROGRAMS—MEAL AND MILK PAYMENTS TO STATES AND SCHOOL FOOD AUTHORITIES

[Expressed in dollars or fractions thereof, effective from July 1, 1987–June 30, 1988]

National school lunch program [1]	Less than 60%	60% or more	Maximum rate
Contiguous States:			
Paid	.1350	.1550	.2150
Reduced Price	1.0050	1.0250	1.1750
Free	1.4050	1.4250	1.5750
Alaska:			
Paid	.2200	.2400	.3350
Reduced Price	1.8775	1.8975	2.1400
Free	2.2775	2.2975	2.5400
Hawaii:			
Paid	.1575	.1775	.2475
Reduced Price	1.2450	1.2650	1.4400
Free	1.6450	1.6650	1.8400

School breakfast program	Non-severe need	Severe need
Contiguous States:		
Paid	.1350	.1350
Reduced Price	.4625	.6125
Free	.7625	.9125
Alaska:		
Paid	.2025	.2025
Reduced Price	.9175	1.1575
Free	1.2175	1.4575
Hawaii		
Paid	.1550	.1550
Reduced Price	.5875	.7625
Free	.8875	1.0625

Special milk program	All milk	Paid milk	Free milk
Pricing programs without free option	$.0950	NA	NA
Pricing programs with free option	NA	.0950	(2)
Nonpricing programs	$.0950	NA	NA

[1] Payments listed for Free & Reduced Price Lunches include both Section 4 and 11 funds.
[2] Average cost ½ pint milk.

Authority: Sections 4, 8, and 11 of the National School Lunch Act, as amended, (42 U.S.C. 1753, 1757, 1759(a)) and sections 3 and 4(b) of the Child Nutrition Act, as amended, (42 U.S.C. 1772 and 42 U.S.C. 1773).

Dated: June 29, 1987.

Anna Kondratas,

Administrator.

[FR Doc. 87-15117 Filed 7-1-87; 8:45 am]

BILLING CODE 3410-30-M

Soil Conservation Service

Environmental Impact Statement; Indian, Howards and Beaver Dam Creeks Watershed, North Carolina

AGENCY: North Carolina Department of Natural Resources and Community Development and the United States Department of Agriculture, Soil Conservation Service.

ACTION: Notice of finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council of Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Division of Soil and Water Conservation, North Carolina Department of Natural Resources and Community Development and the Soil Conservation Service, United States Department of Agriculture, give notice that an environmental impact statement is not being prepared for the Indian, Howards and Beaver Dam Creeks Watershed, Catawba, Gaston and Lincoln Counties, North Carolina.

FOR FURTHER INFORMATION CONTACT: David W. Sides, Director, Division of Soil and Water Conservation, North Carolina Department of Natural Resources and Community Development, P.O. Box 27687, Raleigh, North Carolina 27611, telephone (919) 733-2302 or Bobbye J. Jones, State Conservationist, Soil Conservation Service, 310 New Bern Avenue, Room 535, Fifth Floor, Federal Building, Raleigh, North Carolina 27601, Telephone (919) 856-4210.

SUPPLEMENTARY INFORMATION: The Environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Bobbye J. Jones, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for watershed protection. The planned works of improvement include accelerated technical and financial assistance to apply land treatment measures on 13,200 acres of cropland.

The Notice of A Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting David W. Sides.

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

("This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials.")

Dated: June 25, 1987.

Bobbye J. Jones,

State Conservationist.

[FR Doc. 87-15049 Filed 7-1-87; 8:45 am]

BILLING CODE 3410-16-M

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Meeting

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of ATBCB Meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (ATBCB) has scheduled a meeting to be held from 10:00 to 12 noon, on Wednesday, July 15, 1987, to take place in Department of Transportation (DOT) Conference Room 2230, 400 Seventh Street, SW., Washington, DC.

Items on the Agenda: Changes to the Board's Statement of Organization and Procedures to implement Rehabilitation Act amendments of 1986; the FY 1989 budget request; and an Executive Session (closed to non-Board members).

DATE: Wednesday, July 15, 1987—10:00-12 noon.

ADDRESS: Department of Transportation Conference Room 2230, 400 Seventh Street, SW., Washington, DC.

Committees of the ATBCB will meet on Monday and Tuesday, July 13 and 14, 1987, also in DOT Conference Room 2230, 400 Seventh Street, SW.

FOR FURTHER INFORMATION CONTACT: Larry Allison, Communications Manager, (202) 245-1591 (voice or TDD).

Margaret Milner,

Executive Director.

[FR Doc. 87-15017 Filed 7-1-87; 8:45 am]

BILLING CODE 6820-BP-M

DEPARTMENT OF COMMERCE

International Trade Administration

[Docket No. 6683-01]

Actions Affecting Export Privileges; Especialidades Industriales Latino-Americanas, S.A.

Order

Having reviewed the record and based on the facts addressed in this case, I affirm the following Decision and Order of the Administrative Law Judge (ALJ).

This Office does not agree, however, with the reasoning furnished by the ALJ in denying Agency Counsel's request for the imposition of a civil penalty. The ALJ found that the record failed to establish a sufficient basis for jurisdiction over Respondent in order to impose a civil penalty. The Export Administration Act and Regulations clearly provide the ALJ and Assistant Secretary with the authority to impose civil penalties for violation of the United States export laws. *See* 50 U.S.C.A. App. 2410(c); 15 CFR 387.1(b) (1986). This authority is vested irrespective of the nationality of the respondent or the feasibility of enforcing such a penalty. *See In the Matter of Hendrick G. Wasmoeth,* Docket No. 6674-01, March 19, 1987. Therefore, the ALJ could have imposed a civil penalty in this proceeding if he deemed that circumstances warranted such a sanction.

The Department does not contest the ALJ's decision not to impose a civil penalty against this particular respondent. *See* United States Department of Commerce Submission Concerning Recommended Decision and Order, dated June 10, 1987. In light of this fact, as well as the impending denial of export privileges against the Respondent, this Office agrees that a civil penalty is inappropriate under the circumstances.

This Order constitutes final agency action in this matter.

Dated: June 26, 1987.

Paul Freedenberg,

Assistant Secretary for Trade Administration.

Decision and Order

Appearance for Respondent: Mr. Ramon Albisua, President, Especialidades Industriales Latino-Americanas, S.A., Lago Chiem No. 48, Mexico City 17, Distrito Federal, Mexico.

Appearance for Agency: McGavock Reed, Esq., Attorney-Advisor, Office of the Deputy Chief Counsel for Export Administration, U.S. Department of Commerce, Room H-3329, 14th & Constitution Ave., NW, Washington, DC 20230.

Preliminary Statement

On July 3, 1986 the Office of Export Enforcement International Trade Administration, U.S. Department of Commerce (the "Agency"), issued a charging letter against Respondent Especialidades Industriales Latino-Americanas, S.A. This letter was issued under the authority of the Export Administration Act (50 U.S.C.A. App. 2412(c)(1)) and of Part 388 of the Export Administration Regulations (codified at 15 CFR Parts 368-399) (the "Regulations"). The letter charged that Respondent had violated Section 387.6 of the Regulations in a 1981 reexport of U.S.-origin carbon black from Mexico to Cuba.

In reply to the charging letter, Respondent sent to Agency counsel a copy of answers, sent to the Agency in 1985 by Respondent, to interrogatories from the Agency. Respondent accompanied the copy of these answers with a letter acknowleding receipt of the charging letter. This submission by Respondent was held to constitute an answer to the charging letter in the instant proceeding.

Neither Respondent nor Agency counsel requested a hearing. Consequently, this proceeding is decided on the record without a hearing.

Respondent made no submission other than the one, noted above, that was ruled to be its answer to the charging letter. Agency counsel made its final submission February 19, 1987; and this proceeding is now ready for decision.

Facts and Discussion

In 1981, Respondent, a company based in Mexico City, Mexico, was in the business of supplying equipment and services to the sugar cane industry in Central America. On or about January 12, 1981, Respondent purchased 240,000 pounds of U.S.-origin activated carbon, or carbon black, through a broker in New York City. According to the pro forma invoice, the carbon black was sold to Respondent at its address in Mexico, and consigned to a designated freight forwarder in Laredo, Texas.

The broker ordered the carbon black from a company with an office in Virginia, and that company then shipped the carbon black from there to the designated freight forwarder in Laredo, Texas. The freight forwarder prepared the Shipper's Export Declaration, stating that the ultimate consignee was Respondent, that the ultimate destination was Mexico, and that the export was made general license G-DEST.

The carbon black was transported duty free to Veracruz, Mexico, where in the summer of 1981 Respondent arranged for its transfer to the Cuban vessel "Oceano Antartico" for shipment to Havana, Cuba. When purchasing the carbon black in the United States, Respondent knew that its ultimate destination was to be Cuba, not Mexico. A January 27, 1981, document issued by the Mexican Customs Director General's Office referred to Respondent's request for transit through Mexican territory to Veracruz of carbon black that was destined for Cuba. The Cuban trade bill of lading for the shipment by Respondent of the carbon black to Cuba aboard the Cuban vessel referred to a November 27, 1980, contract. That Respondent did in fact ship the carbon black to Cuba is further confirmed by Respondent's own submission in this proceeding.

Under the Regulations, carbon black may be exported to many destinations under general license G-DEST, but its export to country groups S and Z requires a validated license. Cuba is included in country group Z.

Conclusion

The documentary evidence in the record reflects that Respondent's 1981 shipment of the U.S.-origin carbon black to Cuba violated § 387.6 of the Regulations as charged. Agency Counsel has requested a 10-year denial of export privileges and a $10,000 civil penalty. The request for the 10-year denial is appropriate, as a reasonable sanction in the circumstances of this case.

Agency's counsel's request for the civil penalty is not considered appropriate here. In this type of violation, the denial of export privileges is deemed sufficient. The record in this proceeding fails to establish clearly a sufficient basis for the jurisdiction over Respondent that would be required to impose a civil penalty. Respondent is a foreign party, and in this proceeding it made only the single submission, described above. Historically, *in personnam* civil penalty jurisdiction over non-U.S. nationals outside the United States had been infrequently asserted. It involves complicated questions of personal international law which need not be addressed in this uncontested setting. Thus, I conclude that the appropriate sanction to be imposed in this case is the 10-year denial of export privileges.

Order

Accordingly, pursuant to the authority delegated to the undersigned by Part 388 of the Regulations, it is hereby ordered as follows:

I. For a period of 10 years from the date that this Order becomes final, Respondent:

Especialidades Industriales Latino-Americans, S.A.,
Lago Chiem No. 48,
Mexico City 17, Distrito Federal,
Mexico

any successors or assignees, officers, partners, representatives, agents and employees hereby are denied all privileges of participating directly or indirectly in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the regulations.

II. All outstanding validated export licenses in which Respondent appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation.

III. Without limitation of the generality of the foregoing, participation prohibited in any such transactions, either in the United States or abroad shall include, but not be limited to, participation:

(i) As a party or as a representative of a party to a validated export license application;

(ii) In preparing or filing any export license application or reexport authorization, or any document to be submitted therewith;

(iii) In obtaining or using any validated or general export license or other export control document;

(iv) In carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported; and

(v) In the financing, forwarding, transporting, or other servicing of such commodities or technical data. Such denial of export privileges shall extend only to those commodities or technical data which are subject to the Act and the regulations.

IV. After notice and opportunity for comment, such denial may also be made applicable to any person, firm, corporation, or business organization with which the Respondent is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of export trade or related services.

V. No person, firm, corporation, partnership or other business organization, whether in the United States or elsewhere, without prior disclosure and specific authorization, shall, with respect to U.S.-origin commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with the Respondent or any related party or whereby Respondent or related party may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly: (a) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to or for Respondent or related party denied export privileges, or (b) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance or otherwise service or participate in any export, reexport, transshipment or diversion of any commodity or technical data exported or to be exported from the United States.

VI. This Order shall become effective upon entry of the Secretary's action in this proceeding issued pursuant to the Export Administration Act (50 U.S.C.A. App. 2421(c)(1)).

Dated: May 29, 1987.

Hugh J. Dolan,

Administrative Law Judge.

[FR Doc. 87-14996 Filed 7-1-87; 8:45 am]

BILLING CODE 3510-DT-M

National Oceanic and Atmospheric Administration

North Pacific Fisheries Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The North Pacific Fisheries Management Council's Domestic Observer and Bycatch Committees will convene separate public meetings at the National Marine Fisheries Service, Northwest and Alaska Fisheries Center, 7600, Sand Point Way, NE., Seattle, WA, as follows:

Bycatch Committee—will convene July 21, 1987, at 9. a.m., and continue to July 24 in Room 2079, Building 4, to review information on the distribution of bycatch and target species in the Gulf of Alaska and Bering Sea/Aleutian Islands.

Domestic Observer Committee—will convene July 23 at 1:30 p.m., in the same location as that for the Bycatch Committee, to finalize the details of the North Pacific Council's pilot domestic observer program; to discuss the observer coverage scheme with industry representatives, as well as to review draft Federal and Council observer policies.

For further information contract Clarence Pautzke, North Pacific Fisheries Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 274-4563.

Dated: June 26, 1987.

Richard B. Roe, *Director,*

Office of Fishery Management, National Marine Fisheries Service.

[FR Doc. 87-15008 Filed 7-1-87; 8:45 am]

BILLING CODE 3510-22-M

Western Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Western Pacific Fishery Management Council's Bottomfish and Seamount Groundfish Plan Monitoring Team will convene a public meeting, July 15, 1987, at 9 a.m., at the National Marine Fisheries Service, Honolulu Laboratory, Conference Room, 2570 Dole Street, Honolulu, HI.

The Team's morning session will be devoted to completing the annual report on the bottomfish fisheries of the region; scoping out research needs and choosing projects for a programmatic funding request; reviewing the most current reports on access control projects for the fishery for bottomfish in the Northwestern Hawaiian Islands (prepared by Phil Mayer), as well as discussion of other Team business.

For further information contract Kitty Simonds, Executive Director, Western Pacific Fishery Management Management Council, 1164 Bishop Street, Room 1405, Honolulu, HI 96813; telephone: (808) 523-1368 or (808) 564-8923.

Dated: June 26, 1987.

Richard B. Roe, *Director,*

Office of Fishery Management, National Marine Fisheries Service.

[FR Doc. 87-15009 Filed 7-1-87; 8:45 am]

BILLING CODE 3510-22-M

COMMISSION ON CIVIL RIGHTS

Pennsylvania Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Pennsylvania Advisory Committee to the Commission will convene at 1:30 p.m. and adjourn at 4:00 p.m. on July 23, 1987, in Room 6310 of the William J. Green Federal Building, 600 Arch Street, Philadelphia, Pennsylvania. The purpose of the meeting is to discuss a May 1987 Chairpersons Conference on the status of the agency; implementation of a State law requiring collection of data on bias-related incidents and the training of law enforcement staff collecting the data; and the problems faced by female administrators in public education and other possible topics for projects in the coming year.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Susan M. Wachter, (215/898-6355) or John I. Binkley, Director of the Eastern Regional Division (202/523-5264; TDD 202/376-8117). Hearing impaired persons who will attend the meeting and require services of a sign language interpreter should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

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

Dated at Washington, DC, June 23, 1987.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 87-14981 Filed 7-1-87; 8:45 am]

BILLING CODE 6335-01-M

Virginia Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Virginia Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 5:00 p.m. on July 20, 1987 at the Hampton Inn, Room 111, 2310 Plank Road, Fredericksburg, Virginia 22041 (703/371-0330). The purpose of the meeting will be to hear reports from the Chairman and the regional director of a recent conference of SAC chairpersons and the status of the Commission and its State Advisory Committees. The committee will also be informed of the plans to implement the new human rights law in Virginia, court cases in some voting districts, the impact on minority labor by the immigration amnesty law and recent incidents of harassment based on racial and religious bigotry in Virginia.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Benjamin Bostic (703) 450-5950 or John I. Binkley, Director of the Eastern Regional Division, at (202) 523-5264; TDD (202) 376-8117. Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

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

Susan J. Prado,

Acting Staff Director.

Dated at Washington, DC., June 22, 1987.

[FR Doc. 87-14982 Filed 7-1-87; 8:45 am]

BILLING CODE 6335-01-M

COMMISSION OF FINE ARTS

Meeting

The Commission of Fine Arts next scheduled meeting is Thursday, July 23, 1987 at 10:00 AM in the Commission's offices at 708 Jackson Place, NW., Washington, DC 20006 to discuss various projects affecting the appearance of Washington, DC including buildings, memorials, parks, etc.; also matters of design referred by

other agencies of the government. Handicapped persons should call the offices (566–1066) for details concerning access to meetings.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Mr. Charles Atherton, Secretary, Commission of Fine Arts, at the above address or call the above number.

Dated in Washington, DC, June 25, 1987.

Charles H. Atherton,

Secretary.

[FR Doc. 87–15050 Filed 7–1–87; 8:45 am]

BILLING CODE 6330–01–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton Textile Products Produced or Manufactured in the People's Republic of China

June 29, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of the March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on June 29, 1987. For further information contact Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 566–6828. For information on embargoes and quota re-openings, please call (202) 377–3715.

Background

A CITA directive dated December 23, 1986 (51 FR 47041) established import restraint limits for certain cotton, wool and man-made fiber textile products, including Category 340, produced or manufactured in the People's Republic of China and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987.

A further directive dated Feburary 24, 1987 (52 FR 6057) established import limits for cotton textile products in Category 310/318, among others, produced or manufactured in the People's Republic of China and exported during the same twelve-month period.

Under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 19,1983, as amended, and at the request of the Government of the People's Republic of China, the limit for Category 340 is being increased by application of swing. The limit for Category 310/318 is being reduced to account for the swing applied to Category 340.

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to increase the previously established limit for Category 340.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 19, 1987.

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

Dear Mr. Commissioner: This directive amends, but does not cancel, the directives of December 23, 1986 and February 24, 1987, concerning imports into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in the People's Republic of China and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987.

Effective on June 29, 1987, the directives of December 23, 1986 and February 24, 1987 are amended to include the following adjustments to the previously established restraint limits for cotton textile products in Categories 310/318 and 340, as provided under the terms of the bilateral agreement of August 19, 1983, as amended: [1]

Category	Adjusted 12-month limit [1]
310/318	5,987,480 square yards.
340	710,945 dozen.

[1] The limits have not been adjusted to account for any imports exported after Dec. 31, 1986.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87–15031 Filed 7–1–87; 8:45 am]

BILLING CODE 3510–DR–M

[1] The agreement provides, in part, that (1) with the exception of Category 315, any specific limit may be exceeded by not more than 5 percent of its square yard equivalent total, provided that the amount of the increase is compensated by an equivalent square yard decrease in one or more other specific limits in that agreement year; (2) the specific limits for categories may be increased for carryover or carryforward; (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

Amendment to the Export Visa Arrangement and Cancellation of Visa Waiver Requirement for Certain Man-Made Fiber Textile Products from Indonesia

June 29, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on July 1, 1987. For further information contact Pamela Smith, International Trade Specialist (202) 377–4212.

Background

A CITA directive dated February 1, 1980, as amended, was published in the **Federal Register** (45 FR 8084) which announced the establishment of an export visa arrangement, effected by exchange of notes dated October 1 and 15, 1979, for entry into the United States for consumption, or withdrawal from warehouse for consumption of certain cotton, wool and man-made fiber textile products, produced or manufactured in Indonesia.

Pending resolution of a trade problem, a directive dated April 6, 1987 (52 FR 11726) suspended the export visa requirement for merchandise in Category 639 exported from Indonesia with visas issued after July 1, 1986.

In accordance with exchange of notes dated June 19, 1987 between the Governments of the United States and Indonesia, and pursuant to the export visa arrangement, merchandise in Category 639 exported from Indonesia to the United States on or after July 1, 1987 shall again be subject to the export visa

arrangement. Visa waivers will be required for goods exported after July 1, 1987 that do not have appropriate visa.

Accordingly, in the letter which follows this notice, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to further amend the directive which establishes the export visa arrangement under the bilateral agreement.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 20768) and in Statistical Headnote 5, Schedule 3 of the *Tariff Schedules of the United States Annotated (1987).*

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 29, 1987.

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

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on February 1, 1980, as amended on April 6, 1987, by the Chairman of the Committee for the Implementation Textile Agreements concerning export visa requirements for certain cotton, wool and man-made fiber textiles and textile products, produced or manufactured in Indonesia.

Effective on July 1, 1987, you are directed to prohibit shipments of man-made fiber textile products in Category 639 entered for consumption or withdrawn from warehouse for consumption into the Customs territory of the United States (i.e., the 50 States, the District of Columbia and the Commonwealth of Puerto Rico) on or after July 1, 1987, which have been produced or manufactured in Indonesia and exported on and after July 1, 1987 from Indonesia for which the Government of Indonesia has not issued an appropriate visa. Visa waivers will be required for goods in Category 639 exported after July 1, 1987 that do not have an appropriate visa.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 533(a)(1).

Sincerely,

Ronald I. Levin

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-15033 Filed 7-1-87; 8:45 am]

BILLING CODE 3510-DR-M

Deduction in Charges of Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Jamaica

June 29, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, and the President's February 20, 1986 announcement of a Special Access Program for textile products assembled in participating Caribbean Basin beneficiary countries from fabric formed and cut in the United States, pursuant to the requirements set forth in 51 FR 21208 (June 11, 1986), has issued the directive published below to the Commissioner of Customs to be effective on July 6, 1987. For further information contact Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

On April 1, 1987 a notice was published in the **Federal Register** (52 FR 10398) announcing import restraint limits for certain cotton and man-made fiber textile products in Categories 338/339/638/639 and 347/348/647/648, produced or manufactured in Jamaica and exported during the sixteen-month period which began on September 1, 1986 and extends through December 31, 1987. This notice also announced guaranteed access levels for products in the foregoing categories which are properly certified textile products assembled in Jamaica from fabric formed and cut in the United States.

During a meeting held on June 3, 1987 between the Governments of the United States and Jamaica, the Government of Jamaica provided additional documentation to the U.S. Government establishing that products in Categories 338/339/638/639 and 347/348/647/648 were exclusively from U.S. formed and cut fabric and qualified for entry under the guaranteed access levels. These goods were charged to the designated consultation levels because of the unavailability of proper documentation (CBI Export Declaration (Form ITA-370P)) required for entry under TSUSA 807.0010.

Accordingly, in the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to deduct the additional charges for shipments qualifying for guaranteed access levels made to the restraint limits established for Categories 338/339/638/639 and 347/348/647/648 for the period which began on September 1, 1986 and extends through December 31, 1987. Subsequently, these same amounts will be charged to the guaranteed access levels established for properly certified textile products in Categories 338/339/638/639 and 347/348/647/648 which are assembled in Jamaica from fabric formed and cut in the United States and exported from Jamaica during this same sixteen-month period.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the *Tariff Schedules of the United States Annotated (1987).*

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 29, 1987.

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

Dear Mr. Commissioner: To facilitate implementation of the Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement of August 27, 1986, as amended, between the Governments of the United States and Jamaica, I request that, effective on July 6, 1987, you deduct the following amounts from the charges made to the import restraint limits established in the directive of March 27, 1987, for cotton and man-made fiber textile products, produced or manufactured in Jamaica and exported during the sixteen-month period which began on September 1, 1986 and extends through December 31, 1987.

Category	Amount to be deducted (dozen)
338	17,591
339	140,938
348	3,562

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to rulemaking provisions of 5 U.S.C. 553.

This letter will be published in the **Federal Register.**

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-15032 Filed 7-1-87; 8:45 am]

BILLING CODE 3510-DR-M

Establishing Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Mauritius

June 29, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on July 6, 1987. For further information contact Kimbang Pham, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377-3715.

Background

A CITA directive dated February 3, 1987 (52 FR 3843) established an import restraint limit for spun plied acrylic yarn in Category 604pt., produced or manufactured in Mauritius and exported during the twelve-month period which began on October 31, 1986 and extends through October 30, 1987.

A notice published in the **Federal Register** on February 6, 1987 (52 FR 3845) announced that on December 29, 1986 the Government of the United States had requested the Government of Mauritius to enter into consultations concerning exports to the United States of women's, girls' and infants' cotton coats in Category 335, produced or manufactured in Mauritius and exported to the United States.

During consultations held March 17-18, 1987, and pursuant to subsequent discussions, agreement was reached between the Governments of the United States and Mauritius to further amend the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of June 3 and 4, 1985, as amended, to include specific limits for cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products in Categories 335/835, 604pt. and 647/648/847, produced or manufactured in Mauritius and exported during the periods which began, in the case of Categories 335/835 and 604pt., on March 1, 1987; and, in the case of Category 647/648/847, on April 1, 1987, and extend through September 30, 1990.

The agreement establishes the following specific limits for cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Mauritius and exported during the indicated periods:

Category	Restraint limit	Restraint period
335/835	26,250 dozen	Mar. 1-Sept. 30, 1987.
604pt.	310,917 pounds	Mar. 1-Sept. 30, 1987.
647/648/847	175,000 dozen	Apr. 1-Sept. 30, 1987.

The agreement also establishes the following specific limits for cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced by manufactured in Mauritius and exported during the twelve-month period which begins on October 1, 1987 and extends through September 30, 1988:

Category	Restraint limit
335/835	47,700 dozen.
604pt.	564,980 pounds.
647/648/847	371,000 dozen.

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption, of cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Mauritius and exported during the periods which began, in the case of Categories 335/835 and 604pt., on March 1, 1987; and, in the case of Category 647/648/847, on April 1, 1987, and extend through September 30, 1987, in excess of the designated restraint limits.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), December 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

June 29, 1987

Committee for the Implementation of Textile Agreements

Commissioner of Customs

Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: This directive cancels and supersedes the directive issued to you on February 3, 1987 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of cotton textile products in Category 604pt, produced or manufactured in Mauritius and exported during the twelve-month period which began on October 31, 1986 and extends through October 30, 1987.

Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on July 31, 1986; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of June 3 and 4, 1985, as amended; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on July 6, 1987, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Mauritius and exported during the periods which began on March 1, 1987 for Categories 335/835 and 604pt.[1], and on April 1, 1987 for Category 647/648/847, and extend through September 30, 1987, in excess of the designated limits [2]:

Category	Restraint level
335/835	26,250 dozen.
604pt.	310,917 pounds.
647/648/847	175,000 dozen.

Textile products in Categories 335/835 and 647/648/847 which have been exported to the United States prior to March 1, 1987 for Category 335/835 and prior to April 1, 1987 for Category 647/648/847 shall not be subject to this directive.

Textile products in Categories 335/835 and 647/648/847 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47

[1] In Category 604, only TSUSA numbers 310.5049 and 310.6045.

[2] The levels have not been adjusted to account for any imports exported after February 28, 1987 for Categories 335/835 and 604-A and after March 31, 1987 for Category 647/648/847.

FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553 (a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-15034 Filed 7-1-87; 8:45 am]

BILLING CODE 3510-DR-M

COMMODITY FUTURES TRADING COMMISSION

Chicago Mercantile Exchange and Chicago Board of Trade Proposed Contracts

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures and option contracts.

SUMMARY: The Chicago Mercantile Exchange ("CME") has applied for designation as a contract market in options on physical gold. In addition, the Chicago Board of Trade ("CBT") has applied for designation as a contract market in long-term United Kingdom (U.K.) gilt futures. U.K. gilts are debt instruments used to finance national government operations of the United Kingdom. The Director of the Division of Economic Analysis of the Commodity Futures Trading Commission ("Commission"), acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposals for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATE: For the CME's proposed option on physical gold contract, comments must be received on or before August 17, 1987. For the CBT's proposed futures contract in long-term U.K. gilts, comments must be received on or before August 31, 1987.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581.

Reference should be made to the CME option on physical gold contract or to the CBT long-term U.K. gilts futures contract.

FOR FURTHER INFORMATION CONTACT: For the CBT's long-term U.K. gilt futures contract, contact Naomi Jaffe, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, (202) 254-7227. For the CME's option on physical gold contract, contact Richard Shilts, Division of Economic Analysis, at the same address, (202) 254-7303.

Copies of the terms and conditions of the proposed contracts will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254-6314.

Other materials submitted by the CME or CBT in support of the applications for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1984)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the terms and conditions of the proposed contracts, or with respect to other matrials submitted by the CME or CBT in support of their applications, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, by August 17, 1987 for the CME's option on physical gold contract and by August 31, 1987 for the CBT's long-term U.K gilt futures contract.

Issued in Washington, DC on June 29, 1987.

Paula A. Tosini,

Director, Division of Economic Analysis.

[FR Doc. 87-15039 Filed 7-1-87; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following committee meeting:

Name of Committee: Army Science Board (ASB).

Dates of Meeting: 20-30 July 1987.

Times of Meeting: 0800-1730 hours weekdays and as needed on weekends.

Place: Ft Monroe, Virginia.

Agenda: The Army Science Board 1987 Summer Studies on Lightening the Force and Army Force Cost Drivers will meet for discussions and briefings to-date in order to develop and write their final reports. Both Summer Studies will be briefed, in closed session, to a select group of Army leadership. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S., Appendix 1, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. Contact the Army Science Board Administrative Officer, Sally Warner, for further information at (202) 695-7046.

Sally A. Warner,

Administratie Officer, Army Science Board.

[FR Doc. 87-15120 Filed 7-1-87; 8:45 am]

BILLING CODE 3710-08-M

Department of the Navy

Chief of Naval Operations, Executive Panel Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Mine Warfare Capabilities Task Force will meet July 15-16, 1987 from 9 a.m. to 5 p.m. each day, at 4401 Ford Avenue, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to review current and projected U.S. and Allied Mine Warfare capabilities and potential U.S. vulnerabilities in the broad context of maritime operations and related intelligence. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly

classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact Lieutenant Paul G. Butler, Executive Secretary of the CNO Executive Panel Advisory Committee, 4401 Ford Avenue, Room 601, Alexandria, Virginia 22302-0268. Phone (703) 756-1205.

Dated: June 29, 1987.

Jane M. Virga,

Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 87-15004 Filed 7-1-87; 8:45 am]

BILLING CODE 3810-AE-M

Patent License; Iowa State University Research Foundation

AGENCY: Department of the Navy, DOD.

ACTION: Intent to Grant Partially Exclusive Patent License; Iowa State University Research Foundation.

SUMMARY: The Department of the Navy hereby gives notice of intent to grant to Iowa State University Research Foundation, a revocable, nonassignable, partially exclusive license to practice the Government-owned invention described in U.S. Patent No. 4,308,474 entitled "Rare Earth-Iron Magnetostrictive Materials and Devices Using These Materials" issued December 29, 1981; inventors: Howard T. Savage, Arthur E. Clark and O. Dale McMasters.

This license will be granted unless within 60 days from the date of this notice written objections to this grant along with supporting evidence, if any, are received by the Office of the Chief of Naval Research (Code OOCCIP), Arlington, VA 22217.

DATE: July 2, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. R. J. Erickson, Staff Patent Attorney, Office of the Chief of Naval Research (Code OOCCIP), 800 N. Quincy Street, Arlington, VA 22217-5000, telephone (202) 696-4001.

Dated: June 29, 1987.

Jane M. Virga

LT, JAGC, USNR, Federal Register Liaison Officer.

[FR Doc. 87-15003 Filed 7-1-87; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF EDUCATION

Education Appeal Board Hearings

AGENCY: Department of Education.

ACTION: Notice of applications for review accepted for hearing by the Education Appeal Board.

SUMMARY: This notice lists the applications for review accepted for hearing by the Education Appeal Board (the Board) between February 13, 1987, and May 26, 1987. The Chairman has prepared a summary of each appeal to help potential intervenors. In addition, the notice explains how interested third parties may intervene in proceedings before the Board.

FOR FURTHER INFORMATION CONTACT: The Honorable Ernest C. Canellos, Chairman, Education Appeal Board, 400 Maryland Avenue, SW. (Room 1065, FOB-6), Washington, DC 20202. Telephone: (202) 732-1756.

SUPPLEMENTARY INFORMATION: Under sections 451 through 454 of the General Education Provisions Act (20 U.S.C. 1234 *et seq.*), the Board has authority to conduct (1) audit appeal hearings, (2) withholding, termination, and cease and desist hearings initiated by the Secretary of Education (the Secretary), and (3) other proceedings designated by the Secretary as being within the jurisdiction of the Board.

The Secretary has designated the Board as having jurisdiction over appeal proceedings related to final audit determinations, the withholding or termination of funds, and cease and desist actions for most grant programs administered by the Department of Education (the Department). The Secretary also has designated the Board as having jurisdiction to conduct hearings concerning most Department-administered programs that involve (a) a determination that a grant is void, (b) the disapproval of a request for permission to incur an expenditure during the term of a grant, or (c) determinations regarding cost allocation plans or special rates negotiated with specified grantees.

Regulations governing Board jurisdiction and procedures were published in the **Federal Register** on May 18, 1981, at 46 FR 27304 (34 CFR Part 78).

Applications accepted

Appeal of the Indian Action Council of Northwestern California, Inc., Docket No.: 32(232)86, ACN: 09-64009

The Council appealed a final letter of determination issued by the Grants and Contracts Service (GCS). The underlying audit reviewed matching expenditures allegedly required for a Title IV grant program conducted during FY 1977 and 1978.

GCS disallowed expenditures because of the Council's alleged inability to document matching expenditures.

The Department seeks a refund of $4,569, and the Council disputes all liability.

Appeal of Illinois Department of Rehabilitation Services, Docket No.: 2(238)87, ACN: 05-65032

The State appealed a final letter of determination issued by the Acting Regional Commissioner, Rehabilitation Services Administration. The underlying audit reviewed the Vocational Rehabilitation program conducted during FY 1982, 1983 and 1984.

The Acting Regional Commissioner disallowed specific direct costs for failure to document expenditures properly.

The Department seeks a refund of $6,515,897. The State disputes all liability.

Appeal of the State of New York, Docket No.: 4(240)87, ACN: 02-50250

The State appealed a final letter of determination issued by the Assistant Secretary for Elementary and Secondary Education. The underlying audit examined various aspects of the New York City Board of Education's FY 1982, 1983 and 1984 high school project funded under Title I of the Elementary and Secondary Education Act and Chapter I of the Education Consolidation and Improvement Act.

The Assistant Secretary sustained the auditor's findings and disallowed specific costs for the alleged failure to maintain adequate time distribution records reflecting the period of teacher time attributable to Federal and non-Federal programs.

The Department seeks a refund of $11,156,000. The State disputes liability in the amount of $7,403,000.

Appeal of the State of Louisiana, Docket No.: 5(241)87, ACN: 06-62012

The State appealed a final letter of determination issued by the Assistant Secretary for Elementary and Secondary Education. The underlying audit reviewed programs conducted under Chapter 2 of the Education Consolidation and Improvement Act for the period between July 1, 1984 and June 30, 1985.

The Assistant Secretary sustained the auditor's findings and concluded that the State had supplanted funds during the period in issue.

The Department seeks a refund of $1,149,121, and the State disputes liability in the amount of $550,786.

Appeal of the State of Wisconsin, Docket No.: 6(242)87, ACN: 05-65031

The State appealed a final letter of determination issued by the Acting Assistant Secretary for Vocational and Adult Education. The underlying audit reviewed vocational education expenditures for the period between July 1, 1983 and June 30, 1985.

The Acting Assistant Secretary sustained the auditor's findings and disallowed specific costs for the failure to document expenditures properly, as well as the expenditure of funds beyond the period of availability.

The Department seeks a refund of $7,619. The State disputes total liability.

Appeal of the State of Georgia, Docket No.: 7(243)87, ACN: 04-63030

The State appealed a final letter of determination issued by the Assistant Secretary for Elementary and Secondary Education. The underlying audit reviewed State education programs conducted between July 1, 1984 and June 30, 1985.

The Assistant Secretary sustained the auditor's report, concluding that the State had violated the provisions of Chapter 2 of the Education Consolidation and Improvement Act in the purchase of specified equipment. Expenditures were also disallowed because they allegedly supplanted State funds.

The Department seeks a refund of $160,115, while the State disputes liability in the amount of $160,105.

Appeal of the Trust Territory of the Pacific Islands, Docket No.: 8(244)87, ACN: 09-63057

The Territory appealed a final letter of determination issued by the Assistant Secretary for Elementary and Secondary Education. The underlying audit reviewed the administration of the Territory's Education programs for the year ending June 30, 1984.

The Assistant Secretary sustained the auditor's findings that costs attributable to the Title I program were expended after the period of availability.

The Department seeks a refund of $3,981. The Territory disputes all liability.

Intervention

Regulations in 34 CFR 78.43 provide that an interested person, group, or agency may file an application to the Board Chairman to intervene in an appeal before the Board.

An application to intervene must indicate to the satisfaction of the Board Chairman or, as appropriate, the Panel Chairperson, that the potential intervenor has an interest in, and information relevant to, the specific issues raised in the appeal. If an application to intervene is approved, the intervenor becomes a party to the proceedings.

Applications to intervene, or questions, should be addressed to the Board Chairman at the address provided above.

(20 U.S.C. 1234)

(Catalog of Federal Domestic Assistance No. not applicable)

Dated: June 26, 1987.

Peter R. Greer,

Deputy Under Secretary, Intergovernmental and Interagency Affairs.

[FR Doc. 87-14980 Filed 7-1-87; 8:45 am]

BILLING CODE 4000-01-M

[CFDA No.: 84.190]

Notice Inviting Applications for New Awards under the Christa McAuliffe Fellowship Program for Fiscal Year 1987

Purpose: To provide fellowships to outstanding teachers to enable and encourage them to continue their education or to develop educational projects and programs.

Deadline For Transmittal of Applications: Applications to statewide panel: August 3, 1987, Recommendations to Department of Education: August 7, 1987.

Available Funds Anticipated: $1,950,000.

Maximum Award: $25,313.

Estimated Number of Awards: 80.

Project period: Up to 12 months.

Applicable Regulations: Regulations applicable to this program include the regulations governing the Christa McAuliffe Fellowship Program as proposed to be codified in 34 CFR Part 237. (A notice of proposed rulemaking for proposed Part 237 was published in the **Federal Register** on May 13, 1987 at 52 FR 18184. Applicants should prepare their applications based on the proposed regulations. If there are any substantive changes made in the regulations when published in final form, applicants will be given the opportunity to amend or resubmit their applications).

For Applications or Information Contact: Willi Webb, Director, Policy, Planning and Executive Operations, Office of Elementary and Secondary Education, 400 Maryland Avenue, SW., Washington, DC 20202, Telephone (202) 732-5104.

Program Authority: 20 U.S.C. 1113-1113e.

Dated: June 26, 1987.

Lois Bowman,

Acting Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 87-15005 Filed 7-1-87; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER87-509-000. et al.]

Electric Rate and Corporate Regulation Filings; Florida Power & Light Co. et al.

July 26, 1987.

Take notice that the following filings have been made with the Commission:

1. Florida Power & Light Company

[Docket No. ER87-509-000]

Take notice that on June 23, 1987, Florida Power & Light Company (FPL) tendered for filing a document entitled Amendment Number Two to St. Lucie Delivery Service Agreement between Florida Power & Light Company and Florida Municipal Power Agency (FMPA).

FPL states that Amendment Number Two provides for the delivery of FMPA's power and energy entitlements from FPL's St. Lucie Unit No. 1 and Unit No. 2 in those instances in which there are interruptions or reductions in the capability of the transmission systems of the parties. Amendment Number Two also revises the designation of delivery points and allocation of the FMPA St. Lucie Nuclear Power Resources.

FPL requests that waiver of § 35.3 of the Commission's Regulations be granted and that the proposed Amendment Number Two be made effective on June 1, 1987. FPL states that copies of the filing were served on Florida Municipal Power Agency and Florida Public Service Commission.

Comment date: July 13, 1987, in accordance with Standard Paragraph E at the end of this notice.

2. Idaho Power Company

[Docket No. ER87-107-004]

Take notice that on June 22, 1987, Idaho Power Company (Idaho Power) of Boise, Idaho, tendered for filing a Compliance Filing with respect to the following Agreement, which has been executed by Idaho Power and Pacific Power & Light Company (Pacific):

Transmission Services Agreement, September 1, 1980, Idaho Power—Pacific Power.

This filing is submitted in response to Federal Energy Regulatory Commission Order dated April 21, 1987.

Idaho Power states that it has served copies of its filing on Pacific Power & Light Company and on the Public Utilities Commissions of the states of Idaho, California, Wyoming, Oregon, Washington and Montana.

Comment date: July 13, 1987, in accordance with Standard Paragraph E at the end of this notice.

3. Idaho Power Company

[Docket No. ER87-107-005]

Take notice that on June 22, 1987, Idaho Power Company (Idaho Power) of Boise, Idaho, tendered for filing a Compliance Filing with respect to the following Agreement, which has been executed by Idaho Power and Pacific Power & Light Company (Pacific) and Utah Power & Light Company (Utah):

Transmission Facilities Agreement, June 1, 1974, Idaho Power Company, Pacific Power & Light Company, &, Utah Power & Light Company.

This filing is submitted in response to Federal Energy Regulatory Commission Order dated April 21, 1987.

Idaho Power states that it has served copies of its filing on Pacific Power & Light Company, Utah Power & Light Company and on the Public Utilities Commissions of the states of Idaho, Utah, Wyoming, California, Oregon, Washington and Montana.

Comment date: July 13, 1987, in accordance with Standard Paragraph E at the end of this document.

4. Kansas Gas and Electric Company

[Docket No. ER87-504-000]

Take notice that on June 22, 1987, Kansas Gas and Electric Company (KG&E) tendered for filing a proposed Service Schedule D, Transmission Service, superseding an existing Schedule D in FERC Electric Service Tariff No. 151.

This filing is needed to provide Kansas Electric Power Cooperative an option for delivering power to its members outside of Kansas Gas and Electric Company service territory. The proposed schedule allows Kansas Gas and Electric Company to supply required losses with transmission service or, in the alternate, have Kansas Electric Power Cooperative take service net of such losses. KG&E has requested an effective date of June 1, 1987.

Copies of the filing were served upon the Kansas Electric Power Cooperative and the Utilities Division of the Kansas Corporation Commission.

Comment date: July 13, 1987, in accordance with Standard Paragraph E at the end of this notice.

5. Mississippi Power Company

[Docket No. ER87-499-000]

Take notice that on June 18, 1987, Mississippi Power Company (MPC) tendered for filing Amendment No. 11 to an Interconnection Agreement between MPC and South Mississippi Electric Power Association (SMEPA).

The subject amendment to the Interconnection Agreement revises the terms and conditions under which MPC and SMEPA will price economy energy transactions between their respective electric systems and provides for an additional pricing mechanism which allows the parties to negotiate the price of economy energy transactions.

Comment date: July 13, 1987, in accordance with Standard Paragraph E at the end of this notice.

6. Northern Indiana Public Service Company

[Docket No. ER87-508-000]

Take notice that on June 22, 1987, Northern Indiana Public Service Company (NIPSCO) tendered for filing Fifth Revised Sheet No. 3 to its FERC Electric Service Tariff—Fourth Revised Volume No. 1 which has been revised to include an additional delivery point for Wabash Valley Power Association at Steuben County Rural Electric Membership Corporation. Northern Indiana Public Service Company also tendered for filing the following:

Exhibit A, Fourth Supplemental Agreement dated April 13, 1987 to the Interconnection Agreement between Northern Indiana Public Service Company and the Wabash Valley Power Association, Inc., dated April 16, 1984, covering the establishment of a new delivery point located in the SE¼ of the NE¼ of Sec. 5, T34N R13E, in Grant Township, DeKalb County, Indiana.

Copies of this filing were served upon all customers receiving electric service under NIPSCO's FERC Electric Service Tariff—Fourth Revised Volume No. 1 and the Public Service Commission of Indiana.

NIPSCO requests an effective date of March 11, 1987 for Exhibit A and, therefore, requests waiver of the Commission's notice requirements.

Comment date: July 13, 1987, in accordance with Standard Paragraph E at the end of this notice.

7. Northern States Power Company

[Docket No. ER87-337-000]

Take notice that on June 22, 1987, Northern States Power Company (Minnesota) on behalf of both Northern States Power Company (Minnesota) and Minnesota Power & Light Company tendered for filing a revision to Exhibit C of the Interconnection and Interchange Agreement between Northern States Power Company and Minnesota Power & Light Company.

The Companies have recently agreed to revise some of the loss factors in Exhibit C to reflect the results of a new, more accurate method for calculating the loss factors.

The revised Exhibit C of the previously filed Interconnection and Interchange Agreement represents new arrangements agreed to by the parties, and therefore, replaces all existing agreements.

Northern States Power Company requests the revisions to Exhibit C of the previously filed Interconnection and Interchange Agreement become effective on October 9, 1986, and therefore, requests waiver of the Commission's notice requirements.

Comment date: July 13, 1987, in accordance with Standard Paragraph E at the end of this notice.

8. Northern States Power Company, Interstate Power Company, Iowa Public Service Company, St. Joseph Light & Power Company, Kansas City Power & Light Company

[Docket No. ER87-459-000]

Take notice that on June 23, 1987, Northern States Power Company, *et al.*, tendered for filing an amendment to the filing made in this docket on May 29, 1987 and to transmit additional information regarding the Twin Cities-Omaha-Iowa-Kansas City 345kv Interconnection and Co-ordinating Agreement.

Revision No. 1 to Supplement No. 5 to the Twin Cities-Omaha-Iowa-Kansas City 345kv Interconnection and Co-ordinating Agreement amends the filing so as to provide that the rate for the reservation of transmission capacity will be $2,189 per megawatt per month commencing June 1, 1987. That rate reflects the use of a 34% income tax rate and will remain in effect unless and until changed by an appropriate filing made with this Commission.

Comment date: July 13, 1987, in accordance with Standard Paragraph E at the end of this notice.

9. Pacific Gas and Electric Company

[Docket No. ER87-498-000]

Take notice that on June 19, 1987, Pacific Gas and Electric Company (PGandE) tendered for filing an initial rate schedule under a contract with the City of Santa Clara, California (City)

entitled "System Bulk Power Sale and Purchase Agreement Between City of Santa Clara and Pacific Gas and Electric Company" (Agreement). The Agreement and its appendices contain capacity and energy rates for firm, baseload power proposed to be sold to City by PGandE.

Service would commence on January 1, 1988 and continue for ten years, subject to termination provisions of the Agreement. City can take up to 50 MW of capacity each month. City must take energy at an annual capacity factor of at least 85 percent of the 50 MW, but cannot take less than 35 MW in any hour.

The Agreement specifies initial energy and capacity rates and provides for escalation of each rate over the ten-year contract period. Using an assumption of a constant 85 percent capacity factor on the 50 MW results in a 1988 revenue estimate of about $16 million.

Copies of this filing were served upon City and the Public Utilities Commission of the State of California.

Comment date: July 13, 1987, in accordance with Standard Paragraph E at the end of this notice.

10. Sierra Pacific Power Company

[Docket No. ER87-506-000]

Take notice that on June 22, 1987, Sierra Pacific Power Company (Sierra) tendered for filing pursuant to 18 CFR Part 35 *et seq.* and Ordering Paragraph (J) to the Commission's April 21, 1987 order in *Idaho Power Co.*, 39 FERC ¶61,032 the following executed contracts or amendments to contracts for the provision of jurisdictional services as Part I of its filing in this docket:

A. Agreements for Service Under Sierra's Tariff RT between Sierra and the following companies:

1. Idaho Power Company,
2. Montana Power Company,
3. Pacific Power & Light,
4. Portland General & Electric Company,
5. Washington Water Power Company,
6. Intermountain Consumer Power Association, and
7. Northern California Power Agency.

B. Amendment No. 1 to the May 19, 1981 Agreement between Sierra and Idaho Power Company.

C. First and Second Addenda to the February 24, 1971 Agreement between Sierra and Mr. Wheeler Power, Inc.

In addition to the above-referenced contracts, Sierra also filed the following contracts that may arguably relate to the provision of jurisdictional services:

A. July 1, 1986 North Valmy Plant Operation Agreement between Sierra and Idaho Power Company.

B. August 6, 1986 Silver Peale 55kv Interconnection Agreement between Sierra and Southern California Edison Company.

C. August 16, 1985 Special Facilities Agreement between Sierra and Beowawe Geothermal Power Company.

D. August 6, 1986 Operation and Maintenance Services Agreement between Sierra and Beowawe Geothermal Power Company.

Sierra also states that it will file further material in its Part II filing in compliance with the Commission's filing requirements. Sierra requests that the Commission defer action on its Part I filing until receipt and review of its Part II filing.

Comment date: July 13, 1987, in accordance with Standard Paragraph E at the end of this notice.

11. Arkansas Power & Light Company

[Docket No. ER87-501-000]

Take notice that on June 19, 1987, Arkansas Power & Light Company (AP&L) tendered for filing a Transmission Service Agreement dated June 10, 1987 between AP&L and the City of Ruston, Louisiana (Ruston) for transmission service through the system of AP&L to the system of Louisiana Power & Light Company to permit a sale by Arkansas Electric Cooperative Corporation to Ruston of 27 MW of capacity and associated energy. AP&L request an effective date of July 1, 1987 for the Agreement.

Comment date: July 13, 1987, in accordance with Standard Paragraph E at the end of this notice.

12. Arkansas Power & Light Company

[Docket No. EL87-46-000]

Take notice that on June 22, 1987, Arkansas Power & Light Company (AP&L) tendered for filing in the above-referenced proceeding a Petition For Declaratory Order. In its Petition AP&L requested that the Commission issue a Declaratory Order authorizing it to continue to record on its books and records the deferral of certain costs associated with the Grand Gulf No. 1 nuclear unit.

Comment date: July 13, 1987, in accordance with Standard Paragraph E at the end of this notice.

13. Carolina Power & Light Company

[Docket No. ER87-503-000]

Take notice that on June 22, 1987, Carolina Power & Light Company (Company) tendered for filing in Docket No. ER87-503-000 changes to Company's Backstand Power and Transmission rates which are a part of the Service Agreement dated October 27, 1972, which is on file with the Commission as Carolina Power & Light Company Rate Schedule FPC No. 102. The Service Agreement was subsequently amended June 30, 1977 (Supplement No. 10 to FPC No. 102), February 19, 1981 (Supplement No. 1 to Supplement No. 10 to FPC No. 102), and January 16, 1986 (Supplement No. 35 to FPC No. 102).

Company's Backstand Power and Transmission rates filed herewith decreased from the 1985 rates and are for the time period July 1, 1987, through June 30, 1988. It is respectfully requested that the Commission waive its sixty day notice requirement and allow the supplements filed herewith to become effective on July 1, 1987.

Comment date: July 13, 1987, in accordance with Standard Paragraph E at the end of this notice.

14. Central Illinois Public Service Company

[Docket No. ER87-505-000]

Take notice that on June 22, 1987, Central Illinois Public Service Company (CIPS) tendered for filing a rate schedule applicable to wholesale electric service to Norris Electric Cooperative (Norris). CIPS also tendered for filing an amendment to the supply contract between CIPS and Norris.

The tendered rate schedule and amendment to the supply contract comprise integral parts of the comprehensive agreement between CIPS and Norris, reached after negotiations, to continue and extend their long-term customer-supplier relationship.

CIPS requests a waiver of the Commission's notice requirements to implement the effective dates agreed to by the parties.

Comment date: July 13, 1987, in accordance with Standard Paragraph E at the end of this document.

15. Central Power and Light Company

[Docket No. ER87-502-000]

Take notice that on June 19, 1987, Central Power and Light Company (CPL) tendered for filing Amendment No. 1 to the Interconnection Contract between CPL and the Public Utilities Board of the City of Brownsville, Texas (Brownsville) and Amendment No 1 to the CPL-Brownsville Transmission Services Agreement. Amendment No. 1 to the Interconnection Contract provides for a reduction in Brownsville's firm demand purchase obligations, provides for further reductions under certain conditions and changes various notice provisions in the Interconnection Contract. Amendment No. 1 to the Transmission Services Agreement (TSA)

clarifies that Brownsville shall be solely responsible for transmission service charges or loss compensation demanded by other systems in connection with any transmission service rendered pursuant to the TSA, eliminates a prefiling notice requirement to Brownsville and corrects an inadvertent omission of an execution date in the TSA as originally executed. CPL has requested an effective date of August 14, 1986, and therefore requests waiver of the Commission's notice requirements.

Copies of this filing have been sent to Brownsville and to the Public Utilities Commission of Texas.

Comment date: July 13, 1987, in accordance with Standard Paragraph E at the end of this notice.

16. Consolidated Edison Company of New York, Inc.

[Docket No. ER87-500-000]

Take notice that on June 19, 1987, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing Supplements to several of its Rate Schedules:

Rate schedule No.	Supplement No.	Utility receiving service
55	5	Philadelphia Electric Company (PE).
56	5	Public Service Electric and Gas Company (Public Service).
57	5	Northeast Utilities (NU).
62	5	Orange and Rockland Utilities, Inc. (O&R).
69	2	NU.
74	3	Pennsylvania Power & Light Company (PP&L).
75	4	GPU Service Corporation (GPU).

The Supplement provide for a decrease in rate from 2.7 mills to 2.6 mills per Kwh of interruptible transmission of power and energy over Con Edison's transmission facilities, thus decreasing annual revenues under the Rate Schedules by a total of $50,333.60. Con Edison has requested waiver of notice requirements so that the Supplements can be made effective as of September 1, 1985.

Con Edison states that copies of this filing have been served by mail upon PE, Public Service, NU, O&R, PP&L and GPU.

Comment date: July 13, 1987, in accordance with Standard Paragraph E at the end of this notice.

17. Eastern Edison Company

[Docket No. ER87-497-000]

Take notice that on June 18, 1987, Eastern Edison Company (EE) tendered for filing a contract extension between EE and New England Power Company (NEP) for the continuation of subtransmission service for NEP to Tiverton. This is an extension of the May 19, 1975 agreement, as amended October 30, 1981 (Docket No. ER82-60-000), beyond the May 1, 1987 termination date at the current contract rate of $.49 per kW/month. This extension provides for service on a month by month basis with a 30-day cancellation notice.

Eastern Edison requests waiver of the 60-day notice requirement. NEP requested the extension because of construction delays in building a new substation in Tiverton. NEP did not realize that this delay would occur until recently. Therefore, EE could not file the extension within the 60-day requirement. This agreement is mutually beneficial to both EE and NEP.

Eastern Edison Company served copies of its filing on NEP and the Massachusetts Department of Public Utilities.

Comment date: July 13, 1987, in accordance with Standard Paragraph E at the end of this notice.

18. Florida Power & Light Company

[Docket No. ER87-507-000]

Take notice that on June 22, 1987, Florida Power & Light Company (FPL) tendered for filing nine (9) revised Exhibits A which provide for the contract demands for Florida Keys Electric Cooperative Association, Inc.; Fort Pierce Utilities Authority; City of Homestead; Lake Worth Utilities Authority; Utilities Commission, City of New Smyrna Beach; City of Starke; City of Vero Beach; City of Jacksonville Beach; and City of Green Cove Springs under Rate Schedule PR-3 of FPL's FERC Electric Tariff Second Revised Volume No. 1. The proposed effective date for the contract demands for Florida Keys Electric Cooperative Association, Inc.; Fort Pierce Utilities Authority; City of Homestead; Lake Worth Utilities Authority; Utilities Commission, City of New Smyrna Beach; City of Starke; and City of Vero Beach is May 29, 1987. The proposed effective date for the contract demands for the City of Jacksonville Beach, and the City of Green Cove Springs is June 1, 1987.

Comment date: July 13, 1987, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-15089 Filed 7-1-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER87-346-000, et al.]

Electric Rate and Corporate Regulation Filings; Idaho Power Co. et al.

July 25, 1987.

Take notice that the following filings have been made with the Commission:

1. Idaho Power Company

[Docket No. ER87-346-000]

Take notice that on June 5, 1987, Idaho Power Company (Idaho Power) of Boise, Idaho, tendered for filing a revised return on equity provision with respect to the following Agreements, which have been executed by Idaho Power and Utah Power & Light Company (Utah Power):

Agreement for Interconnection and Transmission Services, Dated March 19, 1982.

Amendment No. 1 to the Agreement for Interconnection and Transmission Services Idaho Power Company-Utah Power & Light Company, Dated August 17, 1982.

The above Agreement and its Amendment were previously submitted for filing and this filing is submitted in response to a Commission deficiency letter dated May 7, 1987. The revised provision amending section A.3 of Exhibit A of the 1982 Agreement is now filed to conform the contractual provisions of those agreements to the Federal Energy Regulatory Commission policy on automatically adjusting equity clauses as set forth in New England Power Company (NEPCo), 31 FERC ¶ 61,378 (1985).

Idaho Power requests that the requirements of prior notice be waived for an effective date of March 19, 1982.

Idaho Power states that it has served copies of its filing on Utah Power and on the Public Utilities Commissions of the states of Idaho, Utah and Wyoming.

Comment date: July 13, 1987, in accordance with Standard Paragraph E at the end of this notice.

MDU Resources Group, Inc.

[Docket No. ES87-33-000]

Take notice that on June 12, 1987, MDU Resources Group, Inc. filed an application with the Federal Energy Regulatory Commission, pursuant to section 204 of the Federal Energy Regulatory Commission, pursuant to section 204 of the Federal Power Act ("the Act"), seeking an Order (a) exempting the Applicant from the competitive bidding requirements of the Commission's Regulations and (b) authorizing the issuance of up to $25,000,000 of promissory notes due no later than December 31, 1990.

Comment date: July 13, 1987, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-15085 Filed 7-1-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP87-390-000, et al.]

Natural Gas Certificate Filings; Columbia Gas Transmission Corp., et al.

June 25, 1987.

Take notice that the following filings have been made with the Commission:

1. Columbia Gas Transmission Corporation

[Docket No. CP87-390-000]

Take notice that on June 10, 1987, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP87-390-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon certain firm sales service, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Columbia proposes to abandon certain firm sales service, totaling 284,256 Dth per day of Contract Demand (CD), to fourteen of its wholesale customers. It is stated that the proposed levels of abandonment in sales service reflect the customers' requests for reductions and conversions to transportation pursuant to §§ 284.10(c) and 284.10(d) of the Commission's Regulations and in accordance with the terms of Columbia's blanket certificate at Docket No. CP86-240, approved by the Commission on February 28, 1986. Further, Columbia asserts that § 284.10(f) of the Commission's Regulations provides that a pipeline may file under § 157.18 of the Commission's Regulations to abandon sales service to the extent of such reductions or conversions.

Specifically, Columbia requests authorization for the abandonment of certain firm sales service as follows:

Customer	Zone	(Dth/d)		
		Existing CD level	Decrease in CD	Proposed CD level
Acme Natural Gas Company	6	19,860	3,182	16,678
Baltimore Gas and Electric Company	2	335,000	17,000	318,000
Columbia Gas of Kentucky, Inc	1	25,300	7,251	18,049
	3	84,160	8,998	75,162
Columbia Gas of Maryland, Inc	6	34,050	3,825	30,225
Columbia Gas of New York, Inc	7	73,490	8,585	64,905
Columbia Gas of Ohio, Inc	1	36,600	5,572	31,028
	4	1,101,195	90,093	1,011,102
	6	82,100	11,494	70,606
Columbia Gas of Pennsylvania, Inc	6	455,460	38,986	416,474
Columbia Gas of Virginia, Inc	2	57,330	4,881	52,449
Mountaineer Gas Co	1	132,710	28,383	104,327
	6	113,920	12,108	101,812
National Fuel Gas Supply Corporation	6	32,100	4,494	27,606
Penn Fuel Gas, Inc	6	18,320	1,832	16,488
Suburban Fuel Gas, Incorporated	4	7,000	402	6,598
UGI Corporation	6	237,170	7,170	230,000
Washington Gas Light Company	2	416,100	30,000	386,100
Total		3,261,865	284,256	2,977,609

Comment date: July 16, 1987, in accordance with Standard Paragraph F at the end of this notice.

2. Consolidated Gas Transmission Corporation

[Docket No. CP87-371-000]

Take notice that on May 29, 1987, Consolidated Gas Transmission Corporation (Consolidated) 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP87-371-000 and application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the rendition of a long-term storage service for East Tennessee Natural Gas Company (East Tennessee), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Consolidated states that the proposed storage service would consist of a storage capacity of quantity 1,016,550 dekatherms (Dt) and a storage demand quantity of 20,331 Dt. This storage

service it is asserted, is proposed to be rendered in accordance with Consolidated's Rate Schedule GSS contained in its effective FERC Gas Tariff. Further, it is stated that the service is proposed to be rendered under a firm storage contract, the term of which would commence upon receipt of all required regulatory approvals and would continue until April 1, 2000.[1]

No additional facilities are proposed to be constructed in connection with the service proposed in Docket No. CP87-371-000, it is stated. Consolidated indicates that deliveries of gas to Consolidated for East Tennessee's account for injection, and by Consolidated for East Tennessee's account upon withdrawal would be made at existing interconnections between the pipeline facilities of Consolidated and Tennessee Gas Pipeline Company, a Division of Tenneco, Inc. (Tennessee Gas).

Comment date: July 16, 1987, in accordance with Standard Paragraph F at the end of this notice.

3. Texas Eastern Transmission Corporation

[Docket No. CP87-381-000]

Take notice on June 2, 1987, Texas Eastern Transmission Corporation (Texas Eastern), P.O. Box 2521, Houston, Texas 77252, filed in Docket No. CP87-381-000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate certain offshore pipeline facilities under the blanket certificate issued in Docket No. CP82-535-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Texas Eastern requests authorization to construct and operate approximately 15.6 miles of 24-inch pipeline extending from the terminus of Texas Eastern's 16-inch Line No. 40-B-3 in the Main Pass Area Block 95, offshore Louisiana to the production facilities of Hall-Houston Oil Company (Hall-Houston) in Main Pass Area Block 165, offshore Louisiana.

Texas Eastern states that the purpose of the proposed pipeline facilities is to connect gas reserves developed by Hall-Houston in Main Pass Blocks 164 and 165, offshore Louisiana and expand Texas Eastern's existing system into an area of growing reserve potential. The maximimum daily capacity is stated to be 62,000 Mcfd.

Texas Eastern asserts that it has executed a gas purchase contract with Hall-Houston and other working interest owners which provides for the commitment of 100 percent of the gas reserves in Main Pass Blocks 164 and 165, estimated to be 24 Bcf, with initial deliverability of 30,000 Mcf per day.

Texas Eastern further states that upon approval of the instant application the proposed pipeline would be constructed by Hall-Houston pursuant to a "turnkey" engineering contract and that the total turnkey cost is $12,250,000. Initial payment it is indicated, would be $5,970,000 upon signing of the Main Pass Blocks 164 and 165 gas purchase contract and completion of the pipeline. It is explained that the remaining $6,280,000 would be paid to Hall-Houston either (1) if and when additional reserves are contracted by Texas Eastern for resale, which reserves are to be delivered by means of the proposed pipeline, at the rate of $100,000 per Bcf of estimated reserves, or (2) if and when natural gas is transported (and such natural gas is not attributable to reserves currently or previously under contract to Texas Eastern) by Texas Eastern, at a rate of 10 cents per Mcf of natural gas delivered by Texas Eastern pursuant to such transportation arrangements. It is stated that if no additional reserves are dedicated to Texas Eastern or gas transported, then the pipeline cost would be $5,970,000. Texas Eastern states that in no event would the maximum cost of the pipeline to Texas Eastern exceed $12,250,000 regardless of the total amount of reserves which are brought under contract or transported. The facilities, it is noted, would be financed initially through short-term debt and funds on hand, with permanent financing undertaken as part of an overall long-term program at a later date.

Texas Eastern alleges the proposed facilities would enable Texas Eastern to attach long-term gas supplies to help meet its commitments to its customers, and that further, the pipeline is designed and positioned to enable Texas Eastern to acquire additional reserves in the Main Pass and Viosca Knoll areas. Texas Eastern anticipates adding available reserves by means of the proposed pipeline of up to 209 Bcf. Texas Eastern further alleges additional economic benefits would accrue to Texas Eastern customers inasmuch as full payment for the pipeline would only be made upon the dedication of additional reserves.

Comment date: August 10, 1987, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, of if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's procedural rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 175.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for

[1] Consolidated states that it is performing a storage service for East Tennessee under § 157.213 of the Commission's regulations until receipt of Commission approval in Docket No. CP87-371-000.

authorization pursuant to Section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-15088 Filed 7-1-87; 8:45 am]

BILLING CODE 6717-01-M

[Project Nos. 9733-001, et al.]

Surrender of Preliminary Permits; Mack Page Whittaker, et al.

June 26, 1987.

Take notice that the following preliminary permits have been surrendered effective as described in Standard Paragraph I at the end of this notice.

1. Mack Page Whittaker

[Project No. 9733-001]

Take notice that Mack Page Whittaker, Permittee for the proposed Lost Creek Hydro Project No. 9733, has requested that its preliminary permit be terminated. The preliminary permit was issued on June 11, 1986, and would have expired on May 31, 1989. The project would have been located on Lost Creek in Garfield County, Utah.

The Permittee filed the request on May 20, 1987.

2. Robert Polish

[Project No. 8658-002]

Take notice that Robert Polish, permittee for the proposed Rock Creek Project, has requested that his preliminary permit be terminated. The preliminary permit was issued on September 4, 1985, and would have expired on August 31, 1988. The project would have been located on Rock Creek near the town of Deerlodge, in Powell County, Montana.

The permittee filed the request on May 22, 1987.

3. City of Tacoma, Department of Public Utilities and Public Utility District No. 1 of Jefferson County, Washington

[Project No. 9377-002]

Take notice that the City of Tacoma, Department of Public Utilities and Public Utility District No. 1 of Jefferson County, Washington, permittees for the Big Quilcene Project No. 9377, have requested that their preliminary permit be terminated. The preliminary permit was issued on March 12, 1986, and would have expired on February 28, 1989. The project would have been located on the Big Quilcene River in Jefferson County, Washington, partially within the Olympic National Forest.

The permittees filed the request on April 27, 1987.

Standard Paragraph

I. The preliminary permit shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007 in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-15086 Filed 7-1-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. QF86-185-001, et al.]

Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, etc.; Malacha Power Project, Inc., et al.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

June 25, 1987.

Take notice that the following filings have been made with the Commission.

1. Malacha Power Project, Inc.

[Docket No. QF86-185-001]

On June 10, 1987, Malacha Power Project, Inc. (Applicant), c/o Mr. Thomas J. Vestal, P.O. Box 250, Fall River Mills, California 96028, submitted for filing an application for recertification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 30 MW hydroelectric facility (FERC P. 8296) will be located on the Pit River in Lassen County, California.

Recertification is requested due to a change in ownership and the electric power production capacity of the facility. Under the instant application, the ownership of the facility will be transferred from Malacha Power Project, Inc. to General Electric Credit Corp. and/or other financial institutions. The electric power production of the facility will increase from 29.9 MW to 30.0 MW.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

2. Ladysmith Cogeneration Limited Partnership

[Docket No. QF87-454-003]

On June 16, 1987, Ladysmith Cogeneration Limited Partnership (Applicant), c/o NORENCO Corporation, 45 South Seventh Street, Suite 3140, Minneapolis, Minnesota 55402, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Ladysmith, Wisconsin, adjacent to Pope & Talbot Wis., Inc.'s absorbent paper products plant. The facility will consist of a solid fuel (wood waste and sludge) steam generator, a controlled extraction/condensing steam turbine generator, and a dual fuel (natural gas and fuel oil) backup steam generator. The steam recovered from the facility will be sold to Pope & Talbot Wis., Inc. for use in the manufacturing of absorbent paper. The net electric power production capacity of the facility will be 4.7 MW. The primary energy source will be wood waste in the form of bark, sawdust, scraps and chips. Natural gas and fuel oil will be used for start-up purposes only. The installation of the facility commenced in September 1986. NORENCO Corporation, a wholly-owned subsidiary of Northern State Power Company owns 50 percent of the equity interest in the facility.

3. Tondu Energy Systems Filer City Station Limited Partnership

[Docket No. QF87-481-000]

On June 12, 1987, Tondu Energy Systems Filer City Station Limited Partnership (Applicant), of One Allen Center, Suite 3445, 500 Dallas Street, Houston, Texas 77002, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Filer City, Michigan. The facility will consist of a coal-fired fluidized bed steam generator and an extraction/condensing steam turbine generator. Steam recovered from the facility will be used by Packaging Corporation of America for their

process. The electric power production capacity will be approximately 50 megawatts. The primary energy source will be bituminous coal and woodwaste. Construction of the facility will begin in the spring of 1988.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-15087 Filed 7-1-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI87-713-000]

Application; Hondo Oil and Gas Co.

June 26, 1987.

Take notice that on June 19, 1987, Hondo Oil and Gas Company (Hondo), P.O. Box 2208, Roswell, New Mexico 88202, filed in this proceeding an application pursuant to sections 4 and 7 of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations, requesting blanket limited-term abandonment and pregranted abandonment authorization.

Hondo states that the authority requested is consistent with the Commission's regulations and is also consistent with recent decisions of the Commission approving blanket limited-term abandonment authority to natural gas producers. Hondo further states that Hondo is faced with excess deliverability of gas subject to NGA jurisdiction due to decreased takes by pipeline purchasers. Hondo states that the authorization requested will enable Hondo to make spot and short-term sales. Specifically, Hondo requests that the Commission authorize Hondo to abandon sales for resale of gas subject to the Commission's NGA jurisdiction to the extent such gas is released from contract by interstate pipelines or purchasers for resale to third parties. Hondo states that its small producer certificate, for which it has recently filed, would provide certificate authorization for its sale of released gas. Hondo also requests pregranted abandonment authority. The authorization sought is requested to be effective from the date of Commission approval through March 31, 1988, or in the alternative for a term of one year from the date of Commission approval.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 13, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-15091 Filed 7-1-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-75-000]

Proposed Changes In Ferc Gas Tariff; Lawrenceburg Gas Transmission Corp.

June 26, 1987.

Take notice that Lawrenceburg Gas Transmission Corporation (Lawrenceburg) on June 24, 1987, tendered for filing proposed changes in its FERC Gas Tariff, First Revised Volume No. 1, in order to effectuate an emergency general increase in its jurisdictional wholesale natural gas rates proposed to become effective July 24, 1987.

The proposed changes would increase revenues from jurisdictional sales and service by $187,766 based on the twelve months ended March 31, 1987, as adjusted.

The increase in tariff rates is required in order to offset a significant revenue deficiency that Lawrenceburg is experiencing because of increased costs and reduced throughput that has occurred since its last filing in 1982.

Copies of this filing were served upon Lawrenceburg's two jurisdictional wholesale customers and to the interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regualtory Commisson, 825 North Capitol Street NE., Washington, DC 29426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before July 6, 1987. 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. 87-15093 Filed 7-1-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP87-13-002, 003 and RP87-69-000, 001]

Proposed Changes in FERC Gas Tariff; South Georgia Natural Gas Co.

June 26, 1987.

Take notice that on June 18, 1987, South Georgia Natural Gas Company (South Georgia) tendered for filing certain revised tariff sheets to its FERC Gas Tariff, First Revised Volume Nos. 1 and 2, with proposed effective dates of May 1, 1987 and July 1, 1987. South Georgia states that the proposed tariff sheets are being filed in accordance with a Stipulation and Agreement filed in these proceedings on June 11, 1987, with the Administrative Law Judge. If certified to the Commission, the Stipulation requires South Georgia to implement the settlement rates on an interim basis pending Commission action on the merits of the settlement. South Georgia has further stated that if the Stipulation is not certified to the Commision, it will withdraw its filing.

On June 23, 1987, South Georgia resubmitted Second Revised Sheet No. 182, Third Revised Sheet No. 182, Second Revised Sheet No. 156 and Third Revised Sheet No. 156 to its First Revised volume No. 2. South Georgia states that these sheets were inadvertently transposed in the June 18, 1987 filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington,

DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before July 6, 1987. 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. 87-15094 Filed 7-1-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI87-710-000]

Application; Sun Exploration and Production Co.

June 26, 1987.

Take notice that on June 17, 1987, Sun Exploration and Production Company ("Sun") filed an application for limited-term blanket authorization to sell on the open market natural gas produced from Sun's interest in High Island A-309 B-4 well, (H.I. A-309), Offshore Texas, High Island A-571, 572, 573, 574 (H.I. A-571 et al), Offshore Texas and any other blocks that have been overlooked. Sun also requests an order granting pregranted abandonment of any sales made pursuant to the authority above. Sun additionally requests waiver of any filing and reporting requirements which may be inconsistent with the authority sought under the above application.

Sun specifically requests authority permitting sales for resale in interstae commerce of all natural gas to be produced from its interest in H.I. A-309 B-4 well, H.I. A-571 et al and any other uncommitted gas for a limited-term of one year, without geographic limitations. Sun states that all the gas in question qualifies for Section 102 (d) pricing under the Natural Gas Policy Act of 1978, but would be sold for resale in the interstate spot-market at competitive, market-sensitive prices, not to exceed the applicable maximum lawful price. Waiver of filing and reporting requirements inconsistent with this limited-term authority and pregranted abandonment is sought in order to make sales possible under authority. Sun claims the application is consistent with prior precedents, with the Commission's goals as enunciated in Order No. 436 *et al.*, and is in the public interest.

Any person desiring to be heard or to make protest with reference to said application should on or before July 13, 1987, file with the Federal Energy Regulation Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211-385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding must file a motion to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless Sun is otherwise advised, it will be unnecessary for Sun appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary

[FR Doc. 87-15092 Filed 7-1-87; 8:15 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Cases Filed; Week of May 22 Through May 29, 1987

During the week of May 22 through May 29, 1987, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals. Department of energy, Washington, DC 20585.

George B. Brenznay,

Director, Office of Hearings and Appeals.

June 24, 1987.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of May 22 through May 29, 1987]

Date	Name and location of applicant	Case No.	Type of submission
May 26, 1987	Doyle Brothers, Inc., Pasco, WA	KEE-0139	Exception to the reporting requirements. If Granted: Doyle Brothers, Inc. Would be relieved of any requirement to file monthly reports with the EIA regarding the firm's sales of fuel oil and kerosene.
May 26, 1987	Terra Technology Corporation, Redmond, WA	KFA-0098	Appeal of an information request denial. If Granted: The April 22, 1987 Freedom of Information Request Denial issued to Terra Technology Corporation would be rescinded and the firm would receive access to information regarding the evaluation of a proposal which it made to Reynolds Electrical and Engineering Company, Inc.
May 28, 1987	Arkansas, Little Rock, AR	KEG-0010	Petition for special redress. If Granted: The Office of Hearings and Appeals would review the expenditure of Stripper-Well funds proposed by the State of Arkansas and which was disapproved by the DOE Assistant Secretary for Conservation and Renewable Energy.

REFUND APPLICATIONS RECEIVED

[Week of May 22, to May 29, 1987]

Date	Name and location of applicant	Case No.
5/28/87	National Oil & Supply Co., Inc.	KEE-0122
5/22/87	Amoco/Washington	RO251-368
5/22/87 through 5/29/87.	Getty Oil Refund Applications.	FR265-1426 through RF265-1528

REFUND APPLICATIONS RECEIVED—Continued

[Week of May 22, to May 29, 1987]

Date	Name and location of applicant	Case No.
5/22/87 through 5/29/87.	Cranston Oil Refund Applications.	RF276-227P through RF276-255
5/28/87	Paul A. Martin	RF277-37
5/29/87	City of Harrisburg	RF277-38

REFUND APPLICATIONS RECEIVED—Continued

[Week of May 22, to May 29, 1987]

Date	Name and location of applicant	Case No.
5/29/87	Nathan Parner	RF225-10818
5/29/87	Alcan Rolled Products Co.	RF272-472
4/13/87	Kyle Brothers Mobil	RF225-19819

REFUND APPLICATIONS RECEIVED—Continued

[Week of May 22, to May 29, 1987]

Date	Name and location of applicant	Case No.
5/28/87	Frank's Butane, Inc	RF225-10820
5/22/87	Massachusetts Bay Trans. Auth.	RF40-3699
5/22/87	Kansas City Area Trans. Auth.	RF272-460
5/22/87	City and County of Honolulu.	RF272-461
5/22/87	Curt's Oil Co., Inc	RF253-13
5/26/87	Donald R. Devine	RF272-463
5/26/87	Department of the Navy	RF272-464
5/26/87	D.L. Feller Trucking, Inc	RF272-465
5/26/87	City of Lebanon Gas Dept.	RF277-32
5/26/87	Bechtel Power Corp	RF277-33
5/26/87	U.S. Plywood Champion Paper.	RF277-34
5/27/87	Caribou Four Corners	RF21-12626
5/27/87	Caribou Four Corners	RF132-2
5/27/87	Red Rose Transit Authority.	RF272-466
5/27/87	Hong Kong Islands Shipping Co.	RF273-467
5/27/87	Armstrong Cork Co	RF277-35
5/27/87	M.F.A. Coop Assn. No. 280.	RF293-7
5/27/87	Barge Transport Co., Inc.	RF225-10817
5/27/87	BTU Energy Corp	RF220-489
5/26/87	Barge Transport Co., Inc.	RF40-3700
5/28/87	Sonoco Products Co	RFR272-468
5/28/87	Dicey Mills, Inc	RF272-469
5/28/87	Celotex Corp	RF277-36
5/29/87	Mount Hope Finishing Co.	RF272-470
5/29/87	Kimberley-Clark Integ. Serv.	RF272-471
5/29/87	Steam Associates, Inc	RF272-473
5/28/87	Harry L. Grant	RF225-10821
5/28/87	Vincent Ganduglia Trucking.	RF115-7
5/26/87	Lukens Steel Co	RF272-462

[FR Doc. 87-15076 Filed 7-1-87; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3226-7]

Environmental Impact Statements; Availability of EPA Comments

Availability of EPA comments prepared June 15, 1987 through June 19, 1987 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act (CAA) and section 102(2)(c) of the National Environmental Policy Act (NEPA) as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5076/73. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in the **Federal Register** dated April 24, 1987 (52 FR 13749).

Draft EISs

ERP No. D-BLM-G70004-NM, Rating LO, Taos Resource Area, Resource Mgmt. Plan, NM. **SUMMARY:** EPA has no objections to the proposed action as discussed in the draft EIS.

Final EISs

ERP No. F1-BLM-K70000-AK, Lower Gila South Resource Area, Wilderness Study Areas, Wilderness Designation, AZ. **SUMMARY:** EPA expressed concern that the final EIS did not discuss how air and water quality would be preserved in areas not recommended for inclusion in the National Wilderness Preservation System. The final EIS also did not evaluate pesticides use or conflicts between grazing and wildlife habitat. EPA recommended that BLM address these concerns in its Record of Decision.

ERP No. F-CGD-E50283-MS, Gulf Coast Strategic Homeporting, Pascagoula Bay/Mississippi Sound Bridge, Construction, Permit Approval, MS. (Adoption of USN final EIS, filed 1-16-87) **SUMMARY:** EPA has reviewd the Coast Guard's adoption of the Department of the Navy final EIS. While there was insufficient information in the EIS to evaluate potential environmental impacts attendant to this bridge permit action, subsequent information provided to EPA has answered most environmental concerns.

ERP No. F-COE-H36020-KS, Great Bend, Kansas Local Flood Protection Plan, Construction, Arkansas River, Walnut and Little Walnut Creeks, KS. **SUMMARY:** EPA believes that the comments made on the draft EIS were responded to sufficiently.

ERP No. F-HUD-F85070-IL, Near Loop Residential Development, Areawide Funding, IL. **SUMMARY:** EPA's review resulted in concerns related to air quality and radioactive materials. EPA requested that HUD ensure that traffic increases are consistent with the State Implementation Plan for the National Ambient Air Quality Standards. EPA also requested that the South Loop area be surveyed for radioactive material.

ERP No. F-SFW-L64033-AK, Kanuti Nat'l Wildlife Refuge, Comprehensive Conservation Mgmt. Plan, Designation, Arctic Circle, AK. **SUMMARY:** EPA made no formal comments. EPA reviewed the final EIS and found it to be satisfactory.

Regulation

ERP No. R-BLM-A01091-00, 43 CFR Parts 3420 and 3460, Competitive Leasing and Environment, Amendments to the Federal Coal Mgmt. Program (AA-650-4121-2410) (52 FR 18404). **SUMMARY:** EPA asked BLM to clarify that the alluvial valley floor criterion would be applied before permit approval, and that municipal watersheds would be identified for particular protection during the land use planning process.

Dated: June 29, 1987.

Barbara Bassuener,

Acting Deputy Director, Office of Federal Activities.

[FR Doc. 87-15073 Filed 7-1-87; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3226-6]

Environmental Impact Statements; Availability

Agency

Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075.

Availability of Environmental Impact Statements Filed June 22, 1987 Through June 26, 1987 Pursuant to 40 CFR 1506.9.

EIS No. 870218, Final, SCS, NB, Middle Big Nemaha Watershed Protection and Flood Prevention Plan, Due: August 3, 1987, Contact: Ron Hendricks (402) 471-5300.

EIS No. 870219, Draft, COE, VI, Limetree Bay Third Port Project Expansion, Port Facilities and Deepwater Port Improvements, St.Croix, Due: August 17, 1987, Contact: Paul Schmidt (904) 791-1691.

EIS No. 870220, Final, EPA, TX, Calvert Lignite Mine/TNP One Power Plant Project, Construction and Operation, Permit, Robertson County, Due: August 3, 1987, Contact: Norm Thomas (214) 655-2260.

EIS No. 870221, FSuppl, COE, MI, Clinton River Federal Navigation Channel, Confined Disposal Facility Construction for Maintenance Dredging, Updated Information, Macomb County, Due: August 3, 1987, Contact: Judy Limburg (313) 226-6752.

EIS No. 870222, Final, COE, OR, Malheur Lake Flood Damage Reduction Plan, Harney County, Due: August 3, 1987, Contact: Witt Anderson (509) 522-6633.

EIS No. 870223, DSuppl, NRC, IL, Rare Earths Permanent Waste Disposal Facility Decommission, Alternative Site Analysis, License, Dupage County, Due: August 17, 1987, Contact: Ginny Tharpe (202) 427-4510.

EIS No. 870224, Final, BLM, WY, UT, Hickey Mountain-Table Mountain Oil and Gas Field Development, Lease, Due: August 3, 1987, Contact: Wally Mierzejewski (307) 382-5350.

EIS No. 870225, Final, IBR, ut, Unita Basin Unit, Construction and Operation, Colorado River Water Quality Improvement Program, Duchesne and Uintah Counties, Due:

August 3, 1987, Contact: Harold Sersland (801) 524-5580.

EIS No. 870226, Final, COE, FL, Port Sutton Channel Navigation Improvements, Hillsborough Bay, Hillsborough County, Due: August 3, 1987, Contact: Richard Makinen (202) 272-0166.

EIS No. 870227, DSuppl, DOE, OR, CA, WA, Third 500kV Intertie Transmission Path, Tesla Substation, California to Southern Oregon, Los Banos Substation and Pacific Northwest Facility Reinforcements, New Routing Options, Due: August 17, 1987, Contact: Nancy Weintraub (916) 978-4460.

EIS No. 870228, Final, BLM, CA, NV, Eagle Lake-Surprise (formerly Cedarville) Resource Areas, Wilderness Resource Areas Designation, Lassen County, CA; and Washoe and Humboldt Counties, NV, Due: August 3, 1987, Contact: Rex Clarey (916) 257-5381.

EIS No. 870229, Draft, UAF, MT, Malmstrom 341st Strategic Missile Wing, Air Force Base, Intercontinental Ballistic Missiles (ICBMs) Program, Development, Due: August 1, 1987, Contact: Kenneth Halleran (202) 694-4269.

EIS No. 870230. DSuppl, COE, IA, Red Rock Dam and Lake Red Rock Operation and Maintenance, Lake Red Rock Conservation Pool Evaluation, Des Moines River, Marion County, Due: August 17, 1987, Contact: Robert Clevenstine (309) 788-6361.

EIS No. 870231, Final, FERC, WA, Snohomish River Basin, Seven Hydroelectric Projects, Construction, Operation and Maintenance, Licenses, King and Snohomish Counties, Due: August 3, 1987, Contact: Frank Karwoski (202) 376-1761.

Amended Notice

EIS No. 870195, Draft, FAA, TN, Nashville Metropolitan Airport Runway Improvements, Site Grading and Construction, Davidson County, Due: August 10, 1987, Published FR 06-12-87—Review period reestablished.

Dated: June 29, 1987.

Barbara Bassuener,

Acting Deputy Director, Office of Federal Activities.

[FR Doc. 87-15074 Filed 7-1-87; 8:45 am]

BILLING CODE 6560-50-M

[OPP-50669; FRL-3227-3]

Pesticides; Issuance of Experimental Use Permits; American Cyanamid Co., et al.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted experimental use permits to the following applicants. These permits are in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person or by telephone: Contact the product manager at the following address at the office location or telephone number cited in each experimental use permit.

SUPPLEMENTARY INFORMATION: EPA has issued the following experimental use permits.

241-EUP-109. Extension. American Cyanamid Company, Agricultural Research Division, P.O. Box 400, Princeton, NJ 08540. This experimental use permit allows the use of 1,562.5 pounds of the herbicides *m*-Toluic acid, 6-(4-isopropyl-4-methyl-5-oxo-2-imidazolin-2-yl)-,methyl ester and *p*-Toluic acid, 2-(4-isopropyl-4-methyl-5-oxo-2-imidazolin-2-yl),-methyl ester on barley and wheat to evaluate the control of various weeds. A total of 4,000 acres are involved; the program is authorized only in the States of California, Colorado, Idaho, Minnesota, Montana, North Dakota, Oregon, Utah, and Washington. The experimental use permit is effective from April 3, 1987 to April 3, 1988. Temporary tolerances for residues of the active ingredients in or on barley and wheat have been established. (Robert Taylor, PM 25, Rm. 245, CM#2, (703-557-1800)).

9018-EUP-1. Renewal. Brea Agricultural Service, Inc., Drawer 1, Stockton, CA 95201. This experimental use permit allows the use of 7,600 pounds of the plant growth regulator hydroxy-propanoic acid on apples, beans, broccoli, cabbage, cauliflower, cherries, citrus, corn, grapes, peppers, prunes, strawberries, and tomatoes to evaluate its effect as a plant growth regulator. A total of 1,900 acres are involved; the program is authorized only in the States of Arizona, California, Florida, Oregon, and Washington. The experimental use permit was previously effective from April 3, 1986 to April 3, 1987; the permit is now effective from April 8, 1987 to April 8, 1988. A temporary exemption from the requirement of a tolerance for residues of the active ingredient in or on the above-named crops has been established. (Robert Taylor, PM 25, Rm. 245, CM#2, (703-557-1800)).

100-EUP-81. Ciba-Geigy Corporation, P.O. Box 18300, Greensboro, NC 27419. This experimental use permit allows the use of 2,726 pounds of the fungicide metalaxyl on grapes to evaluate the control of various diseases. A total of 470 acres are involved; the program is authorized only in the States of Arkansas, California, Georgia, Michigan, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, and Washington. The experimental use permit is effective from June 17, 1986 to September 30, 1987. A temporary tolerance for residues of the active ingredient in or on grapes has been established. (Lois Rossi, PM 21, Rm. 227, CM#2, (703-557-1900)).

1471-EUP-93. Issuance. Elanco Products Company, 740 South Alabama Street, Indianapolis, IN 46285. This experimental use permit allows the use of 2,351 pounds of the growth regulator alpha-(1-methylethyl)-alpha-[4-(trifluoromethoxy)phenyl]-5-pyrimidinemethanol on ornamental trees to evaluate the control of growth. A total of 895 acres are involved; the program is authorized in the District of Columbia and all 50 States except Alaska and Hawaii. The experimental use permit is effective from April 27, 1987 to April 27, 1990. (Robert Taylor, PM 25, Rm. 245, CM#2, (703-557-1800)).

279-EUP-114. Issuance. FMC Corporation, 2000 Market Street, Philadelphia, PA 19103. This experimental use permit allows the use of 2,700 pounds of the herbicide 2-(2-chlorophenyl) methyl-4,4-dimethyl-3-isoxazolidinone on soybeans to evaluate incidents of off-target movement. A total of 2,700 acres are involved; the program is authorized only in the States of Alabama, Arkansas, Georgia, Kentucky, Louisiana, Maryland, Mississippi, Missouri, North Carolina, Oklahoma, Tennessee, Texas, and Virginia. The experimental use permit is effective from April 9, 1987 to April 9, 1988. (Robert Taylor, PM 25, Rm. 245, CM#2, (703-557-1800)).

45639-EUP-27. Issuance. Nor-Am Chemical Company, P.O. Box 7495, 3509 Silverside Road, Wilmington DE 19803. This experimental use permit allows the use of 412.5 pounds of the insecticide amitraz on cotton to evaluate the control of mites. A total of 550 acres are

involved; the program is authorized only in the States of Arizona, Arkansas, California, Louisiana, Mississippi, and Texas. The experimental use permit is effective from April 24, 1987 to April 24, 1988. A temporary tolerance for residues of the active ingredient in or on cottonseed has been established. (Dennis Edwards, PM 12, Rm. 202, CM#2, (703-557-2386)).

264-EUP-74. Issuance. Union Carbide Agricultural Products Co., Inc., T.W. Alexander Drive, P.O. Box 12014, Research Triangle Park, NC 27709. This experimental use permit allows the use of 1,480 pounds of the plant growth regulator ethephon on field and sweet corn to evaluate the reduction of lodging. A total of 5,920 acres are involved; the program is authorized only in the States of Colorado, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Nebraska, North Carolina, Ohio, Oregon, South Dakota, Texas, Virginia, Washington, and Wisconsin. The experimental use permit is effective from May 4, 1987 to May 4, 1989. A temporary tolerance for residues of the active ingredient in or on field and sweet corn has been established. (Robert Taylor, PM 25, Rm. 245, CM#2, (703-557-1800))

612-EUP-3. Issuance. Unocal Chemicals Division, Unocal Corporation, 1201 West 5th St., Los Angeles, CA 90017. This experimental use permit allows the use of 95,275 pounds of the herbicide monoures adduct of sulfuric acid on corn, lentils, peanuts, peas, and soybeans to evaluate the control of various weeds. A total of 925 acres are involved; the program is authorized only in the States of Alabama, Georgia, Illinois, Indiana, Iowa, Missouri, Nebraska, Oregon, and Washington. The experimental use permit is effective from April 30, 1987 to April 30, 1988. A permanent exemption from the requirement of a tolerance for residues of the active ingredient has been established (40 CFR 180.1084). (Robert Taylor, PM 25, Rm. 245, CM#2, (703-557-1800)).

Persons wishing to review these experimental use permits are referred to the designated product managers. Inquiries concerning these permits should be directed to the persons cited above. It is suggested that interested persons call before visiting the EPA offices, so that the appropriate file may be made available for inspection purposes from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

Authority: 7 U.S.C. 136c.

Dated: June 24, 1987.

Edwin F. Tinsworth,

Dirctor, Registration Division, Office of Pesticide Programs.

[FR Doc. 87-15082 Filed 7-1-87; 8:45 am]

BILLING CODE 6560-50-M

[OPP-50671; FRL-3227-4]

Pesticides; Issuance of Experimental Use Permits; Chevron Chemical Co., et al.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted experimental use permits to the following appliants. These permits are in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person or by telephone: Contact the product manager at the following address at the office location or telephone number cited in each experimental use permit.

SUPPLEMENTARY INFORMATION: EPA has issued the following experimental use permits.

239-EUP-104 Extension. Chevron Chemical Company, Agricultural Chemicals Division, 940 Hensley St., Richmond, CA 94804-0036. This experimental use permit allows the use of 1,248.6 pounds of the insecticide alpha-cyano-3-phenoxybenzyl 2,2,3,3-tetramethylcyclopropanecarboxylate on apples and pears to evaluate the control of various insects. A total of 710 acres are involved; the program is authorized only in the States of California, Colorado, Illinois, Massachusetts, Michigan, Minnesota, Missouri, New Jersey, New York, North Carolina, Ohio, Oregon, Pennsylvania, South Carolina, Virginia, Washington, West Virginia, and Wisconsin. The experimental use permit is effective from May 1, 1987 to June 6, 1988. This permit is issued with the following limitations: (1) Treated apple and pear orchards cannot be grazed or fed to livestock; (2) use is limited to commercial orchards; and (3) treated crops may be sold only as fresh market crops and may not be further processed into juice or other products. (George LaRocca, PM 15, Rm. 204 CM#2, (703-557-2400)).

239-EUP-111. Extension. Chevron Chemical Company, Agricultural Chemicals Division, 940 Hensley St., Richmond, CA 94804-0036. This experimental use permit allows the use of 432 pounds of the insecticide alpha-cyano-3-phenoxybenzyl 2,2,3,3,-tetramethylcyclopropanecarboxylate on grapes to evaluate the control of various insects. A total of 540 acres are involved; the program is authorized only in the States of Arizona, California, and New York. The experimental use permit is effective from May 10, 1987 to May 10, 1988. A temporary tolerance for residues of the active ingredient in or on grapes has been established. (George LaRocca, PM 15, Rm. 204 CM#2, (703-557-2400)).

464-EUP-85. Amendment. Dow Chemical, Company, P.O. Box 1706, Midland, MI 48640. In the **Federal Register** of June 4, 1986 (51 FR 20342), EPA issued and EUP pertaining to the issuance of 464-EUP-85 to Dow Chemical Company. At the request of the company, the permit has been amended to add additional pounds of the active ingredient and acreage. The experimental use permit now allows the use of 650 pounds of the herbicide 2-(3,5-dichlorophenyl)-2-(2,2,2-trichloroethyl)oxirane on grain sorghum to evaluate the control of weeds. A total of 1,300 acres are involved; the program is authorized only in the States of Alabama, Arkansas, Kansas, Missouri, Nebraska, Oklahoma, and Texas. The experimental use permit is effective from April 9, 1987 to April 9, 1988. A temporary tolerance for residues of the active ingredient in or on grain sorghum has been established. (Robert Taylor, PM 25, Rm. 245, CM#2, (703-577-1800)).

10182-EUP-42. Issuance. ICI Americas, Inc., Agricultural Chemicals Division, Concord Pike & New Murphy Road, Wilmington, DE 19897. This experimental use permit allows the use of 300 pounds of the insecticide 2,3,5,6-tetrafluoro-4-methylbenzyl (1*RS*-cis-3-*z*-2-chloro-3,3,3-trifluoroprop-1-enyl)-2,2-dimethylcyclopro-panecarboxylate on field and sweet corn and popcorn to evaluate the control of various insects. A total of 2,000 acres are involved; the program is authorized in the State of Alabama, Arkansas, California, Colorado, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, West Virginia, Wisconsin, and Wyoming. The experimental use permit

is effective from may 11, 1987 to May 11, 1988. This permit is issued with the following limitations: (1) All food or feed derived from the experimental program will be destroyed or used for research purposes only; (2) no part of the treated crop will be allowed to enter human or animal diets; (3) livestock will not be allowed to graze in treated areas; and (4) the product will not be used where impact on threatened species is likely. (George LaRocca, PM 15, Rm. 204, CM#2, (703-557-2400)).

45639-EUP-30. Renewal. Nor-Am Chemical Company, 3509 Silverside Rd., P.O. Box 7495, Wilmington, DE 19803. This experimental use permit allows the use of 55.1 pounds of the acaricide amitraz on a total of 500 beef and dairy cattle to evaluate the control of ticks. The program is authorized only in the Territory of Puerto Rico. The experimental use permit was previously effective from May 30, 1986 to May 30, 1987; the permit is now effective from June 1, 1987 to June 1, 1988. A permanent tolerance for residues of the active ingredient in or on beef and dairy cattle has been established (40 CFR 180.287). (Dennis Edwards, PM 12, Rm. 202 CM#2, (703-557-2386)).

748-EUP-21. Issuance. PPG industries, Inc., One PPG Place, Pittsburgh, PA 15272. This experimental use permit allows the use of 560 pounds of the herbicide 1-(carboethoxy)ethyl 5-[2-chloro-4-(trifluoromethyl)phenoxy]-2-nitrobenzoate on cotton to evaluate the control of various weeds. A total of 5,600 acres are involved; the program is authorized only in the States of Alabama, Arkansas, Georgia, Louisiana, Mississippi, Missouri, North Carolina, South Carolina, Tennessee, and Texas. The experimental use permit is effective from June 3, 1987 to June 3, 1989. (Richard Mountfort, PM 23, 237, CM#2, (703-557-1830)).

7182-EUP-22. Renewal. 3M Company, Agricultrual Products, 3M Center, Building 223-IN-05, St. Paul MN 55144. This experimental use permit allows the use of 900 pounds of the plant growth regulator diethanolamine salt of mefluidide on pasture grasses to evaluate its ability to suppress seedhead formation and improve pasture quality. A total of 3,600 acres are involved; the program is authorized only in the States of Arkansas, Iowa, Kansas, Missouri, and Nebraska. The experimental use permit was prevously effective from February 21, 1985 to August 31, 1986; the permit is now effective from March 1, 1987 to March 1, 1988. Temporary tolerances for residues of the active ingredient in or on pasture grass has been established. (Robert Taylor, PM 25, Rm. CM#2, (703-557-1800)).

Persons wishing to review these experimental use permits are referred to the designated product managers. Inquiries concerning these permits should be directed to the persons cited above. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection purposes from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

Authority: 7 U.S.C. 136c.

Dated: June 24, 1987.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 87-15083 Filed 7-1-87; 8:45 am]

BILLING CODE 6560-50-M

[PF-485; FRL-3226-9]

Pesticide Petitions for Cyromazine

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the filing of petitions by the Ciba-Geigy Corp. to amend tolerances for the insecticide cyromazine to include chicken breeder hens.

ADDRESS: By mail, submit written comments to: Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticides Programs, Environmental Protection Agency, 410 M St., SW., Washington, DC 20460.

In person, bring comments to: Rm. 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by making any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, exluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Arturo Castillo, Product Manager (PM) 17, Registration Division, Environmental Protection Agency, Office of Pesticide Programs, 410 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 207, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202. (703) 557-2690.

SUPPLEMENTARY INFORMATION: EPA has received a pesticide petition (PP) and a feed additive petition (FAP) as follows proposing amended tolerances for cyromazine.

1. *FAP 7H5339* Ciba-Geigy Corp., Agricultural Division, P.O. Box 18300, Greensboro, NC 27419, proposes amending 21 CFR 561.99 to permit use of the insecticide cyromazine (N-cyclopropyl- 1,3,5-triazine-2,4,6-triamine) as a feed additive in feed for chicken breeder hens at the rate of not more than 0.01 pound of cyromazine per ton of poultry feed. Section 561.99 currently allows cyromazine in the feed of chicken layer hens only.

2. *PP 7F3544* Ciba-Geigy Corp., proposes amending 40 CFR 180.414 to permit a tolerance of 0.05 part per million of cyromazine in or on chicken breeder hens. Section 180.414 currently allows residues of cyromazine in or on chicken layer hens only.

Authority: 21 U.S.C. 346a.

Dated: June 26, 1987.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 87-15078 Filed 7-1-87; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-211022; FRL 3216-9]

Polychlorinated Biphenyls; Denials of Citizen's Petition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of denial of petition.

SUMMARY: Dr. David G. Walker of Walker Chemists has submitted a petition asking EPA to amend its regulations under 40 CFR 761.3 to exclude mono-, di-, and trichlorobiphenyls from the definition of polychlorinated biphenyls (PCBs). EPA is denying the petition because Congress directed EPA through section 6(e) of the Toxic Substances Control Act (TSCA) to eliminate all PCBs from the environment; EPA has already addressed the issue of excluding lower chlorinations of PCBs in response to another petition; the petitioner has failed to produce convincing evidence that there are no equally satisfactory substitutes for the uses planned in his petition; and the petitioner has not convinced the Agency that changing the

definition as requested would not present an unreasonable risk of injury to humans and the environment.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, E-543, 401 M St. SW., Washington, DC 20460, (202-554-1404).

SUPPLEMENTARY INFORMATION: PCBs are the only chemical singled out by name for regulation in the Toxic Substances Control Act. Section 6(e) generally prohibits the manufacture, use, processing, or distribution in commerce, with certain exceptions, of any PCB. EPA has authority to exclude the manufacture of PCBs from this prohibition if certain findings are made. To amend the PCB regulation EPA must find that there is a reasonable basis to conclude that the proposed activity involving a chemical will not present an unreasonable risk. Petitioners should provide data to support these findings in their request to amend the regulation. See the discussion in the **Federal Register** of November 13, 1985 (50 FR 46825).

I. Background of the Petition

A. Summary of the Petition

David G. Walker (the petitioner) of Walker Chemists submitted a petition to EPA on March 27, 1987, under section 21 to TSCA, asking that the definition of PCBs be amended under 40 CFR 761.3 to exclude mono-, di-, and trichlorobiphenyls. The petitioner requested this change so that Walker Chemists could manufacture, purify, and use monochlorobiphenyls. (MCB) containing small amounts fo dichloro- and trichlorobiphenyls. The petitioner stated that his product would not contain more than 50 parts per million (ppm) of tetrachloro- or higher chlorinated biphenyl compounds. The MCB would be used to make a new solvent, "Walker Solvent," for use in a new technology to separate carbon monoxide (CO), hydrogen sulfide (H_2S), and olefins from gases such as coal producer gas and nitrogen.

The petitioner claims that this product/technology would bring about energy independence for the United States, the clean buring of coal to make electricity, the efficient manufacture of ethylene and propylene, the production of oil from Western oil shales, and increased efficiency in pig iron production.

The petitioner also claims that low health and ecological risks make mono-, di-, and trichlorobiphenyls environmentally acceptable; that they are readily biodegradable by common bacteria in the environment; that they have a low order of toxicity to humans and other life forms; that they are not environmentally persistent; and that they would never have become regulated on their own use history and merits but were instead included by rulemaking with PCB compounds which do have the properties to merit regulation and ban.

B. Petitions Under TSCA Section 21

Section 21 of the Toxic Substances Control Act provides that any person may petition the Administrator of EPA to initiate a proceeding for the issuance, amendment, or repeal of rules under section 4 (rules requiring chemical testing), section 6 (rules imposing substantive controls on chemicals), or section 8 (information-gathering rules). Section 21(b)(3) requires that EPA grant or deny a citizen's petition within 90 days of the filing of the petition (15 U.S.C. 2620(b)(3)).

If the Administrator grants a section 21 petition, the Agency must promptly commence an appropriate proceeding. If the Administrator denies the petition, the reasons for denial must be published in the **Federal Register.**

IF EPA denies the petition, or fails to grant or deny the petition within 90 days of the filing date, the petitioner may commence a civil action in a Federal district court to compel the Agency to initiate the requested action. This suit must be filed within 60 days of the denial, or within 60 days of the expiration of the 90-day period if the Agency fails to grant or deny the petition within that period (15 U.S.C. 2620(b)(4)).

In the remainder of this document, Unit II discusses the history of the definition, Unit III discusses and responds to the low risk claims, Unit IV discusses and responds to the claimed benefits of the requested change, and Unit V summarizes the decision to deny the petition. Unit VI lists the material in the public docket.

II. History of the Definition

In enacting TSCA, Congress intended to eliminate all PCBs from the environment. The legislative history of the Toxic Substances Control Act shows that Congress fully intended to include all chlorinated biphenyls in its definition of polychlorinated biphenyls. Congress has not seen fit to change that definition over the years. EPA, consistent with this congressional intent, used the all-inclusive term "polychlorinated biphenyls" because of the Agency's concern with the risks inherent in all of the chlorinated biphenyls.

EPA recognizes that mono-, di-, and trichlorobiphenyls are less persistent and degrade more rapidly in some environments than do more highly chlorianted biphenyls. In its denial of the Dow Chemical Company's petition to change the definition of PCBs to exclude mono- and dichlorobiphenyls, published in the **Federal Register** of August 25, 1982 (47 FR 37259), EPA acknowleded the technical merits of Dow's claim about the relative risks of monochlorobiphenyls, but the Agency decided not to change the definiton to exlude monochlorobiphenyls because of the congressional intent to include all chlorinated biphenyls. However, the Agency addressed the request for relief in that petition in a subsequent rulemaking concerning PCBs produced as byproducts or impurities of various chemical processes. This change in definition is discussed in the final published in the **Federal Register** of July 10, 1984 (49 FR 28172). Under "PCB and PCBs," in 40 CFR 761.3, "inadvertently generated non-Aroclor PCBs" are defined "as the total PCBs calculated following division of the quantity of monochlorinated biphenyls by 50 and the dichlorianted biphenyls by 5," as referred to under the definition of "[e]xcluded manufacturing process" in the same section. While EPA discounted concentrations of mono- and dichlorobiphenyls where they are generated inadvertently as low level byproducts, because of toxicity concerns the Agency did not discount trichlorobiphenyls, nor did it exclude and chlorinited biphenyl from the general ban on the intentional manufacture of PCBs.

III. Claimed Low Risks and Response

EPA must consider all sources of PCBs and all environments where they will ultimately be found in judging the merits of the petition. The petitioner claims that mono-, di-, and trichlorobiphenyls are readily biodegradable and are not environmentally persistent. EPA has found that they sorb very strongly to soils and sediments and are quite immobile in those media. Also, they do not degrade rapidly under anaerobic conditions. Since terrestrial soil and sediments are generally under anaerobic conditions, when in those media, these PCB congeners will biodegrade very slowly and will be persistent. In addition, since these PCB congeners biodegrade slowly under aerobic conditions in oceans (the ultimate sink), they will tend to be persistent in this environmental compartment. The petitioner claims that ecological

magnification "is not an important risk when the substance is readily biodegradable." However, these PCB congeners will reside in sediments at the bottom of aquatic media under anaerobic conditions and in oceans under aerobic conditions, will biodegrade slowly, and will be persistent. Bottom-feeding fish, as well as fish in the oceans, will bioconcentrate the PCBs. Predators feed on these species and bioaccumulate the PCBs, and in this way PCBs are transported up the food chain. Ecological magnification will, therefore, be large, and man and the environment would be potentially at risk. These findings are discussed in "Environmental Transport and Transformation of Polychlorinated Biphenyls," listed as item (2) under Unit VI. Even if there were no possibility of small amounts of low concentrations of these PCB congeners reaching other environments, their persistence in terrestrial soil and sediment because of anaerobic conditions poses a risk to humans and the environment.

The petitioner states that mono-, di-, and trichlorobiphenyls have a low order of toxicity to humans and other life forms. The data presented by the petitioner supporting this conclusion are entirely acute toxicity information for mammals and ignore toxicity data for acquatic organisms. Toxicity data for these PCB congeners have been collected in "Environmental Risk and Hazard Assessments for Various Isomers of Polychlorinated Biphenyls (Monochlorobiphenyl through Hexachlorobiphenyl and Decachlorobiphenyl)," listed as item (3) under Unit VI. These data indicate that moni-, di-, and trichlorobiphenyls are highly toxic to aquatic organisms.

Further, there are data indicating cause for concern from chronic toxicity effects of lower chlorinated biphenyls. These chronic toxicity data show variations among different Aroclors when administered to different species of mammals. For example, Aroclor 1254 which contains only very small amounts of mono-, di-, and trichlorobiphenyls, is generally found to be more toxic to rabbits and mice than Aroclor 1242 which contains more of these congeners—over 46 percent mono-, di-, and trichlorobiphenyls. These findings are discussed in items (4) and (5) under Unit VI. However, Aroclor 1242 has been shown to cause moderate hepatotoxicity and reproductive effects in laboratory animals. These findings are discussed in items (5) and (6) under Unit VI. Aroclor 1248, which contains 2 percent dichlorobiphenyl and 18 percent trichlorobiphenyl, had no excessive mortality on Sprague-Dawley rats when they were given 100 parts per million (ppm) dietary levels for 65 weeks; however, rhesus monkeys fed diets containing 25, 5, and 2.5 ppm showed morbidity after 2 months and mortality after 18 or fewer months. These findings are discussed in items (7), (8), and (9) under Unit VI.

IV. Claimed Benefits and Response

The petitioner claims five benefits that would come from the granting of his petition. They all derive from the use of monochlorobiphenyl and a small percentage of dichlorobiphenyl, and a small amount of trichorobiphenyl. According to the petition, the Walker separation solvents are indispensable in the technology to make Boudouard carbon, a mobile motor fuel, from coal; in the technology to use higher sulfur coal to make electricity without high sulfur pollution; to manufacture ethylene and propylene in an efficient low-cost manner that would improve the United States petrochemical industry's world position in olefin manufacturing; to make oil and Boudouard carbon from Western oil shales and tar sands; and to cut the use of coke and increase the capacity of blast furnances in the production of pig iron.

EPA agrees that theoretically all of these outcomes of the use of mono-, di-, and trichlorobiphenyls are useful. However, all of the benefits the petition mentioned are relative to the results of other existing processes that make comparable products without the use of any PCBs. For example, as the petitioner stated, there are other methods of preventing sulfur pollution of the air in the production of electricity from coal. See items (10) and (11) under Unit VI. The petitioner claimed that his method/technology is considerably more effective and considerably less expensive. However, the petition did not contain any data which allow comparison of either the cost or technical feasibility of the proposed Walker technology. In fact, no experimental evidence was provided to show that Walker solvents are necessary or have any advantageous over other solvents which are not presently banned under TSCA. Insufficient experimental evidence was provided to prove that Walker solvents form advantages complexes with cuprous aluminum chloride catalysts as claimed in U.S. patents 3,651,159 adn 3,592,865. Since it is illegal to process or use more than small research quantities of PCBs, it appears that no tests have been conducted to demonstrate the claimed advantages of Walker solvents. Further, no synthetic or analytical data or methods were submitted to show that the desired Walker solvent compositions could be manufactured economically without producing significant amounts of prohibited higher PCBs. Without any comparative data, EPA cannot find that the petition offers unique, cost-effective solutions to the energy and industrial problems the petitioner claims.

Changing the definition would allow the manufacture and use of lower chlorinated biphenyls which EPA finds unacceptable on the basis of available data. Further, excluding mono-, di-, and trichlorobihenyls from regulation by definition would have not only the consequence of allowing the petitioner to use the Walker Solvent/technology, but would also open the door for all other uses of these biphenyls. In addition, no process involving these biphenyls, including the petitioner's, can guarantee no generation of yet higher chlorinations of biphenyls.

V. Decision

EPA has reviewed the petition and supporting information and has concluded that the definition of PCBs should not be amended for the following reasons:

1. The petitioner has failed to provide the Agency with sufficient evidence to show that mono-, di-, and trichlorobiphenyls should be excluded.

2. EPA believes that sufficient evidence existed at the time the regulations were promulgated to support including all PCBs within the definition, and that no new developments, discoveries, or data have been presented to the Agency to cause it to alter its position.

3. Mono-, di-, and trichlorobiphenyls present unreasonable risks to humans and the environment, and there are alternative products and technology to the petitioner's.

Accordingly, the petition is denied.

VI. Record

The public record for this petition includes:

(1) The petition.

(2) Leifer, Asa; Brink, Robert H.; Thom, Gary C.; and Partymiller, Kenneth G. "Environmental Transport and Transformation of Polychlorinated Biphenyls,". December 1983. EPA 560/5-83-025.

(3) USEPA, Environmental Effects Branch, Health and Environmental Review Division, Office of Toxic Substances. "Environmental Risk and Hazard Assessments for Various Isomers of Polychlorinated Biphenyls

(Monochlorobiphenyl through Hexachlorobiphenyl and Decachlorobiphenyl. April 1984.

4. Koller, L. D., and Zinkl, J. G. 1973. Pathology of polychlorinated biphenyls in rabbits. American Journal of Pathology. 70:363–377.

(5) Koller, L. D. 1977. Enhanced polychlorinated biphenyls lesions in Moloney Leukemia virus-infected mice. Clinical Toxicology. 11(1): 107–116.

(6) Bleavins, et al., 1980. Polychlorinated biphenyls (Aroclors 1016 and 1242): Effects on survival and reproduction in mink and ferrets. Archives of Environmental Contamination and Toxicology. 9(5): 627–635.

(7) Allen, J. R. and Abramson, L. J. 1979. Responses of rats exposed to polychlorinated biphenyls for fifty-two weeks. II. Compositional and enzymic changes in the liver. Archives of Environmental Contamination and Toxicology. 8:191–200.

(8) Allen, J. R., et al., 1974. Residual effects of short-term, low-level exposure of non-human primates to polychlorinated biphenyls. Toxicology of Applied Pharmacology. 30:440–451.

(9) Barsotti, D. A., et al. 1976. Reproductive dysfunction in rhesus monkeys exposed to low levels of polychlorinated biphenyls (Aroclor 1248). Food and Cosmetic Toxicology. 14: 99–103.

(10) Penner, S. S., et al. (members of the U.S. DOE Fossil Energy Research Working Group). "New Sources of Oil & Gas; Gases from Coal; Liquid Fuels from Coal, Shale Tar Sands, and Heavy Oil Sources." Pergamon Press, New York, First Ed. 1982. Available for review and copying in the Office of Toxic Substances Chemical Library, Rm. NE-B002, 401 M St., Washington, D.C.

(11) Dravo Corp. "Handbook of Gasifiers and Gas Treatment Systems." Report prepared for the U.S. Energy Research and Development Administration. February 1976. Available from the National Technical Information Service (703-487-4600) (DE-83004846).

(12) Letter to David G. Walker from Charles L. Elkins, dated February 20, 1987.

(13) Letter to EPA, Attention: Suzanne Rudzinski from David G. Walker, dated November 5, 1986.

(14) Letter to David G. Walker from Charles L. Elkins, dated November 3, 1986.

(15) Petition for Exemption to Manufacture Monochlorobiphenyl from David G. Walker to EPA, received October 10, 1986.

The public record for this petition is available for inspection and copying in Rm. NE-G004, 401 M St. SW., Washington, DC, from 8 a.m. to 4 p.m. Monday through Friday, except legal holidays, with exceptions as noted.

Dated: June 24, 1987.

Lee M. Thomas,

Administrator.

[FR Doc. 87-15084 Filed 7-1-87; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on June 26, 1987.

Public Health Service (PHS)

(Call Reports Clearance Officer on 202-245-2100 for copies of Package)

A. National Institutes of Health

Community Cancer Care Evaluation Physician Survey—0925-0265—This form is revised to include components of an evaluation of the NCI Physician-Data-Query (PDQ) cancer information system available nationwide through the National Library of Medicine (NLM) or private vendors. Includes a survey of current physician users, and an assessment of issues related to accessing the information relative to the content of the PDQ system. Respondents: Businesses or other for-profit. Number of Respondents: 4,780; Frequency of Response: One-time; Estimated Annual Burden: 1,756 hours.

B. Health Resources Services Administration

HRSA Competing Training Grant Application—0915-0060—Approval is requested to use the HRSA Competing Training Grant Application for two additional grant programs, Post-Baccalaureate Faculty Fellowship Grants and Nursing Special Projects (Demonstration) Grants. Respondents: Non-profit institutions: Number of Respondents: 550; Frequency of Response: Occasionally; Estimated Annual Burden: 33,550 hours.

C. Centers for Disease Control

Pilot Study of Neurologic Illness and Vaccination—NEW—This pilot study will evaluate the feasibility of various methods of case ascertainment and data collection, and obtain more precise estimates of incidence and cost for neurologic events following pertussis and measles vaccination. Respondents: Individuals or households: Number of Respondents: 3,936; Frequency of Response: Occasionally; Estimated Annual Burden: 1,641 hours.

OMB Desk Officer: Shanna Koss-McCallum.

Health Care Financing Administration

Professional Review Organization (PRO) Reporting Forms—0938-0491—The PRO program is designed to redirect and enhance the cost-effectiveness of the program of peer review under Medicare. These forms will be used by HCFA to monitor the PRO program. Respondents: Businesses or other for-profit: Number of Respondents: 54; Frequency of Response: Occasionally; Estimated Annual Burden: 4,988 hours.

OMB Desk Officer: Allison Herron.

Family Support Administration

(Call Reports Clearance Officer on 202-245-0652 for copies of package)

1. Quarterly Statement of Expenditures—0970-0029—The information collected by this form is used to review State expenditures and as a basis to prepare adjustments to the quarterly grant awards to States for the Aid to Families with Dependent Children program. The affected public is comprised of State and Local governments responsible for the administration of the AFDC program. Respondents: State and local governments: Number of Respondents: 54; Frequency of Response: Quarterly; Estimated Annual Burden: 432 hours.

2. Quarterly Estimate of Expenditures—0970-0032— This information collected by this form is used to prepare quarterly grant awards for programs administered by the Family Support Administration. The affected public is comprised of State or local governments responsible for administration of the Aid to Families with Dependent Children program. Respondents: State or local governments: Number of Respondents: 54; Frequency of Response: Quarterly; Estimated Annual Burden: 432 hours.

OMB Desk Officer: Shanna Koss-McCallum.

As mentioned above, copies of the information collection clearance packages can be obtained by calling the

Reports Clearance Officer, on one of the following numbers:

PHS: 202-245-2100
HCFA: 301-594-8650
FSA: 202-245-0652

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

ATTN: (name of OMB Desk Officer).

Dated: June 29, 1987.

James F. Trickett,

Deputy Assistant Secretary, Administrative and Management Services.

[FR Doc. 87-15040 Filed 7-1-87; 8:45 am]

BILLING CODE 4150-04-M

Food and Drug Administration

[Docket No. 86P-0172]

New Animal Drug Status of Injectable Products Containing Amino Acids

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing this notice pursuant to a court-ordered consent decree. This publication will formally notify TechAmerica Group, Inc. (TechAmerica), 15th and Oak Sts., Elwood, KS 66024, and all other interested persons, that TechAmerica's Aminoplex Solution and Aminoplex-C, and other similar injectable products which contain amino acid compounds, are new animal drugs that require an approved new animal drug application before they may be distributed in interstate commerce.

EFFECTIVE DATE: July 2, 1987.

ADDRESS: Information contained in Docket Number 86P-0172, and made a part of this notice by reference, 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.

FOR FURTHER INFORMATION CONTACT: Andrew J. Beaulieu, Center for Veterinary Medicine (HFV-210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3044.

SUPPLEMENTARY INFORMATION: On July 26, 1984, a complaint for forfeiture (Civil No. 3-84-1049, U.S. District Court for the District of Minnesota, Third Division) against various quantities of Aminoplex Solution and Aminoplex-C (Aminoplex) was filed. The complaint alleged that the substances in question were adulterated and misbranded drugs in violation of 21 U.S.C. 351(a)(5) and 21 U.S.C. 352(f)(1). TechAmerica intervened as claimant to the seized articles, and entered into a consent decree on February 27, 1986.

The consent decree provided, among other things, that TechAmerica could, pursuant to 21 CFR 10.30, file a citizen petition regarding the distribution of Aminoplex. The consent decree also specifically provides that:

> From and after the publication of FDA's response to the citizen petition . . . or within six months following the entry of this decree, whichever occurs later, claimant shall alter its distribution of Aminoplex to conform to the terms of FDA's response to the citizen petition, including the cessation of all distribution, if that is required. This applies even if claimant is in the process of pursuing further legal remedies.

Pursuant to the consent decree, TechAmerica filed a citizen petition dated April 14, 1986. As provided for in the consent decree, FDA is publishing below its response to the citizen petition filed by TechAmerica.

Citizen Petition Response

This is in response to your citizen petition, dated April 14, 1986, requesting the Commissioner of Food and Drugs to classify Aminoplex solution and Aminoplex C solution (hereinafter "Aminoplex") as a veterinary food, or alternatively, as a generally recognized as safe and effective drug which may be labeled with adequate directions for use. Presently, the Aminoplex label has been revised pursuant to an out-of-court settlement of previous litigation. The revisions include deleting indications for animal species other than cattle, and deleting directions for use other than intravenously. The product contains amino acids, minerals, vitamins, dextrose, and electrolytes.

I. Aminoplex is Not Food

A. *Historically*, amino acids, minerals, vitamins, dextrose, and electrolyte products, singly or in combinations, intended as injectables have been regarded as drugs by the medical profession, by FDA, and by the regulated industry for more than 40 years. To our knowledge TechAmerica Group has not challenged this concept until now.

There are numerous citations from the published scientific literature to support the history of drug status of injectable nutrients; for example:

1. *Clinical Nutrition Update*, a report of the Symposium on Clinical Nutrition Update: Amino Acids, March 3-4, 1977, Denver, Colorado, sponsored by the American Medical Association and the American Academy of Pediatrics, p. 215, "Many nutrient preparations are in fact drugs and are regulated accordingly, e.g., injectable nutrients.", in left column last paragraph. Page 217 describes the investigations conducted by a major large volume parenteral manufacturer to obtain marketing approval for a new amino acid solution (and p. 225).

2. *The United States Pharmacopeia*, which lists drugs, from at least 1962 (p. 601) to 1985, has listed Protein Hydrolysate Injection (1985 Ed., p. 911) as a sterile solution of amino acids and short-chain peptides, a product in many ways similar to Aminoplex. Thus, Aminoplex fits in principale at least, the definition of a drug in 201(g)(1)(A) of the Food, Drug, and Cosmetic Act ("articles recognized in the official United States Pharmacopeia").

3. The purpose of both old and new texts is to demostrate the period of consistency. Various texts on pharmacology and therapeutics describe and discuss articles composed of injectable amino acids. (Pharmacology may be defined simply as the science of drugs, therapeutics the art of applying drugs in disease.) An article which is discussed in such texts is generally regarded as a drug. Discussions of injectable amino acids appear in texts such as *Pharmacology and Therapeutics* by Arthur Grollman, Lea & Febiger 1954, p. 778, and the *Pharmacological Basis of Therapeutics*, Gilman et al, Macmillan 7th Ed. 1985, p. 859.

Further, the (American Medical Association) *AMA Drug Evaluations 1st Ed.* 1971, p. 122 similary discusses and evaluates such articles as drug, as do current editions.

4. The status of Aminoplex as a drug is further supported by the long-standing unchallenged policy of FDA as reported in Trade Correspondence in Vol. 1, Kleinfeld, Dunn and Kaplan, *Judicial Record 1938-1964*, which discloses in TC2-A-Nov. 1945 a letter which discusses the use of amino acids in foods and drugs. This letter reiterated the agency policy (more than 40 years ago) that "Amino acid preparations offered for parenteral use fall in the category of New Drugs" (p. 749).

B. Historically, food is commonly consumed, taken into the body by mouth, not by injection. The only reason to inject nutrients parenterally would be to cure, mitigate, treat or prevent nutritional or other disease in man or other animals.

Judge Sofaer, in the Starch Blocker case, said, "Congress appears to have intended that this component [the parenthetical exclusion of food in section 201(g)(1)(c) of the act] of the statutory definition of "food" refer to *common usage* . . ." [Emphasis added]. *American Health Products.* v. *Hayes* 574 F. Supp. 1498, 1505 (S.D.N.Y. 1983), food is defined in section 201(f)(1) as "articles used for food or drink . . ." The "common usage" standard argues convincingly against considering injectable nutrients as "food," because injection is not a common usage of food.

C. *Claims.* A previously marketed product with the same name bore the indication, "An aid in the supportive treatment of debilitated large animals." No formualtion or lable change can alter the fact that Tech America once advertised a nearly identical product as a medicinal compound.

The use of the word "treatment" relates the product directly to drug status. Dorland's *Medical Dictionary*, 26th Ed., defines

treatment as "the management and care of a patient for the purpose of combatting disease or disorder," which in this case may be a deficiency of the active ingredients from any cause, whether malnutrition, infection, disfunction, or disorder of body functions.

Thus, section 201(g)(1)(C) of the act is also applicable. As stated above, parenthetical phrase, "(other than food)", has no importance here.

Conclusion

Aminoplex is a drug.

Status as New Animal Drug

Effectiveness

A new animal drug is a drug product which is not generally recognized as safe and effective for its intended purpose. (Section 201(w) of the act.) The Supreme Court has held that ". . . the hurdle of 'general recognition' of effectiveness requires at least the 'substantial evidence' of effectiveness that would be needed for approval of an NDA. In the absence of any evidence of adequate and well-controlled investigations supporting the efficacy of [the drug product] *a fortiori* [the drug product] would be a 'new drug' subject to the provisions of the Act." (Weinberger vs. Hynson, Westcott and Dunning, Inc., 93 S. Ct 2469 (1973) at 630.) The definition of new animal drug in Section 201(w) is even more extensive. Also, the meaning of "substantial evidence" is delineated in Section 512(d)(3) of the act.

None of the following material submitted with the petition constitutes substantial evidence of effectiveness of Aminoplex as evidenced by the following review of literature accompanying the petition:

1. Broderick, G.A., Satter, L.D., and Harper, A.E. Use of Plasma Amino Acid Concentration to Identify Limiting Amino Acids for Milk Production. Journal of Dairy Science, Vol. 57, pages 1015–1023, year 1974.

The hypothesis that essential amino acids will not accumulate in blood plasma unless supplied in excess of requirement was the basis for an attempt by the authors to determine those essential amino acids most likely to limit lactation. The authors measured plasma essential amino acid concentrations, milk production, and milk components as oral protein intake increased by increments from inadequate to adequate amounts. The authors felt that from their experiment that the amino acids valine and lysine may be co-limiting with methionine to suggest that these three amino acids may be nearly equally inadequate for milk production synthesis.

2. Chew, B.P., Eisenman, J.R., and Tanaka, T.S. Arginine Infusion Stimulates Prolactin, Growth Hormone, Insulin, and Subsequent Lactation in Pregnant Dairy Cows. Journal of Dairy Science, Vol. 67, pages 2507–2518, year 1983.

The authors studied the effects of daily intravenous infusions of arginine on changes in serum of various hormones (prolactin, growth hormone, and insulin) in pregnant dairy cows and the effect of changes of these hormones on subsequent lactation. Arginine induced increases in these above-mentioned hormones and urea nitrogen, and the changes of these serum contents were associated with increased milk yield subsequent to calving.

3. Foldager, J., Huber, J.T., and Bergen, W.G. Factors Affecting Amino Acids in Blood of Dairy Cows. Journal of Dairy Science, Vol. 63, pages 396–404.

The authors evaluated the influence of protein percent and source, time after calving, and milk yield on concentrations of amino acids in plasma of dairy cows fed different sources and percents of crude protein. They also studied those amino acids which might limit milk synthesis in diets varying in protein and nonprotein nitrogen.

4. Hogan, J.R., Weston, R.H., and Lindsay, J.R. Influence of Protein Digestion on Plasma Amino Acid Levels in Sheep. Aust. J. Biol. Sci. Vol. 21, pages 1263–1275, year 1968.

The authors conducted a study to determine whether the levels of amino acids in the plasma of sheep were related to the amounts of protein digested in the intestines. Infusions per abomasum of calcium caseinate were utilized in the experiment.

5. Kung, L., Jr., Huber, J.T., Bergen, W.G. and Petitclerc, D. Amino Acids in Plasma and Duodenal Digesta and Plasma Growth Hormone in Cows Fed Varying Amounts of Protein of Differing Degradability. Journal of Dairy Science, vol. 67, pages 2519–2524, year 1984.

According to the authors, the intent of their study was to extend the information on feeding increased protein, heat-treated soybean meal, and ammonia-treated corn silage to lactating dairy cows. They made the following noteworthy statement to their readers, "Interpretation of plasma essential amino acids should be with caution because the most limiting essential amino acids for milk production often cannot be verified from plasma essential amino acids alone." These same authors also acknowledged, "Essential and branched chain amino acids in plasma increased as protein and amount of protected protein in the diet increased. These changes were accompanied by decreased concentrations of nonessential amino acids."

6. Leibholz, J. The Effect of Starvation and Low Nitrogen Intakes on the Concentration of Free Amino Acids in the Blood Plasma and on the Nitrogen Metabolism in Sheep. Aust. J. Agric. Res., vol. 21, pages 723–734, year 1970.

In this study, sheep were administered a low nitrogen diet or starved for 12 or 20 days to determine the effect of very low nitrogen intake and starvation on the concentrations of free amino acids in plasma of sheep. Also in this same study, the author evaluated the effect of the treatments on the sheep's nitrogen balance and the saliva and rumen nitrogen concentrations observed. The author stated in her discussion, "Under field conditions low nitrogen intakes are frequently encountered, and it is often difficult to assess the need for a nitrogen supplement."

7. Oldham, J.D. Amino Acid Requirements for Lactation in High Yielding Dairy Cows. Chapter 3 in: Recent Advances in Animal Nutrition, edited by W. Haresign, pp. 33–65, Cambridge University Press, year 1980.

The subject of amino acid requirements and utilization for high-yielding dairy cows has been discussed.

In his conclusion, the author states, in part, that there is a case for looking afresh at the role of dietary protein for manipulating intake in the high yielding dairy cow, and particular amino acids may have a role in this respect. The author also notes that ". . . the chance of an economic return from amino acid supplementation would not, at present, seem to be very strong from the point of view of meeting an amino acid deficiency in conventional terms."

8. Owens, F.N. and Bergen, W.G. Nitrogen Metabolism of Ruminant Animals: Historical Perspective, Current Understanding and Future Implications. Journal of Animal Science, vol. 57, Suppl. 2, pages 498–518, year 1983.

An extensive review is provided on the importance of ruminal microbes as a protein source; nutritive quality of microbial protein; ruminal ammonia and nitrogen recycling; nonprotein nitrogen utilization, sources and blood levels; amino acid metabolism; essential amino acid requirements; nitrogen requirements; limits on microbial protein synthesis; protein degradation in the rumen; postruminal digestion and absorption of nitrogen compounds; nitrogen digestibility and retention-classical studies; utilization of amino acids after absorption; role of hormones and additives on nitrogen metabolism and growth; descriptive models for whole animal nitrogen metabolism.

9. Phillips, L.S. Nutrition, Somatomedins, and the Brain. Metabolism, vol. 35, pages 78–87, year 1986.

A review is presented on the relationship between nutrition, insulin, hormone, and brain components (pituitary and hypothalamic mechanisms).

10. Powanda, M.C. Host Metabolic Alterations During Inflammatory Stress as Related to Nutritional Status. American Journal of Veterinary Research, vol. 41, pages 1905–1911, year 1980.

Host metabolic sequelae to inflammatory stress (such as microbial infections, parasitism, endotoxemia, etc.) as related to nutritional status are discussed. The author reviews some of the metabolic alterations which occur in a host during infection as to the mechanisms which initiate them and the role these metabolic alterations may have in host defense and repair processes.

11. Richardson, C.R. and Hatfield, E.E. The Limiting Amino Acids in Growing Cattle. Journal of Animal Science, vol. 46, pages 740–745, year 1978.

The authors conducted a series of experimental studies to determine the first, second, and third-limiting amino acids in the microbial protein of growing cattle as indicated by nitrogen retention and plasma amino acid concentrations. Abomasal infusions of amino acids and semipurified diets essentially protein free were utilized in the various experimental procedures involving growing steers.

12. Sawin, C.T. Hormonal Control of Daily Energy Supply, in: The Hormones: Endocrine Physiology, pages 255–265. Little Brown and Company, Boston, year 1969.

Hormonal controls involving processes of eating, post-eating, fasting, exercise, and other stresses (such as cold, surgery, etc.) are discussed. The author's discussion is general and does not point out variations, differences, etc. between the various species.

13. Schwab, C.G., Satter, L.D., and Clay, A.B. Response of Lactating Dairy Cows to Abomasal Infusion of Amino Acids. Journal of Dairy Science, vol. 59, pages 1254–1270, year 1976.

The authors conducted a series of five experiments in which single or mixtures of amino acids were infused into the abomasum of lactating dairy cattle. The authors' intent was to determine if the quality of protein passing from the rumen could be improved for milk, milk fat, or milk protein production and to further determine the most limiting amino acids and their sequence of limitation. In part, the authors noted "Because of the differences in feed proteins with respect to amino acid composition and the extent of their degradation in the rumen, ingredient composition of the ration will influence which amino acids are most limiting for milk production and/or milk protein synthesis."

14. Stein, T.P., Leskiw, M.J., Wallace, H.W., and Oram-Smith, J.C. Changes in Protein Synthesis after Trauma: Importance of Nutrition. American Journal of Physiology, vol. 233, pages E–348–E–355, year 1977.

The authors conducted trauma studies, using laboratory rats, to evaluate the clinical situations in which experimental animals were given different parenterally administered nutrient formulations (Diet I containing amino acids and glucose, Diet II containing only amino acids, Diet III of severely hypocaloric glucose, and Diet IV of the same amount of glucose as Diet I but without the amino acids. For the fifth formulation-Diet V, the rats were given Diet I pre-trauma, and immediately after trauma the diet was changed to diet III). The authors concluded from their experiments with such laboratory rat models that amino acids become limiting before energy posttrauma and that the requirement is mostly for amino acid nitrogen posttrauma.

These citations make no reference to the use of Aminoplex solution and/or Aminoplex C solution. Furthermore, they do not support petitioner's claim that Aminoplex solution and/or Aminoplex C solution is a veterinary food or alternatively a generally recognized safe and effective drug which may be labeled with adequate directions for use by lay persons.

15. Mangan, J.L. and Wright, P.C. Plasma Concentrations of Free Amino Acids in Sheep in Relation to Time of Feeding and Protein Intake. Proc. Nutr. Soc., vol. 32, pages 52A–53A, year 1973.

The authors noted that in sheep most essential amino acids in blood plasma decrease in concentration as the protein intake of the diet decreased.

16. Nimrick, K., Hatfield, E.E., Kaminski, J., and Owens, F.N. Quantitative Assessment of Supplemental Amino Acid Needs for Growing Lambs Fed Urea as the Sole Nitrogen Source. J. Nutrition, vol. 100, pages 1301–1306, year 1970.

The authors undertook a quantitative assessment of the supplemental needs for amino acid requirements of growing lambs fed urea as the sole nitrogen source. They also studied the relationship of plasma amino acid concentrations to nitrogen balance. The treatments consisted of graded levels of L-amino acids infused abomasally. The authors acknowledged, "Plasma amino acid concentrations are difficult to interpret since many variables affect them."

These nutritional studies make no reference to the use of Aminoplex solution and/or Aminoplex C solution. The papers do not support petitioners's claim that Aminoplex solution and/or Aminoplex C solution is a veterinary food or alternatively a generally recognized safe and effective drug which may be labeled with adequate directions for use by lay persons.

17. National Research Council. Ruminant Nitogen Usage. National Academy Press. Chapter entitled Nitrogen Metabolism in Tissues, pp. 57–65, year 1985.

The Subcommittee on Nitrogen Usage in Ruminants of the Committee on Animal Nutrition furnishes an updated review on (1) amino acid metabolism and (2) protein requirements in the ruminant species

Under "amino acid metabolism," the following subtopics are discussed: free amino acid pools, utilization of amino acids, protein synthesis, synthesis of nonprotein compounds, amino acid oxidation, and nitrogen excretion. Detailed remarks under the heading of "protein requirements" are divided into requirements for maintenance and requirements for tissue growth, lactation, and pregnancy.

The Subcommittee acknowledges, "Although there is interest and considerable specultation about amino acid requirements of ruminants, there is limited information on amino acid requirements of ruminant species."

This nutritional citation makes no reference to the use of Aminoplex solution and/or Aminoplex C solution.

This NRC publication does not support petitioner's claim that Aminoplex solution and/or Aminoplex C solution is a veterinary food or alternatively a generally recognized safe and effective drug which may be labeled with adequate directions for use by lay persons.

None of the above cited articles is a report of a controlled study of Aminoplex. Indeed, none of the articles ever mentions Aminoplex. Hence, taken together or separately, they cannot constitute substantial evidence of Aminoplex effectiveness.

As defined by the Act, "substantial evidence" means evidence consisting of adequate and well-controlled investigations. The essential elements of adequate and well-controled studies are found in 21 CFR 514.111(a)(5)(ii) of the new animal drug regulations.

Thus, in the absence of any submitted evidence of adequate and well-controlled investigations supporting the effectiveness of Aminoplex, following the courts reasoning, *a fortiori* Aminoplex is a new animal drug.

Safety

Based on the information submitted by TechAmerica (which did *not* include safety studies of Aminoplex) and other data before FDA, there is insufficient information to determine whether Aminoplex is safe for its intended uses.

In considering the "safety" of Aminoplex, we have examined our files and the scientific literature. True, FDA has received no adverse drug reaction reprots following the use of Aminoplex. However, this does not mean that no adverse reactions have *occurred*, just that none have been reported to FDA. Because Aminoplex is not an approved drug, there is no requirement that TechAmerica report complaints or adverse reactions.

However, FDA *has* received reports of adverse reactions from the use of similar drugs in horses.

Textbooks state that parenteral nutrients may cause hyperglycemia, glycosuria, osmotic diuresis and dehydration depending upon the rate of administration. Too large an amount of any of the amino acids causes an imbalance, resulting in abnormally high serum levels and an increased amino aciduria. There is also the risk of the development of hyperammonaemia.

Similarly, imbalance of the electrolytes may produce toxicity or deficiencies.

(References: *AMA Drug Evaluations 1983, Hazards of Intravenous Feeding*, I.D.A. Johnson, *Adverse Drug Reaction Bulletin*, No. 77, August 1979, pp. 276–279, *Meyler's Side Effect of Drugs*, An Encyclopedia of Adverse Reactions and Interactions, 9 ED, pp. 577–586, Excerpta Medica, Amsterdam 1980, *Vet. Pharm & Therap, 5 Ed.*, Booth, N.H. and MacDonald, LE, 1982.)

Compliance Policy Guide 7125.31

The petitioner alleges that Compliance Policy Guide 7125.31 provided the basis for the "new animal drug" charges and, therefore, constitutes a rule established outside the requirements of the Administrative Procedure Act. The Agency rejects this argument on the grounds that the Guide, as in the case of any Compliance Policy Guide, is not in itself a basis for regulatory action. The Agency issues compliance policy guides to inform its headquarters and field personnel to provide general or specific limits of whether a product, process, or condition is in compliance with relevant laws and regulations. It is not a rule within the meaning of the APA or 21 CFR 10.85. The complaint in the seizure action did not allege violation of the Compliance Policy Guide, but, rather, violations of the Federal Food, Drug, and Cosmetic Act.

Additional Comments on the Petition

1. None of the scientific articles submitted with the petition consist of adequate and well-controlled reports of investigations conducted with Aminoplex for the purpose of developing data to support the safe and effective use of Aminoplex.

To the contrary, several claims, using other similar products or considering such products generically, beneficially to affect inappetance which which may result from stress and other causes thus supporting the therapeutic or preventive intent, either directly or by implication, further strengthening the status of Aminoplex as a drug.

2. GRAS status of substances, 21 CFR 582.1, clearly states restrictions, notably several references to "use in food", handling "as a food ingredient", "would generally be regarded as safe for the purpose intended," and closes with the statement, ". . . will not affect its status for other use not specified.

. . ." Therefore, we conclude the GRAS status of ingredients of Aminoplex, which we have determined to be an injectable drug, is irrelevant. Indeed, many of the part 582 regulations cited in the petition close with the phrase ". . . when used in accordance with good manufacturing or feeding practice."

3. The petition states without further explanation, "Humans ingest nutrient supplements largely as tablets and capsules; that route of administration in cattle is obviously impractical." Yet most drugs and nutrient supplements are administered orally, and owners of cattle and veterinarians will attest that it is much easier, convenient and cheaper to administer them this way than intravenously.

For the reasons discussed above, your petition is denied.

Sincerely yours,

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

* * * * *

Pursuant to the Federal Food, Drug, and Cosmetic Act, FDA considers all injectably-administered amino acid compounds—such as Aminoplex—to be new animal drugs which require FDA approval prior to their manufacture and distribution. The agency's position is clearly supported by the information provided in response to TechAmerica's citizen petition. Pursuant to the terms of the consent decree, TechAmerica is hereby notified to cease distributing Aminoplex and any similar amino acid products. Injectable products containing amino acid compounds marketed by other firms are subject to regulatory action by FDA unless approved new animal drug applications are in effect for such products.

Dated: June 25, 1987.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 87-14989 Filed 7-1-87; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 87F-0183]

Ciba-Geigy Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ciba-Geigy Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of tris(2,4-di-*tert*-butylphenyl) phosphite as an antioxidant and thermal stabilizer for poly(methylpentene) polymer intended to contact food.

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

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 7B3999) has been filed by Ciba-Geigy Corp., Three Skyline Dr., Hawthorne, NY 10532, proposing that § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) be amended to provide for the safe use of tris(2,4-di-*tert*-butylphenyl) phosphite as an antioxidant and thermal stabilizer for poly(methylpentene) polymer intended to contact food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: June 23, 1987.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 87-14990 Filed 7-1-87; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 87P-0176]

Canned Pacific Salmon Deviating From Identity Standard; Temporary Permit for Market Testing

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a temporary permit has been issued to Kelley-Clarke, Inc., to market test canned skinless and boneless chunk salmon packed in water and containing sodium tripolyphosphate to inhibit protein curd formation during retorting. The purpose of the temporary permit is to allow the applicant to measure consumer acceptance of the food.

DATES: This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but no later than September 30, 1987.

FOR FURTHER INFORMATION CONTACT: Karen L. Carson, Center for Food Safety and Applied Nutrition (HFF-414), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0110.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of foods deviating from the requirements of the standards of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), FDA is giving notice that a temporary permit has been issued to Kelley-Clarke, Inc., Seattle, WA 98199.

The permit covers limited interstate marketing tests of canned skinless and boneless chunk salmon packed in water. The test product deviates from the standard of identity for canned Pacific salmon (21 CFR 161.170) is four ways: (1) The form of pack is chunk, i.e., not less than 50 percent of the drained weight of the salmon is retained on a ½-inch mesh screen; (2) the skin and backbone, i. e., vertebrae and associated bones (neural spines and ventral ribs), are removed; (3) water, in an amount not to exceed 10 percent of the water capacity of the can, will be used as a packing medium and to aid in dispersion of salt; and (4) sodium tripolyphosphate, in an amount not to exceed 0.50 percent of the weight of the finished food including free liquid, will be used to inhibit formation of protein curd during retorting. The test product meets all requirements of § 161.170 with the exception of these deviations. The permit provides for the temporary marketing of 120,000 cases of test product containing twenty-four 6½-ounce cans each. The test product will be distributed throughout the United States.

The test product is to be manufactured at the Petersburg Fisheries plant located in Petersburg, AK 99833.

Each of the ingredients used in the food is stated on the label as required by the applicable sections of 21 CFR Part 101. This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but no later than September 30, 1987.

Dated: June 23, 1987.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 87-14991 Filed 7-1-87; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 87P-0178]

Canned Pacific Salmon Deviating From Identity Standard; Temporary Permit for Market Testing

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a temporary permit has been issued to Peter Pan Seafoods, Inc., to market test canned skinless and boneless chunk salmon packed in water and containing sodium tripolyphosphate to inhibit protein curd formation during retorting. The purpose of the temporary permit is to allow the applicant to measure consumer acceptance of the food.

DATES: This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but no later than September 30, 1987.

FOR FURTHER INFORMATION CONTACT: Karen L. Carson, Center for Food Safety and Applied Nutrition (HFF-414), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0110.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of foods deviating from the requirements of the standards of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), FDA is giving notice that a temporary permit has been issued to Peter Pan Seafoods, Inc., Seattle, WA 98121.

The permit covers limited interstate marketing tests of canned skinless and boneless chunk salmon packed in water. The test product deviates from the standard of identity for canned Pacific salmon (21 CFR 161.170) in four ways: (1) The form of pack is chunk, i.e., not less than 50 percent of the drained weight of the salmon is retained on a ½-inch mesh screen; (2) the skin and backbone, i.e., vertebrae and associated bones (neural spines and ventral ribs) are removed; (3) water, in an amount not to exceed 10 percent of the water capacity of the can, will be used as a packing medium and to aid in dispersion of salt; and (4) sodium tripolyphosphate, in an amount not to exceed 0.50 percent of the weight of the finished food including free liquid, will be used to inhibit formation of protein curd during retorting. The test product meets all requirements of § 161.170 with the exception of these deviations. The permit provides for the temporary marketing of 200,000 cases of test product containing twenty-four 6½-ounce cans each. The test product will be distributed throughout the United States.

The test product is to be manufactured at the Petersburg Fisheries plant located in Petersburg, AK 99833.

Each of the ingredients used in the food is stated on the label as required by the applicable sections of 21 CFR Part 101. This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but no later than September 30, 1987.

Dated: June 23, 1987.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 87-14992 Filed 7-1-87; 8:45 am]

BILLING CODE 4160-01-M

Office of Human Development Services

Availability of Funds; Child Development Associate Scholarship Assistance Program

AGENCY: Head Start Bureau (HSB), Administration for Children, Youth and Families (ACYF), Office of Human Development Services, (OHDS), Department of Health and Human Services (HHS).

ACTION: Announcement of the availability of funds for grants to States for child development associate scholarship assistance under Title VI of the Human Services Reauthorization Act of 1986, Pub. L. 99-425.

SUMMARY: FY 1987 funds are available for grants to States (including eligible territories and insular areas) to enable them to award scholarships to eligible individuals who are candidates for the Child Development Associate (CDA) national credential. The sholarship would assist in the payment of the fee for the assessment done by the CDA credentialing organization, the Council for Early Childhood Professional Recognition (CECPR), a subsidiary of the National Association for the Education of Young Children (NAEYC). This Announcement sets forth the application process and requirements for these grants.

DATE: Application must be received by August 31, 1987.

ADDRESS: Applications to: Clennie H. Murphy, Jr., Acting Associate Commissioner, Head Start Bureau, P.O. Box 1182, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Hector Sanchez, Program Specialist, Head Start Bureau, P.O. Box 1182, Washington, DC 20013, (202) 755-7710.

SUPPLEMENTARY INFORMATION:

Introduction

Title VI of the Human Services Reauthorization Act of 1986, Pub. L. 99-425, makes available $1,000,000 for FY 1987 grants to States to enable them to award scholarships to eligible individuals who are candidates for the Child Development Associate (CDA) national credential. Only those States (and territories and insular areas) which receive a grant under Title XX of the Social Security Act are eligible to apply for scholarship grants.

The Governor of each State must designate a State agency or other agency or organziation to administer this program.

State allocations which are listed below have been computed according to a State's total population. A $1,073.00 minimum, however, has been established for each territory and insular area. This minimum is based on the cost of three scholarships at $325.00 each, plus 10 percent allowed for State administrative costs.

Not more than 10 percent of the funds received by a State may be used for costs of administering this program.

The funds allocated to States which do not apply will be reallocated to those States which have submitted approvable applications.

All FY 1987 funds must be expended by September 30, 1989.

Scholarship assistance must be awarded only to eligible individuals; on the basis of the financial need of such individuals; and in amounts sufficient to cover the cost of application, assessment, and credentialing for the CDA credential for such individuals. This means that no costs of education or training leading to CDA candidacy may be funded.

The term "eligible individual" is defined in the statute as a candidate for the CDA credential whose income does not exceed the poverty line, as defined in section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)) by more than 50 percent. (See Appendix I for the FY 1987 Poverty Income Guidelines.)

Some of the tasks of the designated agency include:

- Establishing a process for publicizing the availability and the criteria for awarding these funds throughout the State;
- Soliciting applications from eligible individuals who meet the financial eligibility requirements and who are CDA candidates.
- Establishing procedures for awarding scholarships to cover the fees for registration, assessment and credentialing;
- Establishing review criteria and a procedure for review of applications to assure that eligible individuals are selected from diverse child care settings

to include both privately and publicly funded programs.

Additional Information Regarding the CDA Credential

The number of infants, toddlers and 4- and 5-year-old children in group programs mulitiplied dramatically in recent years in Head Start, day care, public school kindergartens, pre-kindergartens and many other privately and publicly-funded child care and child development settings.

Statistics indicate that over half (54.4 percent) of all mothers with children under age six are working and it is estimated that the number of working mothers will continue to grow. The fastest growing segment of the work force are mothers of infants. Fifty-one percent of mothers with children under the age of three now work full-time, compared to 30 percent in 1970. Additionally, 80 percent of the women presently in the work force are of childbearing age, and an estimated 93 percent of this group will become pregnant during their working career.

According to some studies, more preschool children are now cared for outside the home than in it. Families place great trust in the staff of these programs because the daily performance of the teacher or caregiver determines the qualitly of the child's preschool experiences.

In 1971, the CDA program was initiated to improve the skills of caregivers in center-based, family day care, and home visitor programs and to give recognition to persons who have skill and knowledge levels by granting a CDA credential. These are individuals who have applied for and successfully completed the CDA assessment process. (See Appendix II for a description of the CDA program and the CDA Assessment System.)

Child Development Associates are skilled caregivers who have shown their ability to work with either or both of the following age groups: Birth through three or three through five and their families. Some are center-based caregivers; others are family day care providers; and still others are home visitors. They work in Head Start, day care, or other preschool programs. An optional bilingual specialization is available to CDA candidates working in bilingual (Spanish/English) programs.

More than 19,000 child care providers have earned the CDA credential since 1975, and 32 States have incorporated a requirement for the CDA credential in their child care licensing requirements. Since October 1986 the Employment and Training Administration of the Department of Labor has been working with the Administration for Children, Youth and Families (ACYF) through its local Private Industry Council (PICs) to make Job Training Partnership Act (JTPA) funds available for professional development culminating in the CDA credential.

The national CDA program is administered by the Council for Early Childhood Professional Recognition, a subsidiary of the National Association for the Education of Young Children. The Council is located at 1718 Connecticut Avenue NW., 5th Floor, Washington, DC 20009. The toll free number is 800–424–4310.

Application Requirements

The application requirements for these grants do not go beyond the requirements in the statute and 45 CFR Part 74. Each requirement has been cited to the specific section of the law.

The application may be submitted in any format as long as it contains all requirements specified.

The application must be signed by the Chief Executive of the State and must contain the following information and assurances:

1. The name of the agency or other organization designated by the Governor to administer the CDA Scholarship program (Part 74).

This may include the designated Title XX agency, the State day care licensing authority, a college or university, or other agency or organization (section 603(a)).

2. The agency's Employee Identification Number (EIN).

3. The name, address, and telephone number of the administrator of this program and a contact person, if different (section 603(a)).

4. The following assurances:

a. Scholarships will be awarded only to eligible individuals and only on the basis of the financial need of such individuals (section 603(b));

b. Scholarships will be awarded in amounts sufficient to cover the cost of application, assessment, and CDA credentialing for such individuals (section 603(b));

c. Scholarships will be made available for candidates applying for family day care, center-based and the home visitor CDA credential (Conference Report 99–815);

d. Not more than 10 percent of the funds received will be used for administering this program within the State (section 603(b));

e. In awarding scholarship funds, ensure that the needs of rural and urban areas are appropriately addressed (section 603(c));

f. The State will annually report to the Secretary information on the number of eligible individuals assisted under this grant program and their positions and salaries before and after receiving the CDA credential (section 605(a)).

Notification Under Executive Order 12372

This program is covered under Executive Order 12372.

"Intergovernmental Review of Federal Programs," for State plan consolidation and simplification only (45 CFR 100.12). The review and comment provisions of the Executive Order and Part 100 do not apply.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), the application requirements contained in this Notice have been submitted to the Office of Management and Budget for approval.

State Allocations: Child Development Scholarship Program

FY 87 Allotment

Alabama	16,648
Alaska	2,086
American, Samoa	1,073
Arizona	12,738
Arkansas	9,801
California	88,992
Colorado	13,260
Connecticut	13,160
Delaware	2,558
Dist. of Columbia	2,599
Federated States of Micronesia	1,073
Florida	45,795
Georgia	24,354
Guam	1,073
Hawaii	4,335
Idaho	4,177
Illinois	48,029
Indiana	22,940
Iowa	12,142
Kansas	10,172
Kentucky	15,534
Louisiana	18,617
Maine	4,823
Marshall Islands	1,073
Maryland	18,146
Massachusetts	24,192
Michigan	37,865
Minnesota	17,366
Mississippi	10,840
Missouri	20,895
Montana	3,438
Nebraska	6,701
Nevada	3,801
New Hampshire	4,076
New Jersey	31,356
New Mexico	5,942
New York	79,714
North Carolina	25,723
North Dakota	2,862
Northern Mariana	1,073

Ohio	44,862
Oklahoma	13,761
Oregon	11,157
Pennsylvania	49,656
Puerto Rico	13,606
Republic of Palau	1,073
Rhode Island	4,014
South Carolina	13,769
South Dakota	2,946
Tennessee	19,681
Texas	72,431
Utah	6,893
Vermont	2,211
Virgin Island	1,073
Virginai	23,516
Washington	18,146
West Virginia	8,145
Wisconsin	19,886
Wyoming	2,132
Total	$1,000,000

Dated: March 31, 1987.

Dodie Livingston,

Commissioner, Administration for Children, Youth and Families.

Dated: May 21, 1987.

Jean K. Elder,

Assistant Secretary for Human Development Services-Designate.

Appendix I—FY 1987 Poverty Income Guidelines

Appendix II—The CDA Program and Assessment System

Appendix I

1986 POVERTY INCOME GUIDELINES FOR ALL STATES (EXCEPT ALASKA AND HAWAII) AND THE DISTRICT OF COLUMBIA

Size of family unit	Poverty guideline
1	$5,360
2	7,240
3	9,120
4	11,000
5	12,880
6	14,760
7	16,640
8	18,520

For family units with more than 8 members, add $1,880 for each additional member.

POVERTY INCOME GUIDELINES FOR ALASKA

Size of family unit	Poverty guideline
1	$6,700
2	9,050
3	11,400
4	13,750
5	16,100
6	18,450
7	20,800
8	23,150

For family units with more than 8 members, add $2,350 for each additional member.

POVERTY INCOME GUIDELINES FOR HAWAII

Size of family unit	Poverty guideline
1	$6,170
2	8,330
3	10,490
4	12,650
5	14,810
6	16,970
7	19,130
8	21,290

For family units with more than 8 members, add $2,160 for each additional member.

Appendix II

The CDA Program

The goal of the CDA program is to meet the dramatic need for quality child care. The CDA Competency Standards are the core of the CDA program. They are a statement of the skills needed to be a competent caregiver. CDA training programs are designed to train persons to acquire those skills. In CDA assessment and credentialing, the Competency Standards are the basis upon which caregivers are assessed. However, it is important to understand that, although CDA training programs and the CDA assessment system are both based on the Competency Standards, the training programs and the assessment system are separate from each other. All Candidates for the CDA Credential must apply for and successful complete the CDA assessment process.

The CADA Competency Standards

The CDA Competency Standards define the skills needed by center-based child care staff, family day care providers, and home visitors. Carefully developed by the early childhood profession, the standards set the criteria for a caregiver's performance with children and their families.

A competent caregiver meets the needs of children and their families. The CDA Competency Goals are to: maintain a safe and healthy learning environment, promote the physical and intellectual development of children, provide opportunities for children to develop a positive feeling about themselves as individuals and in a group, encourage positive relationships with families, work cooperatively with other staff, and demonstrate a professional commitment. These six Competency Goals are divided into 13 Functional Areas which define more specifically the functions that a competent caregiver msut perform (see the accompanying chart).

Child Development Associate Competency Standards

This chart outlines the Definition of a CDA, the Competency Goals, and the Functional Areas. It describes the settings for CDA assessment as well as the Infant/Toddler Endorsement, Preschool Endorsement, and Bilingual Specialization.

Official Definition of The CDA

The Child Development Associate or CDA is a person who is able to meet the specific needs of children and who, with parents and other adults, works to nurture children's physical, social, emotional and intellectual growth in a child development framework. The CDA conducts herself or himself in an ethical manner.

The CDA has demonstrated competence in the goals listed below through her or his work in one of the following settings.

1. In a center-based program (CDA–CB).
2. In a home visitor program (CDA–HV).
3. In a family day care program (CDA–FDC).

Within a center-based setting, a person who demonstrates competence working with children from birth to three is a Child Development Associate with an Infant/Toddler Endorsement; or,

A person who demonstrates competence working with children aged three through five is a Child Development Associate with a Preschool Endorsement.

Within any of the above settings, a person who works in a bilingual program and has demonstrated bilingual competence is a Child Development Associate with a Bilingual Specialization.

Competency Goals	Functional Areas, Key Words
I: To establish and maintain a safe, healthy learning environment.	1. Safe. 2. Healthy. 3. Learning environment.
II: To advance physical and intellectual competence.	4. Physical. 5. Cognitive. 6. Communication. 7. Creative.
III: To support social and emotional development and provide postive guidance.	8. Self. 9. Social. 10. Guidance.

CDA Training

CDA training programs give child care workers one opportunity to learn the CDA Competencies. There are many different kinds of CDA training programs offered by a variety of institutions, including colleges, universities, and vocational schools. Some of the training programs specialize

in preparing persons to work in bilingual/bicultural child care settings.

Students in CDA training programs do not automatically receive the CDA Credential. Furthermore, a person does not have to take part in CDA training to be eligible for the credential. Candidates for the credential may be involved in other types of formal training or be informally trained through workshops and seminars. The only way to gain the CDA Credential is to apply to the CDA National Credentialing Program and successfully complete the assessment process.

The CDA Assessment System

The CDA assessment and credentialing system is one way staff can demonstrate skills acquired through various forms of training and experience. Individual skills are assessed, with direction given for further improvement. The assessment process is based on the caregiver's ability to demonstrate the CDA Competencies while working with children, families, and staff.

CDA assessment and credentialing is currently available to caregivers working with children ages birth through five in center-based care, as home visitors, and in family day care homes. Those who successfully demonstrate their ability are awarded the CDA Credential. A Child Development Associate has met a national standard for quality child care.

Those working in bilingual/bicultural child car settings may find much to gain by applying for the CDA Credential with a Bilingual Specialization. The Bilingual specialization is an expansion of the existing credential. It acknowledges the unique skills required to work in bilingual child care settings. This credential is available only for Spanish/English languages at the present time.

The preceding has given an overview of the CDA program. Detailed materials may be obtained from the Council for Early Childhood Professional Recognition, 1718 Connecticut Avenue NW., Washington, DC 20009.

CDA Assessment System

Eligibility for the CDA Credential center-based

To be eligible for CDA assessment in a center-based setting, a person must meet each of the following criteria—

1. Be 18 years old or older.

2. Identify a state-approved [1] child development which has at least ten children enrolled or at least two caregivers where she/he can be observed by other persons while working as a primary caregiver. For the preschool endorsement, the caregiver must be observed working with a group of at least eight children, the majority of whom must be three through five years old. For the infant/toddler endorsement, the caregiver must be observed working with a group of at least three children under the age of three.

3. Have had either some formal training (for example, in a university, college, junior college, vocational/technical school, or high school) or some informal training (for example, workshops, seminars, or inservice training) in early childhood education or child development, or, for the infant/toddler endorsement, training in infant/toddler education. In total, a person must have had at least three educational experiences. Each workshop or course equals one educational experience.

4. Have had at least 640 hours of experience within the last five years working with children in a group, ages birth to three for the infant/toddler endorsement or three to five for the preschool endorsement.

5. Be able to speak, read and write well enough to understand and be understood by both children and adults.

There are two additional requirements for the CDA Credential with a Bilingual Specialization. Candidates for the Bilingual Specialization must—

6. Be able to speak, read, and write both English and Spanish well enough to understand and be understood by both children and adults; and

7. Have access to a child development center where both languages and cultures are consistently used in all daily activities.

Eligibility for the CDA Credential home visitor.

To be eligible for CDA assessment as a home visitor, a person must meet each of the following criteria—

1. Be 18 years old or older.

2. Identify a program where she/he can be observed conducting home visits during which the focal child of the parent is five years old or younger. Home visits must be used by the program as the primary method of delivery on a continuing basis throughout the year.

3. Have had either some formal training (for example, in a university, college, junior college, vocational/technical school, or high school) or some informal training (for example, workshops, seminars, or inservice training) in child development, infant development, or parenting. In total, a person must have had at least three educational experiences. Each workshop or course equals one educational experience.

4. Have had at least 480 contact hours of experience within the last five years working with families in home visitor settings; she/he must have worked with a minimum of four families on a continuous basis where the focal child was five years old or younger, and

5. Be able to speak, read, and write well enough to understand and be understood by both children and adults.

There are two additional requirements for the CDA Credential with a Bilingual Specialization. Candidates for the Bilingual Specialization must—

6. Be able to speak, read, and write both English and Spanish well enough to understand and be understood by both children and adults; and

7. Have access to a home visitor program that fosters bilingual development and in which both languages and cultures are consistently used in all daily activities.

Eligibility for the CDA Credential family day care.

To be eligible for CDA assessment in a family day care setting, a person must meet each of the following criteria—

1. Be 18 years old or older.

2. Identify a state-approved [2] program where she/he can be observed by other persons while working as a primary caregiver with at least two children five years old or younger who are not related to the caregiver.

3. Have had either some formal training (for example, in a university, college, junior college, vocational/technical school, or high school), or some informal training (for example, USDA Child Care Food Program workshops or Family Day Care Association training sessions) in early childhood education or child development. In total, a person must have had at least three educational experiences. Each workshop or course equals one educational experience.

4. Have had at least 640 contact hours as a family day care provider over a minimum period of ten months.

There are two additional requirements for the CDA Credential with a Bilingual Specialization. Candidates for the Bilingual Specialization must—

5. Be able to speak, read, and write both English and Spanish well enough to understand and be understood by both children and adults; and

[1] Persons should seek clarification from the CDA National Credentialing Program if they work in a state where there is no state licensing or approval mechanism for their center.

[2] Persons should seek clarification from the CDA National Credentialing Program if they work in a state where there is no state licensing or approval mechanism for their center.

6. Have access to a family day care setting that fosters bilingual development and in which both languages and cultures are consistently used in all daily activities.

The Assessment Process

The assessment is conducted by a four member Local Assessment Team, or LAT. Each member has an important role.

1. The Candidate. A full member of the LAT, the Candidate has an equal voice in assessing her/his own competence.

The Candidate compiles evidence to demonstrate competence in the 13 Functional Areas. This compiled material is in the form of a Portfolio. (Information on putting together the Portfolio will be supplied by the CDA National Credentialing Program after one applies.)

2. The Advisor. This member of the LAT is selected by the Candidate. The Advisor is an early childhood professional who may be a college professor, a CDA trainer, a CDA, a center director, or someone else. The Advisor establishes a professional relationship with the Candidate over time, observes the Candidate's performance, provides assistance and feedback, and helps the Candidate decide when to be assessed.

The Parent/Community Representative (P/C Rep). Also selected by the Candidate, the P/C Rep must be or have been a parent or guardian of a child five years old or younger. The P/C Rep must have been recently involved with the Candidate's program as a parent or volunteer, but must not be a current employee. Furthermore, the P/C Rep must not have a child currently in the Candidate's care. The P/C Rep serves as the spokesperson on the LAT for the parents and the community. To do this, the P/C Rep gets questionnaires filled out by the parents of children in the Candidate's care and observes the Candidate working with the children and their families.

4. The CDA Representative (CDA Rep). Assigned by the CDA National Credentialing Program, the CDA Rep is a professional in early childhood education who has worked with young children in a child development setting. The CDA Rep has been trained to observe, interview, make fair judgments, and verify that procedures are followed. The CDA Rep observes the Candidate, and participates in the LAT meetings at which the Candidate's competence is assessed.

The Local Assessment Team (LAT) Meeting

Each of the four team members collects information about the Candidate's skills in working with young children. After the information is gathered, the team members attend the LAT meeting. The LAT reviews the materials that have been compiled, examines the Candidate's performance in each of the 13 Functional Areas, and decides if the Candidate has met the CDA Competency Standards. For bilingual assessments, the LAT also looks for demonstrated skill in the use of both languages. Each team member has equal importance in judging the Candidate's competence. This means that the Candidate participates fully in the process. At the completion of the meeting, the LAT votes on the Candidate's overall competence. The LAT may recommend that the Candidate be awarded the CDA Credential or it may decide that the Candidate needs more training. In order to recommend that the Candidate receive the CDA Credential, however, all team members must agree that the Candidate is competent.

The CDA Representative sends all the meeting materials to the CDA National Credentialing Program for review and verification. Depending on how the LAT voted, the Candidate is then either awarded the CDA Credential or advised to seek more training.

How Long It Takes

The assessment system is designed for Candidates to progress at their own pace. Some take longer than others. Much depends on how fast the Candidates, and those with whom they work, can collect the information needed for assessment. The important thing is that assessments should not take place until Candidates feel they are ready.

Cost to the Candidate

The total cost for a CDA assessment and Credential is $325. Two separate fees are paid, as follows:

$25.00 registration fee;

$300.00 assessment and credentialing fee.

These fees are in effect through August, 1987. For further information on current CDA Candidate fees, please contact the CDA National Credentialing Program (800) 424-4310 or (202) 265-9090.

[FR Doc. 87-14893 Filed 7-1-87; 8:45 am]

BILLING CODE 4130-01-M

Public Health Service

Statement of Organization, Functions, and Delegations of Authority, Food and Drug Administration

Part H, Chapter HF (Food and Drug Administration) of the Statement of Organizations, Functions, and Delegations of Authority for the Department of Health and Human Services (35 FR 3685, February 25, 1970, as amended most recently in pertinent part at 49 FR 45263 of November 15, 1984) is amended to reflect realignment from ten Regional Offices to six.

Section HF-B, Organization and Functions is amended as follows:

1. Delete paragraph (f-4) *Regional Field Offices (HFR1-HFRX)* and their Appendix HR-1 in its entirety; and

2. Insert new paragraph (f-4) *Regional Field Offices (HFR).*

(f-4) *Regional Field Offices (HFRN, HFRA, HFRS, HFRM, HFRW, HFRP).* Field operations for the enforcement of the laws under the jurisdiction of FDA are carried out by six Regional Field Offices identified as follows:

Region	Regional field office	Area of responsibility
Northeast Region (HFRN)	New York, NY	Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York.
Mid-Atlantic Region (HFRA)	Philadelphia, PA	Pennsylvania, New Jersey, Delaware, Maryland, Virginia, West Virginia, Ohio, Kentucky.
Southeast Region	Atlanta, GA	North Carolina, South Carolina, Tennessee, Georgia, Florida, Alabama, Mississippi, Louisiana, Puerto Rico.
Midwest Region (HFRM)	Chicago, IL	Michigan, Indiana, Illinois, Wisconsin, Minnesota, North Dakota, South Dakota.
Southwest Region (HFRW)	Dallas, TX	Texas, Arkansas, Oklahoma, Missouri, Kansas, Iowa, Nebraska, New Mexico, Colorado, Utah, Wyoming.
Pacific Region (HFRP)	San Francisco, CA	Alaska, Hawaii, Arizona, California, Nevada, Idaho, Montana, Oregon, Washington.

The Regional Field Office is the primary organizational component for each region and is organized into district offices, divisions, and/or specialized centers. A Regional Field Office is under the direction of a Regional Food and Drug Director who is the primary executive of the agency within the region. The Regional Food and Drug

Director is responsible for the effective implementation of all activities required to assure that regulated establishments within the region comply with laws and regulations enforced by FDA.

Within FDA Regional Field Offices, functions performed are as follows:

Provides managerial direction to the agency's field programs to achieve compliance with the laws and regulations for which the agency is responsible through appropriate voluntary correction or regulatory action.

Manages resource allocations, money, and people.

Manages a field management information system.

Coordinates agency activities with related operations of the PHS Regional Health Administrator and the Department's Regional Director.

Develops and maintains cooperative relationships with State, local, and other Federal agencies; serves on interagency councils; encourages improved State and local consumer protection programs pertinent to agency-enforced laws and regulations.

Assists State and local cooperative officials in the development of uniform legislation, codes, and regulations.

Represents the agency, or provides policy and direction for agency representation, in dealing with public and private organizations, such as government agencies, volunteer agencies, educational institutions, industry and professional associations, and the local media within the region.

Plans and evaluates program activities; measures accomplishments against annual field workplan objectives; initiates management and program analyses; manages a Quality Assurance Program; and advises Headquarters regarding strategy changes needed to reach existing or modified objectives.

Advises Headquarters on new or emerging problems and trends, future program needs and priorities, State legislative activities; manpower, equipment, financial needs, and long-range planning.

Coordinates emergency activities by maintaining liaison with Department components and other Federal departments and agencies and by providing assistance to States and localities in the event of a national disaster or other emergency.

Advises, commissions, and certifies States personnel; and monitors and evaluates State programs in milk, shellfish, food service sanitation, and radiation safety.

Determines acceptability of items, subject to the agency's jurisdiction, for entry into this country through examination of available records, inspection of the product, or by sampling and laboratory examinations of the product followed by release, detention, and/or rejection.

Conducts investigations and inspections and analyzes samples of foods, drugs, and other commodities for which the agency has regulatory responsibility.

Conducts administrative hearings on alleged violations, and initiates appropriate enforcement action.

Recommends legal action to Headquarters, to the Office of the General Counsel, or to the responsible U.S. attorney (when such direct reference is authorized), and assists in implementing approved action.

Detains medical devices and, in cooperation with USDA, detains meat, poultry, or egg products that may be violative.

Manages recalls and performs follow-up activities to assess recall effectiveness and prevent recurrences.

Conducts research to develop and refine analytical methodology and to explore new systems of analysis; maintains liaison with scientists and scientific bodies with interests pertinent to laboratory activities.

Manages, evaluates, and audits the program aspects of Federal-State contracts.

Manages an equal employment opportunity and career development and training program.

Conducts consumer affairs and information programs.

Provides formal mechanisms for receiving consumer input into agency planning and priority-setting systems.

Directs a freedom of information program consistent with agency policy.

Maintains liaison with the medical community to share the agency's position on pertinent issues, and to obtain feedback regarding the concerns of physicians and other health-related scientists.

Conducts a small business representative program.

Prior Delegations of Authority. Pending further delegations, directives, or orders by the Commissioner of Food and Drugs, all delegations of authority to officers or employees in regional Field Offices in effect prior to the date of this order shall continue in effect in them or their successors.

Effective date: June 24, 1987.

Robert E. Windom, M.D.,

Assistant Secretary for Health.

[FR Doc. 87-15015 Filed 7-1-87; 8:45 am]

BILLING CODE 4160-01-M

Administrator, Health Resources and Services Administration; Delegation of Authority to Indian Alcohol and Substance Abuse and Prevention and Treatment Act of 1986

Notice is hereby given that in furtherance of the delegation of April 2, 1987 (52 FR 11754) by the Assistant Secretary for Health to the Administrator, Health Resources and Services Administration (HRSA), the Administrator, HRSA, has delegated to the Director, Indian Health Service, with authority to redelegate, all the authorities delegated to the Administrator, HRSA, under the Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986, excluding the authority under section 4229(b) and the authorities to issue regulations and submit reports to Congress.

The delegation to the Director, Indian Health Service, became effective on April 9, 1987.

Dated: April 9, 1987.

David N. Sundwall,

Administrator, Health Resources and Services Administration.

[FR Doc. 87-14993 Filed 7-1-87; 8:45 am]

BILLING CODE 4160-15-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Alaska Land Use Council, Works Program Items

As required by the operating procedures of the Alaska Land Use Council, which was established under the Alaska National Interest Lands Conservation Act (ANILCA), the Council invites the public to submit, for its consideration, projects and issues they believe should be considered by the Council. The Council is comprised of Federal, State, and Native land and resource decision-makers in Alaska. The Council is mandated to conduct cooperative studies, develop programs and procedures for implementing ANILCA, and to advise the Federal and State governments on a variety of complex land and resource management issues in Alaska.

In submitting a potential project or issues please include a brief description of the work to be accomplished, the completion date, the anticipated product, and the nature of the Council's involvement. The Cochairmen, after consultation with the Council's Staff Committee, will prepare a recommended work program considering the

requirements of ANILCA, projected Council resources, special requests, and recommendations from the public, the Council's Land Use Advisors Committee, and Council members. The proposed work program will be submitted in August to the Council for adoption. Any interested parties having a proposed work program item should submit the information to the Cochairmen prior to July 31, 1987.

Submittals should be sent to either:

Robert L. Grogan, State Cochairman Designee, Alaska Land Use Council, Division of Governmental Coordination, 2600 Denali Street, Suite 700, Anchorage, AK 99503-2798.

Vernon R. Wiggins, Federal Cochairman, Alaska Land Use Council, 1689 "C" Street, Suite 100, Anchorage, AK 99501.

Anyone having questions regarding the Council's work program may call the State Cochairman Designee's office at (907) 274-3528 or the Federal Cochairman's office at (907) 272-3422.

William P. Horn,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87-75002 Filed 7-1-87; 8:45 am]

BILLING CODE 4310-10-M

Bureau of Land Management

[CA-930-07-4332-13; FES87-26]

Availability of Final Environmental Impact Statement; Eagle Lake and Surprise Resource Areas Wilderness, Susanville District, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of final environmental impact statement (EIS) for the Eagle Lake-Cedarville Study Areas Wilderness Proposals; California study areas.

SUMMARY: This EIS assesses the environmental consequences of managing 13 Wilderness Study Areas (WSAs) as wilderness or non-wilderness. The alternatives assessed include: (1) A "no wilderness/no action" alternative (2) an "all wilderness" alternative and (3) "partial wilderness" alternatives for each of the WSAs.

The names of the 13 WSAs analyzed in the EIS, their total acreage, and the proposed actions for each are as follows:

Tunnison Mountain—20,650 acres: 7,660 acres suitable, 12,990 acres nonsuitable.

Five Springs—48,460 acres; 48,460 acres nonsuitable.

Skedaddle Mountain —63,790 acres; 37,240 acres suitable, 26,556 acres nonsuitable.

Dry Valley Rim —95,025 acres; 52,845 acres suitable, 42,180 acres nonsuitable.

Buffalo Hills —47,315 acres; 47,315 acres nonsuitable.

Twin Peaks —91,405 acres; 54,970 acres suitable, 36,435 acres nonsuitable.

Wall Canyon —45,790 acres; 45,790 acres nonsuitable.

Little High Rock Canyon —52,143 acres; 17,320 acres suitable, 34,823 acres nonsuitable.

Yellow Rock Canyon —13,050 acres; 13,050 acres nonsuitable.

High Rock Canyon —33,985 acres; 12,180 acres suitable, 21,805 acres nonsuitable.

East Fork High Rock Canyon —55,320 acres; 33,460 acres suitable, 21,860 acres nonsuitable.

Sheldon contiguous —24,130 acres; 780 acres suitable, 23,350 acres nonsuitable.

Massacre Rim —110,000 acres; 23,260 acres suitable, 86,740 acres nonsuitable.

The Bureau of Land Management wilderness proposals will ultimately be forwarded by the Secretary of the Interior to the President and from the President to Congress. The final decision on wilderness designation rests with Congress.

In any case, no final decision on these proposals can be made by the Secretary during the 30 days following the filing of this EIS. This complies with the Council on Environmental Quality Regulations, 40 CFR 1506.10b(2).

SUPPLEMENTARY INFORMATION: A limited number of individual copies of the EIS may be obtained from the Area Managers, Eagle Lake Resource Area, 2545 Riverside Drive, 873 North Street, Susanville, CA 96130, and Surprise Resource Area, 602 Cressler Street, P.O. Box 460, Cedarville, CA 96104. Copies are also available for inspection at the following locations:

Department of the Interior, Bureau of Land Management, 18th and "C" Streets, NW., Washington, DC 20420,

or

Bureau of Land Management, California State Office, 2800 Cottage Way, Room 2841, Sacramento, CA 95825,

or

Bureau of Land Management, Susanville District Office, 805 Hall Street, Susanville, CA 96130,

FOR FURTHER INFORMATION CONTACT: Larry Teeter, Outdoor Recreation Planner, Susanville District Office, 805 Hall Street, Susanville, CA 96130, (916) 257-5381.

Dated: June 25, 1987.

Bruce Blanchard,

Director, Office of Environmental Project Review.

[FR Doc. 87-14899 Filed 7-1-87; 8:45 am]

BILLING CODE 4310-40-M

[CO-940-07-4121-14; C-44693]

Colorado; Notice of Emergency By-Pass Coal Lease Offering by Sealed Bid

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of competitive coal lease sale.

SUMMARY: Notice is hereby given that certain coal resources in the lands hereinafter described in Rio Blanco County, Colorado will be offered for competitive lease by sealed bid in accordance with the provisions of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 181 et seq.).

DATES: The lease sale will be held at 2:00 p.m., Thursday, August 6, 1987. Sealed bids must be submitted on or before 1:00 p.m., August 6, 1987.

ADDRESSES: The lease sale will be held in the Third Floor Conference Room, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado. Sealed bids must be submitted to the Cashier, Bureau of Land Management, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215.

FOR FURTHER INFORMATION CONTACT: Satch Nakazono at (303) 236-1772.

SUPPLEMENTARY INFORMATION: The tract will be leased to the qualified bidder of the highest cash amount provided that the high bid meets the fair market value determination of the coal resource. The minimum bid is $100 per acre, or fraction thereof. No bid less than $100 per acre, or fraction thereof, will be considered. Sealed bids received after the time specified above will not be considered. The minimum bid is not intended to represent fair market value. The fair market value will be determined by the authorized officer after the sale.

Coal Offered: The coal resource to be offered is limited to coal recoverable by underground mining methods from the "D" seam in the following lands located adjacent to the Deserado Mine approximately ten miles northeast of Rangely, Colorado.

T. 2 N., R. 101 W., 6th P.M.

Sec. 1, Lots 1, 2, 5 and 6, SW¼NE¼, W½SE¼NE¼, and N½SE¼;

T. 3 N., R. 101 W., 6th P.M.

Sec. 36, SW¼SE¼, and W½SE¼SE¼.

The land described contains 344.31 acres.

Total recoverable reserves are estimated to be 2.1 million tons. The D seam underground mineable coal is ranked as high volatile C bituminous using the "Parr Formula" or borderline between subbituminous A and volatile C bituminus using ASTM Standard D-388-77.

Surface Owner: The surface is federally owned.

Rental and Royalty: The lease isued as a result of this offering will provide for payment of an annual rental of $3.00 per acre, or fraction thereof, and a royalty payable to the United States of 8 percent of the value of coal mined by underground methods. The value of the coal will be determined in accordance with 30 CFR 203.200.

Notice of Availability: Bidding instructions for the offered tract are included in the Detailed Statement of Lease Sale. Copies of the statement and the proposed coal lease are available at the Colorado State Office. Case file documents are also available for inspection at that office.

Dated: June 24, 1987.

Neil F. Morck,

State Director.

[FR Doc. 87-15059 Filed 7-1-87; 8:45 am]

BILLING CODE 4310-JB-M

[WY-040-07-4322-02]

Rock Springs District Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Mangement, Interior.

ACTION: Notice of Meeting of the Rock Springs District Grazing Advisory Board.

SUMMARY: This notice sets forth the schedule and agenda of a meeting of the Rock Springs District Grazing Advisory Board.

DATE: August 27, 1987, 9:30 a.m. until 4 p.m.

ADDRESS: Bureau of Land Management, Kemmerer Resource Area Office, Conference Room, North Hwy. 189, Kemmerer, Wyoming 83101.

FOR FURTHER INFORMATION CONTACT: Donald H. Sweep, District Manager, Rock Springs District, Bureau of Land Management, P.O. Box 1869, Rock Springs, Wyoming 82902-1869, (307) 382-5350.

SUPPLEMENTARY INFORMATION: The agenda for the meeting will include:

1. Introduction and opening remarks
2. Approval of minutes of the October 30, 1986 meeting
3. Election of a Chairman and Vice Chairman
4. Improvements proposed for completion in FY 88 with range betterment (8100) funds
5. Update on wild horse gathering
6. Public comment period
7. Rock Creek Allotment (Kemmerer Resource Area) Inventory/Monitoring Field Tour
8. Arrangements for the next meeting

The meeting is open to the public. Interested persons may make oral statements to the Board between 11-11:30 a.m. or file written statements for the Board's consideration. Anyone wishing to make an oral statement should notify the District Manager, Bureau of Land Management, Highway 191 North, P.O. Box 1869, Rock Springs, Wyoming 82902, by August 26, 1987.

Depending on the number of persons wishing to make oral statements, a time limit per person may be established by the District Manager.

Donald H. Sweep,

District Manager.

[FR Doc. 87-15021 Filed 7-1-87; 8:45 am]

BILLING CODE 4310-22-M

[CO-940-87-4111-15; C-36984]

Colorado; Proposed Reinstatement

Notice is hereby given that a petition for reinstatement of oil and gas lease C-36984 for lands in Mesa County, Colorado, was timely filed and was accompanied by all the required rentals and royalties accruing from March 1, 1987, the date of termination.

The lessee has agreed to new lease terms for rentals and royalties at rates of $5.00 and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee for the lease and has reimbursed the Bureau of Land Management for the estimated cost of this **Federal Register** notice.

Having met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920, as amended, (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective March 1, 1987, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Questions concerning this notice may be directed to Karen Purvis of the Colorado State Office at (303) 236-1772.

Richard E. Richards,

Supervisor, Oil and Gas/Geothermal Leasing Unit.

[FR Doc. 87-15022 Filed 7-1-87; 8:45 am]

BILLING CODE 4310-JB-M

[AZ 940-07-4212-12; A-22098]

Exchange of Mineral Estate With the State of Arizona

June 25, 1987.

ACTION: Notice of issuance of conveyance document and partial opening order.

SUMMARY: This was an exchange of State and Federal mineral estates that resulted in the consolidation of ownership of the surface and mineral estates by the State and Federal governments. The State of Arizona acquired 33,972.60 acres of mineral estate on State land in Maricopa, Pinal and Yavapai Counties. The United States acquired 33,995.04 acres of mineral estate on Federal land in La Paz, Maricopa and Yavapai Counties. This action will open 27,078.04 acres to the general mining laws and mineral leasing laws. The remaining 6,917 acres will remain closed due to wilderness considerations.

FOR FURTHER INFORMATION CONTACT: Marsha Luke, Arizona State Office, Telephone (602) 241-5534.

The United States conveyed the mineral estate on the following described land to the State of Arizona on May 12, 1987, under section 206 of the Act of October 21, 1976 (43 U.S.C. 1716):

Gila and Salt River Meridian, Arizona

T. 3 N., R. 2 E.,
Sec., 1, S½NE¼, N½SE¼.
T. 3 N., R. 5 E.,
Sec. 1, lots 1-4, incl., S½N½, S½;
Sec. 2, lots 1-4, incl., S½N½, S½;
Sec. 9, NE¼;
Sec. 11, N½, SE¼;
Sec. 12, all;
Sec. 15, SW¼.
T. 5 N., R. 2 E.,
Sec. 12, NE¼, N½SE¼, SE¼SE¼;
Sec. 13, NE¼.
T. 5 N., R. 3 E.,
Sec. 22, N½, SW¼.
T. 6 N., R. 2 E.,
Sec. 1, lots 1-4, incl., S½N½, S½;
Sec. 3, lots 1, 2, S½NE¼, SE¼;
Sec. 33, NE¼, N½SE¼;
Sec. 34, lots 1-4, incl., N½S½, NW¼, N½NE¼, SW¼NE¼.
T. 6 N., R. 3 E.,
Sec. 6, lots 1-7, incl., S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 8, E½, SE¼SW¼;
Sec. 11, all;
Sec. 12, W½, SE¼;
Sec. 13, W½SE¼;
Sec. 14, all;
Sec. 15, E½, SW¼;
Sec. 17, NW¼, S½;
Sec. 20, NE¼;
Sec. 21, E½;
Sec. 22, all;
Sec. 23, N½SE¼;
Sec. 24, NE¼, E½NW¼;
Sec. 27, E½, N½NW¼;
Sec. 28, E½.
T. 6 N., R. 4 E.,
Sec. 7, lots 3, 4, E½SW¼;
Sec. 8, NW¼, W½SW¼, NW¼NE¼;
Sec. 9, lots 2, 3, 4, SW¼NE¼, SW¼NW¼, SW¼, NW¼SE¼;
Sec. 18, W½NE¼, E½SE¼;
Sec. 19, lots 1, 2, E½NW¼, NE¼;
Sec. 29, SW¼.
T. 7 N., R. 2 E.,
Sec. 11, W½NE¼, NW¼, S½;
Sec. 18, lots 1-4, incl., E½W½, E½;

Sec. 19, lots 1–4, incl., E½W½, E½.
T. 7 N., R. 7 W.,
Sec. 25, E½, SW¼;
Sec. 26, all;
Sec. 27, all;
Sec. 28, all;
Sec. 34, all;
Sec. 35, all.
T. 7 N., R. 8 W.,
Sec. 3, lots 1–4, incl., S½N½, S½;
Sec. 4, lots 1–4, incl., S½N½, S½;
Sec. 5, lots 1–4, incl., S½N½, S½;
Sec. 7, lots 1–4, incl., E½W½, E½;
Sec. 8, N½;
Sec. 9, NW¼;
Sec. 10, NE¼;
Sec. 14, S½;
Sec. 22, all;
Sec. 23, E½.
T. 7 N., R. 9 W.,
Sec. 1, lots 1–4, incl., S½N½, S½;
T. 8 N., R. 7 W.,
Sec. 5, lots 1–4, incl., S½;
Sec. 6, lots 1–7, incl., E½SW¼, SE¼;
Sec. 7, lots 1, 2, E½NW¼, NE¼;
Sec. 8, NW¼;
Sec. 18, lots 1–4, incl., E½W½, E½;
Sec. 30, lots 1–4, incl., E½W½.
T. 8 N., R. 8 W.,
Sec. 1, lots 1–4, incl., S½;
Sec. 6, lots 1–6, incl., E½SW¼, SE¼;
Sec. 11, E½;
Sec. 12, all;
Sec. 13, all;
Sec. 14, E½;
Sec. 23, E½, SW¼;
Sec. 24, all;
Sec. 25, all;
Sec. 26, all;
Sec. 27, E½;
Sec. 33, all;
Sec. 34, all.
T. 10 S., R. 9 E.,
Sec. 21, S½SE¼;
Sec. 22, S½SW¼, NE¼SW¼, W½SE¼;
Sec. 26, W½SW¼, SE¼SW¼;
Sec. 29, SE¼NE¼, E½SE¼.

In exchange the United States acquired the mineral estate from the State of Arizona on the following described land:

Gila and Salt River Meridian, Arizona

T. 2 N., R. 10 W.,
Sec. 2, lots 1–4, incl., S½N½, S½.
T. 2 N., R. 14 W.,
Sec. 2, lots 1–4, incl., S½N½, S½;
Sec. 16, N½, SW¼;
Sec. 32, W½.
T. 3 N., R. 7 W.,
Sec. 2, lots 1–4, incl., S½N½, S½;
Sec. 16, all;
Sec. 32, N½, SW¼, N½SE¼, SW¼SE¼.
T. 3 N., R. 9 W.,
Sec. 32, E½;
Sec. 36, all.
T. 3 N., R. 12 W.,
Sec. 2, lots 1–4, incl., S½N½, S½.
T. 4 N., R. 7 W.,
Sec. 2, lots 1–4, incl., S½N½, S½.
T. 4 N., R. 11 W.,
Sec. 36, all.
T. 4 N., R. 12 W.,
Sec. 2, lots 1–4, incl., S½N½, S½;
Sec. 16, all;
Sec. 32, all;
Sec. 36, all.
T. 4 N., R. 14 W.,
Sec. 2, lots 1–4, incl., S½N½, S½.
T. 5 N., R. 12 W.,
Sec. 2, lots 1–4, incl., S½N½, S½;
Sec. 5, S½N½, SW¼, N½SE¼.
T. 5 N., R. 13 W.,
Sec. 32, all.
T. 5 N., R. 14 W.,
Sec. 32, all;
Sec. 36, lots 1–4, incl., W½E½, W½.
T. 6 N., R. 9 W.,
Sec. 32, all.
T. 6 N., R. 13 W.,
Sec. 2, lots 1–4, incl., S½N½, S½;
Sec. 16, all;
Sec. 19, lots 1–4, incl., E½W½, E½;
Sec. 20, all.
T. 6 N., R. 15 W.,
Sec. 16, all;
Sec. 36, W½.
T. 6 N., R. 16 W.,
Sec. 2, lots 1–4, incl., S½N½, S½.
T. 7 N., R. 11 W.,
Sec. 34, NE¼, NE¼NW¼, S½.
T. 7 N., R. 14 W.,
Sec. 32, N½, S½SW¼, SE¼.
T. 9 N., R. 10 W.,
Sec. 2, all;
Sec. 16, all;
Sec. 32, lots 1 and 2, N½, N½SE¼;
Sec. 36, lots 1–4, incl., N½, N½S½.
T. 10 N. R., 10 W.,
Sec. 2, lots 1–4, incl., SE¼NE¼;
Sec. 16, N½, N½SW¼, SE¼;
Sec. 32, N½.
T. 11 N., R. 13 W.,
Sec. 2, lots 1–4, incl., S½N½, S½;
T. 12 N., R. 14 W.,
Sec. 36, S½.
T. 1 S., R. 7 W.,
Sec. 16, all.
T. 1 S. R. 8 W.,
Sec. 36, all.
T. 1 S., R. 9 W.,
Sec. 32, all;
Sec. 36, all.
T. 1 S., R. 10 W.,
Sec. 32, all;
Sec. 36, all.

At 9:00 a.m. on August 3, 1987, the mineral estate on the reconveyed land described above will be open to applications under the general mining laws and mineral leasing laws, subject to existing State-issued leases and permits for the terms of said leases and permits. All applications and offers received prior to 9:00 a.m. on August 3, 1987 will be considered as simultaneously filed as of that time and date, and a drawing will be held in accordance with 43 CFR 1821.2–3, if necessary. Applications and offers received thereafter shall be considered in the order of filing.

The following described mineral estate acquired by the United States in this exchange will remain closed to appropriation under general mining and mineral leasing laws.

Gila and Salt River Meridian

T. 2 N., R. 14 W.,
Sec. 16, SE¼;
Sec. 32, E½;
Sec. 36, N½S½, S½SE¼.
T. 3 N., R. 9 W.,
Sec. 2, lots 1–4, incl., S½N½, S½;
Sec. 16, all.
T. 4 N., R. 7 W.,
Sec. 32, all.
T. 4 N., R. 8 W.,
Sec. 36, all.
T. 4 N., R. 11 W.,
Sec. 2, lots 1–4, incl., S½N½, S½;
Sec. 16, all.
T. 7 N., R. 17 W.,
Sec. 2, lots 1–4, incl., S½N½, S½.
T. 9 N., R. 10 W.,
Sec. 32, lots 3 and 4, N½SW¼.
T. 11 N., R. 13 W.,
Sec. 32, all.
T. 11 N., R. 14 W.,
Sec. 16, all.
T. 12 N., R. 14 W.,
Sec. 36, N½.

Inquiries concerning the land should be addressed to the Chief, Branch of Lands and Minerals Operations, Arizona State Office, Bureau of Land Management, P.O. Box 16563, Phoenix, Arizona 85011.

John T. Mezes,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 87–15020 Filed 7–1–87; 8:45 am]

BILLING CODE 4310–32–M

[AZ-940-07-4212-12; PHX 080747]

Realty Action; Reconveyed Land Opened to Entry; Mohave County, AZ

June 23, 1987.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of reconveyed land opened to entry.

SUMMARY: This action will open 40 acres of reconveyed land in Mohave County to State Exchange Application.

DATE: June 18, 1987.

FOR FURTHER INFORMATION CONTACT: Marsha Luke, Arizona State Office, (602) 241–5534.

SUPPLEMENTARY INFORMATION: On December 21, 1948, as authorized under Section 8 of the Taylor Grazing Act of June 28, 1934 (48 Stat. 1269), as amended, the United States acquired the following land:

Gila and Salt River Meridian; Arizona

T. 6 N., R. 11 W.
Sec. 9, SW¼NE¼

containing 40 acres in Mohave County.

The land described above has been determined suitable for disposal by

State Exchange, as provided by section 206 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2756; 43 U.S.C. 1716). The land will continue to be segregated from settlement, sale, location or entries under the public land laws. The mineral estate was not reconveyed to the United Sates and therefore, will not be subject to entry under the mining or mineral leasing laws.

John T. Mezes,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 87-15060 Filed 7-1-87; 8:45 am]

BILLING CODE 4310-32-M

[MT-070-07-4212-13; M74131]

Realty Action; Exchange of Public Lands; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Designation of public lands in Granite, Lincoln, Missoula, and Powell Counties, Montana, for transfer out of Federal ownership in exchange for lands owned by Champion International.

SUMMARY: BLM proposes to exchange public land with Champion International to achieve more efficient management of the public land through consolidation and to acquire public values including access and wildlife habitat.

The following public land is being considered for disposal by exchange pursuant to section 206 of the Federal Land Policy and Management Act of October 21, 1976, 43 U.S.C. 1716.

Principal Meridian, Montana

T. 14 N., R. 10 W.,
Sec. 14, E½NE¼, NE¼SE¼
T. 14 N., R. 12 W.,
Sec. 18, Lots 1, 3, 4, SW¼NE¼, SE¼SW¼, S½SE¼, NE¼SE¼
T. 11 N., R. 13 W.,
Sec. 2, Lots 1, 2, 3, 4, S½NW¼, NW¼SW¼
T. 14 N., R. 13 W.,
Sec. 14, E½NE¼, E½SW¼, SE¼
T. 13 N., R. 14 W.,
Sec. 2, Lot 1, SE¼NE¼
T. 11 N., R. 15 W.,
Sec. 18, Lot 4
T. 12 N., R. 15 W.,
Sec. 26, NE¼, N½NW¼, NE¼SE¼
T. 12 N., R. 16 W.,
Sec. 9, SW¼SE¼
Sec. 14, S½NE¼, E½SE¼
Sec. 24, W½
Sec. 32, NW¼, N½S½, SE¼SE¼
T. 13 N., R. 18 W.,
Sec. 24, NE¼, E½NW¼, NW¼NW¼
T. 29 N., R. 27 W.,
Sec. 15, MS6182

The lands described above comprise 2,587.60 acres, more or less. These lands are segregated from entry under the mining laws, except the mineral leasing laws, effective upon publication of this notice in the **Federal Register.** The segregative effect will terminate upon issuance of patent, upon publication in the **Federal Register** of termination of the segregation, or 2 years from the date of this publication, whichever comes first.

Final determination on disposal will await completion of an environmental assessment. Upon completion of the environmental assessment and land use decision, a Notice of Realty Action shall be published specifying the lands to be exchanged and the lands to be acquired.

DATE: For a period of 45 days from date of publication in the **Federal Register,** interested parties may submit comments to the Butte District Manager, P.O. Box 3388, Butte, Montana 59702.

SUPPLEMENTARY INFORMATION: Detailed information concerning the exchange is available at the Butte District Office.

J.A. Moorhouse,
District Manager.

June 26, 1987.

[FR Doc. 87-15023 Filed 7-1-87; 8:45 am]

BILLING CODE 4310-DN-M

[MT-070-07-4212-12; M-71898]

Realty Action; Exchange of Public Lands; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Exchange of public lands for lands owned by the State of Montana in Granite, Missoula and Powell Counties.

SUMMARY: The following described lands have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716.

Principal Meridian, Montana

T. 8 N., R. 15 W.,
Sec. 5, Lots 2, 3, 4, S½NW¼, SW¼, W½SE¼,
Sec. 8, All,
Sec. 17, W½E½, W½,
Sec. 21, W½SW¼, SE¼SE¼,
Sec. 28, E½NE¼.
T. 11 N., R. 11 W.,
Sec. 14, Lot 1,
Sec. 22, N½, NW¼SW¼, NE¼SE¼.
T. 11 N., R. 16 W.,
Sec. 4, SW¼SW¼.
T. 12 N., R. 15 W.,
Sec. 21, N½N½.
T. 12, N., R. 17 W.,
Sec. 13, Lots 1, 2, 3, 5, 6, 8, 9, NW¼NE¼, NE¼NW¼, W½W½, SE¼SW¼, SW¼SE¼.
Sec. 24, Lots 6, 7, NW¼.

Containing 3,210.57 acres of public lands.

In exchange for these lands, the United States will acquire the following lands owned by the State of Montana:

Principal Meridian, Montana

T. 7 N., R. 16 W.,
Sec. 16, All.
T. 13 N., R. 12 W.,
Sec. 16, Lots 1, 2, 3, E½, S½NW¼, SW¼.
T. 13 N., R. 13 W.,
Sec. 16, All,
Sec. 36, Lots 1, 2, 3, 4, 5, 6, 7, W½NE¼, NW¼, N½SW¼, NW¼SE¼.
T. 14 N., R. 13 W.,
Sec. 36, All.

Containing 3,189.79 acres of State lands. These lands are not being acquired for wilderness purposes.

DATES: For a period of 45 days from the date of this notice, interested parties may submit comments to the Bureau of Land Management, at the address shown below. Any adverse comments will be evaluated by the BLM, Montana State Director, who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of Interior.

FOR FURTHER INFORMATION CONTACT: Information related to the exchange, including the environmental assessment/land report, is available for review at the Garnet Resource Area Office, 3255 Fort Missoula Road, Missoula, Montana 59801.

SUPPLEMENTARY INFORMATION: The terms, conditions and reservations of the exchange are:

1. A reservation to the United States of a right-of-way for ditches or canals in accordance with 43 U.S.C. 945.

2. Both the surface and mineral estates will be exchanged on an equal value basis.

3. The lands will be exchanged subject to all valid, existing rights (e.g., rights-of-way, easements, and leases of record).

4. The exchange must meet the requirements of 43 CFR 4110.4-2(b).

This exchange is consistent with Bureau of Land Management policies and planning and has been discussed with State and local officials. The estimated completion date is September, 1987. The public interest will be served by this exchange. It will reposition scattered public lands into intensively managed retention areas with high public values and it will result in

management efficiences while meeting long-term, multiple use goals.

J.A. Moorhouse,

District Manager.

June 26, 1987.

[FR Doc. 87-15024 Filed 7-1-87; 8:45 am]

BILLING CODE 4310-DN-M

[UT-060-07-4212-14; U-59966]

Realty Action; Noncompetitive Sale of Public Land in San Juan County, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, U-59966, noncompetitive sale of Public Land in San Juan County, Utah.

SUMMARY: The following described parcel of public land has been examined, and through the development of land-use planning decisions based upon public input, resource considerations, regulations and Bureau policies, has been found suitable for disposal by sale pursuant to section 203 of the Federal Land Policy and Management Act of 1976 (FLPMA) (90 Stat. 2750; 43 U.S.C. 1713) using direct sale procedures (43 CFR 2711.3-3(a)(3)(5). Sale will be at no less than the appraised fair maket value of $3.000.

Salt Lake Meridian, Utah

T. 36 S., R. 16 E.,

Sec. 28, S½ NW ¼ NW ¼ NE ¼, SW¼ NW ¼ NE ¼, N½ NW¼ SW ¼ NE¼.

The described land aggregates 20 acres.

The land is being offered as a direct sale to Mr. Oren D. Story, Fry Canyon, Utah, in accordance with 43 CFR 2711.3-3(a)(3)(5). The purpose of the sale is to recognize and protect an existing business and facilities built by Mr. Story known as the Fry Canyon Store and Motel and to resolve inadvertent unauthorized occupancy of adjoining lands, which occurred from lack of cadastral survey. The land will not be offered for sale until at least sixty (60) days after publication of this notice.

The grazing lessee has waived his rights to the two-year notification prescribed in section 402(g) of FLPMA.

Publication of this notice in the **Federal Register** segregates the public lands from the operation of the public land laws and the mining laws. The segregative effect will end upon issuance of a patent, or two hundred seventy (270) days from the date of the publication, whichever occurs first.

The terms and conditions applicable to the sale are:

1. All minerals, including oil and gas, shall be reserved to the United States, together with the right to prospect for, mine and remove the minerals. A more detailed description of this reservation, which will be incorporated in the patent document, is available for review at the Moab District Office and the San Juan Resource Area Office.

2. A right-of-way will be reserved for ditches and canals constructed by the authority of the United States (Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945).

3. The sale of the lands will be subject to all valid existing rights and reservations of record. Existing rights and privileges of record include, but are not limited to, Federal oil and gas lease U-41929, Federal Highway Right-of-Way Appropriation U-6953, County Road 258 under R.S. 2477 (U-53767), and Bureau of Land Management Administrative Right-of-Way U-52040.

Sale Procedures: If the identified parcel is not sold it will remain available for sale over the counter until sold or withdrawn from the market. Sealed bids will be accepted at the San Juan Resource Area office during regular business hours, 7:45 a.m. to 4:30 p.m. MST. Sealed bids will be opened the second and last Tuesday of each month at 11:00 a.m.

Bidder Qualifications: Bidders must be U.S. citizens, 18 years of age or more, a State or State instrumentality authorized to hold property, or a corporation authorized to own real estate in the State of Utah.

Bid Standards: The BLM reserves the right to accept or reject any and all offers, or withdraw the land from sale if, in the opinion of the Authorized Officer, consummation of the sale would not be fully consistent with Section 203(g) of FLPMA or other applicable laws.

DATES: For a period of forty-five (45) days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Bureau of Land Management, P.O. Box 970, Moab, Utah 84532. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

SUPPLEMENTARY INFORMATION: Additional information concerning the land and the terms and conditions of the sale may be obtained from David L. Krouskop, Area Realty Specialist, San Juan Resource Area Office, 435 North Main, P.O. Box 7, Monticello, Utah 84535, (801) 587-2141, or from Brad Groesbeck, District Realty Specialist, 82 East Dogwood, Moab District Office, P.O. Box 970, Moab, Utah 84532, (801) 259-6111.

Dated: June 22, 1987.

Gene Nodine,

District Manager.

[FR Doc. 87-15025 Filed 7-1-87; 8:45 am]

BILLING CODE 4310-DQ-M

[NV-930-07-4212-11; N-43892, N-43893]

Realty Action; Battle Mountain District, Shoshone-Eureka Resource Area, Lander County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Realty action, lease or sale of public lands for recreation and public purposes in Lander County, Nevada.

SUMMARY: The following-described lands have been determined to be suitable and will be classified for lease or sale under the Recreation and Public Purposes Act, as amended (43 U.S.C. 869, et. seq.):

Mount Diablo Meridian, Nevada

T. 19 N., R. 43 E.,

Section 13, Lots 3 and 4.

The area described aggregates 87.14 acres, more or less.

The lands are not required for any Federal purpose. Disposal is consistent with the Bureau's planning for this area and would be in the public's interest. The land will be used for the construction of a combined kindergarten through high school facility and recreational and atheletic fields in Austin, Nevada. Grazing permittee has been provided the required 2-year notification of the Bureau's intent to cancel, in part, grazing privileges associated with the subject lands (43 CFR 4110.4-2(b)).

The lands described in this notice will not be offered for lease or sale until the classification becomes effective and all application requirements are met.

Patent, when issued, will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States pursuant to the Act of August 30, 1890 (43 U.S.C. 945).

2. All mineral deposits in the lands together with the right to prospect for, mine and remove such deposits under applicable laws.

And will be subject to:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. All valid existing rights documented on the official land records at the time of patent issuance.

3. Any other reservations the Authorized Officer determines appropriate to ensure public access and proper management of Federal lands and interests therein.

Upon publication of this Notice in the **Federal Register**, the above-described public lands will be segregated from all forms of appropriation under the public land laws, including locations under the mining laws, except as to applications under the mineral leasing laws and application under the Recreation and Public Purposes Act. This segregation will terminate upon issuance of a patent or as specified in a notice of termination.

Comments

For a period of 45 days from the date of publication of this Notice in the **Federal Register**, interested parties may submit comments to the District Manager, P.O. Box 1420, Battle Mountain, Nevada 89820. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification of the lands described in this Notice will become effective 60 days from the date of publication in the **Federal Register.**

Dated: June 24, 1987.

Terry L. Plummer,

District Manager, Battle Mountain, Nevada.

[FR Doc. 87-15061 Filed 7-1-87; 8:45 am]

BILLING CODE 4310-HC-M

[AZ-942-07-4520-12]

Survey Plat Filings; Arizona

June 24, 1987.

1. The plats of survey of the following described lands were officially filed in the Arizona State Office, P.O. Box 16563, Phoenix, Arizona, 85011, on the dates indicated:

A plat representing a dependent resurvey of a portion of the subdivisional lines and a portion of subdivisions in section 30, and a metes-and-bounds survey of lot 25, in section 30, Township 17 North, Range 6 East, Gila and Salt River Meridian, Arizona, was accepted May 8, 1987, and was officially filed May 13, 1987.

A plat representing a dependent resurvey of a portion of the west boundary and a portion of the subdivisional lines; and a survey of subdivisions in sections 19 and 20, Township 16 North, Range 9 East, Gila and Salt River Meridian, Arizona, was accepted May 28, 1987, and was officially filed June 2, 1987.

These plats were prepared at the request of the U.S. Forest Service, Coconino National Forest.

A plat representing a dependent resurvey of portions of the east and north boundaries and a portion of the subdivisional lines, and the adjusted meanders of the left bank of the Little Colorado River in section 12, and a survey of the subdivision of section 12, Township 25 North, Range 10 East, Gila and Salt River Meridian, Arizona, was accepted April 21 1987, and was officially filed April 28, 1987.

The plat was prepared at the request of the National Park Service, Southwest Region.

A supplemental plat showing a subdivision of original lot 5, section 27, Township 1 North, Range 15½ East, Gila and Salt River Meridian, Arizona, was accepted April 2, 1987, and was officially filed April 3, 1987.

A supplemental plat showing amended lottings created by the segregation of patented mining claims in section 11, Township 18 South, Range 12 East, Gila and Salt River Meridian, Arizona, was accepted May 20, 1987, and was officially filed May 21, 1987.

These plats were prepared at the request of Bureau of Land Management, Phoenix District Office.

A plat representing a dependent resurvey of a portion of the subdivisional lines and a survey of subdivisions in section 28, a survey of lot 1, section 28, and a survey of lot 7, section 30, Township 11 North, Range 21 East, Gila and Salt River Meridian, Arizona, was accepted April 1, 1987, and was officially filed April 1, 1987.

This plat was prepared at the request of the U.S. Forest Service, Apache-Sitgreaves National Forest.

A plat representing a survey of a portion of the subdivision of Township 35 North, Range 4 West, Gila and Salt River Meridian, Arizona, was accepted June 17, 1987, and was officially filed June 22, 1987.

This plat was prepared at the request of the National Park Service, Grand Canyon National Park.

A plat representing a dependent resurvey of a portion of the subdivisional lines designed to restore the corners in their true original locations in Township 3 North, Range 20 West, Gila and Salt River Meridian, Arizona, was accepted May 28, 1987, and was officially filed June 2, 1987.

This plat was prepared at the request of the Bureau of Land Management, Arizona State Office.

A supplemental plat showing amended lottings created by the segregation of patented mining claims in section 7, Township 18 South, Range 12 East, Gila and Salt River Meridian, Arizona, was accepted May 20, 1987, and was officially filed May 21, 1987.

A supplemental plat showing amended lottings created by he segregation of patented mining claims in sections 8, 9, 16, and 17, Township 18 South, Range 12 East, Gila and Salt River Meridian, Arizona, was accepted May 20, 1987, and was officially filed May 21, 1987.

These plats were prepared at the request of the Bureau of Land Management, Safford District Office.

2. These plats will immediately become the basic records for describing the land for all authorized purposes. These plats have been placed in the open files and are available to the public for information only.

3. All inquiries relating to these lands should be sent to the Arizona State Office, Bureau of Land Management, P.O. Box 16563, Phoenix Arizona 85011.

James P. Kelley,

Chief, Branch of Cadastral Survey.

[FR Doc. 87-15062 Filed 7-1-87; 8:45 am]

BILLING CODE 4310-32-M

[NM-940-07-4220-11; NM NM 023643]

Continuation of Withdrawal and Reservation of Lands; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Forest Service, U.S. Department of Agriculture proposes that a 20-acre withdrawal for the Bearwallow Administrative Site (Lookout) continue for an additional 20 years. The land would remain closed to location and entry under the mining laws but would be opened to surface entry and has been and would remain open to leasing under the mineral leasing laws.

DATE: Comments should be received by September 30, 1987.

ADDRESS: Comments should be sent to: New Mexico State Director, P.O. Box 1449, Santa Fe, NM 87504-1449.

FOR FURTHER INFORMATION CONTACT: Kay Thomas, BLM, New Mexico State Office, 505-988-6589.

The Forest Service, U.S. Department of Agriculture proposes that the existing land withdrawal made by Public Land Order No. 1890 of June 26, 1959, be continued for a period of 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The land is described as follows:

New Mexico Principal Meridian

Gila National Forest, Bearwallow Administrative Site

Unsurveyed.
T. 10 S., R. 18 S.,
Sec. 11, NE¼ SW¼ SW¼, NW¼ SE¼ SW¼.

The area described contains 20.00 acres in Catron County.

The purpose of the withdrawal is for protection of substantial improvements within the Gila National Forest. The withdrawal segregates the land from operation of the public land laws generally, including the mining laws, but not the mineral leasing laws. No change is proposed in the purpose or segregative effect of the withdrawal, except to open the land to such forms of disposition that may law be made of national forest lands other than under the mining laws.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the New Mexico State Director at the address indicated above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued, and if so, for how long.

The final determination on the continuation of the withdrawal will be published in the **Federal Register.** The existing withdrawal will continue until such final determination is made.

Dated: June 18, 1987.

Robert L. Schultz,

Acting State Director.

[FR Doc. 87-15026 Filed 7-1-87; 8:45 am]

BILLING CODE 4310-FB-M

[NM-940-07-4220-11; NM NM-035384]

Continuation of Withdrawal and Reservation of Lands; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Army Corps of Engineers proposes that a 507.88-acre withdrawal of national forest and public lands for Abiquiu Dam and Reservoir Project continue for an additional 50 years. The land would remain closed to surface entry and mining, but would be open to mineral leasing.

DATE: Comments should be received by September 30, 1987.

ADDRESS: Comments should be sent to: New Mexico State Director, P.O. Box 1449, Santa Fe, NM 87504-1449.

FOR FURTHER INFORMATION CONTACT: Kay Thomas, BLM, New Mexico State Office, 505-988-6589.

The U.S. Army Corps of Engineers proposes that the existing land withdrawal made by Public Land Order No. 2159 of July 13, 1960, be continued for a period of 50 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714.

The land involved is located approximately 7 miles northwest of the town of Abiquiu and contains 507.88-acres of National forest and public lands within T. 24 N., R. 3 E., T. 24 N., R, 4 E., and T . 23 N., R. 5 E., NMPM, Rio Arriba County, New Mexico.

The purpose of the withdrawal is to protect Abiquiu Dam and Reservoir, which was constructed for flood and sediment control purposes on the Jemez River and Rio Chama. No change is proposed in the purpose or segregative effect of the withdrawal, except to open the land to mineral leasing, subject to strict environmental and operational restrictions.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the New Mexico State Director at the address indicated above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued, and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register.** The existing withdrawal will continue until such final determination is made.

Dated: June 23, 1987.

Larry L. Woodard,

State Director.

[FR Doc. 87-15027 Filed 7-1-87; 8:45 am]

BILLING CODE 4310-FB-M

[NM-940-07-4220-11; NM NM 010925]

Continuation of Withdrawal and Reservation of Lands; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Forest Service, U.S. Department of Agriculture proposes that a 39.06-acre withdrawal for the Springtime Recreation Area continue for an additional 19 years, and a 95.00-acre withdrawal for the Water Canyon Recreation Area continue for an additional 10 years. The land would remain closed to location and entry under the mining laws, and has been and would remain open to leasing under the mineral leasing laws.

DATE: Comments should be received by September 30, 1987.

ADDRESS: Comments should be sent to: New Mexico State Director, P.O. Box 1449, Santa Fe, NM 87504-1449.

FOR FURTHER INFORMATION CONTACT: Kay Thomas, BLM, New Mexico State Office, (505) 988-6589.

The Forest Service, U.S. Department of Agriculture proposes that the existing land withdrawal made by Public Land Order No. 1155 dated May 27, 1955, be continued for a period of 19 years for the Springtime Recreation Area, and Water Canyon Recreation Area continue for a period of 10 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The land is described as follows:

New Mexico Principal Meridian

Cibola National Forest, Springtime Recreation Area

T. 8 S., R. 6 W.,
Sec. 36, S½NE¼NE¼, N½SE¼NE¼ (excluding that portion within the boundary of the Apache Kid Wilderness Area (Pub. L. 96-550)).

The area described contains approximately 39.06 acres in Socorro County.

Water Canyon Recreation Area

T. 3 S., R. 3 W.,
Sec. 26, W½NW¼ of lot 2, NW¼NW¼, NW¼SW¼NW¼, W½NE¼S W¼NW¼, W½SW¼SW¼NW¼;
Sec. 27, NE¼ of lot 1, N½SE¼ of lot 1, E½NE¼SE¼NE¼, SE¼SE¼NE¼.

The area described contains approximately 95.00 acres in Socorro County.

The purpose of the withdrawal is for the protection of substantial capital improvements on the Magdalena Ranger District, Cibola National Forest. The withdrawal closed the described lands to mining but not to surface entry or mineral leasing. No change in the

segregative effect or use of the land is proposed by this action.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the New Mexico State Director at the address indicated above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources.

A report will be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether the withdrawal will be continued, and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register.** The existing withdrawal will continue until such final determination is made.

Dated: June 18, 1987.

Robert L. Schultz,

Acting State Director.

[FR Doc. 87-15028 Filed 7-1-87; 8:45 am]

BILLING CODE 4310-FB-M

[NM-940-07-4220-11; NM NM 010206]

Continuation of Withdrawal and Reservation of Lands; New Mexico

June 18, 1987.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Department of Energy proposes that a 320.00-acre withdrawal continue through the year 1994. The land would remain segregated from the public land laws generally including location and entry under the mining laws, but has been and will remain open to leasing under the mineral leasing laws.

DATE: Comments should be received by September 30, 1987.

ADDRESS: Comments should be sent to: New Mexico State Director, P.O. Box 1449, Santa Fe, NM 87504-1449.

FOR FURTHER INFORMATION CONTACT: Kay Thomas, BLM, New Mexico State Office, 505-988-6589.

The Department of Energy proposes that the existing land withdrawal made by Public Land Order No. 964 of May 13, 1954, be continued until 1994 pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The land is described as follows:

New Mexico Principal Meridian

T. 13 N., R. 11 W.,

Sec. 13, S½N½, SE¼.

The area described contains 320.00 acres in McKinley County.

The purpose of the withdrawal is for the use of the Department of Energy for the Domestic Uranium Program. The withdrawal closed the described lands to surface entry and mining. The lands have been and will remain open to mineral leasing. The surface of the land is administered by the Bureau of Indian Affairs pursuant to Public Land Order No. 2198 dated August 26, 1960.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their veiws in writing to the New Mexico State Director at the address indicated above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued, and if so, for how long. The final determiantion on the continuation of the withdrawal will be published in the **Federal Register.** The existing withdrawal will continue until such final determination is made.

Date: June 18, 1987.

Robert L. Schultz,

Acting State Director.

[FR Doc. 87-15029 Filed 7-1-87; 8:45 am]

BILLING CODE 4310-FB-M

Fish and Wildlife Service

Extension of Review Period for the Final Environmental Impact Statement on the Great Swamp National Wildlife Refuge, New Jersey

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the review comment period for the FEIS on the Master Plan for the Great Swamp National Wildlife Refuge, Morris County, New Jersey has been further extended from June 29, 1987 to August 1, 1987. The statement discusses four alternatives for the future management of the refuge. Agency, organization and individual comments are requested.

DATES: The written comment period has been further extended by the Fish and Wildlife Service to August 1, 1987. A Notice of Availability was published on May 22, 1987 (52 FR 19388). At that time it was announced that written comments were due on June 26, 1987. The review period was subsequently reestablished to June 29, 1987 in an amended notice published May 29, 1987 (52 FR 20142).

ADDRESS: Comments should be addressed to: Howard N. Larsen, Regional Director, Region 5, U.S. Fish and Wildlife Service, One Gateway Center, Suite 700, Newton Corner, Massachusetts 02158.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis Laffin, Chief of Planning, U.S. Fish and Wildlife Service, One Gateway Center, Suite 700, Newton Corner, Massachusetts 02158, (617) 965-5100, X222. Individuals wishing copies of this Final EIS for review should immediately contact the above individual. Copies have been sent to all agencies, organizations and individuals who participated in the scoping process and in the review process to date.

A. Eugene Hester,

Regional Director.

[FR Doc. 87-15019 Filed 7-1-87; 8:45 am]

BILLING CODE 4310-55-M

INTERSTATE COMMERCE COMMISSION

Intent To Engage in Compensated Intercorporate Hauling Operations

June 29, 1987.

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation, address of principal office and State of incorporation:

ConAgra, Inc., ConAgra Center, One Central Park Plaza, Omaha, NE 68102 (a Delaware corporation)

2. Wholly-owned subsidiaries which will participate in the operations, addresses of their respective principal offices and State of incorporation:

1. Ag Chem, Inc., Box 67, Girdletree, MD 21829 (a Maryland corporation)
2. AgriBasics Fertilizer Company, One Regency Square, 700 E. Hill Ave., Ste 400, Knoxville, TN 37915 (a Delaware corporation)
3. Agricol Corporation, Inc., 191 Presidential Blvd., Ste 106, Bala-Cynwyd, PA 19004 (a Pennsylvania corporation)

4. Alliance Grain, Inc., Fairway Corporate Center, Ste 313, 4300 Haddonfield Road, Pennsauken, NJ 08109 (a Pennsylvania corporation)
5. Alliance Grain Export, Inc., Fairway Corporate Center, Ste 313, 4300 Haddonfield Road, Pennsauken, NJ 08109 (a Delaware corporation)
6. Alliance Grain Foreign Sales Corp., Inc., Fairway Corporate Center, Ste 313, 4300 Haddonfield Road, Pennsauken, NJ 08109 (a Delaware corporation)
7. Armour Food Express Company, ConAgra Center, One Central Park Plaza, Omaha, NE 68102 (a Delaware corporation)
8. Atwood Commodities, Inc., 876 Grain Exchange Building, Minneapolis, MN 55415 (a Nebraska corporation)
9. Atwood-Larson Company, 876 Grain Exchange Building, Minneapolis, MN 55415 (a Minnesota corporation)
10. Balcom Chemicals, 4687—18th Street, Greeley, CO 80634 (a Colorado corporation)
11. CAG Company, ConAgra Center, One Central Park Plaza, Omaha, NE 68102 (an Oklahoma corporation)
12. CAG Leasing Company, ConAgra Center, One Central Park Plaza, Omaha, NE 68102 (a Texas corporation)
13. Caribbean Basic Foods Company, GPO Box G–1960, San Juan, PR 00936 (a Nebraska corporation)
14. C & L Grain & Feed Company, Inc., Main Street, Townsend, DE 19734 (a Delaware corporation)
15. Central Valley Chemicals, Inc., P.O. Box 446, Weslaco, TX 78596 (a Texas corporation)
16. ConAgra International Fertilizer Company, One Regency Square, 700 E. Hill Ave., Ste 400, Knoxville, TN 37915 (a Delaware corporation)
17. ConAgra International, Inc., ConAgra Center, One Central Park Plaza, Omaha, NE 68102 (a Delaware corporation)
18. ConAgra Pet Products Company, 3902 Leavenworth Street, Omaha, NE 68105 (a Delaware corporation)
19. ConAgra Poultry Company, 422 N. Washington, Box 1997, El Dorado, AR 71730 (a Delaware corporation)
20. ConAgra Transportation, Inc., One Regency Square, 700 E. Hill Ave., Ste 400, Knoxville, TN 37915 (an Oklahoma corporation)
21. The Cropmate Company, One Regency Square, 700 E. Hill Ave., Ste 400, Knoxville, TN 37915 (a Nebraska corporation)
22. CTC North America, Inc., 730 Second Avenue South, Minneapolis, MN 55402 (a Delaware corporation)
23. Dixie Ag Supply, Inc., 1801 Old Montgomery Road, Selma, AL 36701 (an Alabama corporation)
24. E.A. Miller & Sons Packing Company, 410 North 200 West, Hyrum, UT 84319 (a Utah corporation)
25. GA AG Chem, Inc., Empire Expressway, P.O. Box 1260, Swainsboro, GA 30401 (a Georgia corporation)
26. Geldermann Futures Management Corp., 440 LaSalle Street, One Financial Place, 20th Floor, Chicago, IL 60605 (an Illinois corporation)
27. Geldermann, Inc., 440 LaSalle Street, One Financial Place, 20th Floor, Chicago, IL 60605 (an Illinois corporation)
28. Geldermann Securities, Inc., 440 LaSalle Street, One Financial Place, 20th Floor, Chicago, IL 60605 (a Delaware corporation)
29. Grower Service Corporation (New York), 16713 Industrial Parkway, PO Box 18037, Lansing, MI 48901 (a New York corporation)
30. Heinold Asset Management, Inc., 440 LaSalle Street, One Financial Place, 20th Floor, Chicago, IL 60605 (a Delaware corporation)
31. Heinold Asset Management Service Corp., 440 LaSalle Street, One Financial Place, 20th Floor, Chicago, IL 60605 (a Delaware corporation)
32. Heinold Commodities, Inc., 440 LaSalle Street, One Financial Place, 20th Floor, Chicago, IL 60605 (a Delaware corporation)
33. Hess & Clark, Inc., 7th & Orange Street, Ashland, OH 44805 (an Ohio corporation)
34. Hopkins Agricultural Chemical Company, 537 Atlas Avenue, Madison, WI 53714 (an Illinois corporation)
35. Interstate Feeders, Inc., PO Box 626, Malta, ID 83342 (a Utah corporation)
36. Loveland Industries, Inc., 2307 W. 8th Street, Loveland, CO 80539 (a Colorado corporation)
37. Lynn Transportation Company, Inc., 422 N. Washington, Box 1997, El Dorado, AR 71730 (an Iowa corporation)
38. MHC, Inc., ConAgra Center, One Central Park Plaza, Omaha, NE 68102 (an Oregon corporation)
39. M & R Distributing Company, PO Box E, West Highway 30, Grand Island, NE 68801 (a Minnesota corporation)
40. Mid Valley Chemicals, Inc., PO Box 446, Weslaco, TX 78596 (a Texas corporation)
41. Midwest Agriculture Warehouse Company, 725 S. Schneider Street, Fremont, NE 68025 (a Nebraska corporation)
42. Miller Brothers Company, 410 North 200 West, Hyrum, UT 84319 (a Utah corporation)
43. Molinos de Puerto Rico, Inc., GPO Box G–1960, San Juan, PR 00936 (a Nebraska corporation)
44. Monfort of Colorado, Inc., PO Box G, Greeley, CO 80632 (a Delaware corporation)
45. Northwest Chemical Corporation, 4560 Ridge Road, NW, Salem, OR 97303 (an Oregon corporation)
46. O'Donnell-Usen Fisheries, Inc., 255 Northern Avenue, Boston, MA 02210 (a Massachusetts corporation)
47. Omaha Vaccine Company, Inc., 3030 "L" Street, Omaha, NE 68107 (a Nebraska corporation)
48. Ostlund Chemical Company, 1230 – 40th St., NW, Fargo, ND 58102 (a North Dakota corporation)
49. Peavey Marts, Inc., Country General Stores, 123 S. Webb Road, Grand Island, NE 68802 (a Minnesota corporation)
50. Platte Chemical Company, 150 S. Main Street, Fremont, NE 68025 (a Nebraska corporation)
51. Public Grain Elevator of New Orleans, Inc., 730 Second Avenue South, Minneapolis, MN 55402 (a Louisiana corporation)
52. Pueblo Chemical & Supply Co., PO Box 1279, Garden City, KS 67846 (a Colorado corporation)
53. Scentry, Inc., 11806 E. Riggs Road, Chandler, AZ 85224 (a Delaware corporation)
54. Snake River Chemicals, Inc., PO Box 1196, Caldwell, ID 83650 (an Idaho corporation)
55. Spencer Beef Corporation, 410 North 200 West, Hyrum, UT 84319 (a Utah corporation)
56. Taco Plaza, Inc., ConAgra Center, One Central Park Plaza, Omaha, NE 68102 (a Texas corporation)
57. To-Ricos, Inc., PO Box 646, Aibonito, PR 00609 (a Nebraska corporation)
58. Trans-Agra International, Inc., 1525 Lockwood Road, Billings, MT 59101 (a Tennessee corporation)
59. Transbas, Inc., 1525 Lockwood Road, Billings, MT 59101 (a Tennessee corporation)
60. The Trekker Company, One Regency Square, 700 E. Hill Avenue, Ste 400, Knoxville, TN 37915 (a Nebraska corporation)
61. Tri-River Chemical Company, Inc., PO Box 2778, Pasco, WA 99302 (a Washington corporation)
62. Tri State Chemicals, Inc., PO Box 1837, Hereford, TX 79045 (a Texas corporation)
63. Tri State Delta Chemicals, Inc., 2673 Old Leland Road, PO Box 5817,

Greenville, MS 38704 (a Mississippi corporation)
64. Tropmi Import Company, 5024 Uceta Road, PO Box 2819, Tampa, FL 33619 (a Florida corporation)
65. UAP Special Products, Inc., 13808 "F" Street, Omaha, NE 68137 (a Nebraska corporation)
66. Unique Packaging Corporation, 6277 NW 28th Way, Ft. Lauderdale, FL 33309 (a Florida corporation)
67. United Agri Products, Inc., 2687 18th Street, Box 1286, Greeley, CO 80634 (a Delaware corporation)
68. United Agri Products Financial Services, Inc., 4687 18th Street, Box 1287, Greeley, CO 80634 (a Colorado corporation)
69. United Agri Products-Florida, Inc., 3804 Coconut Palm Drive, Ste 170, Tampa, FL 33619 (a Florida corporation)
70. U.S. Tire, Inc., 3443 N. Central Ave., Ste 1205, Phoenix, AZ 80512 (a Florida corporation)
71. VKG Commodities, Inc., 440 S. LaSalle Street, One Financial Place, 20th Floor, Chicago, IL 60605 (an Illinois corporation)
72. Webber Farms, Inc., P.O. Box 460, Cynthiana, KY 41031 (a Kentucky corporation)
73. Westchem Agricultural Chemicals, Inc., 1505 Lockwood Road, Billings, MT 59107 (a Montana corporation)
74. Willow Creek Talc, Inc., 1603 Copper Road, Anaconda, MT 59711 (a Montana corporation)
75. Woodward & Dickerson, Eurasia, Ltd., Woodward House, 937 Haverford Road, Bryn Mawr, PA 19010 (a Pennsylvania corporation)
76. WVS, Inc., 537 Atlas Avenue, Madison, WI 53714 (an Illinois corporation)
77. Yellowstone Valley Chemicals, Inc., 1525 Lockwood Road, Billings, MT 59101 (a Montana corporation)

Noreta R. McGee,

Secretary.

[FR Doc. 87-15036 Filed 7-1-87; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 466 (Sub-No. 1)]

Railroad Cost of Capital; Proposed Expedited Procedure

AGENCY: Interstate Commerce Comission.

ACTION: Notice of Decision.

SUMMARY: On July 1, 1987, the Commission served a decision adopting a procedure to expedite its annual determination of the railroads' cost of capital. Under the adopted procedure the following timetable would be established each year: 1. By January 10—issue a Notice instituting the cost of capital proceeding. 2. By February 10—receive initial comments from the railroads. 3. By March 10—receive comments from shippers and other non-railroad parties. 4. By March 25—receive railroad rebuttal comments. 5. By June 30—Commission service decision. The above timetable will be used when instituting all future cost of captial proceedings.

ADDRESS: To purchase copies of the full decision contact: TS InfoSystems, Inc., Room 2229, 12th St. & Constitution Avenue, NW., Washington, DC 20423, (202) 289-4357—DC Metropolitan Area.

FOR FURTHER INFORMATION CONTACT: Ward L. Ginn, Jr., (202) 275-7489.

This action will not significantly affect either the quality of the human environment or energy conservation. Nor will it have a significant economic impact on a substantial number of small entities.

Authority: 49 U.S.C. 10704(a).

Decided: June 25, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons. Commissioner Andre commented with a separate expression.

Noreta R. McGee,

Secretary.

[FR Doc. 87-15035 Filed 7-1-87; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Settlement Agreement Pursuant to the Clean Water Act

In accordance with departmental policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that a Consent Decree in *United States v. Atlas Minerals Division Atlas Corporation*, Civil Action No. 85-C-11575, was lodged with the United States District Court for the District of Utah, on June 15, 1987. The Consent Decree concerns violations of the Clean Water Act, 33 U.S.C. 1251, relating to a National Pollution Discharge Elimination System permit issued to the defendant. The Consent Decree provides that the defendant is to comply timely and completely with all provisions of the Clean Water Act and the permit noted above. The defendant agrees to pay stipulated penalties in a range between $500 to $12,000 depending upon the number and type of violations involved. The defendant also agrees to pay a civil penalty of $85,000, and an additional $15,000 if it violates any permit condition within one year of the entry of the Consent Decree.

The Department of Justice will receive for thirty (30) days from the date of publication of this notice, written comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States v. Atlas Minerals Division, Atlas Corporation*, D.J. Ref. No. 90-5-1-1-2156A.

The Consent Decree may be examined at the office of the United States Attorney, District of Utah, 350 South Main Street, Salt Lake City, Utah 84101; at the Region VIII office of the Environmental Protection Agency, 999 18th Street, Denver, Colorado 80202-2413; and the Environmental Enforcement Section, Land and Natural Resources Division, Room 1515, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the 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. Please enclose a certified check payable to "Treasurer, United States of America" for $1.30 (10 cents per page) to cover the costs of copying.

Roger J. Marzulla

Acting Assistant Attorney General Land and Natural Resources Division.

[FR Doc. 87-15012 Filed 7-1-87; 8:45 am]

BILLING CODE 44110-01-M

Lodging of Consent Decree Pursuant to the Clean Water Act; Milford, MI

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on June 8, 1987, a proposed consent decree in *United States v. Village of Milford*, Civil Action No. 84-CV-3086-DT, was lodged with the United States District Court for the Eastern District of Michigan. The proposed consent decree resolves a judicial enforcement action brought by the United States against the Village of Milford for violations of the Clean Water Act at its wastewater treatment facility.

The proposed consent decree requires the Village of Milford to comply with the interim effluent limits of its NPDES permit and final effluent limits, which become effective on July 1, 1988. To meet the final effluent limits, the decree requires the Village of Milford to construct specified additions and improvements to its wastewater treatment facility. In addition, the consent decree requires the Village of

Milford to pay a civil penalty of $15,000 to the United States. The decree also requires the Village of Milford to pay the State of Michigan, a re-alligned plaintiff, $2,500 for reimbursement of the State's litigation expenses.

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, U.S. Department of Justice, Washington, DC 20530, and should refer to *United States v. Village of Milford*, D.J. Ref. 90-5-1-1-2150.

The proposed consent decree may be examined at the office of the United States Attorney, 617 Federal Building, 231 West Lafayette, Detroit, Michigan 48226 and at the Region V office of the Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604. Copies of the consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.80 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources.

[FR Doc. 87-15063 Filed 7-1-87; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Clean Water Act; Modine Manufacturing Co.

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on June 19, 1987, a proposed consent decree in *United States v. Modine Manufacturing Company*, Civil Action No. 87-C-0749, was lodged with the United States District Court for the Eastern District of Wisconsin. The proposed consent decree resolves a judicial enforcement action brought by the United States against Modine Manufacturing Company ("Modine") for violations of the Clean Water Act.

The proposed consent decree requires Modine to achieve, demonstrate and thereafter maintain compliance with the General Pretreatment Regulations in 40 CFR Part 403 and the Metal Finishing Categorical Pretreatment Standards in 40 CFR Part 433 at certain of its manufacturing facilities by specific dates. At its Pemberville, Emporia and Washington facility, Modine is required to achieve and demonstrate compliance during the last three months of 1987. At its LaPorte and Trenton facilities, Modine is required to demonstrate compliance by the date the consent decree is entered by the court. Because the Jefferson City and Joplin facilities are in compliance with the regulations and the Whittier facility has been dismantled, the consent decree does not contain a compliance schedule for these three facilities.

The consent decree requires Modine to sample and analyze effluent discharges from its Pemberville, Washington and Emporia facilities on a monthly basis until each facility demonstrates compliance. After Modine has demonstrated compliance at the Pemberville, Trenton, Washington, LaPorte and Emporia facilities, the consent decree requires Modine to sample and analyze the effluent discharges from each of these facilities on a monthly basis until the consent decree terminates.

The consent decree requires Modine to submit to the Environmental Protection Agency monthly status reports for each facility relating to Modine's compliance with the requirements of the decree, the results of effluent sampling and certain other information. The consent decree also requires Modine to pay stipulated penalties for violations of the requirements of the consent decree.

Finally, the consent decree requires Modine to pay a civil penalty of $985,000 within 15 days of the entry of the decree by the Court.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Modine Manufacturing Company*, D.J. Ref. 90-5-1-1-2661.

The proposed consent decree may be examined at the office of the United States Attorney, 330 Federal Building, 517 East Wisconsin Avenue, Milwaukee, Wisconsin 53202 and at the following Regional Offices of the Environmental Protection Agency:

Region V: Office of Regional Counsel, Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604

Region VII: Office of Regional Counsel, Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, Missouri 66101

Region IX: Office of Regional Counsel, Environmental Protection Agency, 215 Fremont Street, San Francisco, California 94105

Copies of the consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land & Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $2.70 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 87-15064 Filed 7-1-87; 8:45 am]

BILLING CODE 440-01-M

Consent Decree in Clean Air Act Enforcement Action; Occidental Chemical Co.

In accordance with the Departmental Policy, 28 CFR 50.7 notice is hereby given that a consent decree in *United States v. Occidental Chemical Company*, Civil Action No. 83-723-A was lodged with the United States District Court for the Middle District of Louisiana on June 8, 1987. The proposed decree concerns compliance with the National Emission Standard for Hazardous Air Pollutants (NESHAP) for vinyl chloride at Occidental's polyvinyl chloride facility in Addis, Louisiana. The proposed decree requires the defendant to comply with the Clean Air Act and the NESHAP for vinyl chloride and to pay a civil penalty of $75,000.

The Department of Justice will receive for thirty (30) days from the publication date of this notice written comments relating to the decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and refer to *United States v. Occidental Chemical Corporation*, 90-5-2-1-605.

The proposed consent decree can be examined at the office of the United States Attorney, 352 Florida Street, Baton Rouge, Louisiana 70801 and at the Region VI Office of the Environmental Protection Agency, 1445 Ross Avenue,

Dallas, Texas 75202–2733. Copies of the consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1521, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed consent decree can be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.30 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 87–15065 Filed 7–1–87; 8:45 am]

BILLING CODE 4410–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 87–57]

NASA Advisory Council (NAC), Life Sciences Advisory Committee (LSAC); 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, Life Sciences Advisory Committee.

DATE AND TIME: July 17, 1987, 8:30 a.m.–5 p.m., July 18, 1987, 8:30 a.m.–3 p.m.

ADDRESS: Capitol Holiday Inn, 550 C Street SW, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald J. White, Code EBF, National Aeronautics and Space Administration, Washington, DC 20546 (202/453–1656).

SUPPLEMENTARY INFORMATION: The Life Sciences Advisory Committee provides advice on the coordination of NASA's life sciences research program. It assists in the long-range planning of space life sciences research and coordinated ground-based research. The committee is composed of 28 members. The meeting will be closed Saturday, July 18, from 1:30 p.m. to adjournment to discuss and evaluate the qualifications of candidates being considered for membership on the committee. Such a discussion would invade the privacy of the individuals involved. Since this session will be concerned with matters listed in 5 USC 552b(c)(6), it has been determined that the meeting will be closed to the public for this period of time. Aside from the closed session referenced above, this meeting will be open to the public up to the seating capacity of the room (approximately 50 persons including committee members and other participants).

Meeting: Open—except for a closed session as noted in the agenda below.

Agenda: Friday, July 17—Clark Room

8:30 a.m. Welcoming Remarks Announcement.
8:40 a.m. Report of June Symposium.
9 a.m. Office of Space Science and Applications (OSSA) Status.
9:30 a.m. Discussion.
10 a.m. Break.
10:15 a.m. Role of Office of Exploration.
10:45 a.m. Discussion.
11 a.m. Open Discussion.
12 p.m. Break.
1:30 Report on Center Site Visit Review.
2:30 p.m. Discussion.
3 p.m. LSAC White Paper.
5 p.m. Adjourn.

Saturday, July 18—Columbia Room South

8:30 a.m. Status of Closed Environment Life Support System (CELSS) Management Issue.
8:45 a.m. Discussion.
9 a.m. Status of Life Science Satellite (LIFESAT).
9:30 Discussion.
9:45 Break.
10 a.m. Discussion on Life Sciences Accommodation on Space Station.
11 a.m. Status of Strategic Planning Study.
11:30 Discussion.
12 p.m. Break.
1:30p.m. Closed Session.
3:00 p.m. Adjourn.

Richard L. Daniels

Advisory Committee Management Officer, National Aeronautics and Space Administration.

June 26, 1987.

[FR Doc. 87–15014 Filed 7–1–87; 8:45 am]

BILLING CODE 7510–01–M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision, or extension: Revision.

2. The title of the information collection:

10 CFR Part 74—Material Control and Accounting of Special Nuclear Material

NUREG 1065—Acceptance Criteria for the Low Enriched Uranium Reform Amendments

NUREG 1280—Standard Format and Content Acceptance Criteria for the Material Control and Accounting (MC&A) Reform Amendment

3. The form number if applicable: Not applicable.

4. How often the collection is required: Submission of the material control and accounting plan and the fundamental nuclear material control plan are one-time requirements. Specified inventory and material status reports are required annually or semiannually. Other reports are submitted as events occur.

5. Who will be required or asked to report: Persons licensed under 10 CFR Parts 70 or 72 who possess and use certain forms and quantities of special nuclear material.

6. An estimate of the number of responses: 46.

7. An estimate of the total number of hours needed to complete the requirement or request: 30,133.

8. An indication of whether section 3504(h), Pub. L. 96–511 applies: Not applicable.

9. Abstract: 10 CFR Part 74 establishes requirements for material control and accounting of special nuclear material and for documenting the transfer of special nuclear material. The recordkeeping and reporting requirements are designed to provide timely detection of the loss, theft or diversion of special nuclear material. The material control and accounting plans and fundamental nuclear control plans are needed to ensure that licensees have systems and procedures in place for the control and accounting of special nuclear material.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 1717 H Street, NW., Washington, DC 20555.

Comments and questions should be directed to the OMB reviewer, Vartkes L. Broussalian, (202) 395–3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 492-8132.

Dated at Bethesda, Maryland, this 17th day of June 1987.

For the Nuclear Regulatory Commission.

William G. McDonald,

Director, Office of Administration and Resources Management.

[FR Doc. 87-15041 Filed 7-1-87; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-498]

Environmental Assessment and Findings of No Significant Impact; Houston Lighting and Power Co., et. al., South Texas Project, Unit No. 1

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an Exemption from a portion of the requirements of Appendix J of 10 CFR Part 50 to the Houston Lighting and Power Company, acting for itself and for the City of San Antonio (acting by and through the City Public Service Board of San Antonio), Central Power and Light Company, and the City of Austin, Texas (the applicants). The Exemption would apply to the South Texas Project (STP) Unit 1 located in Matagorda County, Texas.

Environmental Assessment

Identification of Proposed action: Section III.D.2(b)(ii) of Appendix J, 10 CFR Part 50, states that "Air locks open during periods when containment integrity is not required by the plant Technical Specifications shall be tested at the end of such periods at not less than P_a." By letter dated January 15, 1986, the applicant requested that the South Texas Project Unit 1 Technical Specifications be written to instead require an overall air lock leak rate test at P_a (37.5 psig) to be performed only "Upon completion of maintenance which has been performed on the air lock that could affect the air lock sealing capability" Otherwise, if an air lock is opened during periods when containment integrity is not required and no such maintenance has been performed, a door seal leak rate test (a less time-consuming test) must be performed. This requested exemption is consistent with the staff's position on the acceptable testing frequency necessary to demonstrate air lock sealing capability intended in Appendix J. The staff's current position is shown in the Standard Technical Specifications for Westinghouse Pressurized Water Reactors (NUREG-0452, Rev. 4). Until Commission Rulemaking changes the current requirement in Appendix J, an exemption to the present regulation must be granted before the licensee can adopt the requested Technical Specification.

Need for Proposed Action: The proposed exemption is needed because, based on experience at various plants, the staff found that literal compliance with Section III.D.2(b)(ii) of Appendix J is not necessary to assure containment leaktightness. The requested exemption is in compliance with the staff's technical position and has been granted to many plants. Literal compliance with the regulation would lead to increased costs and occupational exposure.

Environmental Impact of the Proposed Action: The proposed exemption to 10 CFR Part 50, Appendix J, Section III.D.2(D)(ii) will assure air lock sealing capability and containment integrity; therefore, this exemption will not increase to greater than previously determined, the probability of accidents and post-accident radiological releases, nor otherwise affect radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with this proposed exemption.

With regard to potential non-radiological impacts, the proposed exemption involve features located entirely within the restricted area as defined in 10 CFR Part 20. They would not affect non-radiological plant effluents and would have no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed exemption.

Alternatives to the Proposed Actions: The principal alternative to the proposed actions would be to deny the requested exemptions. This would result in increased costs and occupational exposure.

Alternative Use of Resources: This action does not involve the use of resources not previously considered in the Final Environmental Statement (NUREG-1171) for STP, Units 1 and 2.

Agencies and Persons Contacted: The NRC staff reviewed the applicants' request and applicable documents referenced therein that support this Exemption for STP, Units 1 and 2. The NRC did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for this action. Based upon the environmental assessment, we conclude that this action will not have a significant effect on the quality of the human environment.

For details with respect to this action, see the request for exemption dated January 15, 1986. This document, utilized in the NRC staff's technical evaluation of the exemption request, is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488. The staff's technical evaluation of the request was published in SER Supplement No. 3 and is available for inspection at both locations listed above.

Dated at Bethesda, Maryland, this 18th day of June 1987.

For the Nuclear Regulatory Commission.

Frank Schroeder,

Acting Director, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 87-15042 Filed 7-1-87; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 40-8857]

Final Finding of No Significant Impact Regarding a new Source and Byproduct Material License for Operation of Everest Minerals Corporation's Highland Site, Located in Converse County, Wyoming; Everest Minerals Corp.

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Final Finding of No Significant Impact.

1. Proposed Action

The proposed administrative action is to issue a new source and byproduct material license authorizing Everest Minerals Corporation to operate the Highland insitu leach uranium recovery operation located in Converse County, Wyoming.

2. Reasons for Final Finding of No Significant Impact

An environmental assessment was prepared by the staff at the U.S. Nuclear Regulatory Commission (NRC) and issued by the Commission's Uranium Recovery Field Office, Region IV. The environmental assessment performed by the Commission's staff evaluated potential impacts on-site and off-site due to radiological releases that may occur during the course of the operation. Documents used in preparing the assessment included operational data from the research and development insitu leach operation, the licensee's application dated December 30, 1985,

and the Final Environmental Statement for Exxon Corporation (Everest's Highland site) prepared by the Commission staff dated November 1978. Based on the review of these documents, the Commission has determined that no significant impact will result from the proposed action.

The public was informed of the availability of this document by way of a May 12, 1987, Federal Register publication. The subsequent 30-day comment period expired on June 12, 1987. No public comments were received on the proposed action.

In accordance with 10 CFR 51.33(e), the Director, Uranium Recovery Field Office, made the determination to issue a final finding of no significant impact in the Federal Register. Concurrent with this finding, the staff will issue a Source and Byproduct Material License SUA-1511 authorizing operation of Everest Minerals Corporation's Highland insitu leach uranium recovery operation located in Converse County, Wyoming.

This finding, together with the environmental assessment setting forth the basis for the finding, is available for public inspection and copying at the Commission's Uranium Recovery Field Office located at 730 Simms Street, Golden, Colorado, and at the Commission's Public Document Room at 1717 H Street, NW., Washington, DC.

Dated at Denver, Colorado, this 17 day of June, 1987.

For the Nuclear Regulatory Commission.

Edward F. Hawkins,

Chief, Licensing Branch 1, Uranium Recovery Field Office, Region IV.

[FR Doc. 87-15043 Filed 7-1-87; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-498 and 50-499]

Environmental Assessment and Finding of No Significant Impact; Houston Lighting and Power Co., et al., South Texas Project, Units 1 and 2

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of a Schedular Exemption from a portion of the requirements of General Design Criterion (GDC) 4 (10 CFR Part 50, Appendix A) to the Houston Lighting and Power Company, acting for itself and for the City of San Antonio (acting by and through the City Public Service Board of San Antonio), Central Power and Light Company, and the City of Austin, Texas (the applicants). The Schedular Exemption would apply to the South Texas Project (STP) Unit 1 located in Matagorda County, Texas. The limited exemption would extend until the second refueling outage of the STP Unit 1 by which time the outcome of the Commission's consideration of the "leak-before-break" concept as applied beyond the main coolant loop piping, is expected to become apparent.

Environmental Assessment

Identification of Proposed Action: The Schedular Exemption would permit the applicants to not install pipe whip restraints and jet impingement shields and to not consider the dynamic effects associated with postulated pipe breaks in certain STP Units 1 and 2 piping systems, on the basis of advanced calculational methods for assuring that applied piping stresses would not result in rapidly propagating piping failure: i.e., pipe rupture.

Need for Proposed Action: The proposed Schedular Exemption is needed in order for the applicants not to consider the dynamic loading effects associated with the postulated full flow circumferential and longitudinal pipe ruptures in the pressurizer surge line and the accumulator injection lines. These dynamic loading effects include pipe whip, jet impingement, asymmetric pressurization transients and break associated dynamic transients in unbroken portions of the main loop and connected branch lines. Therefore, the applicants would not be required to install, for the time being, protective devices such as pipe whip restraints and jet impingement shields related to postulated break locations in the pressurizer surge line and the accumulator injection lines. Analysis shows that the pipe breaks, which these devices are designed to protect against, are extremely unlikely. On the other hand, the presence of these devices increases inservice inspection time in the containment and their elimination would lessen the occupational doses to workers and facilitate inservice inspections.

GDC 4 requires that structures, systems and components important to safety shall be appropriately protected against dynamic effects including the effects of discharging fluids that may result from equipment failures, up to and including a double-ended rupture of the largest pipe in the reactor coolant system (Definition of LOCA). In recent submittals the applicants have provided information to show by advanced fracture mechanics techniques that the detection of small flaws by either inservice inspection or leakage monitoring systems is assured long before flaws in the piping materials can grow to critical or unstable sizes which could lead to large break areas such as the double-ended guillotine break or its equivalent. The NRC staff has reviewed and accepted the applicants' conclusion. Therefore, the NRC staff agrees that double-ended guillotine break in the piping associated with the pressurizer surge line and the accumulator injection lines and their associated dynamic effects, need not be required as a design basis accident for pipe whip restraints and jet impingement shields; i.e., the restraints and jet shields are not needed. Accordingly, the NRC staff agrees that a partial exemption from GDC 4 is appropriate. However, the Commission has not yet finalized action on the staff recommendation which applies this methodology beyond the main coolant loop.

Environmental Impact of the Proposed Action: The proposed Schedular Exemption would not affect the environmental impact of the facility. No credit is given for the restraints and shields to be eliminated in calculating accident doses to the environment. While the jet impingement barriers and pipe whip restraints would minimize the damage from jet forces and whipping from a broken pipe, the calculated limitation on stresses required to support this Schedular Exemption assures that the probability of pipe breaks which could give rise to such forces are extremely small; thus, the pipe whip restraints and jet impingement shields would have no significant effect on the overall plant accident risk.

The Schedular Exemption does not otherwise affect radiological plant effluents. Likewise, the relief granted does not affect non-radiological plant effluents, and has no other environmental impact. The elimination of the pipe whip restraints and jet impingement shields would tend to lessen the occupational dose to workers inside containment. Therefore, the Commission concludes that there are no significant radiological impacts associated with the Schedular Exemption.

The proposed Schedular Exemption involves design features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect plant non-radioactive effluents and has no other environmental impact. Therefore, the Commission concludes that there are no non-radiological impacts associated with this proposed Schedular Exemption.

Since we have concluded that there are no measurable negative environmental impacts associated with this Schedular Exemption, any alternatives would not provide any significant additional protection of the

environment. The alternative to the Schedular Exemption would be to require literal compliance with GDC 4 for the duration of the license.

Alternative Use of Resources: This action does not involve the use of resources not previously considered in the Final Environmental Statement (NUREG–1171) for STP, Units 1 and 2.

Agencies and Persons Contacted: The NRC staff reviewed the applicants' request and applicable documents referenced therein that support this Schedular Exemption for STP, Units 1 and 2. The NRC did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for this action. Based upon the environmental assessment, we conclude that this action will not have a significant effect on the quality of the human environment.

For details with respect to this action, see the request for exemption dated May 26, 1987, which additionally provides a description of the submittals leading up to the NRC staff's technical evaluation of the exemption request, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488. The staff's technical evaluation of the request will be published with the Operating License (if it is granted) and will also be available for inspection at both locations listed above.

Dated at Bethesda, Maryland, this 15th day of June, 1987.

For the Nuclear Regulatory Commission.

Frank Schroeder,

Acting Director, Division of Reactor Projects, III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 87–15044 Filed 7–1–87; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 30–08228, License No. 07–14900–01 EA 87–44]

Milford Memorial Hospital; Order Modifying License, Effective Immediately

I

Milford Memorial Hospital, Milford, Delaware 19963–0199 (licensee/hospital) is the holder of specific byproduct material License No. 07–14900–01 (the license) issued by the Nuclear Regulatory Commission (Commission/NRC) pursuant to 10 CFR Parts 30, 31, and 35. The license authorizes the licensee to use (1) byproduct material listed in Groups I through V of Schedule A, § 36.100 of 10 CFR 35 (under the new revised 10 CFR Part 35 this requirement is under Subparts D, E, and F) for diagnostic and therapeutic procedures, (2) byproduct material listed in § 31.11(a) of 10 CFR Part 31 for *in vitro* studies, and (3) xenon–133 for blood flow and pulmonary function studies. The license was originally issued on December 28, 1971; was most recently renewed on June 3, 1982; was due to expire on May 31, 1987; and is currently in effect pursuant to a timely application for renewal in accordance with 10 CFR 2.109.

II

As part of an NRC inspection conducted at the licensee's facility on December 17, 1986, an NRC inspector reviewed the records of daily constancy checks performed on the dose calibrator. During the review, the inspector observed that during a period of time in 1986, the recorded results of the constancy checks were almost always the same value. In the presence of Dr. Santos F. Delgado, the licensee's Radiation Safety Officer at the time, the inspector asked one of the two licensee technologists responsible for performing the constancy checks if these tests had been performed. She initially stated that the constancy checks had been performed daily. However, when she performed the constancy check procedure a short time later in the presence of the inspector and obtained a significantly different value than previously recorded, she admitted that she had recorded data in the past without actually performing the check. The other technologist also admitted that she had documented the results of daily constancy checks without having performed the checks. Subsequent to the inspection, the licensee conducted an investigation of this matter and determined that these records were falsified for the period May 6, 1986 through December 17, 1986.

III

Although Dr. Delgado, as the Radiation Safety Officer (RSO) at that time, stated that he had performed an audit of these specific records of constancy checks on November 16, 1986, he apparently did not recognize that the records had been falsified. Dr. Delgado also stated that as part of the audit, he verified that records of constancy checks existed, but apparently he did not assess the accuracy of the records. If an adequate audit of the records had been performed by Dr. Delgado, he would have determined that the constancy reading on each record was almost always the same for approximately a six-month period, a fact that should have caused him to inquire further since the radioactive source used to perform the constancy reading had a relatively short half-life.

IV

During an interview with investigators from the NRC Office of Investigations on May 18, 1987, the Assistant Administrator of the hospital stated that during a review of previous Radiation Safety Committee (RSC) meeting minutes, he noticed that there were minutes for a January 20, 1987 RSC meeting that he neither attended or was given notice of despite his previous instructions to Dr. Delgado that he or the Hospital Administrator be present at those meetings. As a result, on May 11, 1987, he questioned Dr. Delgado concerning Dr. Delgado's failure to invite him to this meeting and Dr. Delgado spontaneously admitted to the Assistant Administrator that these RSC meetings, which were required by the license to be conducted quarterly, had not been conducted for at least the past year even though Dr. Delgado had created a record in each case to represent that the meetings had occurred. (Dr. Delgado subsequently admitted to two investigators from the Office of Investigations during an interview on May 18, 1987 that no RSC meetings had been held since approximately 1970.) These false records had been presented to NRC inspectors during various NRC inspections in the past as evidence that the RSC meetings had occurred as required. Specific meeting minutes of the Committee also had been provided to the NRC, in letters dated April 7 and May 14, 1982, to resolve NRC concerns regarding the licensee's application for license renewal dated February 23, 1982. Those meeting minutes had been used by the NRC to resolve NRC concerns regarding possible deficiencies in the licensee's program for maintaining radiation exposures as low as reasonably achievable.

V

As a result of the falsification of records by the two technologists and by the Radiation Safety Officer, the NRC concludes that the Radiation Safety Program at Milford Hospital has not been properly implemented, and therefore, the NRC does not have reasonable assurance that the health and safety of the public is adequately protected. The NRC also concludes that the falsification of records by Dr.

Delgado and his failure to recognize the falsification of constancy check records by the technologists, raise questions as to his integrity as well as his competency to serve as the Radiation Safety Officer. Accordingly, immediate action is required to provide assurance that licensed activities will be properly supervised and conducted. Therefore, notwithstanding the fact that the licensee has suspended Dr. Delgado as the Radiation Safety Officer and from all safety related activities in the Nuclear Medicine Department pending completion of an investigation into the accuracy of all Radiation Safety documents, as stated in the licensee's June 1, 1987 letter to the NRC, I am ordering: (1) The removal of Dr. Delgado from the position of Radiation Safety Officer at Milford Memorial Hospital, (2) the suspension of Dr. Delgado's authorization to independently use or supervise the use of licensed material as currently permitted by the license, (3) the institution of monthly independent audits of the Radiation Safety Program, and (4) a review of the Radiation Safety Program by the new RSO, correction of deficiencies identified, and certification by the licensee to the NRC that the Nuclear Medicine Program is being operated safely and in accordance with requirements. Since these actions are necessary to provide reasonable assurance that licensed activities will be safely and properly conducted, I find that such actions are required for the public health and safety and are to be made immediately effective.

VI

Accordingly, pursuant to sections 81, 161(b), (i), and (o), 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.204 and 10 CFR Parts 30 and 35, it is hereby ordered, that effective immediately:

A. License No. 07-14900-01 is modified, removing the name of Dr. Santos F. Delgado from the license as the RSO. Dr. Abraham J. Strauss is added to the license as the new RSO, as proposed in the licensee's June 1, 1987 letter to the NRC.

B. The license authorization for Dr. Santos F. Delgado to independently use or supervise the use of licensed material is suspended. This suspension does not preclude Dr. Delgado from performing activities involving licensed material under the personal supervision of an authorized user.

C. License No. 07-14900-01 is modified to require an independent party, qualified in the area of radiation safety, to perform monthly audits of the Radiation Safety Program. The audits shall continue for a period of one year.

These audits shall be conducted for the purpose of evaluating the effectiveness of the radiation safety program in assuring adherence to NRC requirements and safe performance of licensed activities. These audits shall include at a minimum:

1. Assessment of management control and oversight of the program;

2. Evaluation of the adequacy of staffing levels, training and qualification of personnel involved in licensed activities, and implementation of the program;

3. Observation and evaluation of the performance of personnel engaged in licensed activities; and

4. Assessment of the quality and accuracy of records required to be maintained concerning licensed activities.

The first such independent audit shall be conducted within one month of the date of this Order. The results of each audit shall be simultaneously provided to the Hospital Administrator and the Director, Division of Radiation Safety and Safeguards (DRSS), JNRC Region I, within two weeks of completion of the audit. The hospital shall provide to the Director, DRSS, NRC Region I, within 30 days of receipt of the results of each audit, a description of the corrective actions taken for each recommendation by the independent party and justification for any recommendation not accepted.

D. Within 14 days of the date of this Order, the new RSO shall review the Radition Safety Program in its entirety, develop and implement actions to correct any identified deficiencies, and the Hospital Administrator shall submit a letter to the Regional Administrator, NRC Region I, certifying based on the RSO's review that the Nuclear Medicine Program is being operated safely and in accordance with the terms and conditions of the license.

E. The Regional Administrator may relax or terminate any of these conditions for cause shown.

VII

The licensee or any other person adversely affected by this Order may request a hearing within 30 days after issuance of this Order. Any answer to this Order or any request for hearing shall be submitted to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington 20555. Copies shall also be sent to the Assistant General Counsel for Enforcement at the same address and to the Regional Administrator, U.S. Nuclear Regulatory Commission, Region I, 631 Park Avenue, King of Prussia, Pennsylvania 19406. If a person other than the licensee requests a hearing, that person shall set forth with particularity the manner in which the petitioner's interest is adversely affected by this Order and should address the criteria set forth in 10 CFR 2.714(d). Upon the failure of the licensee to answer or request a hearing within the specified time, this Order shall be final without further proceedings. An answer to this order or a request for hearing shall not stay the immediate effectiveness of this order.

If a hearing is requested, the Commission will issue an order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Dated at Bethesda, Maryland, this 15th day of June 1987.

For the Nuclear Regulatory Commission.

James M. Taylor,

Deputy Executive, Director for Regional Operations.

[FR Doc. 87-15045 Filed 7-1-87; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-245]

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing; Northeast Nuclear Energy Co.

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-21 issued to Northeast Nuclear Energy Company (NNECO), (the licensee), for operation of the Millstone Nuclear Power Station, Unit No. 1, located in New London County, Connecticut.

The amendment would revise sections 3.4, 4.4, and the associated Bases of the Technical Specifications (TS) in accordance with the licensee's application for amendment dated May 22, 1987. These changes are being proposed to ensure compliance with the ATWS rule (10 CFR 50.62) which requires all BWRs to have a standby liquid control system (SLCS) with a minimum flow capacity equivalent to 86 gpm of 13 weight percent sodium pentaborate solution. At Millstone Unit 1, the equivalent flow capacity, as clarified in Generic Letter 85-03, "Clarification of Equivalent Control Capacity for Standby Liquid Level Control Systems," dated January 28, 1985, will be achieved by utilizing B-10 enriched sodium pentaborate. The

minimum SLCS system parameters being proposed are: Pump flow rate of 40 gpm; solution concentration of at least 11%; solution volume of at least 1850 gallons; and a minimum B-10 enrichment of 50 atom percent.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has reviewed the attached changes pursuant to 10 CFR 50.59 and has determined that they do not constitute an unreviewed safety question. The probability of occurrence or the consequences of an accident or malfunction of equipment important to safety (i.e., safety-related) previously evaluated in the Final Safety Analysis Report has not been increased. The possibility for an accident or malfunction of a different type than any evaluated previously in the Final Safety Analysis Report has not been created. There has not been a reduction in the margin of safety as defined in the bases for any Technical Specification. These proposed changes will improve the performance of the standby liquid control system and, hence, will provide an increased margin of safety. Revised minimum values for the pump flow rate, solution concentration, B-10 enrichment, and the solution volume will maintain the current basis for the SLCS, which is to bring the reactor from full power to a cold, xenon-free shutdown, assuming none of the control rods can be inserted.

The licensee has reviewed the proposed changes in accordance with 10 CFR 50.92 and has concluded that they do not involve a significant hazards consideration in that these changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed. The standby liquid control system is not credited in any of the design basis accident analyses and, as such, it is considered to provide only an additional mitigative feature in the event of an accident.

2. Create the possibility of a new or different kind of accident from any previously analyzed. The proposed changes do not introduce any new failure modes.

3. Involve a significant reduction in a margin of safety. Upgrading the functional capabilities of the standby liquid control system increases the margin of safety.

The Commission has provided guidance concerning the application of standards in 10 CFR 50.92 by providing certain examples (51 FR 7751, March 6, 1986). The changes proposed herein most closely resemble example (ii), a change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications, in that stricter operating requirements and surveillance procedures reflect additional conservatism.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Written comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Copies of written comments received may be examined at the NRC Public Document Room, 1717 H Street NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By August 3, 1987, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW. Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Cecil O. Thomas, Director, Integrated Safety Assessment Project Directorate, Division of Reactor Projects—III, IV, V and Special Projects: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel—Bethesda, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Garfield, Esquire, Day, Berry & Howard Counselors at Law, City Place, Hartford, Connecticut 06103, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

For the Nuclear Regualtory Commission.

Cecil O. Thomas,

Director, Integrated Safety Assessment Project Directorate, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 87-15232 Filed 7-1-87; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-245]

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing; Northeast Nuclear Energy Co.

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-21 issued to Northeast Nuclear Energy Company (NNECO), (the licensee), for operation of the Millstone Nuclear Power Station, Unit No. 1, located in New London County, Connecticut.

The amendment would change the Millstone Unit No. 1 Technical Specifications (TS) to reflect Reload 11/Cycle 12 in accordance with the licensee's application for amendment dated May 21, 1987 as modified by letter dated June 30, 1987. The proposed changes will amend the current minimum critical power ratio (MCPR), linear heat generation rate (LHGR) and maximum average planar linear heat generation rate (MAPLHGR). The core reload consists of 196 new (unirradiated) General Electric Type GE8 x 8EB (GE-8B) fuel assemblies. The new MAPLHGR curves and MCPR and LHGR valves reflect the new core conditions subsequent to refueling.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

NNECO has reviewed the attached proposed changes pursuant to 10 CFR 50.59 and has determined that they do not constitute an unreviewed safety question. The probability of occurrence or the consequences of an accident or malfunction of equipment important to safety (i.e., safety-related) previously evaluated in the Final Safety Analysis Report (FSAR) has not been increased. The possibility for an accident or malfunction of a different type than any evaluated previously in the Final Safety Analysis Report has not been created. There has not been a reduction in the margin of safety as defined in the basis for any Technical Specification. The new MAPLHGR curves and MCPR and LHGR values will not only accurately reflect the new core conditions subsequent to this refueling outage, but they will also ensure that safety analysis assumptions will be maintained.

NNECO has also reviewed the proposed changes in accordance with 10 CFR 50.92 and has concluded that they do not involve a significant hazards consideration in that these changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed. Per 10 CFR 50.46, all requirements will be met for Cycle 12 operation as long as the MAPLHGR limits are met. The MAPLHGR limit for the GE-7B fuel bundles applies for all the lattices in the bundle. However, since the GE-8B fuel contains axially zoned gadolinia, the MAPLHGR limits for GE-8B is lattice-specific.

Thus, there is no impact on the consequences of a LOCA due to this change. Additionally, limiting MCPR transients were analyzed. The MCPR safety limit for Millstone Unit 1 is 1.07. The operating limit is arrived at by the calculated ΔCPR for the limiting transient to the safety limit value (1.07

−ΔCPR). This ensures that the safety limit will never be violated for any expected operational transient. The limiting MCPR event for Millstone Unit 1 is the load rejection without bypass event, which for Reload 11 results in an MCPR limiting condition for operation (LCO) of 1.30. Additionally, there is no adverse impact on overpressurization events due to the proposed changes.

Therefore, NNECO concludes that these changes do not impact the consequences of any transient relating to MCPR concerns since the safety limit will not be violated for any expected operational transient. Additionally, these changes do not impact the consequence of many design basis loss-of-coolant accidents (LOCAs). Since no new failure modes are introduced, there is no increase in the probability of any accident previously analyzed.

2. Create the possibility of a new or different kind of accident from any previously analyzed. Fuel operational limits are set such that plant response to all design basis transients and accidents are bounded by the FSAR analyses. Additionally, since a mislocated fuel bundle loading error will result in an MCPR greater than the safety limit, and since the ΔCPR for a misoriented bundle is zero, no potential for creation of new unanalyzed event exists.

3. Involve a significant reduction in a margin of safety. Adequacy of protective boundaries is ensured by the set operational limits. In addition, the proposed changes do not impact the technical basis for any Technical Specification.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Written comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Copies of written comments received may be examined at the NRC Public Document Room, 1717 H Street NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By August 3, 1987, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respects 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 for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW. Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Cecil O. Thomas, Director, Integrated Safety Assessment Project

Directorate, Division of Reactor Projects—III, IV, V and Special Projects; petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel—Bethesda, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Garfield, Esquire, Day, Berry & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(l)(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, DC., and at the Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Dated at Bethesday, Maryland, this 30th day of June 1987.

For the Nuclear Regulatory Commission.

Cecil O. Thomas,

Director, Integrated Safety Assessment Project Directorate, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 87–15233 Filed 7–1–87; 8:45 am]

BILLING CODE 7590-01-M

OVERSEAS PRIVATE INVESTMENT CORPORATION

Agency Report Forms Under OMB Review

AGENCY: Overseas Private Investment Corporation.

ACTION: Request for Comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the Agency has made such a submission. The proposed form under review is summarized below.

DATE: Comments must be received within 14 calendar days of this notice. If you anticipate commenting on the form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and the Agency Submitting Officer of you intent as early as possible.

ADDRESS: Copies of the subject form and the request for review submitted to OMB may be obtained from the Agency Submitting Officer. Comments on the form should be submitted to the Agency Submitting Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

OPIC Agency Submitting Officer:

L. Jacqueline Brent, Office of Personnel and Administration, Overseas Private Investment Corporation, Suite 461, 1615 "M" Street, NW., Washington, DC 20527; Telephone (202) 457–7151.

OMB Reviewer:

Francine Picoult, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; Telephone (202) 395–7231.

Summary of Form Under Reviews:

Type of Request: Revision
Title: Application for Political Risk Investment Insurance
Form Number: OPIC–52
Frequency of Use: Other—once per investor per project
Type of Respondent: Business or other institutions (except farms)
Standard Industrial Classification Codes: All
Description of Affected Public: U.S. companies investing overseas
Number of Responses: 350
Reporting Hours: 700
Federal Cost: $10,000
Authority for Information Collection: Section 234(a) of the Foreign Assistance Act of 1961, as amended.

Abstract (Needs and Users;

Pursuant to OPIC's statute OPIC must screen each applicant for investment insurance in order to determine the eligibility of the investor, assess the political risks of the project, and calculate the economic and development effects of the project in the host country and in the U.S. The OPIC Form 52 enables OPIC to collect this information in order to carry out Congress's mandate to manage the program prudently and to assure that no project is supported which has a significant adverse effect on U.S. employment.

Dated: June 26, 1987.

Mildred A. Osowski,

Office of the General Counsel.

[FR Doc. 87–15052 Filed 7–1–87; 8:45 am]

BILLING CODE 3210-01-M

Agency Report Forms Under OMB Review

AGENCY: Overseas Private Investment Corporation.

ACTION: Request for Comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the Agency has made such a submission. The proposed form under review is summarized below.

DATE: Comments must be received within 14 calendar days of this notice. If you anticipate commenting on the form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and the Agency Submitting Officer of your intent as early as possible.

ADDRESS: Copies of the subject form and the request for review submitted to OMB may be obtained from the Agency Submitting Officer. Comments on the form should be submitted to the Agency Submitting Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

OPIC Agency Submitting Officer:

L. Jacqueline Brent, Office of Personnel and Administration, Overseas Private Investment Corporation, Suite 461, 1615 "M" Street, NW., Washington, DC 20527; Telephone (202) 457–7151.

OMB Reviewer:

Francine Picoult, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; Telephone (202) 395–7231.

Summary of Form Under Review:

Type of Request: Revision
Title: Application for Political Risk Insurance for Hydrocarbon Projects
Form Number: OPIC—77
Frequency of Use: Other—once per investor per project
Type of Respondent: Business or other institutions (except farms)
Standard Industrial Classification Codes: All
Description of Affected Public: U.S. companies investing overseas
Number of Responses: 15 per annuml
Reporting Hours: 12
Federal Cost: $3,750
Authority for Information Collection: Section 234(a) of the Foreign Assistance Act of 1961, as amended.

Abstract (Needs and Uses):

The hydrocarbon application is used to collect from eligible international petroleum companies data on proposed oil and gas projects, which is used in drafting political risk insurance contracts.

Dated: June 19, 1987.

Mildred A. Osowski,

Office of the General Counsel.

[FR Doc. 87-15053 Filed 7-1-87; 8:45 am]

BILLING CODE 3210-01-M

Agency Report Forms Under OMB Review

AGENCY: Overseas Private Investment Corporation.

ACTION: Request for Comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the Agency has made such a submission. The proposed form under review is summarized below.

DATE: Comments must be received within 14 calendar days of this notice. If you anticipate commenting on the form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and the Agency Submitting Officer of your intent as early as possible.

ADDRESS: Copies of the subject form and the request for review submitted to OMB may be obtained from the Agency Submitting Officer. Comments on the form should be submitted to the Agency Submitting Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

OPIC Agency Submitting Officer:

L. Jacqueline Brent, Office of Personnel and Administration, Overseas Private Investment Corporation, Suite 461, 1615 "M" Street, NW., Washington, DC 20527; Telephone (202) 457-7151.

OMB Reviewer:

Francine Picoult, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; Telephone (202) 395-7231.

Summary of Form Under Review:

Type of Request: Revision
Title: Request for Registration for Political Risk Investment Insurance
Form Number: OPIC—50
Frequency of Use: Other—once per investor per project
Type of Respondent: Business or other institutions (except farms)
Standard Industrial Classification Codes: All
Description of Affected Public: U.S. companies investing overseas
Number of Responses: 500 per annum
Reporting Hours: 250
Federal Cost: $5,000
Authority for Information Collection: Section 234(a) of the Foreign Assistance Act of 1961, as amended.

Abstract (Needs and Uses):

OPIC 50 is submitted by eligible investors to register their intentions to invest overseas and, in time, to seek OPIC insurance. By investor submitting Form 50 prior to making irrevocable commitment to invest, OPIC can demonstrate its incentive effect.

Dated: June 19, 1987.

Mildred A. Osowski,

Office of the General Counsel.

[FR Doc. 87-15054 Filed 7-1-87; 8:45 am]

BILLING CODE 3210-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-24641; File No. SR-NASD-87-23]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Short Sale Requirements

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 27, 1987, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed amendments to Article III, sections 21(b) and 41 of the NASD's Rules of Fair Practice and the Board of Governors' Interpretation on Prompt Receipt and Delivery of Securities ("Interpretation") clarify the applicability of the NASD's short sale rules to various types of securities. The proposed amendment to Article III, section 21(b) will exclude debt securities from the requirement to mark customer order tickets "long" or "short." A similar amendment will be made to the Interpretation. The proposed amendment to Article III, section 41 will limit to common shares, rights and warrants the requirement (i) to maintain a record of aggregate "short" positions NASDAQ securities in all customer and proprietary firm accounts and (ii) to report such information to the NASD on a monthly basis.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item IV, below. The NASD has prepared summaries, set forth in Sections (A), (B) and (C), below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed amendments to Article III, sections 21(b) and 41 of the NASD Rules of Fair Practice and the Interpretation of the Board of Governors on Prompt Receipt and Delivery of Securities is to clarify the applicability of the NASD short sale requirements to various types of securities. The proposed amendment to Article III, section 21(b) will exclude corporate bonds from the requirement to mark customer order tickets "long" or "short." A similar amendment will be made to the Interpretation. The proposed amendment to Article III, section 41 will limit to common shares, rights and warrants the requirement (i) to maintain a record of aggregate short positions in NASDAQ securities in all customer and firm proprietary accounts and (ii) to report such information to the NASD on a monthly basis.

The proposed amendments are consistent with section 15A(b)(6) of the Act, which requires the rules of a registered securities association to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, and protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not anticipate that the proposed amendments will impose any burden on competition not

necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR-NASD-87-23 and should be submitted by July 17, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: June 25, 1987.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87-15100 Filed 7-1-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-24418]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

June 25, 1987.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by July 20, 1987 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declaration(s) at the addresses specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered; and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Central and South West Corporation (70-6877)

Central and South West Corporation ("CSW"), 2500 San Jacinto Tower, Dallas, Texas 75201, a registered holding company, and its wholly owned nonutility subsidiary, CSW Energy, Inc. ("Energy"), 2500 San Jacinto Tower, Dallas, Texas 75201, have filed a post effective amendment to their application filed pursuant to sections 9(a) and 10 of the Act.

By orders dated August 4, 1983 (HCAR No. 23021), March 12, 1985 (HCAR No. 23627) and February 6, 1987 (HCAR No. 24314), CSW and Energy were authorized through December 31, 1988, among other things, to invest up to $49 million in qualifying cogeneration facilities and small power production facilities in the service territories of CSW's electric utility subsidiaries. CSW and Energy now seek to extend this investment authority to (i) cogeneration facilities located in any geographic area, and (ii) small power production projects located within the service territories of the member utilities of the power pools in which the CSW operating companies participate—the Electric Reliability Counsel of Texas and the Southwest Power Pool.

WPL Holdings, Inc. (70-7385)

WPL Holdings, Inc. (the "Company"), 222 West Washington Avenue, Madison, Wisconsin 53703, has filed an applicaion pursuant to Sections 3(a)(1), 9(a)(2), and 10 of the Act requesting an order (1) approving the acquisition by the Company of all the outstanding shares of common stock of Wisconsin Power and Light Company ("WPL"), a Wisconsin corporation, and, in connection therewith, the indirect acquisition of 33.1% of the outstanding shares of capital stock of Wisconsin River Power Company ("River Power"), a Wisconsin corporation, and 100% of the outstanding shares of capital stock of South Beloit Water, Gas and Electric Company ("SBWG&E"), an Illinois corporation, through the ownership by WPL of said shares and (2) granting the Company and its subsidiaries, upon consummation of the proposed transaction, an exemption under section 3(a)(1) of the Act from all of the provisions of the Act except Section 9(a)(2).

The Company was incorporated on April 22, 1981, for the purpose of accomplishing a proposed merger and reorganization pursuant to an Agreement and Plan of Merger and Reorganization (the "Plan of Merger"). As more fully described herein, the Company owns all the outstanding common stock of WPL Acquisitions, Inc. ("Acquisitions"), a Wisconsin corporation. Neither the Company nor Acquisitions owns any significant assets or engages in any business, and currently neither is a "holding company" under the Act. The Plan of Merger was approved by WPL's common and preferred shareholders at WPL's annual meeting held on April 22, 1987.

WPL, the Company, and Acquisitions propose to accomplish the proposed merger and reorganization by entering into the Plan of Merger, whereby (i) Acquisitions will be merged into WPL, with WPL as the surving corporation; (ii) the common stock of Acquisitions onwed by the Company will be converted into new common stock of WPL; (iii) the outstanding common stock, $5 par value, of WPL will be converted, on a share-for-share basis, into common stock, $.01 par value, of the Company; (iv) WPL will become a wholly owned subsidiary of the Company, and certain of WPL's

subsidiaries (including River Power, SBWG&E, WP&L Nuclear Fuel, Inc., REAC, Inc., NUFUS Resources, Inc., and WP&L Foundation, Inc.) will preserve their present relationships with WPL; and (v) WPL, by means of a noncash dividend to the Company, will transfer to the Company all the outstanding stock of Heartland Development Corporation ("Heartland") which will own all the outstanding stock of certain of WPL's nonutility subsidiaries (including Residuals Management Technology, Inc., WP&L Communications, Inc., and Enserv, Inc.). Following the merger and reorganization, all of the outstanding common stock of the Company will be owned by the former WPL common shareowners. The Company's common stock will be listed on the New York Stock Exchange, and WPL's common stock will be delisted from such exchange.

It is proposed that there will be no exchange of the outstanding preferred stock or first mortgage bonds of WPL in connection with the merger and reorganization and that, immediately following the merger and reorganization, the Company will have no outstanding securities other than common stock. Holders of WPL preferred stock and first mortgage bonds will continue as security holders of WPL except for those holders of WPL preferred stock who properly exercise statutory appraisal rights.

WPL has its principal executive office in Madison, Wisconsin, and is a public utility company engaged principally in generating, purchasing, distributing, and selling electric energy in 35 counties in southern and central Wisconsin. WPL furnishes retail electric service to about 323,085 customers and wholesale service to 30 municipal utilities, to two public utilities serving retail customers in small communities, and to five rural electric cooperative customers. WPL also purchases, distributes, and sells natural gas to about 112,042 customers located in 20 counties in southern and central Wisconsin. It also supplies water to about 16,000 customers in two communities in Wisconsin. WPL's total operating revenues for 1986 were $569.2 million, of which $437 million (76.8%) was from electric service, $128.2 million (22.5%) was from gas service, and $4 million (.7%) was from water service.

WPL is subject to regulation by the Public Service Commission of Wisconsin as to formation of a public utility holding company, retail rates, service rules, accounts, issuance of securities, certain additions and extensions to facilities, and in other respects. It is also subject to the jurisdiction of the Federal Energy Regulatory Commission ("FERC") under the Federal Power Act as to wholesale rates, certain electric utility facilities, accounts, and in other respects. Certain of WPL's natural gas facilities and operations may also be subject to the jurisdiction of FERC under the Natural Gas Act. WPL has been declared an exempt holding company pursuant to section 3(a)(2) of the Act (*Wisconsin Power and Light Co.*,) 1 SEC 362 (1936)).

WPL owns 100% of the outstanding capital stock of SBWE&G, an Illinois corporation, which supplies retail electric, gas, and water service to customers in South Beloit and Rockton, Illinois, and the rural territory adjacent to those cities. SBWG&E provides electric service to about 26,011 customers, gas service to about 19,684 customers, and water service to about 1,316 customers. The service territory of SBWG&E is adjacent to the territory served by WPL in Wisconsin. SBWG&E has been a wholly owned subsidiary of WPL since prior to 1930 and has no securities outstanding other than those held by WPL. SBWG&E's operating revenues for 1986 were $13,541,923, representing about 2.5% of WPL's consolidated operating revenues for 1986. SBWG&E is subject to regulation by the Illinois Commerce Commission as to retail rates, accounts, issuance of certain securities, and in other respects. In addition, because of WPL's ownership of SBWG&E, the proposed merger and reorganization must be approved by the Illinois Commerce Commission.

WPL owns 33.1% of the outstanding capital stock of River Power, a Wisconsin corporation, incorporated in 1947. The remaining capital stock is owned 33.1% by Wisconsin Public Service Corporation and 33.8% by Consolidated Water Power Company. Wisconsin Public Service Corporation is a public utility company operating in north central and northeastern Wisconsin. Consolidated Water Power Company is a wholly owned subsidiary of Consolidated Papers, Inc., which is engaged principally in the manufacture and sale of paper, pulp, and paper products. The acquisition of the capital stock of River Power by WPL was approved by the Commission by order in File Nos. 70-1656 and 31-551 (27 SEC 539 (1948)). The business of River Power consists of the ownership and operation of two dams and related hydroelectric plants on the Wisconsin River having an aggregate installed capacity of about 35,000 kW. River Power does not own any transmission or distribution facilities and operates solely in Wisconsin. The output of the hydroelectric plants is sold, at the sites of such plants, to the three companies which own its outstanding capital stock, substantially in proportion to their stock ownership interests.

By order entered on April 30, 1987, the Public Service Commission of Wisconsin approved the merger and reorganization of WPL under the Wisconsin Holding Company Act. The scope of diversification which may be engaged in by the Company is limited under said order. The Company is restricted from using any funds from WPL for investment in any nonutility business until WPL reaches and can maintain a 50% common equity level in its utility capital structure. Furthermore, the sum of the assets of all nonutility affiliates in the Company's holding-company system "may not exceed the sum of 25 percent of the assets of WPL."

The Columbia Gas System, Inc. (70-7396)

The Columbia Gas System, Inc. ("Columbia"), 20 Montchanin Road, Wilmington, Delaware 19807, a registered holding company, has filed an application-declaration pursuant to Sections 6(a), 7, 9(a), 10, and 12(b) of the Act and Rules 43 and 45 promulgated thereunder.

Columbia proposes to establish a new, wholly owned, gas marketing subsidiary, TriStar Trading, Inc. ("TriStar Trading"), which will broker gas and participate in markets for gas and other hydrocarbons on a spot or longer term basis. TriStar Trading will also transport, exchange and pool sources of gas for sale, and provide marketing services, including gas procurement, sales and transportation services, to local distribution companies ("LDCs") and end-users. TriStar Trading will sell gas to affiliated and nonaffiliated pipelines, and to LDC's and their respective end-users.

TriStar Trading proposes: (1) To issue and sell to Columbia 500 shares of its common stock, $1.00 par value, at $10,000 per share; (2) to participate in the Columbia System money pool ("Money Pool"); (3) to borrow up to $15 million through the Money Pool or from Columbia on open account advances ("Advances"); and (4) to convert such Advances or sums due, if not paid within 360 days, into long-term installment notes and or common stock, or any combination thereof not to exceed $15 million. Columbia further proposes to act as surety, indemnitor and guarantor for certain of TriStar

Trading's activities up to an aggregate of $20 million.

Money Pool borrowings will bear interest at the Money Pool rate. Advances will bear interest at a rate equal to Columbia's effective cost of short-term funds and will be repaid as gas is sold. Long-term notes will mature over a period of time to be determined by the officers of Columbia to equate to the term of Columbia's most recent long-term financing and will bear interest at a rate equal to the effective cost of Columbia's most recent long-term financing.

Georgia Power Company, et al. (70-7402)

Georgia Power Company ("Georgia Power"), 333 Piedmont Avenue, NE., Atlanta, Georgia 30308, Southern Electric International, Inc. ("International"), 100 Ashford Center North, Atlanta, Georgia 30346, and The Southern Investment Group, Inc. ("Investment"), 64 Perimeter Center East, Atlanta, Georgia 30346, three wholly owned subsidiaries of The Southern Company, a registered holding company, and Piedmont-Forrest Corporation ("Piedmont"), 333 Piedmont Avenue, NW, Atlanta, Georgia 30308, a wholly owned subsidiary of Georgia Power, have filed a declaration pursuant to section 6(a) and 7 of the Act.

Investment, Piedmont-Forrest and Georgia Power are Georgia corporations. They propose to amend their corporate charters to limit the personal liability of their directors for money damages to the fullest extent permitted by section 14-2-171(b)(3) and section 46-8-51(k) of the Georgia Code. Directors would still be liable for monetary damages (i) for any appropriation, in violation of their duties, of any business opportunity of the corporation, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law (iii) for paying a dividend, approving a stock repurchase or making a distribution of assets in violation of section 14-2-154 of the Georgia Code, or (iv) for any transaction from which the director derived an improper benefit.

International, a Delaware corporation, proposes similarly to amend its certificate of incorporation to limit the liability of its directors for monetary damages as permitted by recently amended section 102(b)(7) of the Delaware Code.

Appalachian Power Company, et al. (70-7414)

Appalachian Power Company ("Appalachian"), an electric utility subsidiary of American Electric Power Company, Inc., a registered holding company, and Appalachian's subsidiaries ("Coal Subsidiaries"), Southern Appalachian Coal Company ("SACCo"), Central Appalachian Coal Company ("CACCo") and Cedar Coal Company ("Cedar"), all located at 40 Franklin Road, Roanoke, Virginia 24022, have filed a declaration pursuant to section 12(c) of the Act and Rule 46 thereunder.

By prior Commission order, dated June 6, 1984 (HCAR No. 23322), SACCo, CACCo, and Cedar were authorized to sell certain real property interests and fixed assets to NuEast Mining Company and to Ashland Oil Co., so that substantially all of the coal mining activities of the Coal Subsidiaries were transferred in consideration for notes, rents and royalties, and all business operations were discontinued. Because the Coal Subsidiaries are inactive, it has been determined that they will not need any capital in excess of stated capital in the foreseeable future. Accordingly, the Coal Subsidiaries each propose to declare and pay periodically to Appalachian dividends out of paid-in surplus until the amount of such dividends equals an aggregate capital surplus amount of $58.4 million. This amount being the aggregate paid-in surplus of the Coal Subsidiaries as determined on April 30, 1987.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

Dated: June 24, 1987.

[FR Doc. 87-15095 Filed 7-1-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-15829; 812-6635]

Application; Eaton Vance California Municipals Trust, et al.

June 26, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an order under the Investment Company Act of 1940 ("1940 Act").

Applicants: Eaton Vance California Municipals Trust, Eaton Vance High Income Trust, Eaton Vance High Yield Municipals Trust and Eaton Vance Liquid Assets Trust ("Funds"), and Eaton Vance Distributors, Inc. ("Principal Underwriter") on behalf of any other existing or future registered investment company for which the Principal Underwriter acts as principal underwriter and whose shares are offered and sold on substantially the same basis as those of the Funds or whose shares may be exchanged for shares of such Funds (collectively with the Funds, "Exempt Funds").

Relevant 1940 Act Sections: Exemption requested under section 6(c) from the provisions of sections 2(a)(32), 2(a)(35), 22(c) and 22(d), and Rule 22c-1 thereunder, and approval of exchange offers requested under section 11(a).

Summary of Application: Applicants seek an order permitting the Exempt Funds: (1) To assess, defer and waive a contingent deferred sales charge ("CDSL") imposed on their shares in certain circumstances; and (2) to offer certain exchange privileges.

Filing Dates: The application was filed on February 24, 1987, and amended on March 30, May 29 and June 23, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on July 22, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, 24 Federal Street, Boston MA 02110.

FOR FURTHER INFORMATION CONTACT: Victor R. Siclari, Staff Attorney (202) 272-3037 or Brion R. Thompson, Special Counsel (202) 272-3016 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231-3282 (in Maryland (301) 285-4300).

Applicants' Representatives

1. The Funds are each registered under the 1940 Act as an open-end, diversified, management investment company. Shares of each Fund are offered for sale to the public through the Principal Underwriter, which is a wholly-owned subsidiary of the Funds' investment adviser, Eaton Vance Management, Inc. ("Adviser"), which in

turn is a wholly-owned subsidiary of Eaton Vance Corp.

2. Each Fund offers its shares without the imposition of a front-end sales charge. Applicants request an exemption to permit the Exempt Funds (which includes the Funds) to impose a CDSL upon redemption of their shares by shareholders. The CDSL is or will be paid by shareholders of each Exempt Fund to the Principal Underwriter or, under some circumstances, to the Exempt Fund to compensate them for services and expenses related to offering Exempt Fund shares for sale to the public. A CDSL will be imposed on any redemption the amount of which exceeds the aggregate value at the time of redemption of (a) all shares in the account purchased more than six years prior to the redemption, (b) all shares in the account acquired through reinvestment of dividends and capital gains distributions, and (c) the increase, if any, of value of all other shares in the account (namely those purchased within the six years preceding the redemption) over the purchase prior of such shares. Redemptions will be processed in a manner to maximize the amount of redemption which will not be subject to a CDSL; i.e., each redemption will be assumed to have been made first from the exempt amounts referred to in clauses (a), (b) and (c) above, and second through liquidation of those shares in the account referred to in clause (c) on a first-in-first-out basis.

3. The amount of the CDSL imposed upon redemption, if any, will depend upon the year during which the shares being redeemed were purchased with all purchases during a month being aggregated and deemed to have been made on the first day of the month, as follows: 6% if the redemption occurs during the first year after purchase; 5% if the redemption occurs during the second year; 4% if the redemption occurs during the third year; 3% if the redemption occurs during the fourth year; 2% if the redemption occurs during the fifth year; and 1% if the redemption occurs during the sixth year. No CDSL will be imposed on shares redeemed after six years from the date of purchase.

4. Applicants request an exemption to permit each Exempt Fund to waive the CDSL with respect to the following redemptions of such Exempt Fund's shares: (i) Redemptions of shares held by the Adviser, its affiliates or their respective directors, trustees, employees and clients, (ii) redemptions following the death of disability of a shareholder, (iii) redemptions in connection with certain distributions from IRAs, qualified retirement plans or tax-sheltered annuities, (iv) involuntary redemptions of shares in accounts that do not meet with Exempt Fund's minimum blance requirements, and (v) redemptions the proceeds of which are reinvested in shares of the same Exempt Fund within thirty days of such redemption. These are described more fully in the application. The Funds already have a policy of waiving payment of the CDSL with respect to those shares referred to in clauses (i), (iv) and (v) above. The Exempt Fund expect that they would adopt a policy of waiving the CDSL with respect to the redemptions referred to in clauses (ii) and (iii) above it it were determined by their respective Trustees that such a policy were necessary in order to enhance the Funds' competitiveness and attractiveness to investors.

5. Each of the Funds offers certain exchange privileges to its shareholders which are made on the basis of the relative net asset value per share next determined after receipt of an order for exchange. Each exchange is subject to the mininum investment requirements of the Fund whose shares are being acquired in the exchange. At present, shares of a Fund may be exchanged for shares fo another Fund without the imposition of a CDSL at the time of the exchange. Such shares, upon subsequent redemption, will be subject to the CDSL of the Fund from which the shares are being redeemed, calculated by reference to the date of initial purchase of the first Fund's shares. In addition, it is contemplated that shares of any Exempt Fund's shares. In addition, it is contemplated that shares of any Exempt Fund may be exchanged for shares of certain no-load Exempt Funds which may be offered in the future, without the imposition of any CDSL at the time of the exchange. Upon subsequent redemption from the no-load Exempt Fund, such shares will be subject to the CDSL of the Fund from which the exchange occurred. For purposes of calculating this charge, the shareholder's holding period will be deemed to include the period during which shares of the no-load Exempt Fund were held by the shareholder. Thus, in each case, payment of the CDSL is deferred until the shareholder ultimately redeems shares from the group of Exempt Funds, and the amount of such charge is based on the entire period durig which shares of any Exempt Fund were held by the shareholder.

6. Each Fund assists in financing the distribution of its shares pursuant to a plan of distribution adopted in accordance with Rule 12b-1 under the 1940 Act (the "Plan"). Each Fund's Plan provides that such Fund will pay daily compensation to the Principal Underwriter for its distribution services consisting of sales commissions equal to an amount not exceeding 5% of the price received by the Fund for each share sold on or after the effective date of the Plan plus distribution fees approximately calculated by applying the rate of 1% over the prevailing prime rate to the outstanding balance of uncovered distribution charges. The Principal Underwriter will use its own funds (which may be borrowed from banks) to pay to each authorized dealer selling Fund shares up to 4% of the purchase price of shares sold through such dealer. Payments of daily compensation will be spread over time so that the aggregate amount of such payments during any fiscal year shall not exceed 1% of the Fund's average daily net assets for such year. Such compensation will be accrued daily and payable monthly, but will be automatically discontinued during any period in which there are no outstanding uncovered distribution charges under such Plan. Uncovered distribution charges are approximately equivalent to all unpaid sales commissions and distribution fees to which the Principal Underwriter will be taken into consideration by each Exempt Fund's Trustees in their annual review of such Exempt Fund's Plan.

7. It is expecIt is expected, that, whenever a shareholder exchanges shares of one Exempt Fund for those of another Exempt Fund, the Principal Underwriter will waive a portion of the daily compensation payable by the first Exempt Fund pursuant to its Plan. It is anticipated that such waiver will be effected by deducting from such Exempt Fund's uncoverd distribution charges any positive amount calculated by subtracting (a) 1% of the valve of the shares redeemed in the exchange from (b) the amount of the CDSL which would ordinarily be payable upon the redemption of such shares. In addition, it is expected that the Principal Underwriter will waive a portion of the daily compensation payable by the second Exempt Fund pursuant to its Plan. It is anticipated that such waiver will be effected by deducting from such Exempt Fund's uncovered distribution charges any positive amount calculated by subtracting (a) the amount of the CDSL which would ordinarily be payable upon the redemption of the first Exempt Fund's shares less 1% of the value of the first Exempt Fund's shares redeemed in the exchange from (b) 5% of the price of the second Exempt Fund's shares sold in the exchange.

8. Each Fund's Plan also authorizes such Fund to make distribution assistance payments in amounts up to .25 percent per annum of such Fund's average daily net assets to authorized dealers based on the value of shares sold by such authorized dealers and remaining outstanding for specified periods of time. Distribution assistance payments, which are charged to operating expenses of each Fund, reduce each Fund's net investment income, yield and total return. Distribution assistance payments made to authorized dealers are separate and distinct from the daily compensation payable by each Fund to the Principal Underwriter and, as such, are not subject to automatic discontinuance when there are no outstanding uncovered distribution charges of the Principal Underwriter under the Plan.

Applicants' Legal Conclusions

1. Applicants submit that the requested exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. The CDSL permits the shareholders to have the advantage of more investment dollars working for them at the time of their purchase than with the traditional front-end sales charge. The CDSL and the Plan are fair to the Funds and their shareholders, and designed to achieve parity between those shareholders electing to hold their shares and continue as Fund shareholders and those shareholders electing early redemption of their shares. In each situation in which the charge could be waived, deferred or varied, the redeeming shareholder (i) would have purchased shares under circumstances that did not require the Principal Underwriter to incur substantial additional distribution expenses, (ii) would be a member of a class of shareholders favored under the federal tax or securities laws, or (iii) would have had no control over the timing of such redemption. Furthermore, such waivers are consistent with the policies underlying Rule 22d-1 under the 1940 Act, which permits scheduled variations in or elimination of the sales charge for particular classes of ivnestors. In addition, the exchange offers give shareholders desirable flexibility in their financial planning.

Applicants' Conditions

If the requested order is granted, Applicants agree to the following conditions:

1. Applicants will comply with the provisions of Rule 22d-1 under the 1940 Act.

2. Applicants will comply with the provisions of proposed Rule 11a-3 (or any similar rule) under the 1940 Act when and if such rule is adopted by the SEC.

3. Applicants will comply with the provisions of Rule 12b-1 (or any successor rule) under the 1940 Act, as such rule may be amended from time to time.

4. To the extent that any of the Funds or the Principal Underwriter has imposed any CDSL, waived such sales charges or made offers of exchange as described in the application prior to the date of receiving the order requested herein, each Applicant is relying on its own interpretation of the 1940 Act and the rules thereunder and understands that any such order will be effective and apply prospectively on and after the date of such order.

For the Commission, by the Division of Investment Management, under delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87-15096 Filed 7-1-87; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-15828; 812-6691]

Application; General American Life Insurance Company, General American Life Insurance Company Separate Account No. 2 and General American Capital Company

Dated: June 26, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

Applicants: General American Life Insurance Company (the "Company"), General American Life Insurance Company Separate Account No. 2 (the "Separate Account"), and General American Capital Company (Capital Company").

Relevant 1940 Act Sections: Exemption requested under section 17(b) from section 17(a) and an order pursuant to section 17(d) and Rule 17-d-1 thereunder.

Summary of Application: Applicants seek an order to permit the Separate Account to transfer its portfolio assets to Capital Company in return for shares of the Managed Equity Fund of Capital Company; and the simultaneous reorganization of the Separate Account into a unit investment trust ("the UIT") with five divisions, each corresponding to a fund of Capital Company.

Filing Date: April 23, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on the application or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on July 17, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the applicants with the request, either personally or by mail, and also send a copy to the Secretary of the SEC, along with proof of service by affidavit or, in the case of an attorney-at-law, by certificate. Request notifications of the date of a hearing by writing to the secretary of the SEC.

ADDRESSES: Secretary, SEC 450 5th Street NW., Washington, DC 20549. General American Life Insurance Company 700 Market Street, St. Louis Missouri 63010.

FOR FURTHER INFORMATION CONTACT: Financial Analyst Denise M. Furey, (202) 272-2067 or Special Counsel Lewis, B. Reich, (202) 272-2061, (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch is person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 253-4300).

Applicants' Representations and Conditions

1. The Company is a mutual life insurance company originally incorporated as a stock company under the laws of Missouri in 1933, and which began operations as a mutual company in 1936. The Company is principally engaged in writing individual and group life insurance policies and annuity contracts and is admitted to do business in 49 states, the District of Columbia, and in ten (10) Canadian provinces.

2. The Separate Account was established by the Company on October 22, 1970 under the insurance laws of Missouri. The Separate Account is a separate investment account of the Company to which assets are allocated to support benefits payable under the variable portion of annuity contracts issued by the Company, including certain group and individual variable annuity contracts (the "Contracts"). The Account is registered with the SEC as an open-end diversified management investment company. The Separate

Account currently consists of a single portfolio of equity securties.

3. Capital Company is an open-end diversified management investment company organized as a series fund. Capital Company was established to provide for the investment of assets of various separate accounts, including the Separate Account after its reorganization into the UIT, that fund variable annuity and life insurance contacts. Capital Company will consist initially of five investment portfolios: An Equity Index Fund; a Money Market Fund; a Fixed Income Fund; a Managed Equity Fund; and an Asset Allocation Fund. Capital Company will offer its shares to the Separate Account, and to General American Life Insurance Company Separate Account Eleven ("Separate Account Eleven") which was registered with the SEC simultaneously with Capital Company to serve as the funding vehicle for certain variable life insurance policies issued by the Company. Capital Company will, upon completion of the transactions described herein, also serve as the funding for three existing separate accounts of the Company that fund tax qualified retirement plans (collectively the "Qualified Accounts").

4. Subject to approval by the owners of existing Contracts, the Separate Account will be reorganized as a unit investment trust with five distinct investment divisions. All of the assets of the Separate Account will be transferred to the Managed Equity Fund of Capital Company in exchange for shares of that fund. The portfolio of the Managed Equity Fund will mirror the investment objective, policies and restrictions of the Separate Account. Capital Company will be the continuing funding vehicle for the Contracts as well as certain other registered and unregistered variable contracts. The purpose of the reorganization is to enable Capital Company to act as the underlying investment medium for the Separate Account, as well as other separate investment accounts of the Company.

5. Owners of existing Contracts currently have voting interests in certain matters relating to the Separate Account in proportion to their respective interests at the time of the vote. Following the reorganization, the Company will offer each owner of an existing Contract the opportunity to instruct the Company to vote the Managed Equity Fund shares attributable to that Contract on matters which owners currently have voting rights, and will vote those shares in accordance with such instructions. The proxy materials will request Contract owner approval of the plan of reorganization (the "Plan").

6. Applicants represent that the proposed transaction is reasonable and fair in that the reorganization will benefit existing and future Contract owners by increasing current investment and opportunities and facilitating the future expansion of investment alternatives under the Contract. To the extent Capital Company is used to fund other variable annuity and life insurance contracts issued by the Company, Contract owners will benefit from the economies of scale involved, particularly with respect to the level of fixed admininstrative expenses. This potential benefit is created at no cost to Contract owners, as the Company has undertaken to assume all expenses relating to the reorganization, and Capital Company has previously been organized at no expense to the Separate Account or Contract owners. Applicants assert that the transformation of the Separate Account into the UIT should also benfit future owners of other variable contracts issued by the Company.

7. The transactions effecting transfer of the portfolio assets of the Separate Account in return for shares of the Managed Equity Fund will be effected in conformity with section 22(c) of the 1940 Act and Rule 22c-1 thereunder.

8. Applicants submit that the proposed reorganization will result in contract owner interests which, in practical economic terms, do not differ in any measurable way from interests prior to the reorganization, except to the extent a higher investment advisory fee will be charged in consideration of advisory services by Morgan Stanley as sub-adviser. Neither the Separate Account not Capital Company will incur extraordinary costs in effecting the transfer of assets and Applicants believe, based on its review of existing Federal income tax laws and regulations, that the transfer of assets and collective registration of the accounts will be tax-free events.

9. Applicants submit that the investment objectives of the Managed Equity Fund of Capital Company will be, in substance, identical to the investment objectives of the Separate Acount immediately preceding the reorganization. The Plan is consistent with the objectives and policies of the Separate Account. However, the Company will obtain Contract owner approval of the transactions by at least the vote required under the 1940 Act on any change in investment policy, thus eliminating any quesiton as to whether investment in Capital Company's funds complies with the Separate Acount's investment objectives and policies.

10. Applicants represent that they will conform to the conditons set forth in Rule 17a-8 to the extent that implementation of the Plan is conditioned upon its approval by the Management Committee of the Separate Account and the Board of Directors of Capital Company.

11. Applicants submit that the proposed transactions are consistent with the purposes of the 1940 Act in that the proposed transactions will be affected in a manner consistent with the public interest and the protection of investors and contract owners will be fully informed of the terms of the transactions in the proxy materials. Contract owners will have an opportunity to approve or disapprove the Plan and related matters at a special meeting of contract owners called for that purpose.

12. Applicants believe that the participation of the Separate Account in the proposed Plan will be on a basis equal to that of the Company, Separate Account Eleven and the Qualified Accounts. Applicants submit that the reorganization will lead to certain economies of scale and efficiencies of administration that will result in benefits to both the "Company (including the Qualified Accounts) and the Separate Account, and that no benefits will inure to the Company (or the Qualified Accounts) to the detriment of the Separate Account.

13. Applicants submit that the establishment of the Capital Company will benefit them by expanding the current investment opportunities to current contract owners and facilitating the future expansion of investment alternatives under existing and new variable insurance contracts. The Plan has been reviewed by the Management Committee of the Separate Account and the Board of Directors of Capital Company including a majority of the disinterested members of both groups, and each has independently determined the proposed transactions are in the best interests of contract owners and of Capital Company.

14. Applicants represent that the terms of the proposed Plan and related transactions meet all of the requirements of section 17(d) of the 1940 Act and Rule 17d-1 thereunder and that an order should be granted permitting the proposed transactions pursuant to those provisions.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87-15097 Filed 7-1-87; 8:45 am]

BILLING CODE 8010-01-M

Issuer Delisting; Application To Withdraw From Listing and Registration; Rockaway Corporation (Common Stock, No Par Value) File No. 1-5379

June 29, 1987.

Rockaway Corporation ("Company"), 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 above specified security from listing and registration on the American Stock Exchange, Inc. ("Amex"). The Company's common stock recently began trading on the New York Stock Exchange ("NYSE").

The reasons alleged in the application for withdrawing this security from listing and registration on the Amex include the following:

The Company considered the direct and indirect costs and expenses attendant in maintaining the dual listing of its common stock on the NYSE and the Amex. The Company does not see any particular advantage in the dual listing would fragment the market for it common stock.

Any interested person may, on or before July 21, 1987 submit by letter to the Security of the Securities and Exchange Commission, Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87-15102 Filed 7-1-87; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC- 15830; 312-6668]

Application; L.F. Rothschild MS Corp.

June 26, 1987.

AGENCY: Securities and Exchange Commission (the "SEC").

ACTION: Notice of application for an exemption under the Investment Company Act of 1940, (the "1940 Act").

Applicant: L.F. Rothschild MS Corp.

Relevant 1940 Act Section: Order requested under section 6(c) of the 1940 Act from all provisions of the 1940 Act.

Summary of Application: Applicant seeks a conditional order exempting the Applicant and each trust to be established by the Applicant (each, a "Trust") from all provisions of the provisions of the 1940 Act in connection with their proposed issuance of collateralized mortgage obligations (the "Bonds") and Applicant's sale of beneficial ownership interests in such Trusts.

Filing Date: The application was filed on March 31, 1987 and amended June 12, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on July 17, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it the Secretary of the SEC, along with proof of service by affidavit, or, for attorneys by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. L.F. Rothschild MS Corp., 55 Water Street New York, New York 10041.

FOR FURTHER INFORMATION CONTACT: Sherry A. Hutchins, Staff Attorney at (202) 272-2799, or Brion R. Thompson, Special Counsel at (202) 272-3016, Office of Investment Company Regulation, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300)).

Applicant's Representations and Undertakings

1. Applicant was organized under the laws of the State of Delaware on February 5, 1987, as a wholly-owned, limited purpose finance subsidiary of L.F. Rothschild, Unterberg, Towbin Holdings, Inc. Applicant was organized solely for the purpose of issuing and selling the Bonds in one or more series (the "Series") and establishing Trusts, each of which will issue one or more Series of Bonds.

2. Applicant seeks an exemption on behalf of itself and each Trust to be established by the Applicant. Each Trust will be created pursuant to a deposit trust agreement (each, a "Trust Agreement") between the Applicant, as Depositor, and a bank, trust company or other fiduciary acting as owner trustees (the "Owner Trustee"). Applicant will not engage in any business or investment activity other than issuing and selling one or more Series of Bonds under an indenture (an "Indenture") between the Applicant and a bank, trust company or other fiduciary acting as bond trustee (a "Bond Trustee"). No Trust will engage in any business or investment activity other than issuing and selling one Series of Bonds under an indenture (also, an "Indenture") between such Trust, acting through the Owner Trustee, and a Bond Trustee.

3. Each Series of Bonds will be collateralized by (a) "fully modified pass-through" mortgage-backed certificates ("GNMA Certificates") guaranteed as to timely payment of principal and interest by the Government National Mortgage Association, (b) Guaranteed Mortgage Pass-Through Certificates ("FNMA Certificates") issued and guaranteed as to timely payment of principal and interest by the Federal National Mortgage Association, (c) Mortgage Participation Certificates ("FHLMC Certificates") issued and guaranteed as to timely payment of interest and, unless otherwise specified in the related Prospectus Supplement, ultimate collection of principal by the Federal Home Loan Mortgage Corporation, or (d) a combination of such GNMA Certificates, FNMA Certificates and FHLMC Certificates (collectively, "Mortgage Collateral").

4. In the case of each Series of Bonds (a) the Trust will hold no substantial assets other than the Mortgage Collateral; (b) each Series of Bonds will be secured by Mortgage Collateral having a value determined pursuant to the provisions of the related Indenture, at the time of issuance and following

each payment date, equal to or greater than the outstanding principal balance of such Series of Bonds; (c) distributions of principal and interest received on the Mortgage Collateral securing each Series of Bonds and any applicable reserve funds, plus reinvestment income thereon, will be sufficient to pay all interest on such Series of Bonds and to retire each class of Bonds of a Series by its stated maturity; (d) the Mortgage Collateral will be assigned by the related Owner Trustee to the related Bond Trustee and will be subject to the lien of the related Indenture; and (e) some or all classes of Bonds of a Series may have (i) stepped interest rates changing in amount and in a manner determined at the time the Bonds are issued and/or (ii) variable or floating interest rates determined from time to time pursuant to a formula set forth in the related indenture.

5. In addition to the issuance and sale of the Bonds, the Applicant intends to sell beneficial interests in each Trust ("Certificates") to a limited number (in no event more than one hundred) of investors in transactions exempt from the registration requirements of the Securities Act of 1933 ("1933 Act"). Such investors may include (1) one or more banks, savings and loan associations, insurance companies, and pension plans or other institutions which customarily engage in the purchase of mortagages or other collateral and/or (2) non-institutions which are "accredited investors," as defined in Rule 501(a) of the 1933 Act, which will be limited to not more than fifteen, will purchase at least $200,000 of such Certificates, and will have a net worth at the time of purchase that exceeds $1,000,000 (exclusive of primary residence) (collectively, "Eligible Investors") in transactions not constituting a public offering within the meaning of section 4(2) of the 1933 Act. Applicant represents, based on representations it will obtain from such Eligible Investors, that such Eligible Investors will have such knowledge and experience in financial and business matters, specifically in the field of mortgage-related securities as to be capable of evaluating the risk and volatility of interest rate fluctuations as they affect the value of mortgages, mortgage-related securities and residual interest in mortgage-related securities such as those represented by the Certificates and will have direct, significant, and, in the case of a non-institution, personal experience in making investments in mortgage-related securities. Initially, Applicant does not intend to sell Certificates relating to any one Trust to more than twenty-five Eligible Investors. Moreover, Applicant represents that each Eligible Investors will be required to represent that it is purchasing for investment purposes, and the Trust Agreement relating to each Trust will further prohibit the transfer of any Certificates if there would be more than one hundred beneficial owners of such Certificates at any time.

6. Neither the Certificateholders, the related Owner Trustee nor the related Bond Trustee will be able to impair the security afforded by the Mortgage Collateral to the holders of the Bonds. That is, without the consent of each Bondholder to be affected, neither the Certificateholders the related Owner Trustee nor the related Bond Trustee will be able to (1) change the stated maturity on any Bonds; (2) reduce the principal amount or the rate of interest on any Bonds; (3) change the priority of payment of any class of any series of bonds; (4) impair or adversely affect the Mortgage Collateral securing a Series of Bonds; (5) permit the creation of a lien ranking prior to or on a parity with the lien of the related Indenture with respect to the Mortgage Collateral or (6) otherwise deprive the related Bondholders of the security afforded by the lien of the related Indenture.

7. The sales of the Certificates in each Trust will not alter the payment of cash flows under the related Indenture including the amounts to be deposited in the collection account or any reserve fund created pursuant to the related Indenture to support payments of principal and interest on the related Series of Bonds. No holder of a controlling interest in any Trust (as the term "control" is defined in Rule 405 under the 1933 Act), will be affiliated with the Owner Trustee or the rating agency rating the related Series of Bonds. None of the owners of the Certificates in any Trust will be affiliated with the related Bond Trustee.

8. The interest of the Bondholders will not be compromised or impaired by the ability of the applicant to sell Certificates in each Trust, and there will not be a conflict of interest between the Bondholders and the Certificateholders for several reasons: (a) The collateral will not be speculative in nature; (b) each Series of Bonds will only be issued so long as the rating agency has rated such Bonds in one of the two highest rating categories; (c) each Indenture under which the Bonds will be issued subjects the collateral pledged to secure the Bonds, all income distributions theron and all proceeds from a conversion, voluntary or involuntary of any such collateral to a first priority perfected security interest in the name of the Bond Trustee on behalf of the Bondholder; and (d) the owners of the certificates will be entitled to receive current distributions representing the residual payments on the collateral from each Trust in accordance with the terms of the related Trust Agreement, which distributions are analogous to dividends payable to a shareholder of a corporate issuer of collateralized mortgage obligations. Furthermore, unless a Trust elects to be treated as a "real estate mortgage investment conduit" (a "REMIC") under the Internal Revenue Code of 1986, as amended (the "Code"), the Certificateholders are liable for the expenses, taxes and other liabilities of such Trust (other than the principal and interest on the Bonds) to the extent not previously paid from the trust estate. the choice of the form to issue the Bonds and the identity of the owners of the Certificates in a Trust however, will not alter in any way the payments made to the holders of Bonds.

9. The aggregate interest of the owners of the Certificates in the collateral and the expected returns earned by such owners will be far less than the payments made to Bondholders. Applicant does not intend to deposit in any Trust Mortgage Collateral with a collateral value which exceeds 110% of the aggregate principal amount of the related Series of Bonds. It will not be possible for the owners of the Certificates to alter the collateral initially deposited into a Trust. Each series of Bonds to be issued may contain one or more classes of variable or floating interest rate Bonds, each of which will have a fixed maximum rate or rates of interest ("interest rate cap" or "interest rate caps") that will be payable on the Bonds (or a fixed minimum rate of interest in the case of an inverse floating rate Bond).

10. Any Series of Bonds containing one or more classes of variable or floating interest rate Bonds will be structured with reference to the interest rate cap or caps for that particular Series to ensure that the cash flow scheduled to be received from the Mortgage Collateral pledged to secure the Bonds will be sufficient to make all payment of principal and interest on the Bonds, even if the interest rate on any class of variable or floating interest rate Bonds in such Series climbed to the interest rate cap in the first variable or floating interest rate period and remained at the applicable rate interest cap throughout the life of the Bonds.[1]

[1] In the case of a Series of Bonds that contains a class or classes of variable or floating interest rate

Continued

The Mortgage Collateral deposited in an issuing Trust will be paid down as the mortgages underlying the Certificates are repaid but will not be released from the lien of the Indenture prior to the payment of the Bonds, except to the extent permitted by the limited right to substitute collateral as described in the application.

11. Each Trust, whether or not it elects to be treated as a REMIC, will provide for the payment of administrative fees and expenses incurred in connection with the issuance of the Bonds and the administration of the Trust by one of the methods or a combination of one or more of such methods outlined in the application. Each Trust will insure that the anticipated level of fees and expenses will be more than adequately provided for regardless of which or all of such methods selected by such Trust to provide for the payment of fees and expenses. Such election by any Trust will have no effect on the level of administrative fees and expenses that would be incurred by any such Trust.

Applicant's Legal Conclusions

1. Applicant submits that the relief requested is necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

Applicant submits that the granting of the order will provide increased investment flexibility and will also result in the increased availability of funds for mortgage lending, thus serving a critical national need. Applicant further submits that such purchases will generally be made from mortgage lenders that typically use the proceeds of the sale to originate new mortgage loans, thereby increasing the flow of funds from the capital markets to the mortgage markets.

Applicant's Conditions

Applicant agrees that if an order is granted it will be expressly conditioned on the following:

(1) Each Series of Bonds will be registered under the 1933 Act, unless offered in a transaction exempt from registration pursuant to an exemption pursuant to section 4(2) of the 1933 Act.

(2) The Bonds will be "mortgage related securities" within the meaning of section 3(a)(41) of the Securities Exchange Act of 1934, as amended. However, the Mortgage Collateral directly security the Bonds will be limited to the Certificates, cash and other deposits to a reserve fund, if any.

(3) If new Mortgage Collateral is substituted, the substitute Mortgage Collateral must: (i) Be of equal or better quality than the Mortgage Collateral replaced; (ii) have similar payment terms and cash flow as the Mortgage Collateral replaced; (iii) be insured or guaranteed at least to the same extent as the Mortgage Collateral replaced; and (iv) meet the conditions set forth in paragraphs (2) and (4) hereof. In addition, new Mortgage Collateral may not be substituted for more than 40% of the aggregate face amount of the Mortgage Collateral initially pledged. In no event may any new Mortgage Collateral be substituted for any substitute Mortgage Collateral.

(4) All collateral will be held by a Bond Trustee. The related Bond Trustee may not be an affiliate (as the term "affiliate" is defined in Rule 405 under the 1933 Act, 17 CFR 230.405) of an Issuer of a related Series of Bonds. Each Bond Trustee will be provided with a first priority perfected security or lien interest in and to all collateral securing a related Series of Bonds.

(5) Each Series of Bonds will be rated in one of the two highest bond rating categories by at least one nationally recognized statistical rating agency that is not affiliated with the Applicant. The Bonds will not be considered "redeemable securities" within the meaning of section 2(a)(32) of the 1940 Act.

(6) No less often than annually, an independent public accountant will audit the books and records of each Trust and, in addition, will report on whether the anticipated payments of principal and interest on the related Mortgage Collateral and other collateral pledged to secure such Series of Bonds continue to be adequate to pay the principal and interest on each Series of Bonds in accordance with their terms. Upon completion, copies of the auditor's reports will be provided to each related Bond Trustee.

(7) Each of the above representations regarding the Bonds, the Certificates in the Trusts, stepped interest rate and variable rate classes of Bonds and the election by a Trust to be treated as a REMIC (and as more fully described in the application) will be express conditions to the requested order.

For the SEC, by the Division of Investment Management, under delegated authority:

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87-15099 Filed 7-1-87; 8:45 am]

BILLING CODE 8010-01-M

Bonds, a number of mechanisms exist to ensure that this representation will be valid notwithstanding subsequent potential increases in the interest rate applicable to the variable or floating interest rate Bonds. Procedures that have been identified to date for achieving this result include the use of (i) interest rate caps for the variable or floating interest rate Bonds; (ii) "inverse" variable interest rate Bonds (which pay a lower rate of interest as the rate increases on the corresponding "normal" floating interest rate Bonds); (iii) variable or floating rate collateral (such as variable rate FNMA Certificates) to secure the Bonds; (iv) interest rate swap agreements (under which the issuer of the Bonds would make periodic payments to a counterparty at a fixed rate of interest based on a stated notional principal amount, such as the principal amount of Bonds in the variable or floating interest rate class of such series, in exchange for receiving corresponding periodic payments from the counterparty at a variable or floating rate of interest based on the same notional principal amount) and (v) hedge agreements (including interest rate futures and option contracts), under which the issuer of the Bonds would realize gains during periods of rising interest rates sufficient to cover the higher interest payments that would become due during such periods on the variable or floating interest rate class of Bonds). It is expected that other mechanisms may be identified in the future. Applicant will give the Staff of Investment Management (the "Staff") of the SEC notice by letter of any such additional mechanisms before they are utilized, in order to give the Staff an opportunity to raise any questions as to the appropriateness of their use. In all cases, these mechanisms will be adequate to ensure the accuracy of the representation and will be adequate to meet the standards required for a rating of the Bonds in one of the two highest bond rating categories, and no Bonds will be issued for which this is not the case.

[Rel. No. IC-15826; 812-6765]

Application; Sun Life Assurance Company of Canada (U.S.), et al.

Dated: June 24, 1987.

AGENCY: Securities and Exchange Commission.

ACTION: Notice of Filing of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicants: Sun Life Assurance Company of Canada (U.S.) ("Company"); Sun Life of Canada (U.S.) Variable Account D ("Account D"); Clarendon Insurance Agency, Inc. (together, "Applicants").

Relevant 1940 Act Sections: Exemption requested *under* section 6(c) *from* sections 26(a)(2)(C) and 27(c)(2).

Summary of Application: Applicants seek an order to permit them to issue certain master group deferred combination fixed/variable annuity contracts ("contracts") which will permit a deduction of mortality and expense risk charges.

Filing Date: The application was filed on June 23, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on the application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on July 15, 1987. Request a hearing in

writing, setting forth the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. The Company and Account D, One Sun Life Executive Park, Wellesley Hills, MA 02181; and Clarendon Insurance Agency, Inc., 200 Berkeley Street, Boston, MA 02116.

FOR FURTHER INFORMATION CONTACT: Financial Analyst Margaret Warnken (202) 272-2058 or Special Counsel Lewis B. Reich (202) 272-2061 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 253-4300).

Applicants' Representations

1. The Company, a stock life insurance corporation incorporated under the laws of Delaware on January 12, 1970, issues life insurance policies and individual and group annuities. The Company is a wholly-owned subsidiary of Sun Life Assurance Company of Canada, a mutual life insurance company incorporated pursuant to Act of Parliament of Canada in 1865.

2. The Company established Account D on March 31, 1982 as a separate account pursuant to a resolution of its board of directors, to act as the funding medium for the contracts. Account D is registered under the 1940 Act as a unit investment trust. The assets of Account D are divided into sub-accounts, each of which invests exclusively in shares of a specific mutual fund or in shares of a designated series of a specific mutual fund selected by the owners from among a group of mutual funds advised by Massachusetts Financial Services Company, a wholly-owned subsidiary of the Company.

3. No initial sales charge is deducted from purchase payments and up to 10% of purchase payments credited to a participant's account may be withdrawn in any account year on a non-cumulative basis without the imposition of a deferred sales charge ("withdrawal charge"). Amounts withdrawn in excess of 10% will be subject to a withdrawal charge assessed against purchase payments credited to the participant's account as follows:

Number of years payments in participant's account	Withdrawal charge (percent)
1	6
2	6
3	5
4	4
5	3
6	2
7	1
8	0

All withdrawals will be processed on a first-in, first-out basis. No withdrawal charge is imposed upon withdrawals providing a death benefit or to purchase an annuity provided that payment under the annuity option elected is over a period of at least five years. No withdrawal charge is imposed upon amounts withdrawn after a participant's account has been established for twelve years. Applicants represent that in no event will aggregate withdrawal charges assessed against a participant's account exceed 6% of aggregate purchase payments made to that account. Applicants represent that the withdrawal charge which is assessed in connection with certain full or partial withdrawals will recoup expected distribution costs associated with registering and distributing the contracts. Applicants further represent the Company does not expect to realize a profit from the mortality and expense risk charge and that the charges do not incorporate any charges for the assumption of distribution expense risks.

4. For assuming certain risks under the contracts, Applicants request an exemptive order permitting deduction of a mortality and expense risk charge determined semi-annually based on total purchase payments credited to all participants' accounts under a contract pursuant to the following schedule and subject to the restrictions set forth below:

Purchase payments	Asset charge	Approximately breakdown for mortality and expense risk charge (percent)	
$ up to 250,000	1.30	0.80	0.50
250,000 to 1,499,999	1.25	0.80	0.45
1,500,000 to 4,999,999	1.10	0.80	0.30
5,000,000 and over	0.95	0.80	0.15

Applicants represent that, for the period from the date of the order requested herein ("Order") through December 31, 1987, and for each calendar year thereafter, the sum of all Asset Charges deducted from Account D with respect to the contracts during each such period ("Total Asset Charge") is not expected to exceed an annual rate of 1.25% of the Accounts' average daily net assets for that period ("Average Assets"). Applicants further represent that if the Total Asset Charge for any such period does exceed such rate, the Company will reimburse Account D for the amount of such excess, and that if such reimbursement is not made within forty-five days of the end of that period, Applicants will cease to rely on the Order with respect to the deduction of such excess.

5. Applicants state the mortality risk arises from the contractual obligation to continue to make annuity payments to each annuitant regardless of how long the annuitant lives and regardless of how long annuitants as a group live. The expense risk is the risk that the administrative charges provided in the contracts may be insufficient to cover the actual total administrative expenses incurred by the Company. If the mortality and expense risk charge is insufficient to cover the actual costs, the loss will be borne by the Company. Conversely, if the amount deducted proves more than sufficient, the excess will be profit to the Company.

6. The Company has determined its charges are reasonable in amount with respect to comparable annuity products. These latter representations are based upon analyses of publicly available information about comparable annuity products in light of the products' particular annuity features, taking into consideration such factors as annuity rate guarantees, current charge levels, sales loads and expense charge guarantees. The Company undertakes to maintain and make available to the SEC upon request, a memorandum setting forth the basis for its representation. Account D represents it will invest in a mutual fund only if such fund undertakes to have a Board of Directors with a disinterested majority formulate and approve any plan under Rule 12b-1 to finance distribution expenses.

Applicants' Conditions

If the requested order is granted, Applicants agree to the conditions set forth in paragraphs 4 and 6, herein.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87-15098 Filed 7-1-87; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2283]

Declaration of Disaster Loan Area; Michigan

Oakland County in the State of Michigan constitutes a disaster area because of damage from a tornado which occurred on June 21, 1987. Applications for loans for physical damage may be filed until the close of business on August 25, 1987, and for economic injury until the close of business on March 28, 1988, at the address listed below:

Disaster Area 2 Office, Small Business Administration, 120 Ralph McGill Blvd., 14th Floor, Atlanta, Georgia 30308

or other locally announced locations. The interest rates are:

	Percent
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses without credit available elsewhere	4.000
Businesses (EIDL) without credit available elsewhere	4.000
Other (non-profit organizations including charitable and religious organizations)	9.500

The number assigned to this disaster is 228312 for physical damage and for economic injury the number is 653400.

(Catalog for Federal Domestic Assistance Programs Nos. 59002 and 59008)

Dated: June 26, 1987.

James Abdnor,

Administrator.

[FR Doc. 87-15048 Filed 7-1-87; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2282]

Declaration of Disaster Loan Area; Oklahoma

Garvin and Logan Counties and the adjacent Counties of Canadian, Carter, Garfield, Grady, Kingfisher, Lincoln, McClain, Murray, Noble, Oklahoma, Payne, Pontotoc and Stephens, in the State of Oklahoma, constitute a disaster area due to damages from heavy rains and flooding which began May 19, 1987, and continued through May 31, 1987. Applications for loans for physical damage may be filed until the close of business on August 24, 1987, and for economic injury until the close of business on March 25, 1988, at the address listed below:

Disaster Area 3 Office, Small Business Administration, 2306 Oak Lane, Suite 110, Grand Prairie, Texas 75051.

or other locally announced locations. The interest rates are:

	Percent
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses without credit available elsewhere	4.000
Businesses (EIDL) without credit available elsewhere	4.000
Other (non-profit organizations including charitable and religious organizations)	9.500

The number assigned to this disaster is 228206 for physical damage and for economic injury the number is 653300.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

Dated: June 25, 1987.

[FR Doc. 87-1500 Filed 7-1-87; 8:45 am]

BILLING CODE 8025-01-M

[License No. 05/07-0023]

Filing of an Application for a Transfer of Ownership and Control; Clarion Capital Corp.

Notice is hereby given that an Application has been filed with the small Business Administration (SBA), pursuant to the Regulations governing small business investment companies (13 CFR 107.601 (1987)) for a transfer of ownership and control of Clarion Capital Corporation, 35555 Curtis Boulevard, Eastlake, Ohio 44094, a Federal Licensee under the Small Business Investment Act of 1958, as amended (15 U.S.C. 661 *et seq.*). The proposed transfer of ownership and control of Clarion Capital Corporation, which was licensed September 25, 1968, is subject to the prior written approval of SBA.

It is proposed that Mr. Morton A. Cohen, Chairman and Chief Executive Officer of Clarion Capital Corporation, purchase approximately 63.7 percent interest in Clarion Capital Corporation from First City Development Corp. The proposed purchase will increase Mr. Cohen's ownership to approximately 70.8 percent of the outstanding shares of Clarion Capital Corporation.

At the present time there is no anticipated change in the management of Clarion Capital Corporation.

Notice is given that any person may, not later than 15 days from the date of publication of this Notice, submit written comments on the proposed transfer of ownership and control to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street NW., Washington, DC 20416.

A copy of this Notice will be published in a newspaper of general circulation in Cleveland, Ohio.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: June 17, 1987.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 87-15001 Filed 7-1-87; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORATION

Coast Guard

[CGD 87-039]

Coast Guard Auxiliary Survey

AGENCY: United States Coast Guard, DOT.

ACTION: Notice.

SUMMARY: Notice is hereby given that Office of Management and Budget (OMB) approval, under the Paperwork Reduction Act, is being sought for the nationwide collection of information from current and former members of the Coast Guard Auxiliary.

DATES: The request for OMB approval will be submitted in June 1987 and completion of the survey is tentatively scheduled for August 1987.

ADDRESS: Copies of the Request for OMB Review (Standard Form 83) and supporting documentation are available for inspection and copying at Commandant (G-BC), U.S. Coast Guard Headquarters, Room 4224, 2100 Second Street SW., Washington, DC 20593-0001.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Bergen at the address given above; telephone 202-267-0972. Normal office hours are between 7:30 a.m. and 4:00 p.m., Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION: The Coast Guard Authorization Act of 1986 (Pub. L. 99-640) requires the Coast Guard to submit a report to Congress on the overall performance and effectiveness of the Coast Guard Auxiliary. The Act directs that the report must contain an assessment of:

(1) The extent to which membership of the Coast Guard Auxiliary has declined in recent years and the causes for such declines;

(2) The effect, if any, on the maritime community of any such decline in the performance levels of the Coast Guard Auxiliary in the areas of life-saving, assistance to persons in distress, safety patrols and inspections, and support missions for the Coast Guard; and

(3) The effect, if any, of the Coast Guard's non-emergency assistance policy on the overall effectiveness of the Coast Guard Auxiliary.

In responding to the Congressional manadate, the Coast Guard wishes to obtain input on the foregoing questions by conducting a nationwide survey of current and former members of the Auxiliary. Views and information obtained through the survey will be used in preparing the report and, if appropriate, in any future policymaking, legislative proposals, or rulemaking proposals affecting the Auxiliary.

Persons desiring to comment on this information collection should send their comments to: Office of Infomation and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place, NW, Washington, DC 20503, Attn: Desk Officer, U.S. Coast Guard. Persons submitting comments to OMB are also requested to submit a copy of their comments to the Coast Guard at the address listed in the **"ADDRESSES"** section. (14 U.S.C. 81).

Issued in Washington, DC, June 29, 1987.

T.T. Matteson,

Rear Admiral, U.S. Coast Guard, Chief, Office of Boating, Public and Consumer Affairs.

[FR Doc. 87-15057 Filed 7-1-87; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circulars; Airplanes; Advanced Training Devices; Evaluation and Qualification

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Issuance and availability of Advisory Circular (AC) 120-45, Advanced Training Devices (Airplane Only).

SUMMARY: Advisory Circular (AC) 120-45 provides information, guidelines, and criteria as one means that would be acceptable to the FAA Administrator for the evaluation and use of airplane Advanced Training Devices (ATD) which may be used in training programs or for airman training or checking under Part 135 of the Federal Aviation Regulations (FAR). This AC includes equipment validation tests and tolerances for ATD's and procedures for acquiring FAA evaluation and qualification.

FOR FURTHER INFORMATION CONTACT: Mr. Edward M. Boothe, Manager, National Simulator Evaluation Program, ASO-205, Flight Standards Division, Southern Region, Federal Aviation Administration, 3400 Norman Berry Drive, East Point, Georgia 30344; Telephone: (404) 763-7773.

ADDRESSES: A copy of this advisory circular may be obtained by writing to: Manager, National Simulator Evaluation Program, ASO-205, Flight Standards Division, Southern Region, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320.

SUPPLEMENTARY INFORMATION:

Background

Aircraft simulators and a wide variety of training devices have existed and been utilized for training since the very early days of aviation. The FAA has for a long time recognized the value of such devices as a means of enhancing pilot training and in 1954 began allowing certain procedures for initial, transition, upgrade, and differences training and competency checks to be performed in aircraft simulator or other appropriate training device. As the technology has advanced, the FAA has continued to permit increased use of simulators and training devices in approved training programs. In June 1980, the Advanced Simulator Plan was promulgated to further encourage and permit increased use of simulators.

However, the major benefits of better and more thorough training at reduced cost which have been achieved through the use of aircraft simulators have primarily accrued to major air carriers. Air taxi and regional operators, operating under Title 14 CFR Part 135, have not found airplane simulators to be cost beneficial due to the high cost of the simulator relative to the airplane. The Regional Airline Association (RAA) submitted a proposal to the FAA in 1984 containing requirements and performance parameters for advanced training devices together with training and checking credit to be used with such devices. The FAA did not find the RAA proposal totally acceptable as a solution of the issue, but began a review of the needs of regional carriers to objectively determine a training and airman checking medium which would meet the necessary requirements. The FAA sponsored a research effort to analyze the system used for certificating, training, and/or checking airmen and the way simulation is used in that system. The result of this effort was published in the report "A Systematic Determination of Skill and Simulator Requirements for Airline Transport Pilot Certification" (DOT/FAA/VS-84/2), November 1984. This study indicated that a nonmotion, nonvisual training device with aerodynamic programming and control loading which achieves a high level of correspondence to a specific airplane could be appropriately used in pilot training and checking.

Advances in technology have made possible devices which are in a category between simulators and the training devices previously envisioned by the FAA. Therefore, the FAA has developed Advisory Circular (AC) 120-45, Advanced Training Devices (Airplane Only) Evaluation and Qualification, to provide standards and criteria for advanced training devices and their evaluation. It is the FAA's intent, through the release of this AC, to promote the use of sophisticated training devices which satisfy the needs of Part 135 operators and which, when combined with a comprehensive training program, will enhance aviation safety.

The Proposal

In March 1986, the FAA published notice of the availability of a proposed Advisory Circular (AC) AC 120-XX, Advanced Training Devices (Airplane Only), in the **Federal Register**, Through this notice the FAA requested comments on the proposed AC from any interested persons. Comments received on or before May 28, 1986, the end of the announced 60-day comment period, were considered as part of the FAA's final decision-making process.

Subsequent to the comment period, representatives of the industry requested additional communication with the FAA. These requests and some preliminary meetings resulted in a working group meeting in the FAA Southern Region Headquarters on October 30, 1986. The working group included representatives from interested segments of the industry and from the FAA. The main result of the working group meeting was the decision to remove airman training and checking cedits from the AC under discussion and to publish them in a separate forthcoming AC which will be announced in the **Federal Register** at a later date.

Discussion of Comments Received

In response to the proposal, the FAA received six written comments from airline companies, simulator or training

device manufacturers, airplane manufacturers, aviation trade/industry associations, and interested government agencies. The FAA appreciates the thoughtful and meaningful contributions and the interest expressed by all of those who took time to participate in the development of this Advisory Circular.

Summary Responses to Substantive Comments Received

1. One comment was received to paragraph 4a. The commenter objected to evaluation of ATD's by the National Simulator Program Manager (NSPM) and suggested local FAA inspectors be authorized to perform all evaluations. The FAA disagrees. A specially trained team of individuals provides the standardization necessary to insure consistent evaluation of the objective and functional performances of ATD's.

2. Several comments addressed the training and checking authorizations which were tabulated in paragraph 5 of the proposed AC. Each of these comments included recommendations concerning one or more of the procedures of maneuvers listed. The FAA has deleted the table of training and checking authorizations from paragraph 5 of the proposed AC and will include them in another AC which is currently being developed. The comments addressing these authorizations will be considered during the new AC development.

3. One comment was received concerning paragraph 6b (Simulation Data) and 6c (Flight Test Data). The commenter suggested deleting paragraph 6c and adding the following statement to paragraph 6b: "Data may also be obtained from Airplane Flight Manual (AFM), Aircraft Type Inspection Report (TIR), or actual flight test. The best airplane data available should be used for design and performance test." The FAA disagrees. The term "best airplane data available" establishes no minimum standard or level of quality for the data. If flight test data is not available for validation, then there is no assurance that the device is representative of a specific airplane type. The FAA has concluded that quality data must be used to produce a training device which meets the necessary standards to provide transfer of behavior to the airplane. Provisions for the use of certain AFM and TIR data have been added to Appendix 2.

4. One commenter suggested deleting paragraphs 7a, b, c, d, e, and f; paragraphs 8a, b, c, d, e, f, g, and h; Appendix 1, paragraphs 1, 2, 3, 4, and 5; Appendix 2, paragraphs 1, 2, and 3. The commenter did not offer specific substantive reasoning for the suggested deletions or any original suggestions for change. Those paragraphs provide needed information and guidance, therefore, those provisions are retained.

5. One comment was received on Appendix 1, paragraph la relating to ATD standards. The commenter stated the first sentence of the paragraph is too vague and leaves too much room for interpretation. They did not, however, offer any suggested change. The sentence has been changed to state: "The cockpit should be a full-size replica of the specific airplane."

6. One comment was received on paragraphs 8b(3) and 8c relative to the aircraft data needed for an acceptable Approval Test Guide (ATG). Although the commenter did not suggest any specific changes to the proposal, he objected to the need for specific aircraft performance data for testing ATD performance. The commenter, however, acknowledged the need to occasionally perform independent flight testing to acquire performance data for simulation modeling. The proposal allows for exceptions to the normal flight test presented in an ATG by stating in Appendix 2, paragraph 1 the alternatives which may be acceptable as a validation reference. Thus, the original proposal is retained.

7. One comment was received on Appendix 1, paragraphs le and 1f relating to ATD standards. The commenter suggested engine out maneuvering and asymmetric flight control conditions be allowed in an ATD. Based on experience with aircraft simulators, the FAA has concluded that visual and motion cueing is needed to support maneuvers involving high asymmetric power conditions at low airspeed. The proposed AC has been revised, however, to consider asymmetric conditions in certain flight phases where the aerodynamic effects are minimal.

8. One commenter stated that the performance requirements as presented in Appendix 2, Validation Tests, are unnecessarily stringent and can be expected to substantially affect the cost of the devices. The FAA acknowledges that the requirement for quality data may affect the cost of the device; however, the FAA cannot agree that the standards are unnecessarily stringent. It is the FAA's intent that ATD's be used to complete portions of a pilot certification or proficiency check. These portions would not need repeating in the aircraft. Thus, the ATD must be of sufficient fidelity to assure a transfer of pilot behavior to the aircraft. To validate such fidelity, the ATD characteristics must closely replicate those of the airplane, a process which demands the guidance given in the proposal.

9. One commenter noted that the tolerances given in Appendix 2, Validation Tests, are essentially the same as those required for Phase II airplane simulators. The commenter further expressed the opinion that assurance is needed that the ATD reasonably represents the aircraft in question, but believed that could be accomplished through the requirements stated in Appendix 1, ATD Standards, and Appendix 3, Functional Tests. The FAA acknowledges that the tolerances are esentially those required for airplane simulators. In fact, the tolerances for assessing basic aerodynamic programming, as given in Advisory Circular 120-40, "Airplane Simulator and Visual System Evaluation" are the same for all levels of simulation. Because of the checking credits proposed for an ATD, the FAA concludes that the same tolerances are applicable to ATD's although the validation reference data requirements may be more relaxed. The FAA strongly disagrees that the requirements of Appendix 1 and Appendix 3 alone are adequate to validate performance and handling qualities. The general requirements of Appendix 1 to not address the programming issue, and those of Appendix 3 are a subjective evaluation of each maneuver that is performed after it is shown that the device is validated to the performance and handling qualities tolerances given in Appendix 2.

10. One commenter expressed the opinion that it would be unduly restrictive that an ATD be excluded from one engine inoperative flight conditions. The FAA has determined that a motion system is required to provide the correct cues to the pilot in high asymmetric power, low speed flight conditions where aerodynamic effects are significant. Since an ATD does not require a motion system, it cannot provide the needed level of correspondence to the airplane. The proposed AC did not contain any requirement for asymmetric flight conditions (including one engine inoperative) and, therefore, did not include the need for airplane data and simulator programming for these conditions. It has been revised, however, to consider asymmetric conditions in certain flight phases where the aerodynamic effects are minimal.

11. The FAA has continued to review the proposed AC 120-XX and has found several areas which need clarification or correction.

a. Correction of a typographical error in the last sentence of paragraph 6c. The paragraph has been rewritten and some material relocated to Appendix 2.

b. Due to possible proprietary rights of source documents, an operator may wish to maintain the ATG within their own security system. The language of paragraph 8g has been changed to allow storage of master ATG source material at either the local FAA office or at the operator's facility but subject to full accessibility upon request by the Administrator.

c. Correction of a typographical error in the last sentence of paragraph 8g. The sentence should read, "The master ATG should be reviewed by the NSPM and approved by the POI prior to the first recurrent evaluation of the ATD."

d. The recurrent evaluations proposed in paragraph 9 would be scheduled every four months. The intent of a recurrent evaluation process would be to accomplish the entire ATG at least once a year. Accordingly, the last sentence of paragraph 9 is changed to read: "Each recurrent evaluation, normally scheduled at four-month intervals, will consist of functional tests and approximately one-third of the validation tests in the ATG."

e. Numerous corrections have been made throughout the document. These corrections were the result of a detailed review of the proposed AC and the working group session of October 30, 1986. The "Discussion," paragraph 1 of Appendix 2, was rewritten to clarify validation data acceptability. Other clarifying statements were added.

Issued in East Point, Georgia, on May 11, 1987.

William M. Berry, Jr.,

Manager, Flight Standards Division, Southern Region, FAA.

[FR Doc. 87-15070 Filed 7-1-87; 8:45 am]

BILLING CODE 4910-13-M

Advisory Circular 21-12A; Availability

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability.

SUMMARY: Advisory Circular (AC) 21-12, Revision A, Application for U.S. Airworthiness Certificate, FAA Form 8130-6, was issued March 26, 1987. AC 21-12A provides revised instructions on the preparation and submittal of Federal Aviation Administration (FAA) Form 8130-6 (Issue 6-86 and subsequent) Application for Airworthiness Certificate. This notice announces the availability of Advisory Circular (AC) 21-12, Revision A.

DATED: Advisory Circular 21-12A was issued March 26, 1987.

ADDRESS: Copies of the advisory circular are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20401.

FOR FURTHER INFORMATION CONTACT: Dana Lakeman, Manager, Production Certification Branch, Aircraft Manufacturing Division, Office of Airworthiness, (Room 333) 800 Independence Avenue, SW., Washington, DC 20591, telephone: (202) 267-8361.

SUPPLEMENTARY INFORMATION: Advisory Circular (AC) 21-12, Revision A, Application for U.S. Airworthiness Certificate, FAA Form 8130-6, was issued March 26, 1987. AC 21-12A provides instructions on the preparation and submittal of Federal Aviation Administration (FAA) Form 8130-6 (Issue 6-86 and subsequent) Application for Airworthiness Certificate, which must be completed not only to obtain an airworthiness certificate but also for any amendment or modification to a current airworthiness certificate. The purpose of the revision was to include the Application for Airworthiness Certificate, FAA Form 8130-6, dated June 1986, to make the advisory circular coincide with other previously issued advisory circulars and internal FAA directives, to remove references to obsolete documents, and to revise paragraphs containing instructions for completing FAA Form 8130-6 to more clearly define the required entries.

Issued in Washington, DC, on March 26, 1987.

William J. Sullivan,

Deputy Director of Airworthiness, Office of Airworthiness.

[FR Doc. 87-15069 Filed 7-1-87; 8:45 am]

BILLING CODE 4910-13-M

Radio Technical Commission for Aeronautics (RTCA), Special Committee 156—Potential Interference to Aircraft Electronic Equipment From Devices Carried Aboard; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I), notice is hereby given of a meeting of RTCA Special Committee 156 on Potential Interference to Aircraft Electronic Equipment from Devices Carried Aboard to be held on July 27-29, 1987, in the RTCA Confernce Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC, commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Chairman's Remarks; (2) Approval of the Minutes of the Fourteenth Meeting; (3) Review Task Assignments; (4) Review Third Draft of the Committee's Report; (5) Task Assignments; (6) Other Business; and (7) Date and Place of Next Meeting.

Attendance is open to the interested public but limited space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on June 24, 1987.

Wendie F. Chapman,

Designated Officer.

[FR Doc. 87-15071 Filed 7-1-87; 8:45 am]

BILLING CODE 4910-13-M

Radio Technical Commission for Aeronautics (RTCA), Special Committee 163—Unintentional or Simultaneous Transmissions That Adversely Affect Two-Way Radio Communications; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I), notice is hereby given of a meeting of RTCA Special Committee 163 on Unintentional or Simultaneous Transmissions that Adversely Affect Two-Way Radio Communications to be held on July 21-22, 1987, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC, commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Chairman's Remarks; (2) Approval of Minutes of First Meeting; (3) Review Revised Terms of Reference; (4) Define Problem, Quantize It, and Evaluate Potential Solutions; (5) Review Survey Form; (6) Define Committee Work Program and Schedule; (7) Assignment of Tasks; (8) Other Business; and (9) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005; (202) 682-0266.

Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on June 24, 1987.

Wendie F. Chapman,

Designated Officer.

[FR Doc. 87-15072 Filed 7-1-87; 8:45 am]

BILLING CODE 4910-13-M

TENNESSEE VALLEY AUTHORITY

Information Collection Under Review by the Office of Management and Budget (OMB)

AGENCY: Tennessee Valley Authority.

ACTION: Information Collection Under Review by the Office of Management and Budget (OMB).

SUMMARY: The Tennessee Valley Authority (TVA) has sent to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), as amended by Pub. L. 99-591.

Requests for information, including copies of the information collection proposed and supporting documentation, should be directed to the Agency Clearance Officer whose name, address, and telephone number appear below. Questions or comments should be directed to the Agency Clearance Officer and also to the Desk Officer for the Tennessee Valley Authority, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; Telephone: (202) 395-7313.

Agency Clearance Officer: Mark R. Winter, Tennessee Valley Authority, 100 Lupton Building, Chattanooga, TN 37401; (615) 751-2524.

Type of Request: Regular submission.

Title of Information Collection: Energy Management Survey.

Frequency of Use: On occasion.

Type of Affected Public: State or local governments, farms, business or other for-profit, Federal agencies, non-profit institutions, small businesses or organizations.

Small Businesses or Organizations Affected: Yes.

Federal Budget Functional Category Code: 271.

Estimated Number of Annual Responses: 3000.

Estimated Total Annual Burden Hours: 4800.

Need For and Use of Information: This information collection satisfies the need for information from commercial and industrial power consumers who request energy management surveys. Analysis of these voluntary surveys, coupled with program data, will help improve the efficiency of consumers' energy and capacity use and permit savings in TVA's capacity and fuel costs.

John W. Thompson,

Manager of Corporate Services, Senior Agency Official.

[FR Doc. 87-15030 Filed 7-1-87; 8:45 am]

BILLING CODE 8120-01-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: June 26, 1987.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington DC 20220.

U.S. Customs Service

OMB number: 1515-0010.
Form number: 5119-A.
Type of review: Reinstatement.
Title: Informal Entry.
Description: The information is used for entering certain commercial and non-commercial merchandise informally into the commerce of the U.S., eliminating the need for a bond or surety.
Respondents: Individuals or households, Businesses.
Estimated burden: 51,010 hours.

OMB number: 1515-0020.
Form number: 7539.
Type of review: Reinstatement.
Title: Drawback Entry Covering Rejected Merchandise and Same Condition Merchandise.
Description: The form is needed to establish the eligibility of rejected, same condition, substitution same condition, or destroyed merchandise for refund of duty. The form is used by the claimant to provide the necessary information for Customs to approve his drawback claim.
Respondents: Businesses.
Estimated burden: 22,550 hours.

OMB number: 1515-0022.
Form number: 4315.
Type of review: Extension.
Title: Application for Allowance in Duties.
Description: The document is submitted by the importer or his agent when applying for a duty allowance due to damaged or defective imported merchandise.
Respondents: Businesses.
Estimated burden: 1,600 hours.

OMB number: 1515-0045.
Form number: 7533-C.
Type of review: Reinstatement.
Title: U.S. Customs In-Transit Manifest.
Description: The document is used by railroads to transport merchandise (products and manufacturers of the U.S.) from one port to another in the United States through Canada.
Respondents: Businesses.
Estimated burden: 15 hours.

OMB number: 1515-0062.
Form number: 1301.
Type of review: Reinstatement.
Title: General Declaration.
Description: The form is used by U.S. Customs as the form by which the master of the vessel can set forth various items of information as to the location of the vessel in the port, itinerary prior to arrival in the U.S., the ports or call in the U.S., and the itinerary after leaving the U.S.
Respondents: Businesses.
Estimated burden: 18,326 hours.

OMB number: 1515-0126.
Form number: None.
Type of review: Reinstatement.
Title: Current List of Officers, Members or Employees, of Licensed Cartmen, Lightermen; Access to Customs Security Areas.
Description: The district director requires at certain times, a current list showing the names and addresses of managing officers and members. The information is used to insure that officers and members are not involved in organized crime or other fraudulent practices.
Respondents: Businesses.
Estimated burden: 711 hours.

Clearance Officer: B.J. Simpson (202) 566-7529, U.S. Customs Service, Room 6426, 1301 Constitution Avenue NW., Washington, DC 20229.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Internal Revenue Service

OMB number: 1545-0047.
Form number: Form 990, Schedule A (Form 990).
Type of review: Revision.
Title: Return of Organization Exempt From Income Tax Organization Exempt Under 501(c)(3).

Description: Form 990 is needed to determine that Internal Revenue Code section 501(a) tax-exempt organizations fulfill the operating conditions of their tax exemption. Schedule A (Form 990) is used to elicit special information from section 501(c)(3) organizations. IRS uses the information from these forms to determine if the filers are operating within the rules of their exemption.

Respondents: Non-profit institutions.

Estimated burden: 5,244,498 hours.

OMB number: 1545–0597.

Form number: 4598.

Type of review: Reinstatement.

Title: Form W–2, W–2P, or 1099 Not Received or Incorrect.

Description: Employers or payors are required to furnish Forms W–2, W–2P, or 1099 to employees and other payees. This three-part form is necessary for the resolution of taxpayer complaints and inquires concerning the non-receipt of or incorrect Forms W–2, W–2P, or 1099.

Respondents: Individuals or households, State or local governments, Farms, Businesses, Federal agencies or employees.

Estimated burden: 212,500 hours.

OMB number: 1545–0675.

Form number: 1040EZ.

Type of review: Revision.

Title: Income Tax Return for Single Filers with No Dependents.

Description: This form is used by certain single individuals to report their income subject to income tax and to compute their correct tax liability. The data is also used to verify that the items reported on the form are correct and are also for general statistics use.

Respondents: Individuals or households.

Estimated burden: 7,526,096 hours.

Clearance officer: Garrick Shear (202) 566–6150, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 87–14997 Filed 7–1–87; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: June 26, 1987.

The Department of Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub.L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 2224, Main Treasury Building, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB number: 1545–0162.

Form number: 4136.

Type of review: Resubmission.

Title: Computation of Credit for Federal Tax on Gasoline and Special Fuels.

Description: Internal Revenue Code Section 39 requires information in order to claim a credit for Federal excise tax on certain gasoline and special fuels used. This form is used to figure the amount of credit. Data is used to verify the validity of the claims of business entitites that use gasoline and special fuels for off-highway use.

Respondents: Individuals or households, Farms, Businesses.

Estimated burden: 155,107 hours.

OMB number: 1545–0992.

Form number: 964–A.

Type of review: Resubmission.

Title: Computation of Gain or Loss Recognized on Section 333 Liquidation.

Description: Form 964–A is used by corporations who wish to liquidate under section 333. In order to qualify, the corporation must have an applicable value of $10,000,000 or less. If the corporation qualifies, Form 964–A is used to determine the amount of gain or loss the corporation must include as income on its final tax return. The IRS uses the information to determine if the corporation qualifies and if so the amount of income that must be included.

Respondents: Businesses.

Estimated burden: 5,737 hours.

Clearance officer: Garrick Shear (202) 566–6150, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

OMB reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Office.

[FR Doc. 87–14998 Filed 7–1–87; 8:45 am]

BILLING CODE 4810-25-M

Office of the Secretary

Boycott Provisions (Section 999) of the Internal Revenue Code; Additional Boycott Guideline

AGENCY: Office of the Secretary, Treasury.

ACTION: Notice of Additional Guideline.

SUMMARY: Section 999 of the Internal Revenue Code denies certain tax benefits to taxpayers who participate in or cooperate with international boycotts, other than boycotts which are sanctioned by U.S. law. The Treasury Department today issued an additional guideline which states that certain prohibitions which are part of government procurement boycotts taken pursuant to Commonwealth initiatives against South Africa are sanctioned by U.S. law. Thus, participation in or cooperation with those prohibitions does not give rise to penalties under section 999.

FOR FURTHER INFORMATION CONTACT: David D. Joy, Office of the General Counsel, Department of the Treasury, 15th and Pennsylvania Avenue, NW., Washington DC 20220, (202–566–5569, not a toll-fre call).

SUPPLEMENTARY INFORMATION: This document contains an additional guideline relating to the Department of the Treasury's enforcement of section 999 of the Internal Revenue Code. Section 999 incorporates provisions of the Tax Reform Act of 1976 (90 Stat. 1649–54), specifically sections 1061–1064 (known as the "Ribicoff Amendment"), which deny certain tax benefits for participation in or cooperaton with international boycotts. Published guidelines which are still in effect today are found at 49 FR 18061 (April 26, 1984), 44 FR 66272 (November 19, 1979), and 43 FR 3454 (January 25, 1978).

Executive Order 12291

The Department of the Treasury has determined that this guideline is not a major rule as defined in Executive Order 12291, and that a Regulatory Impact Analysis is therefore not required.

Analysis

This guideline responds to questions concerning certain prohibitions which are part of the Australian and Canadian Government procurement boycotts of South Africa. These prohibitions were imposed pursuant to Commonwealth initiatives taken against South Africa in October 1985 and August 1986, and consist of prohibitions of government contracts with companies majority (51%) owned by South Africans.

Treasury decided to publish this guideline in order to remove any confusion over whether the exception for boycotts sanctioned by U.S. law, found in section 999(b)(4)(A), covered these prohibitions. A provision of U.S. law, section 314 of the Comprehensive Anti-Apartheid Act of 1986, is similar to these prohibitions. U.S. law therefore sanctions participation in or cooperation with these prohibitions.

Drafting Information

The principal author of this guideline is David Joy of the Office of the General Counsel, Department of the Treasury.

The Guidelines are amended as follows:

* * * * *

P. Boycotts Sanctioned By U.S. Law

P-1 Q: Pursuant to the Commonwealth boycott of South Africa, the government of a Commonwealth country, or an entity owned or controlled by such a government, refuses to purchase goods and services of South African origin. Tender documents issued by such government or entity specifically require the successful contractor, in carrying out the contract, to agree (1) to observe the government's policy of not purchasing goods and services from entities which are majority (51%) owned by South Africans and/or (2) not to enter into a subcontract with an entity which is majority (51%) owned by South Africans. Company C agrees to either, or both, of these prohibitions. Does Company C's action constitute participation in or cooperation with an international boycott under section 99(b)(3)(A)(i)?

A: No. Company C's action comes within the exemption under section 999(b)(4)(A) and does not constitute an agreement to refrain from doing business with a person described in section 999(b)(3)(A)(i). Section 314 of the Comprehensive Anti-Apartheid Act of 1986, Pub. L. 99-440, prohibits U.S. Government agencies from procuring goods or services from South African parastatal organizations. As this provision is similar to the procurement prohibitions described above, U.S. law sanctions participation in or cooperation with those prohibiitions.

Dated: June 29, 1987.

J. Roger Mentz,

Assistant Secretary for Tax Policy.

[FR Doc. 87-15046 Filed 7-1-87; 8:45 am]

BILLING CODE 4810-25-M

Debt Management Advisory Committee; Meeting

Notice is hereby given, pursuant to section 10 of Appendix I of Title 5 of the United States Code, that a meeting will be held at the U.S. Treasury Department in Washington, DC on July 28 and July 29, 1987 of the following debt management advisory committee:

Public Securities Association, U.S. Government and Federal, Agencies Securities Committee.

The agenda for the Public Securities Association U.S. Government and Federal Agencies Securities Committee meeting provides for a working session on July 28 and the preparation of a written report to the Secretary of the Treasury on July 29, 1987.

Pursuant to the authority placed in heads of departments by section 10(d) of Appendix I of Title 5 of the United States Code and vested in me by Treasury Department Order 101-05, I hereby determine that this meeting is concerned with information exempt from disclosure under section 552b(c)(4) and (9)(A) of Title 5 of the United States Code, and that the public interest requires that such meetings be closed to the public.

My reasons for this determination are as follows. The Treasury Department requires frank and full advice from representatives of the financial community prior to making its final decision on major financing operations. Historically, this advice has been offered by debt management advisory committees established by the several major segments of the financial community, which committees have been utilized by the Department at meetings called by representatives of the Secretary. When so utilized, such a committee is recognized to be an advisory committee under Appendix I of Title 5 of the United States Code. The advice provided consists of commercial and financial information given and received in confidence. As such debt management advisory committee activities concern matters which fall within the exemption covered by section 552b(c)(4) of Title 5 of the United States Code for matters which are "trade secrets and commercial or financial information obtained from a person and privileged or confidential."

Although the Treasury's final announcement of financing plans may not reflect the recommendations provided in reports of an advisory committee, premature disclosure of these reports would lead to significant financial speculation in the securities market. Thus, these meetings also fall within the exemption covered by section 552b(c)(9)(A) of Title 5 of the United States Code.

The Assistant Secretary (Domestic Finance) shall be responsible for maintaining records of debt management advisory committee meetings and for providing annual reports setting forth a summary of committee activities and such other matters as may be informative to the public consistent with the policy of section 552b of Title 5 of the United States Code.

Dated: June 29, 1987.

Charles O. Sethness,

Assistant Secretary (Domestic Finance).

[FR Doc. 87-14995 Filed 7-1-87; 8:45 am]

BILLING CODE 4810-25-M

Fiscal Service

[Dept. Circ. 570, 1986 Rev., Supp. No. 23]

Surety Companies Acceptable on Federal Bonds; Termination of Authority; Coronet Insurance Co.

Notice is hereby given that the Certificate of Authority issued by the Treasury to Coronet Insurance Company, under the United States Code, Title 31, Sections 9304-9308, to qualify as an acceptable surety on Federal bonds is terminated effective this date.

The Company was last listed as an acceptable surety on Federal bonds at 51 FR 23932, July 1, 1986.

With respect to any bonds currently in force with Coronet Insurance Company, bond-approving officers for the Government may let such bonds run to expiration and need not secure new bonds. However, no new bonds should be accepted from the Company. In addition, bonds that are continuous in nature should not be renewed.

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Finance Division, Surety Bond Branch, Washington, DC 20226, telephone (202) 634-2214.

Dated: June 24, 1987.

Mitchell A. Levine,

Assistant Commissioner, Comptroller, Financial Management Service.

[FR Doc. 87-14984 Filed 7-1-87; 8:45 am]

BILLING CODE 4810-35-M

[Dept. Circ. 570, 1986 Rev., Supp. No. 22]

Surety Companies Acceptable on Federal Bonds; Termination of Authority; Investors Insurance Company of America

Notice is hereby given that the Certificate of Authority issued by the Treasury to Investors Insurance Company of America, Ramsey, New Jersey, under the United States Code, Title 31, Sections 9304–9308, to qualify as an acceptable surety on Federal bonds is terminated effective this date.

The Company was last listed as an acceptable surety on Federal bonds at 51 FR 23941, July 1, 1986.

With respect to any bonds currently in force with Investors Insurance Company of America, bond-approving officers for the Government should secure new bonds with acceptable sureties in those instances where a significant amount of liability remains outstanding.

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Finance Division, Surety Bond Branch, Washington, DC 20226, telephone (202) 634–2381.

Dated: June 24, 1987.

Mitchell A. Levine,

Assistant Commissioner, Comptroller, Financial Management Service.

[FR Doc. 87–14985 Filed 7–1–87; 8:45 am]

BILLING CODE 4810-35-M

VETERANS ADMINISTRATION

Agency Form Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains an extension and lists the following information: (1) The department or staff office issuing the form, (2) the title of the form, (3) the agency form number, if applicable, (4) a description of the need and its use, (5) how often the form must be filled out, (6) who will be required or asked to report, (7) an estimate of the number of responses, (8) an estimate of the total number of hours needed to fill out the form, and (9) and indication of whether section 3504(h) of Pub. L. 96–511 applies.

ADDRESSES: Copies of the forms and supporting documents may be obtained from Patti Viers, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 233–2146. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Elaina Norden, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395–7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 60 days of this notice.

Dated: June 26, 1987.

By direction of the Administration.

Raymond S. Blunt,

Director, Office of Program Analysis and Evaluation.

Extension

1. Department of Veterans Benefits.
2. Application for Accrued Benefits by Veteran's Surviving Spouse, Child or Dependent Parent.
3. VA Form 21–551.
4. This information is required to determine a claimant's entitlement to accrued benefits withheld during a veterans' hospitalization or domiciliary care.
5. On occasion.
6. Individuals or households.
7. 1,000 responses.
8. 333 hours.
9. Not applicable.

1. Department of Veterans Benefits.
2. Loan and Cash Surrender Values.
3. Va Form 29–5772.
4. This information is provided by the insured to request a loan or cash surrender and is used to verify entitlement.
5. On occasion.
6. Individuals or households.
7. 31,500 responses.
8. 5,250 hours.
9. Not applicable.

[FR Doc. 87–75038 Filed 7–1–87; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 52, No. 127
Thursday, July 2, 1987

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).

U.S. COMMISSION ON CIVIL RIGHTS

PLACE: 1121 Vermont Avenue, NW, Room 512, Washington, DC 20425

DATE AND TIME: Monday, July 13, 1987, 9:00 a.m.–5:00 p.m.

STATUS OF MEETING: Open to the public.

MATTERS TO BE CONSIDERED:

I. Approval of Agenda
II. Approval of Minutes of Last Meeting
III. Staff Directors Report
  A. Status of Earmarks
  B. Personnel Report
  C. Activity Report
IV. Rules and Procedures for the Conduct of Commission Meetings
V. Discussion: DOJ and OFCCP chapters and conclusion, Federal Enforcement of Equal Employment Requirements Report
VI. Discussion: Proposed Projects and Budget for FY 88 and FY 89
VII. Briefing of "Domestic and International Implications of AIDS," Robert Kupperman, Ph.D. Georgetown Center for Strategic and International Studies
VIII. SAC Report: "Status of Civil Rights in Garden City and Finny County, Kansas
IX. SAC Recharters
X. Discussion by SAC Chairs

PERSON TO CONTACT FOR FURTHER INFORMATION: Thomas Olson, Press and Communications Division, (202) 376–8150.

Susan J. Prado,
Acting Staff Director.

[FR Doc. 15147 Filed 6–30–87; 10:46 am]

BILLING CODE 6335-01-M

FEDERAL ELECTION COMMISSION:

DATE AND TIME: Tuesday, July 7, 1987, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, July 9, 1987, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of Dates for Future Meetings.
Correction and Approval of Minutes.
Eligibility Report for Candidates to Receive Presidential Primary Matching Funds.
Certification Report for Convention Financing.
Audit of Mondale/Ferraro Committee, Inc.—Statement of Reasons.
Draft Advisory Opinion 1987–15: James F. Schoener on behalf of Kemp for President Committee.
Draft Advisory Opinion 1987–16: Daniel A. Taylor on behalf of Governor Dukakis.
Draft Advisory Opinion 1987–18: Dan V. Jackson on behalf of Texas Industries, Inc.
Draft Advisory Opinion 1987–19: The Honorable William L. Clay on behalf of Congressman Harold Ford.
Routine Administrative Matters.

PERSONS TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone: 202–376–3155.

Marjorie W. Emmons,
Secretary of the Commission.

[FR Doc. 87–15225 Filed 6–30–87; 2:44 pm]

BILLING CODE 6715-01-M

FEDERAL MARITIME COMMISSION

TIME AND DATE: 10:00 a.m., July 8, 1987.

PLACE: Hearing Room One, 1100 L Street, NW., Washington, DC 20573.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Docket No. 86–29—Filing of Service Contracts and Availability of Essential Terms—Consideration of Comment and Petition to File Cost Study Affidavit.
2. Docket No. 87–1—Automobile Measurement Rule—Consideration of Comments.

CONTACT PERSON FOR MORE INFORMATION Joseph C. Polking, Secretary, (202) 523–5725.

[FR Doc. 87–15149 Filed 6–30–87; 10:46 am]

BILLING CODE 6730-01-M

UNITED STATES INSTITUTE OF PEACE

TIMES AND DATES: 9:00 a.m.-5:00 p.m., Thursday, July 9, 1987; 9:00 a.m.-5:00 p.m., Friday, July 10, 1987.

PLACE: Thursday, July 9, 1987—Dirksen Senate Office Bldg. Rm G–50; Friday, July 10, 1987—National Trust for Historic Preservation, 1785 Massachusetts Avenue, NW., Washington, DC 20036.

STATUS: Thursday, July 9, 1987. Open.

Friday, July 10, 1987. Open (portions may be closed pursuant to subsection (c) of section 552(b) of title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Pub. L. 98–525).

Agenda (Tentative)

Thursday, July 9, 1987. Colloquium on *The Role of International Law In Securing and Maintaining Peace Among Nations: Problems and Prospects.*

Thursday Morning Session—9:00 a.m.–12:00 p.m.

Introductory Remarks: Senator Claiborne Pell.

Panelists
—Mr. G. Keith Highet, Pres., American Society of Int'l Law
—Prof. Louis Henkin, Columbia Law School
—Prof. Myres McDougal, Yale Law School
—Hon. Steven Schwebel, Int'l Court of Justice

Thursay Afternoon Session—2:00 p.m.–5:00 p.m.

Introductory Remarks: To Be Announced

Panelists
Hon. Monroe Leigh, Steptoe & Johnson—
—Prof. Adda Bozeman, Sarah Lawrence College
—Prof. Anthony D'Amato, Northwestern Law School
—Hon. John Stevenson, Sullivan & Cromwell

Friday, July 10, 1987. Meeting of the Board of Directors convened.

Chairman's Report. President's Report. Committee Reports. Presidential Search. Consideration of Grant Applications.

CONTACT: Mrs. Olympia Diniak. Telephone: (202) 789–5700.

Dated: June 29, 1987.

Robert F. Turner,
President, United States Institute of Peace.

[FR Doc. 87–15186 Filed 6–30–87; 1:08 pm]

BILLING CODE 3155-01-M

federal register

Thursday
July 2, 1987

Part II

Enforcement of Nondiscrimination on the Basis of Handicap in Federally Conducted Programs; Notice of Proposed Rulemaking

Executive Office of the President
Office of Administration
3 CFR Part 102
Office of Personnel Management
5 CFR Part 723
Merit Systems Protection Board
5 CFR Part 1207
Office of the Special Counsel
5 CFR Part 1262
Federal Labor Relations Authority
5 CFR Part 2416
National Aeronautics and Space Administration
14 CFR Part 1251
Securities and Exchange Commission
17 CFR Part 200
Overseas Private Investment Corporation
22 CFR Part 711
African Development Foundation
22 CFR Part 1510
National Labor Relations Board
29 CFR Part 100
National Archives and Records Administration
36 CFR Part 1208
Veterans Administration
38 CFR Part 15
Federal Emergency Management Agency
44 CFR Part 16

Executive Office of the President

Office of Administration

3 CFR PART 102

Office of Personnel Management

5 CFR PART 723

Merit Systems Protection Board

5 CFR PART 1207

Office of the Special Counsel

5 CFR PART 1262

Federal Labor Relations Authority

5 CFR PART 2416

National Aeronautics and Space Administration

14 CFR PART 1251

Securities and Exchange Commission

17 CFR PART 200

Overseas Private Investment Corporation

22 CFR PART 711

African Development Foundation

22 CFR PART 1510

National Labor Relations Board

29 CFR PART 100

National Archives and Records Administration

36 CFR PART 1208

Veterans Administration

38 CFR PART 15

Federal Emergency Management Agency

44 CFR PART 16

Enforcement of Nondiscrimination on the Basis of Handicap in Federally Conducted Programs

AGENCIES: Executive Office of the President, Office of Personnel Management, Merit Systems Protection Board, Office of the Special Counsel (MSPB), Federal Labor Relations Authority, National Aeronautics and Space Administration, Securities and Exchange Commission, Overseas Private Investment Corporation, African Development Foundation, National Labor Relations Board, National Archives and Records Administration, Federal Emergency Management Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed regulation requires that the agencies listed above operate all of their programs and activities to ensure nondiscrimination against qualified individuals with handicaps. It sets forth standards for what constitutes discrimination on the basis of mental or physical handicap, provides a definition for individual with handicaps and qualified individual with handicaps, and establishes a complaint mechanism for resolving allegations of discrimination. This regulation is issued under the authority of section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of handicap in programs or activities conducted by Federal Executive agencies.

DATE: To be assured of consideration, comments must be in writing and must be received on or before August 31, 1987. Comments should refer to specific sections in the regulation.

ADDRESSES: See individual agencies below. Copies of this notice will be made available on tape for persons with impaired vision who request them. They will be provided by the Coordination and Review Section, Civil Rights Division, Department of Justice, Washington, DC 20530, (202) 724-2222 (voice) or (202) 724-7678 (TDD).

FOR FURTHER INFORMATION CONTACT: See individual agencies below.

SUPPLEMENTARY INFORMATION:

Background

The purpose of this proposed rule is to provide for the enforcement of section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), as it applies to programs and activities conducted by the following agencies (hereinafter "the agencies"): Executive Office of the President, Office of Personnel Management, Merit Systems Protection Board, Office of the Special Counsel (MSPB), Federal Labor Relations Authority, National Aeronautics and Space Administration, Securities and Exchange Commission, Overseas Private Investment Corporation, African Development Foundation, National Labor Relations Board, National Archives and Records Administration, Veterans Administration, Federal Emergency Management Agency. As amended by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Sec. 119, Pub. L. 95-602, 92 Stat. 2982) and the Rehabilitation Act Amendments of 1986 (Pub. L. 99-506, 100 Stat. 1810), section 504 of the Rehabilitation Act of 1973 states that

> No otherwise qualified individual with handicaps in the United States, * * * shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance *or under any program or activity conducted by any Executive agency or by the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978. Copies of any proposed regulation shall be submitted to appropriate authorizing committees of Congress, and such regulation may take effect no earlier than the thirtieth day after the date on which such regulation is so submitted to such committees.*

(29 U.S.C. 794 (1978 amendment italicized).)

Because the agencies are required by this amendment to promulgate implementing regulations, and because the proposed standards and procedures to be established are the same for all of the agencies, the agencies are publishing this notice of proposed rulemaking jointly. The final rule adopted by each agency will be codified in that agency's portion of the Code of Federal Regulations as indicated in the information provided for individual agencies below. The agencies agreed to joint publication of the preamble and the text of the regulation in order to expedite its issuance and minimize costs, in view of the identity in proposed standards among the agencies. If, following the public comment period, one or more of the agencies desires to promulgate a final regulation with different substantive provisions in order to account for its particular needs indentified in response to public comments, it will, of course, do so.

The substantive nondiscrimination obligations of the agency, as set forth in this proposed rule, are identical, for the most part, to those established by Federal regulations for programs or activities receiving Federal financial assistance. (*See* 28 CFR Part 41 (section 504 coordination regulation for federally assisted programs).) This general parallelism is in accord with the intent expressed by supporters of the 1978 amendment in floor debate, including its sponsor, Rep. James M. Jeffords, that the Federal Government should have the same section 504 obligations as recipients of Federal financial assistance. 124 Cong. Rec. 13,901 (1978) (remarks of Rep. Jeffords); 124 Cong. Rec. E2668, E2670 (daily ed. May 17, 1978) *id.*; 124 Cong. Rec. 13,897 (remarks

of Rep. Brademas); *id.* at 38,552 (remarks of Rep. Sarasin).

There are, however, some language differences between this proposed rule and the Federal Government's section 504 regulations for federally assisted programs. These changes are based on the Supreme Court's decision in *Southeastern Community College v. Davis*, 442 U.S. 397 (1979), and the subsequent circuit court decisions interpreting *Davis* and section 504. *See Dopico v. Goldschmidt*, 687 F.2d 644 (2d Cir. 1982); *American Public Transit Association v. Lewis*, 655 F.2d 1272 (D.C. Cir. 1981) *(APTA); see also Rhode Island Handicapped Action Committe v. Rhode Island Public Tansit Authority*, 718 F.2d 490 (1st Cir. 1983).

These language differences are also supported by the decision of the Supreme Court in *Alexander v. Choate*, 469 U.S. 287 (1985), where the Court held that the regulations for federally assisted programs did not require a recipient to modify its durational limitation on Medicaid coverage of inpatient hospital care for handicapped persons. Clarifying its *Davis* decision, the Court explained that section 504 requires only "reasonable" modifications, *id.* at 300, and explicitly noted that "[t]he regulations implementing section 504 [for federally assisted programs] are consistent with the view that *reasonable* adjustments in the nature of the benefit offered must at times be made to assure meaningful access." *Id.* at n.21 (emphasis added).

Incorporation of these changes, therefore, makes this regulation implementing section 504 for federally conducted programs consistent with the Federal Government's regulations implementing section 504 for federally assisted programs as they have been interpreted by the Supreme Court. Many of these federally assisted regulations were issued prior to the interpretations of section 504 by the Supreme Court in *Davis*, by lower courts interpreting *Davis*, and by the Supreme Court in *Alexander*; therefore their language does not reflect the interpretation of section 504 provided by the Supreme Court and by the various circuit courts. Of course, these federally assisted regulations must be interpreted to reflect the holdings of the Federal judiciary. Hence the agencies believe that there are no significant differences between this proposed rule for federally conducted programs and the Federal Government's interpretation of section 504 regulations for federally assisted programs.

This regulation has been reviewed by the Department of Justice. It is an adaptation of a prototype prepared by the Department of Justice under Executive Order 12250 (45 FR 72995, 3 CFR, 1980 Comp., p. 298) and distributed to Executive agencies. This regulation has also been reviewed by the Equal Employment Opportunity Commission under Executive Order 12067 (43 FR 28967, 3 CFR, 1978 Comp., p. 206). It is not a major rule within the meaning of Executive Order 12291 (46 FR 13193, 3 CFR, 1981 Comp., p. 127) and, therefore, a regulatory impact analysis has not been prepared. This regulation does not have an impact on small entities. It is not, therefore, subject to the Regulatory Flexibility Act (5 U.S.C. 601–612).

Section-by-Section Analysis

Section ____.101 Purpose.

Section ____.101 states the purpose of the proposed rule, which is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

Section ____.102 Application.

The regulation applies to all programs or activities conducted by the agencies. Under this section, a federally conducted program or activity is, in simple terms, anything a Federal agency does. Aside from employment, there are two major categories of federally conducted programs or activities covered by this regulation: Those involving general public contact as part of ongoing agency operations and those directly administered by the agencies for program beneficiaries and participants. Activities in the first category include communication with the public (telephone contacts, office walk-ins, or interviews) and the public's use of the agency's facilties. Activities in the second category include programs that provide Federal services or benefits. This regulation does not, however, apply to programs or activities conducted outside the United States that do not involve individuals with handicaps in the United States.

Section ____.103 Definitions.

"Assistant Attorney General." "Assistant Attorney General" refers to the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

"Auxiliary aids." "Auxiliary aids" means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in and enjoy the benefits of the agency's programs or activities. The definition provides examples of commonly used auxiliary aids. Although auxiliary aids are required explicitly only by § ____.160(a)(1), they may also be necessary to meet other requirements of the regulation.

"Complete complaint." "Complete complaint" is defined to include all the information necessary to enable the agency to investigate the complaints. The definition is necessary, because the 180 day period for the agency's investigation (*see* § ____.170(g)) begins when the agency receives a complete complaint.

"Facility." The definition of "facility" is similar to that in the section 504 coordination regulation for federally assisted programs (28 CFR 41.3(f)) except that the term "rolling sock or other conveyances" has been added and the phrase "or interest in such property" has been deleted because the term "facility," as used in this regulation, refers to structures and not to intangible property rights. Is should, however, be noted that the regulation applies to all program and activities conducted by the agency regardless of whether the facility in which they are conducted is owned, leased, or used on some other basis by the agency. The term "faciltiy" is used §§ ____.149, ____.150, and ____.170(f).

"Historic preservation programs," "Historic properties," and "Substantial impairment." These terms are defined in order to aid in the interpretation of § ____.150 (a)(2) amd (b)(2), which relate to accessibility of historic preservation programs.

"Individual with handicaps." The definition of "individual with handicaps" is identical to the definition of "handicapped person" appearing in the section 504 coordination regulation for federally assisted programs (28 CFR 41.31). Although section 103(d) of the Rehabilitation Act Amendments of 1986 changed the statutory term "handicapped individual" "individual with handicaps," the legislative history of this amendment indicates that no substantive change was intended. Thus, although the term has been changed in this regulation to be consistent with the statute as amended, the definition is unchanged. In particular, although the term as revised refers to "handicaps" in the plural, it does not exclude persons who have only one handicap.

"Qualified individual with handicaps." The definition of "qualified individual with handicaps" is a revised version of the definition of "qualified handicapped person" appearing in the

section 504 coordination regulation for federally assisted programs (28 CFR 41.32).

Paragraph (1) is an adaptation of existing definitions of "qualified handicapped person" for purposes of federally assisted preschool, elementary, an secondary education programs (*see, e.g.*, 45 CFR 84.3(k)(2)). It provides that an individual with handicaps is qualified for preschool, elementary, or secondary education programs conducted by the agency, if he or she is a member of a class of persons otherwise entitled by statute, regulation, or agency policy to receive these services from the agency. In other words, an individual with handicaps is qualified if, considering all factors other than the handicapping condition, he or she is entitled to receive education service from the agency.

Paragraph (2) deviates from existing regulations for federally assisted programs because of intervening court decisions. It defines "qualified individual with handicaps" with regard to any program other than those covered by paragraph (1) under which a person is required to perform services or to achieve a level of accomplishment. In such programs a qualified individual with handicaps is one who can achieve the purpose of the program without modifications in the program that the agency can demonstrate would result in a fundamental alteration in its nature. This definition reflects the decision of the Supreme Court in *Davis*. In that case, the Court ruled that a hearing-impaired applicant to a nursing school was not a "qualified handicapped person" because her hearing impairment would prevent her from participating in the clinical training portion of the program. The Court found that, if the program were modified so as to enable the respondent to participate (by exempting her from the clinical training requirements), "she would not receive even a rough equivalent of the training a nursing program normally gives." *Id.* at 410. It also found that "the purpose of [the] program was to train persons who could serve the nursing profession in all customary ways," *Id.* at 413, and that the respondent would be unable, because of her hearing impairment, to perform some functions expected of a registered nurse. It therefore concluded that the school was not required by section 504 to make such modifications that would result in "a fundamental alteration in the nature of the program." *Id.* at 410.

We have incorporated the Court's language in the definition of "qualified individual with handicaps" in order to make clear that such a person must be able to participate in the program offered by the agency. The agency is required to make modifications in order to enable an applicant with handicaps to participate, but is not required to offer a program of a fundamentally different nature. The test is whether, with appropriate modifications, the applicant can achieve the purpose of the program offered; not whether the applicant could benefit or obtain results from some other program that the agency does not offer. Although the revised definition allows exclusion of some individuals with handicaps from some programs, it requires that an individual with handicaps who is capable of achieving the purpose of the program must be accommodated, provided that the modifications do not fundamentally alter the nature of the program.

The agency has the burden of demonstrating that a proposed modification would constitute a fundamental alteration in the nature of its program or activity. Furthermore, in demonstrating that a modification would result in such an alteration, the agency must follow the procedures established in § ____.150(a) and § ____.160(d), which are discussed below, for demonstrating that an action would result in undue financial and administrative burdens. That is, the decision must be made by the agency head or his or her designee in writing after consideration of all resources available for the program or activity and must be accompanied by an explanation of the reasons for the decision. If the agency head determines that an action would result in a fundamental alteration, the agency must consider options that would enable the individual with handicaps to achieve the purpose of the program but would not result in such an alteration.

For programs or activities that do not fall under either of the first two paragraphs, paragraph (3) adopts the existing definition of "qualified handicapped person" with respect to services (28 CFR 41.32(b)) in the coordination regulation for programs receiving Federal financial assistance. Under this definition, a qualified individual with handicaps is an individual with handicaps who meets the essential eligibility requirements for participation in the program or activity.

Paragraph (4) explains that "qualified individual with handicaps" means "qualified handicapped person" as that term is defined fo puposes of employment in the Equal Employment Opportunity Commission's regulation at 29 CFR 1613.702(f), which is made applicable to this part by § ____.140. Nothing in this part changes existing regulations applicable to employment.

"Section 504." This definition makes clear that, as used in this regulation, "section 504" applies only to programs or activities conducted by the agency and not to programs or activities to which it provides Federal financial assistance.

Section ____.110 Self-evaluation.

The agency shall conduct a self-evaluation of its compliance with section 504 within one year of the effective date of this regulation. The self-evaluation requirement is present in the existing section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.5(b)(2)). Experience has demonstrated the self-evaluation process to be a valuable means of establishing a working relationship with individuals with handicaps that promotes both effective and efficient implementation of secton 504.

Section ____.111 Notice.

Section ____.111 requires the agency to disseminate sufficient information to employees, applicants, participants, beneficiaries, and other interested persons to apprise them of rights and protections afforded by section 504 and this regulation. Methods of providing this information include, for example, the publication of information in handbooks, manuals, and pamphlets that are distributed to the public to describe the agency's programs and activities; the display of informative posters in service centers and other public places; or the broadcast of information by television or radio.

Section ____.130 General prohibitions against discrimination.

Section ____.130 is an adaptation of the corresponding section of the section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.51).

Paragraph (a) restates the nondiscrimination mandate of section 504. The remaining paragraphs in § ____.130 establish the general principles for analyzing whether any particular action of the agency violates this mandate. These principles serve as the analytical foundation for the remaining sections of the regulation. If the agency violates a provision in any of the subsequent sections, it will also violate one of the general prohibitions found in § ____.130. When there is no applicable subsequent provision, the general prohibitions stated in this section apply.

Paragraph (b) prohibits overt denials of equal treatment of individuals with handicaps. The agency may not refuse to provide an individual with handicaps with an equal opportunity to participate in or benefit from its program simply because the person is handicapped. Such blatantly exclusionary practices often result from the use of irrebuttable presumptions that absolutely exclude certain classes of disabled persons (*e.g.*, epileptics, hearing-impaired persons, persons with heart ailments) from participation in programs or activities without regard to an individual's actual ability to participate. Use of an irrebuttable presumption is permissible only when in all cases a physical condition by its very nature would prevent an individual from meeting the essential eligibility requirements for participation in the activity in question. It would be permissible, therefore, to exclude without an individual evaluation all persons who are blind in both eyes from eligibility for a license to operate a commercial vehicle in interstate commerce; but it may not be permissible to automatically disqualify all those who are blind in just one eye.

In addition, section 504 prohibits more than just the most obvious denials of equal treatment. It is not enough to admit persons in wheelchairs to a program if the facilities in which the program is conducted are inaccessible. Paragraph (b)(1)(iii), therefore, requires that the opportunity to participate or benefit afforded to an individual with handicaps be as effective as that afforded to others. The later sections on program accessibility (§§ ____.149–____.151) and communications (§ ____.160) are specific applications of this principle.

Despite the mandate of paragraph (d) that the agency administer its programs and activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps, paragraph (b)(1)(iv), in conjunction with paragraph (d), permits the agency to develop separate or different aids, benefits, or services when necessary to provide individuals with handicaps with an equal opportunity to participate in or benefit from the agency's programs or activities. Paragraph (b)(1)(iv) requires that different or separate aids, benefits, or services be provided only when necessary to ensure that the aids, benefits, or services are as effective as those provided to others. Even when separate or different aids, benefits, or services would be more effective, paragraph (b)(2) provides that a qualified individual with handicaps still has the right to choose to participate in the program that is not designed to accommodate individuals with handicaps.

Paragraph (b)(1)(v) prohibits the agency from denying a qualified individual with handicaps the opportunity to participate as a member of a planning or advisory board.

Paragraph (b)(1)(vi) prohibits the agency from limiting a qualified individual with handicaps in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving any aid, benefit, or service.

Paragraph (b)(3) prohibits the agency from utilizing criteria or methods of administration that deny individuals with handicaps access to the agency's programs or activities. The phrase "criteria or methods of administration" refers to official written agency policies and to the actual practices of the agency. This paragraph prohibits both blatantly exclusionary policies or practices and nonessential policies and practices that are neutral on their face, but deny individuals with handicaps an effective opportunity to participate.

Paragraph (b)(4) specifically applies the prohibition enunciated in § ____.130(b)(3) to the process of selecting sites for construction of new facilities or selecting existing facilities to be used by the agency. Paragraph (b)(4) does not apply to construction of additional buildings at an existing site.

Paragraph (b)(5) prohibits the agency, in the selection of procurement contractors, from using criteria that subject qualified individuals with handicaps to discrimination on the basis of handicap.

Paragraph (b)(6) prohibits the agency from discriminating against qualified individuals with handicaps on the basis of handicap in the granting of licenses or certification. A person is a "qualified individual with handicaps" with respect to licensing or certification if he or she can meet the essential eligibility requirements for receiving the license or certification (*see* § ____.103).

In addition, the agency may not establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with handicaps to discrimination on the basis of handicap. For example, the agency must comply with this requirement when establishing safety standards for the operations of licensees. In that case the agency must ensure that standards that it promulgates do not discriminate against the employment of qualified individuals with handicaps in an impermissible manner.

Paragraph (b)(6) does not extend section 504 directly to the programs or activities of licensees or certified entities themselves. The programs or activities of Federal licensees or certified entities are not themselves federally conducted programs or activities nor are they programs or activities receiving Federal financial assistance merely by virtue of the Federal license or certificate. However, as noted above, section 504 may affect the content of the rules established by the agency for the operation of the program or activity of the licensee or certified entity, and thereby indirectly affect limited aspects of their operations.

Paragraph (c) provides that programs conducted pursuant to Federal statute or Executive order that are designed to benefit only individuals with handicaps or a given class of individuals with handicaps may be limited to those individuals with handicaps.

Paragraph (d), discussed above, provides that the agency must administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps, *i.e.*, in a setting that enables individuals with handicaps to interact with nonhandicapped persons to the fullest extent possible.

Section ____.140 Employment.

Section ____.140 prohibits discrimination on the basis of handicap in employment by the agency. Courts have held that section 504, as amended in 1978, covers the employment practices of Executive agencies. *Gardner v. Morris*, 752 F.2d 1271, 1277 (8th Cir. 1985); *Smith v. United States Postal Service*, 742 F.2d 257, 259–260 (6th Cir. 1984); *Prewitt v. United States Postal Service*, 662 F.2d 292, 302–04 (5th Cir. 1981). *Contra McGuiness v. United States Postal Service*, 744 F.2d 1318, 1320–21 (7th Cir. 1984); *Boyd v. United States Postal Service*, 752 F.2d 410, 413–14 (9th Cir. 1985).

Courts uniformly have been that, in order to give effect to section 501 of the Rehabilitation Act, which covers Federal employment, the administrative procedures of section 501 must be followed in processing complaints of employment discrimination under section 504. *Smith*, 742 F.2d at 262; *Prewitt*, 662 F.2d at 304. Accordingly, § ____.140 (Employment) of this rule adopts the definitions, requirements, and procedures of section 501 as established in regulations of the Equal Employment Opportunity Commission (EEOC) at 29 CFR Part 1613. Responsibility for coordinating

enforcement of Federal laws prohibiting discrimination in employment is assigned to the EEOC by Executive Order 12067 (3 CFR 1978 Comp., p. 206). Under this authority, the EEOC establishes government-wide standards on nondiscrimination in employment on the basis of handicap. In addition to this section, § ____.170(b) specifies that the agency will use the existing EEOC procedures to resolve allegations of employment discrimination.

Section ____.149 Program Accessibility: Discrimination Prohibited.

Section ____.149 states the general nondiscrimination principle underlying the program accessibility requirements of §§ ____.150 and ____.151.

Section ____.150 Program Accessibility: Existing Facilities.

This regulation adopts the program accessibility concept found in the existing section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.57), with certain modifications. Thus, § ____.150 requires that each agency program or activity, when viewed in its entirety, be readily accessible to and usable by individuals with handicaps. The regulation also makes clear that the agency is not required to make each of its existing facilities accessible (§ ____.150(a)(1)). However, § ____.150, unlike 28 CFR 41.57, places explicit limits on the agency's obligation to ensure program accessibility (§ ____.150(a)(2), (a)(3)).

Paragraph (a)(2), which establishes a special limitation on the obligation to ensure program accessibility in historic preservation programs, is discussed below in connection with paragraph (b).

Paragraph (a)(3) generally codifies recent case law that defines the scope of the agency's obligation to ensure program accessibility. This paragraph provides that in meeting the program accessibility requirement the agency is not required to take any action that would result in a fundamental alteration in the nature of its program or activity or in undue financial and administrative burdens. A similar limitation is provided in § ____.160(d). This provision is based on the Supreme Court's holding in *Southeastern Community College v. Davis*, 442 U.S. 397 (1979), that section 504 does not require program modifications that result in a fundamental alteration in the nature of a program, and on the Court's statement that section 504 does not require modifications that would result in "undue financial and administrative burdens." 442 U.S. at 412. Since *Davis*, circuit courts have applied this limitation on a showing that only one of the two "undue burdens" would be created as a result of the modification sought to be imposed under section 504. *See, e. g., Dopico v. Goldschmidt*, 687 F.2d 644 (2d Cir. 1982); *American Public Transit Association v. Lewis*, (*APTA*), 655 F.2d 1272 (D.C. Cir. 1981).

Paragraphs (a)(3) and § ____.160(d) are also supported by the Supreme Court's decision in *Alexander v. Choate*, 469 U.S. 287 (1985). *Alexander* involved a challenge to the State of Tennessee's reduction of inpatient hospital care coverage under Medicaid from 20 to 14 days per year. Plaintiffs argued that this reduction violated section 504 because it had an adverse impact on handicapped persons. The Court assumed without deciding that section 504 reaches at least some conduct that has an unjustifiable disparate impact on handicapped people, but held that the reduction was not "the sort of disparate impact" discrimination that might be prohibited by section 504 or its implementing regulation. *Id.* at 299.

Relying on *Davis*, the Court said that section 504 guarantees qualified handicapped persons "meaningful access to the benefits that the grantee offers," *id.* at 301, and that "*reasonable adjustments* in the nature of the benefit being offered must at times be made to assure meaningful access." *Id.* at n. 21 (emphasis added). However, section 504 does not require " 'changes,' 'adjustments,' or 'modifications' to existing programs that would be 'substantial' *** or that would constitute 'fundamental alteration[s] in the nature of a program.' " *Id.* at n. 20 (citations omitted). *Alexander* supports the position, based on *Davis* and the earlier, lower court decisions, that in some situations, certain accommodations for a handicapped person may so alter an agency's program or activity, or entail such extensive costs and administrative burdens that the refusal to undertake the accommodations is not discriminatory. Thus failure to include such an "undue burdens" provision could lead to judicial invalidation of the regulation or reversal of a particular enforcement action taken pursuant to the regulation.

This paragraph, however, does not establish an absolute defense; it does not relieve the agency of all obligations to individuals with handicaps. Although the agency is not required to take actions that would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens, it nevertheless must take any other steps necessary to ensure that individuals with handicaps receive the benefits and services of the federally conducted program or activity.

It is our view that compliance with § ____.150(a) would in most cases not result in undue financial and administrative burdens on the agency. In determining whether financial and administrative burdens are undue, all agency resources available for use in the funding and operation of the conducted program or activity should be considered. The burden of proving that compliance with § ____.150(a) would fundamentally alter the nature of a program or activity or would result in undue financial and administrative burdens rests with the agency. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee and must be accompanied by a written statement of the reasons for reaching that conclusion. Any person who believes that he or she or any specific class of persons has been injured by the agency head's decision or failure to make a decision may file a complaint under the compliance procedures established in § ____.170.

Paragraph (b)(1) sets forth a number of means by which program accessibility may be achieved, including redesign of equipment, reassignment of services to accessible buildings, and provision of aides. In choosing among methods, the agency shall give priority consideration to those that will be consistent with provision of services in the most integrated setting appropriate to the needs of individuals with handicaps. Structural changes in existing facilities are required only when there is no other feasible way to make the agency's program accessible. The agency may comply with the program accessibility requirement by delivering services at alternate accessible sites or making home visits as appropriate.

Paragraph ____.150(a)(2) provides an additional limitation on the obligation to ensure program accessibility that is applicable only to historic preservation programs. In order to avoid a possible conflict between the congressional mandates to preserve historic properties on the one hand and to eliminate discrimination against individuals with handicaps on the other, § ____.150(a)(2) provides that in historic preservation programs the agency is not required to take any action that would result in a substantial impairment of significant historic features of an historic property.

Nevertheless, because the primary benefit of an historic preservation program is uniquely the experience of the historic property itself,

§ ____.150(b)(2) requires the agency to give priority to methods of providing program accessibility that permit individuals with handicaps to have physical access to the historic property. This priority on physical access may also be viewed as a specific application of the general requirement that the agency administer programs in the most integrated setting appropriate to the needs of qualified individuals with handicaps (§ ____.130(d)). Only when providing physical access would result in a substantial impairment of significant historic features, a fundamental alteration in the nature of the program, or in undue financial and administrative burdens, may the agency adopt alternative methods for providing program accessibility that do not ensure physical access. Examples of some alternative methods are provided in § ____.150(b)(2).

The special limitation on program accessibility set forth in § ____.150(a)(2) is applicable only to programs that have preservation of historic properties as a primary purpose (*see supra* discussion of definition of "historic preservation program," § ____.103). Narrow application of the special limitation is justified because of the inherent flexibility of the program accessibility requirement. Where historic preservation is not a primary purpose of the program the agency is not bound to a particular facility. It can relocate all or part of its program to an accessible facility, make home visits, or use other standard methods of achieving program accessibility without making structural alterations that might impair significant historic features of the historic property.

Paragraphs (c) and (d) establish time periods for complying with the program accessibility requirement. As currently required for federally assisted programs by 28 CFR 41.57(b), the agency must make any necessary structural changes in facilities as soon as practicable, but in no event later than three years after the effective date of this regulation. Where structural modifications are required, a transition plan shall be developed within six months of the effective date of this regulation. Aside from structural changes, all other necessary steps to achieve compliance shall be taken within sixty days.

Section § ____.151 Program Accessibility: New Construction and Alterations.

Overlapping coverage exists with respect to new construction and alterations under section 504 and the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157). Section § ____.151 provides that those buildings that are constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered to be readily accessible to and usable by individuals with handicaps in accordance with 41 CFR 101–19.600 to 101–19.607. This standard was promulgated pursuant to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157). We believe that it is appropriate to adopt the existing Architectural Barriers Act standard for section 504 compliance because new and altered buildings subject to this regulation are also subject to the Architectural Barriers Act and because adoption of the standard will avoid duplicative and possibly inconsistent standards.

Existing buildings leased by the agency after the effective date of this regulation are not required by the regulation to meet accessibility standards simply by virtue of being leased. They are subject, however, to the program accessibility standard for existing facilities in § ____.150. To the extent the buildings are newly constructed or altered, they must also meet the new construction and alteration requirements of § ____.151.

Federal practice under section 504 has always treated newly leased buildings as subject to the existing facility program accessibility standard. Unlike the construction of new buildings where architectural barriers can be avoided at little or no cost, the application of new construction standards to an existing building being leased raises the same prospect of retrofitting buildings as the use of an existing Federal facility, and the agency believes the same program accessibility standard should apply to both owned and leased existing buildings.

In *Rose* v. *United States Postal Service*, 774 F.2d 1355 (9th Cir. 1985), the Ninth Circuit held that the Architectural Barriers Act requires accessibility at the time of lease. The *Rose* court did not address the issue of whether section 504 likewise requires accessibility as a condition of lease, and the case was remanded to the District Court for, among other things, consideration of that issue. The agency may provide more specific guidance on section 504 requirements for leased buildings after the litigation is completed.

Section ____.160 Communications.

Section ____.160 requires the agency to take appropriate steps to ensure effective communication with personnel of other Federal entities, applicants, participants, and members of the public. These steps shall include procedures for determining when auxiliary aids are necessary under § ____.160(a)(1) to afford an individual with handicaps an equal opportunity to participate in, and enjoy the benefits of, the agency's program or activity. They shall also include an opportunity for individuals with handicaps to request the auxiliary aids of their choice. This expressed choice shall be given primary consideration by the agency (§ ____.160(a)(1)(i)). The agency shall honor the choice unless it can demonstrate that another effective means of communication exists or that use of the means chosen would not be required under § ____.160(d). That paragraph limits the obligation of the agency to ensure effective communication in accordance with *Davis* and the circuit court opinions interpreting it (*see supra* preamble discussion of § ____.150(a)(3)). Unless not required by § ____.160(d), the agency shall provide auxiliary aids at no cost to the individual with handicaps.

The discussion of § ____.150(a), Program accessibility: Existing facilities, regarding the determination of undue financial and administrative burdens also applies to this section and should be referred to for a complete understanding of the agency's obligation to comply with § ____.160.

In some circumstances, a notepad and written materials may be sufficient to permit effective communication with a hearing-impaired person. In many circumstances, however, they may not be, particularly when the information being communicated is complex or exchanged for a lengthy period of time (*e.g.*, a meeting) or where the hearing-impaired applicant or participant is not skilled in spoken or written language. In these cases, a sign language interpreter may be appropriate. For vision-impaired persons, effective communication might be achieved by several means, including readers and audio recordings. In general, the agency intends to inform the public of (1) the communications services it offers to afford individuals with handicaps an equal opportunity to participate in or benefit from its programs or activities, (2) the opportunity to request a particular mode of communication, and (3) the agency's preferences regarding auxiliary aids if it can demonstrate that several different modes are effective.

The agency shall ensure effective communication with vision-impaired and hearing-impaired persons involved in hearings conducted by the agency. Auxiliary aids must be afforded where necessary to ensure effective communication at the proceedings. If sign language interpreters are necessary,

the agency may require that it be given reasonable notice prior to the proceeding of the need for an interpreter. Moreover, the agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature (§ ____.160(a)(1)(ii)). For example, the agency need not provide eye glasses or hearing aids to applicants or participants in its programs. Similarly, the regulation does not require the agency to provide wheelchairs to persons with mobility impairments.

Paragraph (b) requires the agency to provide information to individuals with handicaps concerning accessible services, activities, and facilities. Paragraph (c) requires the agency to provide signage at inaccessible facilities that directs users to locations with information about accessible facilities.

Section ____.170 Compliance procedures.

Paragraph (a) specifies that paragraphs (c) through (l) of this section establish the procedures for processing complaints other than employment complaints. Paragraph (b) provides that the agency will process employment complaints according to procedures established in existing regulations of the EEOC (29 CFR Part 1613) pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

Paragraph (c) is amended by each individual agency. It designates the official responsible for coordinating implementation of § ____.170 and provides and address to which complaints may be sent.

The agency is required to accept and investigate all complete complaints (§ ____.170(d)). If it determines that it does not have jurisdiction over a complaint, it shall promptly notify the complainant and make reasonable efforts to refer the complaint to the appropriate entity of the Federal Government (§ ____.170(e)).

Paragraph (f) requires the agency to notify the Architectural and Transportation Barriers Compliance Board upon receipt of a complaint alleging that a building or facility subject to the Architectural Barriers Act was designed, constructed, or altered in a manner that does not provide ready access to and use by individuals with handicaps.

Paragraph (g) requires the agency to provide to the complainant, in writing, findings of fact and conclusions of law, the relief granted if noncompliance is found, and notice of the right to appeal (§ ____.170(g)). One appeal within the agency shall be provided (§ ____.170(i)). The appeal will not be heard by the same person who made the initial determination of compliance or noncompliance.

Paragraph (l) permits the agency to delegate its authority for investigating complaints to other Federal agencies. However, the statutory obligation of the agency to make a final determination of compliance or noncompliance may not be delegated.

EXECUTIVE OFFICE OF THE PRESIDENT

Office of Administration

3 CFR Part 102

ADDRESSES: Comments should be sent to Arnold Intrater, General Counsel, Office of Administration, Executive Office of the President, Washington, DC 20503.

Comments received will be available for public inspection at the Executive Office of the President Library, Room G-102, New Executive Office Building, Washington, DC 20503 from 8:30 a.m. to 5:30 p.m., Monday through Friday, except legal holidays. As access to the building is restricted because of security considerations, persons desiring entry should call 395-3654 (voice) or 456-6213 (TDD) in advance.

FOR FURTHER INFORMATION CONTACT: Arnold Intrater, (202) 456-6226 (voice) or (202) 456-6213 (TDD).

SUPPLEMENTARY INFORMATION: The Executive Office of the President is a designation which encompasses several different agencies, boards and commissions each with a role of providing analysis and advice and help in developing policy in certain areas, or carry out specific projects in support of the Presidency. The Office of Administration was established to provide common administrative support and services for units within the Executive Office of the President.

Because of the uniqueness of the Executive Office of the President, it is proposed that decisions which need to be made by a head of an agency would be made by a three-person board.

List of Subjects in 3 CFR Part 102

Blind, Buildings, Civil rights, Equal educational opportunity, Equal employment opportunity, Federal buildings and facilities, Handicapped, Historic places, Historic preservation, Government employees.

It is proposed that Title 3 of the Code of Federal Regulations be amended as follows:

1. Part 102 is added as set forth at the end of this document.

PART 102—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE EXECUTIVE OFFICE OF THE PRESIDENT

Sec.
102.101 Purpose.
102.102 Application.
102.103 Definitions.
102.104–102.109 [Reserved].
102.110 Self-evaluation.
102.111 Notice.
102.112–102.129 [Reserved].
102.130 General prohibitions against discrimination.
102.131–102.139 [Reserved].
102.140 Employment.
102.141–102.148 [Reserved].
102.149 Program accessibility: Discrimination prohibited.
102.150 Program accessibility: Existing facilities.
102.151 Program accessibility: New construction and alterations.
102.152–102.159 [Reserved].
102.160 Communications.
102.161–102.169 Reserved].
102.170 Compliance procedures.
102.171–102.999 [Reserved].

Authority: 29 U.S.C. 794.

2. Part 102 is further amended by adding the following definitions to § 102.103 thereof, placing them in alphabetical order among the existing definitions of that section:

§ 102.103 Definitions.

* * * * *

"Agency" means, for purposes of these regulations only, the following entities in the Executive Office of the President: the White House Office, the Office of the Vice President, the Office of Management and Budget, the Office of Policy Development, the National Security Council, the Office of Science and Technology Policy, the Office of the United States Trade Representative, the Council on Environmental Quality, the Council of Economic Advisers, the Office of Administration, the Office of Federal Procurement Policy, and any committee, board, commission, or similar group established in the Executive Office of the President.

"Agency head" or "head of the agency", as used in §§ 102.150(a)(3), 102.160(d) and 102.170 (i) and (j), shall be a three-member board which will include the Director, Office of Administration, the head of the Executive Office of the President agency in which the issue needing resolution or decision arises and one other agency head selected by the two other board members. In the event that an issue needing resolution or decision arises within the Office of Administration, one of the board members shall be the

Director of the Office of Management and Budget.

* * * * *

3. Part 102 is further amended by revising paragraph (c) in § 102.170 to read as follows:

§ 102.170 Compliance procedures.

* * * * *

(c) The Director, Facilities Management, Office of Administration, Executive Office of the President shall be responsible for coordinating implementation of this section. Complaints may be sent to the Director at the following address: Room 486, Old Executive Office Building, 17th and Pennsylvania Ave., NW., Washington, DC 20500.

* * * * *

Charles M. Kupperman,

Deputy Director, Office of Administration, Executive Office of the President.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 723

ADDRESSES: Comments should be sent to Mr. Raleigh Neville, U.S. Office of Personnel Management, Room 6504, Washington, DC, 20415. Comments received will be available for public inspection at Room 6504, 1900 E St., NW., Washington, DC from 10:00 a.m. to 3:30 p.m. Monday through Friday except legal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Raleigh Neville, (202) 632-6817, TDD: Mr. John Gimperling, (202) 632-6272.

List of Subjects in 5 CFR Part 723

Blind, Buildings, Civil rights, Employment, Equal educational opportunity, Equal employment opportunity, Federal buildings and facilities, Handicapped, Historic places, Historic preservation, Government employees.

It is proposed that Title 5 of the Code of Federal Regulations be amended as follows:

1. Part 723 is added as set forth at the end of this document.

PART 723—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE OFFICE OF PERSONNEL MANAGEMENT

Sec.
723.101 Purpose.
723.102 Application.
723.103 Definitions.
723.104–723.109 [Reserved].
723.110 Self-evaluation.
723.111 Notice.
723.112–723.129 [Reserved]
723.130 General prohibitions against discrimination.
723.131–723.139 [Reserved]
723.140 Employment.
723.141–723.148 [Reserved]
723.149 Program accessibility: Discrimination prohibited.
723.150 Program accessibility: Existing facilities.
723.151 Program accessibility: New construction and alterations.
723.152–723.159 [Reserved]
723.160 Communications.
723.161–723.169 [Reserved]
723.170 Compliance procedures.
723.171–723.999 [Reserved]

Authority: 29 U.S.C. 794.

2. Part 723 is further amended by revising paragraph (c) in § 723.170 to read as follows:

§ 723.170 Compliance procedures.

* * * * *

(c) The Chief, Staffing Policy Division, Staffing Group, shall be responsible for coordinating implementation of this section. Complaints may be sent to the Staffing Policy Division, Staffing Group, Office of Personnel Management, Room 6504, 1900 E St., NW., Washington, DC 20415.

* * * * *

Constance Horner,

Director.

MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1207

ADDRESSES: Comments should be sent to Merit Systems Protection Board, 1120 Vermont Avenue, NW., 8th Floor, Washington, DC 29419. Comments received will be available for public inspection at the above address from 8:30 a.m. to 5:00 p.m. Monday through Friday except legal holidays.

FOR FURTHER INFORMATION CONTACT: Darrell L. Netherton, (202) 653-5805 (voice), (202) 653-8896 (TDD).

List of Subjects in 5 CFR Part 1207

Blind, Buildings, Civil rights, Equal educational opportunity, Equal employment opportunity, Federal buildings and facilities, Handicapped, Historic places, Historic preservation, Government employees.

It is proposed that Title 5 of the Code of Federal Regulations be amended as follows:

1. Part 1207 is added as set forth at the end of this document.

PART 1207—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE MERIT SYSTEMS PROTECTION BOARD

Sec.
1207.101 Purpose.
1207.102 Application.
1207.103 Definitons.
1207.104–1207.109 [Reserved]
1207.110 Self-evaluation.
1207.111 Notice.
1207.112–1207.129 [Reserved]
1207.130 General prohibitions against discrimination.
1207.131–1207.139 [Reserved]
1207.140 Employment.
1207.141–1207.148 [Reserved]
1207.149 Program accessibility: Discrimination prohibited.
1207.150 Program accessibility: Existing facilities.
1207.151 Program accessibility: New construction and alternations.
1207.152–1207.159 [Reserved]
1207.160 Communications.
1207.161–1207.169 [Reserved]
1207.170 Compliance procedures.
1207.171–1207.999 [Reserved]

Authority: 29 U.S.C. 794.

2. Part 1207 is further amended by revising paragraph (c) in § 1207.170 to read as follows:

§ 1207.170 Compliance procedures.

* * * * *

(c) The Equal Employment Officer shall be responsible for coordinating implementation of this section. Complaints may be sent to the Equal Employment Office, Merit System Protection Board, 1120 Vermont Avenue, NW., Room 908, Washington, DC 20419.

* * * * *

Daniel R. Levinson,

Chairman of the Board.

OFFICE OF THE SPECIAL COUNSEL

5 CFR Part 1262

ADDRESSES: Comments should be sent to the Office of the Special Counsel, 1120 Vermont Avenue, NW., Suite 1100, Washington, DC, 20005. Comments received will be available for public inspection at the above address from 8:30 a.m. to 5:00 p.m. Monday through Friday except legal holidays.

FOR FURTHER INFORMATION CONTACT: John Marshall Meisburg, Jr., General Attorney, FTS 653-7307, (202) 653-7307 (voice) or (202) 724-7678 (TDD).

List of Subjects in 5 CFR Part 1262

Blind, Buildings, Civil rights, Employment, Equal educational

opportunity, Equal employment opportunity, Federal buildings and facilities, Handicapped, Historic places, Historic preservation, Government employees.

It is proposed that Title 5 of the Code of Federal Regulations be amended as follows:

1. Part 1262 is added as set forth at the end of this document.

PART 1262—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE OFFICE OF THE SPECIAL COUNSEL

Sec.
1262.101 Purpose.
1262.102 Application.
1262.103 Definitons.
1262.104–1262.109 [Reserved]
1262.110 Self-evaluation.
1262.111 Notice.
1262.112–1262.129 [Reserved]
1262.130 General prohibitions against discrimination.
1262.131–1262.139 [Reserved]
1262.140 Employment.
1262.141–1262.148 [Reserved]
1262.149 Program accessibility: Discrimination prohibited.
1262.150 Program accessibility: Existing facilities.
1262.151 Program accessibility: New construction and alternations.
1262.152–1262.159 [Reserved]
1262.160 Communications.
1262.161–1262.169 [Reserved]
1262.170 Compliance procedures.
1262.171–1262.999 [Reserved]

Authority: 29 U.S.C. 794.

2. Part 1262 is further amended by revising paragraph (c) in § 1262.170 to read as follows:

§ 1262.170 Compliance procedures.

* * * * *

(c) The Managing Director for Operations shall be responsible for coordinating implementation of this section. Compliants may be sent to the Managing Director for Operations, Office of the Special Counsel, 1120 Vermont Avenue, Suite 1100, Washington, DC 20005.

* * * * *

Mary F. Wieseman,
Special Counsel.

FEDERAL LABOR RELATIONS AUTHORITY

5 CFR Part 2416

ADDRESSES: Comments should be sent to Orinda R. Nelson, Associate Director, Equal Employment Opportunity, Federal Labor Relations Authority, 500 C Street, SW., Washington, DC 20424. Comments received will be available for public inspection at the above address from 8:15 a.m. to 4:45 p.m. Monday through Friday except legal holidays.

FOR FURTHER INFORMATION CONTACT: Orinda R. Nelson (202) 382–0992 (voice) or (202) 724–7678 (TDD).

List of Subjects in 5 CFR Part 2416

Blind, Buildings, Civil rights, Employment, Equal educational opportunity, Equal employment opportunity, Federal buildings and facilities, Handicapped, Historic places, Historic preservation, Government employees.

It is proposed that Title 5 of the Code of Federal Regulations be amended as follows:

1. Part 2416 is added as set forth at the end of this document.

PART 2416—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE FEDERAL LABOR RELATIONS AUTHORITY

Sec.
2416.101 Purpose.
2416.101 Application.
2416.103 Definitions.
2416.104–2416.109 [Reserved]
2416.110 Self-evaluation.
2416.111 Notice.
2416.112–2416.129 [Reserved]
2416.130 General prohibitions against discrimination.
2416.131–2416.139 [Reserved]
2416.140 Employment.
2416.141–2416.148 [Reserved]
2416.149 Program accessibility: Discrimination prohibited.
2416.150 Program accessibility: Existing facilities.
2416.151 Program accessibility: New construction and alterations.
2416.152–2416.159 [Reserved]
2416.160 Communications.
2416.161–2416.169 [Reserved]
2416.170 Compliance procedures.
2416.171–2416.999 [Reserved]

Authority: 29 U.S.C. 794.

2. Part 2416 is further amended by revising paragraph (c) in § 2416.170 to read as follows:

§ 2416.170 Compliance procedures.

* * * * *

(c) The Associate Director, Equal Employment Opportunity, shall be responsible for coordinating implementation of this section. Complaints may be sent to the Associate Director, Equal Employment Opportunity, Federal Labor Relations Authority, 500 C Street, SW., Washington, DC 20424.

* * * * *

Jacqueline R. Bradley,
Executive Director.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1251

ADDRESSES: Comments should be sent to Ms. Lynda Sampson, Handicapped and Aged Employment Program Manager, National Aeronautics and Space Administration, Room 6111, 400 Maryland Avenue, SW., Washington, DC 20546. Comments received will be available for public inspection at the above address from 10:00 a.m. to 3:00 p.m. Monday through Friday except legal holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Lynda Sampson (202) 453–2177 (voice) or (202) 426–1436 (TDD).

List of Subjects in 14 CFR Part 1251

Blind, Buildings, Civil rights, Employment, Equal educational opportunity, Equal employment opportunity, Federal buildings and facilities, Handicapped, Historic places, Historic preservation, Government employees, Grant programs.

It is proposed that 14 CFR Part 1251 be amended as follows:

PART 1251—[AMENDED]

1. The authority citation for Part 1251 is revised to read as follows:

Authority: 29 U.S.C. 794.

2. Subpart 1251.5 is added to Part 1251 as set forth at the end of this document.

Subpart 1251.5—Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the National Aeronautics and Space Administration

Sec.
1251.501 (____.101) Purpose.
1251.502 (____.102) Application.
1251.503 (____.103) Definitions.
1251.504–1251.509 (____.104–____.109) [Reserved]
1251.510 (____.110) Self-evaluation.
1251.511 (____.111) Notice.
1251.512–1251.529 (____.112–____.129) [Reserved]
1251.530 (____.130) General prohibitions against discrimination.
1251.531 (____.131) to 1251.539 (____.139) [Reserved]
1251.540 (____.140) Employment.
1251.541–1251.548 (____.141–____.148) [Reserved]
1251.549 (____.149 Program accessibility: Discrimination prohibited.

Sec.
1251.550 (____.150) Program accessibility: Existing facilities.
1251.551 (____.151) Program accessibility: New construction and alterations.
1251.552–1251.559 (____.152–____.159) [Reserved]
1251.560 (____.160) Communications.
1251.561–1251.569 (____.161–____.169) [Reserved]
1251.570 (____.170) Compliance procedures.
1251.571–1251.999 (____.171–____.999) [Reserved]

3. Part 1251 is further amended by revising paragraph (c) in § 1251.570 to read as follows:

§ 1251.570 Compliance procedures.

* * * * * * *

(c) The Assistant Administrator for Equal Opportunity Programs shall be responsible for coordinating implementation of this section. Complaints may be sent to the Office of Equal Opportunity Programs, Room 6119, 400 Maryland Avenue, SW., Washington, DC 20546.

* * * * *

James C. Fletcher,
Administrator.
April 24, 1987.

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comment letters should refer to File No. S7–17–87. All comments received will be available for public inspection and copying in the Commission's Public Reference Room.

FOR FURTHER INFORMATION CONTACT: Nancy A. Wolynetz, Selective Placement Coordinator, 450 Fifth Street, NW., Washington, DC (202) 272–2550 (voice) or (202) 272–2552 (TTD); or Jeanne G. Hartford, Special Counsel, Office of the Executive Director, 450 Fifth Street, NW., Washington, DC (202) 272–2700.

Administrative practice and procedure, Blind, Buildings, Civil Rights, Employment, Equal Education Opportunity, Equal Employment Opportunity, Federal buildings and facilities, Freedom of Information, Handicapped, Historic Places, Historic Preservation, Government Employees, Privacy, Securities.

It is proposed that Part 200 Title 17 of the Code of Federal Regulations be amended as follows:

PART 200—[AMENDED]

1. The authority citation for Part 200 is revised to read as follows:

Authority: Sec. 19, 23, 48 Stat. 85, 901, as amended, sec. 20, 49 Stat. 833, sec. 319, 53 Stat. 1173, sec. 38, 211, 54 Stat. 841, 855 (15 U.S.C. 77s, 78w, 79t, 77sss, 80a–37, 80b–11), unless otherwise noted. Subpart L is also issued under 29 U.S.C. 794.

2. Subpart L is added to Part 200 as set forth at the end of this document.

Subpart L—Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Securities and Exchange Commission

Sec.
200.601 (____.101) Purpose.
200.602 (____.102) Application
200.603 (____.103) Definitions.
200.604–200.609 ____.104–.109) [Reserved]
200.610 (____.110) Self-evaluation.
200.611 (____.111) Notice.
200.612–200.629 (____.112–.129) [Reserved]
200.630 (____.130) General prohibitions against discrimination.
200.631–200.639 (____.131–.139) [Reserved]
200.640 (____.140) Employment.
200.641–200.648 (____.141–.148) [Reserved]
200.649 (____.149) Program accessibility: Discrimination prohibited.
200.650 (____.150) Program accessibility: Existing facilities.
200.651 (____.151) Program accessibility: New construction and alterations.
200.652–200.659 (____.152–.159) [Reserved]
200.660 (____.160) Communications.
200.661–200.669 (____.161–.169) [Reserved]
200.670 (____.170) Compliance procedures.
200.671–200.699 (____.171–.199) [Reserved]

Authority: 29 U.S.C. 794.

3. Subpart L is further amended by revising paragraph (c) in § 200.670 to read as follows:

§ 200.670 Compliance procedures.

* * * * *

(c) The Equal Employment Opportunity Manager shall be responsible for coordinating implementation of this section. Complaints may be sent to the EEO Manager, 450 Fifth Street, NW., Washington, DC 20549.

* * * * *

George G. Kundahl,
Executive Director.

OVERSEAS PRIVATE INVESTMENT CORPORATION

22 CFR Part 711

ADDRESSES: Comments should be sent to: Jane H. Chalmers, Deputy General Counsel, Overseas Private Investment Corporation, 1615 M St., NW Suite 400, Washington, DC 20527.

Comments received will be available for public inspection at 1615 M Street, NW., Suite 400, Washington, DC 20527 from 9:30 a.m. to 5:00 p.m. Monday through Friday except legal holidays.

FOR FURTHER INFORMATION CONTACT: Jane H. Chalmers (202) 457–7200 (voice) or (202) 724–7678 (TDD).

List of Subjects in 22 CFR Part 711

Blind, Buildings, Civil rights, Equal educational opportunity, Equal employment opportunity, Federal buildings and facilities, Handicapped, Historic places, Historic preservation, Government employees.

It is proposed that title 22 of the Code of Federal Regulations be amended as follows:

1. Part 711 is added as set forth at the end of this document.

PART 711—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE OVERSEAS PRIVATE INVESTMENT CORPORATION

Sec.
711.101 Purpose.
711.102 Application.
711.103 Definitions.
711.104–711.109 [Reserved]
711.110 Self-evaluation.
711.111 Notice.
711.112 711.129 [Reserved]
711.130 General prohibitions against discrimination.
711.131–711.139 [Reserved]
711.140 Employment.
711.141–711.148 [Reserved]
711.149 Program accessibility: Discrimination prohibited.
711.150 Program accessibility: Existing facilities.
711.151 Program accessibility: New construction and alterations.
711.152–711.159 [Reserved]
711.160 Communications.
711.161 711.169 [Reserved]
711.170 Compliance procedures.
711.171–711.999 [Reserved]

Authority: 29 U.S.C. 794.

2. Part 711 is further amended by revising paragraph (c) in § 711.170 to read as follows:

§ 711.170 Compliance procedures.

* * * * *

(c) The Director of Personnel shall be responsible for coordinating implementation of this section. Complaints may be sent to Overseas Private Investment Corporation, 1615 M

Street, NW., Washington, DC 20527, Attention: Director of Personnel.

* * * * *

Richard K. Childress,

Vice President for Personnel and Administration.

AFRICAN DEVELOPMENT FOUNDATION

22 CFR Part 1510

ADDRESSES: Comments should be sent to the Office of the General Counsel, 1625 Massachusetts Avenue, NW., Suite 600, Washington, DC, 20036. Comments received will be available for public inspection at the above address from 8:30 a.m. to 5:00 p.m. Monday through Friday except legal holidays.

FOR FURTHER INFORMATION CONTACT: Paul Magid, General Counsel, 1625 Massachusetts Avenue, NW., Suite 600, Washington, DC, 20036 (202) 673-3916 (voice) or (202) 724-7678 (TDD).

List of Subjects in 22 CFR Part 1510

Blind, Buildings, Civil rights, Employment, Equal educational opportunity, Equal employment opportunity, Federal buildings and facilities, Handicapped, Historic places, Historic preservation, Government employees.

It is proposed that Title 22 of the Code of Federal Regulations be amended as follows:

1. Part 1510 is added as set forth at the end of this document.

PART 1510—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE AFRICAN DEVELOPMENT FOUNDATION

Sec.
1510.101 Purpose.
1510.102 Application.
1510.103 Definitions.
1510.104–1510.109 [Reserved]
1510.110 Self-evaluation.
1510.111 Notice.
1510.112–1510.129 [Reserved]
1510.130 General prohibitions against discrimination.
1510.131–1510.139 [Reserved]
1510.140 Employment.
1510.141–1510.148 [Reserved]
1510.149 Program accessibility: Discrimination prohibited.
1510.150 Program accessibility: Existing facilities.
1510.151 Program accessibility: New construction and alterations.
1510.152–1510.159 [Reserved]
1510.160 Communications.
1510.161–1510.169 [Reserved]
1510.170 Compliance procedures.
1510.171–1510.999 [Reserved]

Authority: 29 U.S.C. 794.

2. Part 1510 is further amended by revising paragraph (c) in § 1510.170 to read as follows:

§ 1510.170 Compliance procedures.

* * * * *

(c) The Personnel Officer, Office of Administration and Finance shall be responsible for coordinating implementation of this section. Complaints may be sent to Personnel Officer, Office of Administration and Finance, African Development Foundation, 1625 Massachusetts Avenue, NW., Suite 600, Washington, DC, 20036.

* * * * *

Leonard H. Robinson, Jr.,

President, African Development Foundation.

NATIONAL LABOR RELATIONS BOARD

29 CFR Part 100

ADDRESSES: Comments should be sent to John C. Truesdale, Executive Secretary, National Labor Relations Board, 1717 Pennsylvania Avenue, NW., Washington, DC 20570. Comments received will be available for public inspection at the above address from 8:30 a.m. to 5:00 p.m. Monday Through Friday except legal holidays.

FOR FURTHER INFORMATION CONTACT: Ernest Russell, Director of Administration, National Labor Relations Board, 1717 Pennsylvania Avenue, NW., Washington, DC (202) 254-9200 or (202) 634-1699 (TDD).

SUPPLEMENTARY INFORMATION: The National Labor Relations Board is responsible for conducting hearings and elections pursuant to the National Labor Relations Act, as amended (29 U.S.C. 141–169). When determining where hearings and elections will be held, the Agency must consider both the convenience of the parties to a proceeding and the public, and the extent to which delay or expense can be minimized. While many hearings are conducted in the Agency's Regional, Subregional, and Resident Offices, a number of hearings are held in more remote locations where the employer, the union and the employee witnesses are located. Also, in order to maximize participation at Board-conducted elections to determine employee desires regarding union representation, these elections are customarily held at the employer's premises.

Hearings held in Agency offices will be subject to the program accessibility and communications requirements of this regulation and will be made accessible in accordance with this regulation. As to hearings held at non-Agency sites, the Agency will attempt to locate accessible local facilities that are both convenient and inexpensive. In these instances, the Agency will include in the notice of hearing served upon the parties a request that the parties provide the Regional, Subregional, or Resident Office with prompt notice in advance of any accessibility features they or their witnesses may require. If the Agency receives, in advance, a request for an accessible hearing site or special accommodation, it will then arrange necessary accommodations for those parties, representatives, witnesses, or members of the public requiring such accommodation. Similarly with regard to elections, the notice to employees issued in connection with an election will likewise include a request that handicapped persons inform the Agency, in advance, of any auxiliary aids, such as sign language interpreters, that may be necessary in order to facilitate their participation in the election.

Thus, the Agency will, with respect to hearings or elections at non-Agency sites, and subject to the limitations of § 100.650(a)(3) and § 100.660(d) of this regulation, ensure access for any handicapped person who gives reasonable advance notice, that the person will attend a hearing as a party, a party's representative, a witness, a member of the public, or will appear as a participant in an election.

List of Subjects in 29 CFR Part 200

Blind, Buildings, Civil rights, Employment, Equal educational opportunity, Equal employment opportunity, Federal buildings and facilities, Handicapped, Historic places, Historic preservation, Government employees.

It is proposed that Part 100 of Title 29 of the Code of Federal Regulations be amended as follows:

PART 100—ADMINISTRATIVE REGULATIONS

1. The part heading is revised to read as set forth above.

2. The authority citation for Part 100 is revised to read as follows:

Authority: Sec. 6 of the National Labor Relations Act, as amended, 29 U.S.C. 141, 146.

Subpart A is also issued under 5 U.S.C. 7301, 18 U.S.C. 201 et seq., E.O. 11222, 5 CFR 735.104.

Subpart B is also issued under 5 U.S.C. 201 et seq., 18 U.S.C. 202.

Subpart C is also issued under 18 U.S.C. 202, E.O. 11222, 5 CFR 735.104.

Subpart F is also issued under 29 U.S.C. 794.

3. Subparts A, B, C, and D headings are removed.

§§ 100.735-1 through 100.735-6 and §§ 100.735-11 through 100.735-22 [Redesignated as §§ 100.101 through 100.106 and §§ 100.111 through 100.122]

4. Sections 100.735-1 through 100.735-6 and §§ 100.735-11 through 100.735-22 are redesignated §§ 100.101 through 100.106 and §§ 100.111 through 100.122 respectively and designated Subpart A. The heading for Subpart A is added to read "Subpart A-Employee Responsibilities and Conduct".

§§ 100.735-31 through 100.735-34 and §§ 100.735-36 through 100.735-39 [Redesignated as §§ 100.201 through 100.204 and §§ 100.206 through 100.209]

5. Sections 100.735-31 through 100.735-34 and §§ 100.735-36 through 100.735-39 are redesignated §§ 100.201 through 100.204 and §§ 100.206 through 100.209 respectively and designated Subpart B. The heading for Subpart B is added to read "Subpart B-Employee Statements of Employment and Financial Interest".

§§ 100.735-41 through 100.735-47 [Redesignated as §§ 100.301 through 100.307]

6. Sections 100.735-41 through 100.735-47 are redesignated §§ 100.301 through 100.307 respectively and designated Subpart C. The heading for Subpart C is added to read "Subpart C-Special Government Employee Conduct and Responsibility".

7. Subparts D and E are added and reserved.

Subpart D—Employee Personal Property Loss Claims [Reserved]

Subpart E-Claims Under the Federal Tort Claims Act [Reserved]

8. Subpart F is added as set forth at the end of this document.

Subpart F—Enforcement of nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the National Labor Relations Board

Sec.
100.601 (____.101) *Purpose.*
100.602 (____.102) *Application.*
100.603 (____.103) *Definitions.*
100.604-100.609 (____.104-____.109) [Reserved]
100.610 (____.110) *Self-evaluation.*
100.611-100.629 (____.111-____.129) [Reserved]
100.630 (____.130) *General prohibitions against discrimination.*
100.631-100.639 (____.131-____.139) [Reserved]
100.640 (____.140) *Employment.*
100.641-100.648 (____.141-____.148) [Reserved]
100.649 (____.149) *Program accessibility: Discrimination prohibited.*
100.650 (____.150) *Program accessibility: Existing facilities.*
100.651 (____.151) *Program accessibility: New construction and alterations.*
100.652-100.654 (____.152-____.159) [Reserved]
100.660 (____.160) *Communications*
100.661-100.669 (____.161-____.169) [Reserved]
100.670 (____.170) *Compliance procedures.*
100.671-100.699 (____.171-____.999) [Reserved]

4. Part 100 is further amended by revising paragraph (c) in § 100.670 to read as follows:

§ 100.670 Compliance procedures.

* * * * *

(c) The Director of Administration shall be responsible for coordinating implementation of this section. Complaints may be sent to Director of Administration, National Labor Relations Board, 1717 Pennsylvania Avenue, NW., Washington, DC 20570.

* * * * *

John C. Truesdale,
Executive Secretary.

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1208

ADDRESSES: Comments should be sent to: Adrienne C. Thomas, Director, Program Policy and Evaluation Division, National Archives (NAA), Washington, DC 20408.

Comments received will be available for public inspection at Room 409, National Archives Building, 8th & Pennsylvania Avenue, NW., Washington, DC 20408, from 8:45 a.m. to 5:15 p.m. Monday through Friday except legal holidays.

FOR FURTHER INFORMATION CONTACT: Adrienne C. Thomas or Nancy Y. Allard, TDD: 202/523-0774, Non-TDD: 202/523-3215, Room 409, National Archives Building, 8th & Pennsylvania Avenue, NW., Washington, DC 20408.

List of Subjects in 36 CFR Part 1208

Blind, Buildings, Civil rights, Employment, Equal educational opportunity, Equal employment opportunity, Federal buildings and facilities, Handicapped, Historic places, Historic preservation, Government employees.

It is proposed that Title 36 of the Code of Federal Regulations be amended as follows:

1. Part 1208 is added as set forth at the end of this document.

PART 1208—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Sec.
1208.101 Purpose.
1208.102 Application.
1208.103 Definitions.
1208.104-1208.109 [Reserved]
1208.110 Self-evaluation.
1208.111 Notice.
1208.112-1208.129 [Reserved]
1208.130 General prohibitions against discrimination.
1208.131-1208.139 [Reserved]
1208.140 Employment.
1208.141-1208.148 [Reserved]
1208.149 Program accessibility: Discrimination prohibited.
1208.150 Program accessibility: Existing facilities.
1208.151 Program accessibility: New construction and alternations.
1208.152-1208.159 [Reserved]
1208.160 Communications.
1208.161-1208.169 [Reserved]
1208.170 Compliance procedures.
1208.171-1208.999 [Reserved]

Authority: 29 U.S.C. 794.

2. Part 1208 is further amended by revising paragraph (c) in § 1208.170 to read as follows:

§ 1208.170 Compliance procedures.

* * * * *

(c) The Assistant Archivist for Management and Administration shall be responsible for coordinating implementation of this section. Complaints may be sent to National Archieves and Records Administration (NA), Washington, DC 20408.

* * * * *

Frank G. Burke,
Acting Archivist of the United States.

VETERANS ADMINISTRATION

38 CFR Part 15

ADDRESSES: Comments should be sent to the Administrator of Veterans Affairs (271A); Veterans Administration; 810 Vermont Avenue NW.; Washington, DC 20420. Comments received will be available for public inspection at the

above address in the Veterans Services Unit, room 132, from 8:00 a.m. to 4:30 p.m. Monday through Friday except legal holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Lynn Batts, Office of Equal Opportunity, (202) 233-2150 or (202) 233-3710 (TDD).

List of Subjects in 38 CFR Part 15

Blind, Buildings, Civil rights, Equal educational opportunity, Equal employment opportunity, Federal buildings and facilities, Handicapped, Historic places, Historic preservation, Government employees.

It is proposed that Title 38 of the Code of Federal Regulations be amended as follows:

1. Part 15 is added as set forth at the end of this document.

PART 15—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE CETERANS ADMINISTRATION

Sec.
15.101 Purpose.
15.102 Application.
15.103 Definitions.
15.104–15.109 [Reserved]
15.110 Self-evaluation.
15.111 Notice.
15.112–15.129 [Reserved]
15.130 General prohibitions against discrimination.
15.131–15.139 [Reserved]
15.140 Employment.
15.141–15.148 [Reserved]
15.149 Program accessibility: Discrimination prohibited.
15.150 Program accessibility: Existing facilities.
15.151 Program accessibility: New construction and alterations.
15.152–15.159 [Reserved]
15.160 Communications.
15.161–15.169 [Reserved]
15.170 Compliance procedures.
15.171–15.999 [Reserved]

Authority: 29 U.S.C. 794.

2. Part 15 is further amended by revising paragraph (c) in § 15.170 to read as follows:

§ 15.170 Compliance procedures.

* * * * *

(c) The Director, Office of Equal Opportunity, shall be responsible for coordinating implementation of this section. Complaints may be sent to the Administrator of Veterans Affairs or the Director, Office of Equal Opportunity, at the following address: Veterans Administration; 810 Vermont Avenue NW., Washington, DC 20420.

* * * * *

Thomas K. Turnage,
Administrator of Veterans Affairs.

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 16

ADDRESSES: Comments should be sent to Rules Docket Clerk, Room 840, Federal Emergency Management Agency, 500 C Street SW., Washington, DC, 20472. Comments received will be available for public inspection at the above address for 8:30 a.m. to 5:00 p.m. Monday through Friday except legal holidays.

FOR FURTHER INFORMATION CONTACT: Alan Clive, Equal Employment Manager, Room 815, 500 C. Street SW., Washington, DC (202) 646-3957 (voice) or 646-4117 (TDD).

List of Subjects in 44 CFR Part 16

Blind, Buidlings, Civil rights, Employment, Equal educational opportunity, Equal employment opportunity, Federal buildings and facilities, Handicapped, Historic places, Historic preservation, Government employees.

It is proposed that Title 44 of the Code of Federal Regulations be amended as follows:

1. Part 16 is added as set forth at the end of this document.

PART 16—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY

Sec.
16.101 Purpose.
16.102 Application.
16.103 Definitions.
16.104–16.109 [Reserved]
16.110 Self-evaluation.
16.111 Notice.
16.1112–16.129 [Reserved]
16.130 General prohibitions against discrimination.
16.131–16.139 [Reserved]
16.140 Employment.
16.141–16.148 [Reserved]
16.149 Program accessibility: Discrimination prohibited.
16.150 Program accessibility: Existing facilities.
16.151 Program accessibility: New construction and alterations.
16.152–16.159 [Reserved]
16.160 Communications.
16.161–16.169 [Reserved]
Sec.
16.170 Compliance procedures.
16.171–16.999 [Reserved]

Authority: 29 U.S.C. 794.

2. Part 16 is further amended by revising paragraph (c) in § 16.170 to read as follows:

§ 16.170 Compliance procedures.

* * * * *

(c) The Director of Personnel shall be responsible for coordinating implementation of this section. Complaints may be sent to Director of Personnel, Room 810, Federal Emergency Management Agency, 500 C Street SW., Washinton, DC 20472.

* * * * *

Julius W. Becton, Jr.,
Director.

PART—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED

BY: _____

Sec.
____.101 Purpose.
____.102 Application.
____.103 Definitions.
____.104–____.109 [Reserved]
____.110 Self-evaluation.
____.111 Notice.
____.112–____.129 [Reserved]
____.130 General prohibitions against discrimination.
____.131–____.139 [Reserved]
____.140 Employment.
____.141–____.148 [Reserved]
____.149 Program accessibility: Discrimination prohibited.
____.150 Program accessibility: Existing facilities.
____.151 Program accessibility: New construction and alterations.
____.152–____.159 [Reserved]
____.160 Communications.
____.161–____.169 [Reserved]
____.170 Compliance procedures.
____.171–____.999 [Reserved]

Authority: 29 U.S.C. 794.

§ ____.101 Purpose.

The purpose of this part is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

§ ___.102 Application.

This part applies to all programs or activities conducted by the agency, except for programs or activities conducted outside the United States that do not involve individuals with handicaps in the United States.

§ ___.103 Definitions.

For purposes of this part, the term——

"Assistant Attorney General" means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

"Auxiliary aids" means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the agency. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings, and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, notetakers, written materials, and other similar services and devices.

"Complete complaint" means a written statement that contains the complainant's name and address and describes the agency's alleged discriminatory action in sufficient detail to inform the agency of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

"Facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

"Historic preservation programs" means programs conducted by the agency that have preservation of historic properties as a primary purpose.

"Historic properties" mean those properties that are listed or eligible for listing in the National Register of Historic Places or properties designated as historic under a statute of the appropriate State or local government body.

"Individual with handicaps" means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. As used in this definition, the phrase:

(1) "Physical or mental impairment" includes—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism.

(2) "Major life activities" includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) "Is regarded as having an impairment" means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the agency as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in subparagraph (1) of this definition but is treated by the agency as having such an impairment.

"Qualified individual with handicaps" means—

(1) With respect to preschool, elementary, or secondary education services provided by the agency, an individual with handicaps who is a member of a class of persons otherwise entitled by statute, regulation, or agency policy to receive education services from the agency;

(2) With respect to any other agency program or activity under which a person is required to perform services or to achieve a level of acomplishment, an individual with handicaps who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the agency can demonstrate would result in a fundamental alteration in its nature;

(3) With respect to any other program or activity, an individual with handicaps who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity; and

(4) "Qualified handicapped person" as that term is defined for purposes of employment in 29 CFR 1613.702(f), which is made applicable to this party by § ___.140

"Section 504" means section 504 of the Rehabilitation Act of 1973 (Pub. L 93–112, 87 Stat. 394 (29 U.S.C. 794)), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93–516, 88 Stat. 1617); the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95–602, 92 Stat. 2955); and the Rehabilitation Act Amendments of 1986 (Pub. L. 99–506, 100 Stat. 1810). As used in this part, section 504 applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

"Substantial impairment" means a significant loss of the integrity of finished materials, design quality, or special character resulting from a permanent alteration.

§§ ___.104___.109 [Reserved]

§ ___.110 Self-evaluation.

(a) The agency shall, within one year of the effective date of this part, evaluate its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this part, and, to the extent modification of any such policies and practices is required, the agency shall proceed to make the necessary modifications.

(b) The agency shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps, to participate in the self-evaluation process by submitting comments (both oral and written).

(c) The agency shall, for at least three years following completion of the self-evaluation, maintain on file and make available for public inspection:

(1) A description of areas examined and any problems identified; and

(2) A description of any modifications made.

§ ____.111 Notice.

The agency shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the programs or activities conducted by the agency, and make such information available to them in such manner as the head of the agency finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this regulation.

§§ ____.112-____.129 [Reserved]

§ ____.130 General prohibitions against discrimination.

(a) No qualified individual with handicaps shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

(b)(1) The agency, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap—

(i) Deny a qualified individual with handicaps the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified individual with handicaps an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified individual with handicaps with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to individuals with handicaps or to any class of individuals with handicaps than is provided to others unless such action is necessary to provide qualified individuals with handicaps with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified individual with handicaps the opportunity to participate as a member of planning or advisory boards; or

(vi) Otherwise limit a qualified individual with handicaps in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The agency may not deny a qualified individual with handicaps the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The agency may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would—

(i) Subject qualified individuals with handicpas to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

(4) The agency may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude individuals with handicaps from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the agency; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

(5) The agency, in the selection of procurement contractors, may not use criteria that subject qualified individuals with handicaps to discrimination on the basis of handicap.

(6) The agency may not administer a licensing or certification program in a manner that subjects qualified individuals with handicaps to discrimination on the basis of handicap, nor may the agency establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with handicaps to discrimination on the basis of handicap. However, the programs or activities of entities that are licensed or certified by the agency are not, themselves, covered by this part.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Executive order to individuals with handicaps or the exclusion of a specific class of individuals with handicaps from a program limited by Federal statute or Executive order to a different class of individuals with handicaps is not prohibited by this part.

(d) The agency shall administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps.

§§ ____.131-____.139 [Reserved]

§ ____.140 Employment.

No qualified individual with handicaps shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the agency. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR Part 1613, shall apply to employment in federally conducted programs or activities.

§§ ____.141-____.148 [Reserved]

§ ____.149 Program accessibility: Discrimination prohibited.

Except as otherwise provided in § ____.150, no qualified individual with handicaps shall, because the agency's facilities are inaccessible to or unusable by individuals with handicaps, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

§ ____.150 Program accessibility: Existing facilities.

(a) *General.* The agency shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and unsable by individuals with handicaps. This paragraph does not—

(1) Necessarily require the agency to make each of its existing facilities accessible to and usable by individuals with handicaps;

(2) In the case of historic preservation programs, require the agency to take any action that would result in a substantial impairment of significant historic features of an historic property; or

(3) Require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § ____.150(a) would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or

activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with handicaps receive the benefits and services of the program or activity.

(b) *Methods*—

(1) *General.* The agency may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by individuals with handicaps. The agency is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The agency, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the agency shall give priority to those methods that offer programs and activities to qualified individuals with handicaps in the most integrated setting appropriate.

(2) *Historic preservation programs.* In meeting the requirements of § ____.150(a) in historic preservation programs, the agency shall give priority to methods that provide physical access to individuals with handicaps. In cases where a physical alteration to an historic property is not required because of § ____.150(a)(2) or (a)(3), alternative methods of achieving program accessibility include—

(i) Using audio-visual materials and devices to depict those portions of an historic property that cannot otherwise be made accessible;

(ii) Assigning persons to guide individuals with handicaps into or through portions of historic properties that cannot otherwise be made accessible; or

(iii) Adopting other innovative methods.

(c) *Time period for compliance.* The agency shall comply with the obligations established under this section within sixty days of the effective date of this part except that where structural changes in facilities are undertaken, such changes shall be made within three years of the effective date of this part, but in any event as expeditiously as possible.

(d) *Transition plan.* In the event that structural changes to facilities will be undertaken to achieve program accessibility, the agency shall develop, within six months of the effective date of this part, a transition plan setting forth the steps necessary to complete such changes. The agency shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps, to participate in the development of the transition plan by submitting comments (both oral and written). A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

(1) Identify physical obstacles in the agency's facilities that limit the accessibility of its programs or activities to individuals with handicaps;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(4) Indicate the official responsible for implementation of the plan.

§ ____.151 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered so as to be readily accessible to and usable by individuals with handicaps. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151–4157), as established in 41 CFR 101–19.600 to 101–19.607, apply to buildings covered by this section.

§ ____.152-____.159 [Reserved]

§ ____.160 Communications.

(a) The agency shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The agency shall furnish appropriate auxiliary aids where necessary to afford an individual with handicaps an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the agency.

(i) In determining what type of auxiliary aid is necessary, the agency shall give primary consideration to the requests of the individual with handicaps.

(ii) The agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the agency communicates with applicants and beneficiaries by telephone, telecommunication devices for deaf persons (TDD's) or equally effective telecommunication systems shall be used.

(b) The agency shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The agency shall provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the program action would fundamentally alter the proposed or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § ____.160 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with handicaps receive the benefits and services of the program or activity.

§§ ____.161 ____.169 [Reserved]

§ ____.170 Compliance procedures.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs and activities conducted by the agency.

(b) The agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR Part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) The head of the agency shall designate an official to be responsible for coordinating implementation of this section.

(d) The agency shall accept and investigate all complete complaints for which it has jurisdiction. All complete complaints must be filed within 180 days of the alleged act of discrimination. The agency may extend this time period for good cause.

(e) If the agency receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate Government entity.

(f) The agency shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), is not readily accessible to and usable by individuals with handicaps.

(g) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, the agency shall notify the complainant of the results of the investigation in a letter containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found; and

(3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the agency of the letter required by § _____.170(g). The agency may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the head of the agency.

(j) The head of the agency shall notify the complainant of the results of the appeal within 60 days of the receipt of the request. If the head of the agency determines that additional information is needed from the complainant, he or she shall have 60 days from the date of receipt of the additional information to make his or her determination on the appeal.

(k) The time limits cited in (g) and (j) of this section may be extended with the permission of the Assistant Attorney General.

(l) The agency may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated to another agency.

§§ ____. 171—____. 999 [Reserved]

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federal register

Thursday
July 2, 1987

Part III

National Labor Relations Board

29 CFR Part 103

Collective-Bargaining Units in the Health Care Industry; Notice of Proposed Rulemaking and Notice of Hearing

NATIONAL LABOR RELATIONS BOARD

29 CFR Part 103

Collective-Bargaining Units in the Health Care Industry

AGENCY: National Labor Relations Board.

ACTION: Notice of proposed rulemaking and notice of hearing.

SUMMARY: In order to facilitate the election process, the National Labor Relations Board proposes to amend its rules to include a new provision specifying which bargaining units will be found appropriate in various types of health care facilities. The Board has resolved to utilize notice-and-comment rulemaking rather than be presented with continuing lengthy and costly litigation over the issue of appropriate bargaining units in each case. Interested parties may submit oral testimony in connection with the proposed rules.

DATES: Comments must be received on or before October 30, 1987.

Hearings are scheduled as follows: August 17, 1987, Washington, DC, 9:00 a.m.; August 31, 1987, Chicago, Illinois; September 14, 1987, San Francisco, California.

Persons wishing to present oral testimony at any one of the specified locations shall call or write no later than July 24, 1987.

ADDRESSES: Comments should be sent to: Office of the Executive Secretary, 1717 Pennsylvania Avenue, NW., Room 701, Washington, DC 20570, Telephone: (202) 254-9430.

The hearings will be conducted at the following locations:

(1) *Washington, DC*—The Board's Hearing Room, Sixth Floor, 1717 Pennsylvania Avenue, NW., Washington, DC 20570.

(2) *Chicago, Illinois*—Persons who wish to attend this hearing should contact either the Office of the Executive Secretary or the Board's Chicago Regional Office, Everett McKinley Dirksen Building, 219 S. Dearborn Street, Chicago, Illinois 60604, telephone number (312) 353-7570, to be notified of the exact time and place of the Chicago hearing.

(3) *San Francisco, California*—Persons who wish to attend this hearing should contact either the Office of the Executive Secretary or the Board's San Francisco Regional Office, 901 Market Street, Suite 400, San Francisco, California 94103, telephone number (415) 995-5324, to be notified of the exact time and place of the San Francisco hearing.

Persons wishing to present oral testimony at any one of the specified locations should notify the office of the Executive Secretary, 1717 Pennsylvania Ave., NW., Washington, DC 20570, telephone number (202) 254-9430.

FOR FURTHER INFORMATION CONTACT: John C. Truesdale, Executive Secretary, Telephone: (202) 254-9430.

SUPPLEMENTARY INFORMATION:

I. Background

Since 1974, when Congress extended the protection of the National Labor Relations Act to nonprofit hospitals, the Board has taken literally hundreds of thousands of pages of testimony in a myriad of litigated cases regarding particular circumstances at various health care facilities. Nonetheless, to this day there is no one, generally phrased test for determining appropriate units in this industry that has met with success in the various circuit courts of appeal, and, unfortunately, parties have no clear guidance as to what units the Board and courts will ultimately find appropriate.

At the outset, in a series of 1975 decisions, the Board found appropriate several specific types of units. For example, in *Mercy Hospitals of Sacramento,*[1] after noting the congressional admonition against "undue proliferation," the Board found appropriate a separate unit of registered nurses, finding that they possess "interests evidencing a greater degree of separateness than those possessed by most other professional employees in the health care industry." Thereafter, in *NLRB v. St. Francis Hospital of Lynwood,*[2] the Ninth Circuit rejected the *Mercy* doctrine, finding that the Board had set forth an unwarranted presumption of appropriateness in that adjudicative proceeding,[3] and, further, that the Board had improperly looked for a "community of interests" rather than a "disparity of interests." [4] The Board's later *Newton-Wellesley Hospital* decision [5] represented an explicit effort by the Board to address the Ninth Circuit's concerns in *St. Francis,* but subsequent decisions based on *Newton-Wellesley* met with no greater judicial acceptance.[6] Finally, after a number of years of unsuccessfully advocating variations of the "community of interests" test with respect to registered nurses, the Board, in *North Arundel Hospital Assn.*[7] and *Keokuk Area Hospital,*[8] moved toward the Ninth Circuit's view and held that the disparity of interests test should be applied, having found in *St. Francis Hospital* [9] that that test better met the standards desired by Congress and required by the courts. Yet, recently the D.C. Circuit has severely criticized *St. Francis II,*[10] holding that the disparity test was not mandated by the legislative history, and strongly suggesting that some variation of the historically accepted community of interests standard was required.[11] Similarly, the Second,[12] Eighth,[13] and Eleventh Circuits,[14] while acknowledging the necessity to restrict health care units, have directly or indirectly disagreed with the disparity of interests test.

In cases involving maintenance units, the Board's decisions have, likewise, not achieved judicial acceptance. Nor have Board Members among themselves always agreed on the proper test to apply. In the first lead case, *Shriners Hospitals for Crippled Children,*[15] the Board was split three ways: two members found the requested unit of stationary engineers did not possess a "community of interest sufficiently separate and distinct" to warrant a separate unit; a third member concurred generally; and two other members found the requested unit appropriate. Thereafter, in an attempt to clarify the law in this area, the Board held a special oral argument. Consensus was not achieved. In one case, a majority of the Board found a separate maintenance unit inappropriate;[16] in another, though

[1] 217 NLRB 765, 767 (1975), enf. denied on other grounds 589 F.2d 968 (9th Cir. 1978) cert. denied 440 U.S. 910 (1979).

[2] 601 F.2d 404 (9th Cir. 1979).

[3] Id. at 414-417.

[4] Id. at 418-419.

[5] 250 NLRB 409 (1980).

[6] See, e.g., *NLRB* v. *HMO International,* 678 F.2d 806 (9th Cir. 1982); *NLRB* v. *Frederick Memorial Hospital,* 691 F.2d 191 (4th Cir. 1982). See also *Presbyterian/St. Luke's Medical Center* v. *NLRB,* 653 F.2d 450 (10th Cir. 1981); *Mary Thompson Hospital* v. *NLRB,* 621 F.2d 858 (7th Cir. 1980).

[7] 279 NLRB No. 48 (Apr. 16, 1986).

[8] 278 NLRB No. 33 (Jan. 27, 1986).

[9] 271 NLRB 948 (1984) (*St. Francis II*).

[10] *Electrical Workers IBEW Local 474 (St. Francis Hospital)* v. *NLRB* 814 F.2d 697 (D.C. Cir. 1987).

[11] As concurring Judge Buckley observed, the majority technically left open the possibility the Board was entitled to switch from the community of interests standard, but did so in "ominous tones," thereby rendering an "advisory opinion" on that matter. (Id. at 718).

[12] *Masonic Hall* v. *NLRB,* 699 F.2d 626 (1983).

[13] *Watonwan Memorial Hospital* v. *NLRB,* 711 F.2d 848, 850 (1983).

[14] *NLRB* v. *Walker County Medical Center,* 722 F.2d 1535, 1539 at fn.4 (1984).

[15] 217 NLRB 806 (1975).

[16] *Jewish Hospital of Cincinnati,* 223 NLRB 614 (1976).

finding a unit of stationary engineers to be appropriate, the Board relied on four different rationales.[17] The Board's treatment of this area was criticized by the Third Circuit, which held that in these cases the community of interests standard intended by Congress was a nontraditional one, and that the Board had not struck the proper balance.[18] A similar conclusion was reached by the Seventh Circuit.[19] *In Allegheny General Hospital,*[20] the Board attempted to explain more clearly its rationale in maintenance unit cases, but that effort was not accepted judicially either.[21] Board Members could agree neither on the general test to apply, nor on the correct results in particular cases.[22] A further effort at clarification was made in *St. Francis Hospital,* 265 NLRB 1025 (1982)(*St. Francis I*), which itself contained two separate dissents. Thereafter, the Board issued the aforementioned *St. Francis II* decision, attempting to apply the disparity test so as, it said, better to follow Congress' admonition against undue proliferation. As noted, the D.C. Circuit found that that decision itself represented a misreading of the statute.

Thirteen years and many hundreds of cases later, the Board finds that despite its numerous, well-intentioned efforts to carry out congressional intent through formulation of a general conceptual test, it is now no closer to successfully defining appropriate bargaining units in the health care industry than it was in 1974.

II. Disparity Versus Community Of Interests

In reflecting on the court opinions mentioned above, the Board notes that most courts have tended towards either a "community of interests" or "disparity of interests" test. Though these tests over the past decade or so have developed a "life of their own," and have been taken to refer to more or fewer units, respectively, we believe it appropriate to repeat an earlier Board observation in one lead case, *Newton-Wellesley Hospital,* supra, that various courts' "disagreement with our approach may be largely semantic."[23] As the Board there noted:

> The Board's inquiry into the issue of appropriate units, even in a non-health care industrial setting, never addresses, solely and in isolation, the question whether the employees in the unit sought have interests in common with one another. Numerous groups of employees fairly can be said to possess employment conditions or interests "in common." Our inquiry—though perhaps not articulated in every case—necessarily proceeds to a further determination whether the interests of the group sought are sufficiently distinct from those of other employees to warrant the establishment of a separate unit. We respectfully suggest that, at least to that extent, the test of "disparateness" described by the court is, in practice, already encompassed logically within the community-of-interest test as we historically have applied it, and, accordingly, we interpret the court's direction to the Board to be one of emphasis or degree, and not embracing a distinction of kind.

In one case, after chronicling the checkered and largely unfavorable treatment the Board's broadly stated principles have received from reviewing courts, the Second Circuit concluded that a court sometimes enforces the Board's decision if it "can infer from the Board's result that it has taken the nonproliferation policy into account."[24] The court suggested that perhaps courts "focus * * * on what the Board did as much as on what it said."[25]

The court's analysis of what the Board has done in its hithertofore "doctrinal" approach to health care unit cases was echoed in the description of this process offered by one scholarly commentator:[26]

> Rather than providing a basis for decisions that only a supposedly expert agency could make—by evaluating the available empirical, economic literature an systematically distilling the accumulatd experience of Board personnel and of the labor relations community generally—the Board acts as a kind of Article I "Talmudist" court, parsing precedent, divining the true meaning of some Supreme Court ruling, and balancing in some mysterious fashion competing, yet absolute-sounding values.

The Board has decided that, rather than formulating yet another broadly phrased test for determining appropriate health care units, perhaps a new approach is needed.

III. The Decision To Engage In Rulemaking: Doctrinal Versus Empirical Approach

The focus of all appropriate unit decisions in the health care industry has been the congressional admonition against "undue proliferation." As described in detail above, some Board Members, and some courts, have believed that this permitted a "community of interests" test, with special emphasis on avoiding proliferation. Others have believed this mandated or at least suggested a "disparity of interest" test, with the same emphasis. As noted, the Second Circuit in *Masonic Hall* believed the real test was in the result reached by the Board, i.e., what unit or units were in fact found appropriate. Indeed, at the end of its decision in *Masonic Hall,* the court observed, perhaps wistfully, that "empirical data is not before us."[27]

It is clear to us that the key element in the Board's avoidance of proliferation is to designate how many units will be deemed appropriate in a particular type of health care facility. In so doing, the Board must effectuate section 7 rights by permitting bargaining in cohesive units, units with interests both shared within the group and disparate from those possessed by others; weighed against this must be Congress' expressed desire to avoid proliferation in order to avoid disruption in patient care, unwarranted unit fragmentation leading to jurisdictional disputes and work stoppages, and increased costs due to whipsaw strikes and wage leapfrogging.[28] Though the Board has of times made broad generalizations as to which types of unit configurations would or would not lead to proliferation and the catalogue of undesired results, it cannot be denied that it has never obtained empirical data on these matters. This, along with the still unsettled state of the Board's past, doctrinal efforts after so many years, is on major reasons for the Board's deciding to engage in rulemaking.

Another major reason is a reflection of the Board's extensive experience. The Board has in the last 13 years received many hundreds of petitions for health care units. Generally, the units requested have been in approximately six, predictable groupings: registered nurses, other professional employees, technical employees, busines office clerical employees, service and maintenance employees, and skilled

[17] *St. Vincent's Hospital,* 223 NLRB 638 (1976).

[18] *St. Vincent's Hospital v. NLRB,* 567 F. 2d 588 (3d Cir. 1977).

[19] *NLRB v. West Suburban Hospital,* 570 F.2d 213 (7th Cir. 1978).

[20] 239 NLRB 872 (1978).

[21] *Allegheny General Hospital v. NLRB,* 608 F.2d 965 (3d Cir. 1979), denying enf. of 239 NLRB 872.

[22] One court stated the Board's opinions in this area were in a state of "disarray." *Long Island College Hospital v. NLRB,* 566 F.2d 833, 843—444 (2d Cir. 1977), cert. denied 435 U.S. 996 (1978).

[23] 250 NLRB at 411–412.

[24] *Masonic Hall v. NLRB,* 699 F.2d at 637.

[25] Id.

[26] Estreicher, *Policy Oscillation at the Labor Board: A Plea for Rulemaking,* in proceedings of NYU 37th Annual National Conference on Labor (1984), reprinted in 37 Ad. L. Rev. 163, 172 (1985).

[27] 699 F. 2d at 642.

[28] See description of the legislative history contained in *Masonic Hall,* 699 F.2d at 631–632.

maintenance employees.[29] Only occasionally have units of guards or physicians been sought. It is our observation that these groups of employees generally exhibit the same internal characteristics, and relationship to other groups of employees, in one health care facility as do like groups of employees at other facilities. To put the matter another way, the various health care facilities we have examined over the years have looked very much the same as other facilities of the same type: large acute care hospitals, small acute care hospitals, and nursing homes.[30]

To give a more specific example, we have observed that registered nurses perform essentially the same duties at all large acute care hospitals, regardless of which large hospital is involved. Differences are insignificant. For example, despite the emphasis by counsel in the oral argument in the recent *St. Vincent* case (19–RC–11496) on the fact that, in that case, not all RNs were in a single nursing department, we note that the precise same situation prevailed in *Mercy Hospitals of Sacramento,* supra, the first lead case involving registerd nurses after the 1974 amendments.[31] Similarly, it has been our experience that RNs from hospital to hospital receive more or less the same training, uniformly administer drugs and to some extent oversee the work of aides, work at shifts throughout the day and night and on weekends, etc. Despite these similarities, which we are certain are apparent to any labor law practitioner or other knowledgeable person in the health care field, the Board has undertaken to elicit extensive evidence on RNs' duties at each facility sought to be organized, in order to "adjudicate" the appropriate unit in each case. This has come at a tremendous cost to the hospitals, to unions, and to the Board itself, which must furnish hearing officers, court reporters, and lawyers to help the Members decide the cases, based on the heretofore enunciated generalized "doctrines." To the extent one record is different from another, it would appear that is largely the result of counsels' skill or determination in seeking to demonstrate "interchange," "contacts," and the like, mirroring the requirements that have been set forth by the Board in its latest "lead" case. Registered nurses can be expected to communicate with pharmacists about medications, and with maintenance employees about air-conditioning systems, regardless of the facility. Especially in light of the fact that, after 13 years, we are no further along in achieving consensus over doctrine than we were in 1974, and since in any event we are convinced that laborious, costly, case-by-case recordmaking and adjudication in this remarkably uniform field has proved to be an unproductive expenditure of the parties' and the taxpayers' funds, we have decided to engage in rulemaking. The Board is of the opinion that rulemaking, though perhaps time consuming at the outset, will be a valuable long-term investment, paying dividends in the form of predictability, efficiency, and more enlightened determinations as to viable appropriate units, leading ultimately to better judicial and public acceptance.

IV. Power To Engage in Rulemaking

Section 6 of the National Labor Relations Act expressly gives the Board power to make substantive rules:

> The Board shall have authority from time to time to make, amend, and rescind, in the manner prescribed by the Administrative Procedure Act, such rules and regulations as may be necessary to carry out the provisions of this Act.

This is the standard grant of general rulemaking authority given to Federal agencies. The function of such a grant of legislative rulemaking authority is to permit an administrative agency to fill in the interstices of the Act it administers through the quasi-legislative promulgation of rules to be applied in the future, with the choice between proceeding by general rule or by individual, ad hoc litigation "one that lies primarily in the informed discretion of the administrative agency."[32]

Both sections 9(b) and 9(c)(1) on their face appear to give the Board discretion to make unit determinations. It has been argued that the language of section 9(b) requires a separate determination "in each case," and thus that rulemaking as to units is statutorily prohibited. We do not agree. The adaptability of rulemaking proceedings to unit determinations was considered by Kenneth Culp Davis, perhaps the leading authority on administrative law, who concluded:

> The Labor Management Relations Act provides: "The Board shall decide in each case whether . . . the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof . . ." Do the words "in each case" mean that the Board is prohibited from classifying problems, from developing rules or principles, or from relying on precedent cases which establish narrow or broad propositons? The answer has to be clearly no; the Board may decide "in each case" with the help of such classifications, rules, principles, and precedents as it finds useful. The mandate to decide "in each case" does not prevent the Board from supplanting the original discretionary chaos with some degree of order, and the principal instruments for regularizing the system of deciding "in each case" are classifications, rules, principles, and procedents. Sensible men could not refuse, to use such instruments and a sensible Congress would not expect them to. [Davis, *Administrative Law Text* 145 (3d ed. 1972.)]

The Supreme Court urged the Board to use its rulemaking powers in *NLRB v. Wyman-Gordon Co.,* 394 U.S. 759 (1969). As Justice Douglas there stated:

> The rule-making procedure performs important functions. It gives notice to an entire segment of society of those controls or regimentation that are forthcoming. It gives an opportunity for persons affected to be heard. . . . Agencies discover that they are not always repositories of ultimate wisdom; they learn from the suggestions of outsiders and often benefit from that advice. . . . This is a healthy process that helps make a society viable. The multiplication of agencies and their growing power makes them more and more remote from the people affected by what they do and make more likely the arbitrary exercise of their powers. Public airing of problems through rule-making makes the bureaucracy more responsive to public needs and is an important brake on the growth of absolutism in the regime that now governs all of us. . . . Rule making is no cure-all; but but it does force important issues into full public display and in that sense makes for more responsible administrative action. [Id. at 777–779].

Moreover, Congress in 1978 considered, though it failed to pass, legislation that would have required the Board to embrace rulemaking in several areas, including an elaboration of appropriate bargaining units. The Senate committee, in endorsing S. 2467, went so far as to state that "there is no labor relations issue on which there has been such a strong consensus of scholarly opinion as on the proposition that the Board should make greater use of its rulemaking authority under section 6 of the Act." [33]

[29] See St. Francis I, 265 NLRB at 1029.

[30] Beyond these types of facilities,we are not yet able to generalize and so do not now propose to engage in rulemaking.

[31] 217 NLRB at 768. The Board in the early *Mercy* case permitted the 27 RNs working in departments other than nursing to vote under challenge.

[32] *SEC v. Chenery Corp.,* 332 U.S. 194, 203 (1947); *NLRB v. Bell Aerospace Co.,* 416 U.S. 267, 294 (1974); *NLRB v. Children's Baptist Home,* 576 F.2d 256, 260 (9th Cir. 1978); *NLRB v. St. Francis Hospital of Lynwood,* 601 F.2d at 414.

[33] As reported in BNA Special Supplement, DLR, p. 7 (Feb. 6, 1978). Among the many scholars referred to were Peck, *The Atrophied Rule Making-Powers of the NLRB,* 70 Yale L.J. 729 (1961); Peck, *A Critique of the National Labor Relations Board's Performance in Policy Formation: Adjudication and*

Continued

Thereafter, the Seventh Circuit, tired of a case-by-case analysis (on a charge nurse-supervisory issue), stated: "while the Board is entitled to some judicial deference in interpreting its organic statute as well as in finding facts, it would be entitled to even more if it had awakened its dormant rulemaking powers for the purpose of particularizing the application * * * to the medical field." *Hillview Health Care Center*, 705 F.2d 1461, 1466 (7th Cir. 1983).

Recent observers of the Board have been similarily supportive.[34] In one recent article, Professor Charles Morris, editor in chief of *The Developing Labor Law*, suggests that "Substantive rulemaking pursuant to the Administrative Procedure Act (APA) and Section 6 of the NLRA is probably the most important thing the Board can do to effectuate its process, economize its time, and advise the people who need to know—most of whom are not lawyers—what the law requires." [35] Morris urges rulemaking with particular reference to collective-bargaining units in the health care industry.[36] As Morris suggests, "The wheel need not be reinvented in every case." [37]

In deciding to engage in rulemaking with respect to appropriate bargaining units in the health care industry, it is the Board's desire to substitute for hithertofore unsuccessful doctrines, and lengthy and costly litigation by the parties to each case who seek primarily to advance their own interests in that case, informed rulemaking. In the course of that process, the Board seeks to obtain that empirical evidence that is one of the chief reasons for engaging in rulemaking,[38] and that was alluded to by the Second Circuit in *Masonic Hall*, 699 F.2d at fn.26.

Depending on the numbers of institutions or persons who desire to give oral testimony, it is the Board's intention to conduct a group of hearings, at which knowledgeable persons can give testimony as to how bargaining in the various units at different types of health care institutions has worked. The Board wants to learn how various bargaining units affect legitimate concerns of both unions and health care employers. For example, when registered nurses have been grouped with other professionals, have their interests been properly represented? Has the bargaining, when it has occurred in all-professional groups, nonetheless proceeded on the basis of each separate profession? Have wage rates been negotiated separately despite the all-professional units? When they have existed, have separate professional groupings resulted in interruption in the delivery of health care? Wage whipsawing? Jurisdictional disputes? These are merely examples of the types of questions that should be addressed by anyone testifying for or against separate units, such as registered nurses, business office clericals, technicals, maintenance employees, etc. The Board is not seeking at the oral hearings the "opinions" and further legal arguments of counsel, which may be submitted as comments, but, rather, actual, empirical, practical evidence offered by industry and union representatives who have themselves participated in or observed bargaining in the health care industry in various configurations. The Board also desires evidence from witnesses with direct knowledge about any recent changes in the delivery of health care, such as cost containment, allegedly greater integration of function between categories of health care employees, and changes in function of specific classifications of health care employees, including greater or lesser degrees of specialization, that may have an impact on the question of appropriate units.

We trust that after receiving and studying such empirical evidence, we will be better able to make an informed judgment as to what units should be found appropriate in the health care industry, because they reflect true community/diversity of interests and do not promote but instead minimize the type of proliferation and interruption of care which concerned Congress in passing the 1974 amendments. No small additional advantage, we hope, will be the attainment of a greater measure of judicial and public deference to what will be our better informed judgment and expertise, with the long-run advantage of settling, finally, the difficult question of appropriate bargaining units in the health care industry.

V. Proposed Rulemaking

The proposed rule which follows is a new endeavor for the National Labor Relations Board, but not for labor-management agencies generally. A number of States have engaged in rulemaking with respect to appropriate bargaining units for their own employees.[39] The proposal that petitions be entertained only in the proposed units is patterned after a similar provision in the Florida and Massachusetts rules. We have decided not to make the units only "presumptively" appropriate, because one important advantage of rulemaking is the certainty it offers; moreover, as previously indicated, our experience has been that facilities and employee functions in hospitals and other health care institutions of approximately the same size and type are virtually identical. Though an "extraordinary circumstances" exception has been included, it is anticipated that the exception will be little used and limited to truly extraordinary situations; the exception is to be construed narrowly and is not intended to provide an opportunity (or loophole) for redundant litigation. The preamble is by its terms limited to petitions for initial organization, since historically the Board has required decertification petitions to be filed in the certified or recognized unit.[40] When institutions are partially organized we assume that petitions for new units will follow the proposed rules, insofar as possible.

There is a provision that the listed units will be the only appropriate units, except that any combination will also be appropriate at the union's option and so long as the requirements of section 9(b)(1) and (3) are met. The union is given the option because the Board will have determined that the dictated number of units do not proliferate, and a petition for one of them will be processed to an election without extensive testimony on that issue; a combination would a fortiori be appropriate, since it would proliferate even less. The reference to section 9(b)(1) is included since the statute requires a self-determination election when professionals are sought to be included with nonprofessionals; a combination of these groups, as with

Rule Making, 117 U. Pa. L. Rev. 254 (1968); Shapiro, *The Choice of Rulemaking or Adjudication in the Development of Administrative Policy*, 78 Harv. L. Rev. 921 (1965); Bernstein, *The NLRB's Adjudication-Rulemaking Dilemma Under the Administrative Procedure Act*, 79 Yale L.J. 571 (1970); Kahn, *The NLRB and Higher Education: The Failure of Policymaking through Adjudication*, 21 U.C.L.A. L. Rev. 63 at 167–175 (1973); Silverman, *The Case for the National Labor Relations Board's Use of Rulemaking in Asserting Jurisdiction*, 25 Labor L.J. 607 (1974); and Davis, *Administrative Law Treatise* section 6.17 (1970 Supp.).

[34] Estreicher, supra at fn.26; Subrin, *Conserving Energy at the Labor Board: The Case for Making Rules on Collective Bargaining Units*, 32 Lab. L.J. 105 (1981).

[35] Morris, *The NLRB in the Dog House—Can an Old Board Learn New Tricks?*, 24 San Diego L.R. 9 (1987), p. 27.

[36] Id. at 41, fn.149.

[37] Id. at 34.

[38] Morris, supra, at 29, 31. See also Subrin, supra at 108–109, 111.

[39] See, e.g., *In the Matter of State of Florida*, 2 FPER 111 (June 17, 1976). Also, amendment to the Rules and Regulations of Massachusetts Labor Relations Commission, adopted 3 March 1975.

[40] *Cambell Soup Co.*, 111 NLRB 234 (1955).

RNs (professionals) and LPNs (technicals) at a nursing home, would have to satisfy the 9(c)(1) requirements through the conduct of a *Sonotone*[41] election. Similarly the reference to section 9(b)(3) is included because the statute prohibits the inclusion of guards in bargaining units with other employees.

The proposed rule divides health care facilities into three separate groups. The Board has tentatively decided, based on its experience, that larger hospitals, with their larger numbers of employees in each category, may warrant one or two additional units. In smaller facilities, it is likely that employees will have more contacts with one another, may to some extent perform one another's work, and generally may share interests more than groupings in larger hospitals.[42] A slightly lesser degree of specialization seems also probable. Recognizing that perfection is impossible in this area, but also being intent on not litigating the precise boundaries of the "small hospital" in each case,[43] the Board has tentatively determined that acute care[44] hospitals of more than 100 patient beds will be deemed "large"; acute care hospitals of 100 patient beds or fewer will be deemed "small." The Board will be grateful for interested parties' comments about these definitions during the comment period. No definition of nursing homes seems required. The Board leaves to future proceedings rules with regard to other types of health care facilities.

As for the proposed units, the Board gave considerable thought merely to advising the public that it had decided to engage in rulemaking, leaving wide open the substance of any rule. However, we have decided to offer a proposal with more specifics, solely for purposes of focusing the debate. It is our best judgment that having such a proposal on the floor, for debate, will prove more fruitful than merely inviting open-ended commentary. However, the Board wishes to make it abundantly clear that while the proposed units at this point are based on the Board's cumulative experience and observation, the Board has a completely open mind about which and how many units it will ultimately settle upon. That is the purpose of the comment period and hearings provided for, and the Board will reassess its proposed units before issuing a final rule.

[41] *Sonotome Corp.*, 90 NLRB 1236 (1950).

[42] *See*, e.g., *Mount Airy Psychiatric Center*, 253 NLRB 1003 (1981); see also 217 NLRB 802 (1975).

[43] Subrin, supra, pp. 106–7.

[44] Sec. 2(14) refers to, inter alia, "hospitals" and "convalescent hospitals."

The proposed rule notes that "nothing shall prevent the Board from holding additional hearings concerning the specific job classifications to be included in, or excluded from, each of the above units, and from establishing additional rules, where appropriate, about such matters." That is, after this proceeding, in which the Board will determine the contours of appropriate units, the Board may commence additional rulemaking proceedings to determine the composition of these units, including the professional or technical status of certain classifications which we have encountered frequently in health care cases. As an example, we are advised that there is currently before one regional office a case[45] in which the petition was filed 10 October 1986; hearing commenced 14 November 1986. As of 20 May 1987, the Board had taken testimony covering 24 days of hearing, with more scheduled, covering 5978 transcript pages plus 300 exhibits. At issue is the petitioner's desire for a unit of all service, maintenance, clerical and technical employees with a "community of interest," as opposed to the employer's contention that only an all nonprofessional unit is appropriate. Essentially, the parties differed over the placement of business office clericals, and technicals "without a community of interest," but to some extent 300 classifications were in dispute, some as to whether they were technical or professional, and as to whether they shared interests in common with other, included categories. It has been our observation that classifications in the health care industry are to a large degree standardized, and that future rulemaking to determine what classifications are technical, if that unit is ultimately deemed appropriate, or, alternatively, professional, might further shorten proceedings by eliminating duplicative and in some cases self-evident testimony.

The proposed rule notes that the Board will approve consent agreements providing for elections in accordance with the rule, and that nonconforming agreements will be rejected. Further, the rule will be effective on a prospective basis only, for petitions filed on and after (30 days after publication of the final rule).

VI. Justification For Proposed Units

Initially, we emphasize that, except for information we have gleaned from our decided cases, our proposed rule is not based on empirical evidence concerning health care facilities generally. We anticipate that the testimony and commentary we receive in the course of the rulemaking process will contain a significant amount of the empirical data we need in order to verify or modify our original ideas as to which bargaining units are appropriate.

In formulating our proposed rule, we have, of course, kept firmly in mind Congress's admonition against proliferation of health care bargaining units. However, we also have been mindful of our statutory mandate to make unit determinations "in order to assure to employees the fullest freedom in exercising the rights guaranteed by [the] Act."[46] In addition, we have deemed it significant that the 1974 amendments were intended to encourage collective bargaining by hospital employees in order to improve wages, working conditions, and morale among those employees, reduce turnover, and improve the quality of hospital care.[47] We thus agree with the Second Circuit Court of Appeals that the legislative history of the amendments "does not direct the courts or the Board to erect obstacles to certification of bargaining units that are broader and higher than Congress was itself willing to enact."[48] Consequently, we have drafted the proposed rule with the intent of affording health care employees the "fullest freedom" to organize, while at the same time attempting to avoid the proliferation of bargaining units in that industry that so concerned Congress. We have sought to accomplish this, not by promulgating an abstract standard, but rather by satisfying ourselves that we have limited the possible units in the various types of establishments to a reasonable, finite number of congenial groups displaying both a community of interests within themselves and a disparity of interests from other groups.

The specific units contained in the proposed rule were included, and other possible units were omitted, for the following reasons:

A. Large Acute Care Hospitals

1. *Registered Nurses (RNs).* Because of the numerous differences that commonly exist between RNs and other professional employees, we have tentatively determined that, in large hospitals, separate RN units are appropriate for bargaining. Thus, in comparison with most other professionals, RNs usually work three

[45] *Christ Hospital*, 9—RC—15019.

[46] Sec. 9(b) of the Act, 29 U.S.C. 159(b).

[47] *Beth Israel Hospital v. NLRB*, 437 U.S. 483, 497–498 (1978); see also *Masonic Hall*, 699 F.2d at 634.

[48] Id. at 635.

shifts, round the clock, 7 days a week, have constant responsibility for direct patient care, and are subject to common supervision by other nurses.[49] RNs also share similar education, training, experience, and licensing that are not shared by other hospital employees.[50] Although RNs do have contact with certain other professionals, such as pharmacists, social workers, and physical therapists, such contacts tend to be less frequent than the RNs' contacts with one another.[51] Moreover, RNs have a lengthy history of organization, both professionally and for purposes of collective bargaining.[52] Finally, because our experience has shown that RNs comprise the largest group of professional employees at most health care facilities, granting them (but not other individual professions) their own separate unit will not contribute significantly to proliferation of bargaining units.[53]

2. *Physicians.* For the purposes of the Act, most physicians employed by hospitals are considered either supervisors, managerial employees, or (in the case of interns and residents) students,[54] and hence do not have statutory organizational rights. Accordingly, we envision very few, if any, petitions for separate physicians' units. However, because of physicians' separate education, training, and skills, and particularly because of their unique position as the ultimate supervisors of patient care, we deem it necessary to provide for the possibility of such units in the event they are requested.

3. *Other professional employees.* Section 9(b)(1) of the Act mandates separate representation for professional employees unless a majority of those employees vote for inclusion in a unit with nonprofessionals.[55] The statute thus requires that professional employees not be combined in bargaining units with nonprofessional employees without the consent of the former.[56] While, therefore, a separate unit consisting of all professional employees unquestionably is an appropriate unit for bargaining, for the reasons set forth above, we have (provisionally) determined that separate registered nurses' units also are appropriate. However, in light of the congressional admonition against proliferation of bargaining units, we have determined at this time not to approve separate units of other individual professional employee classifications. Otherwise, we believe, the door would be open to the very fragmentation of bargaining units Congress directed the Board to avoid.

4. *Technical employees.* In our experience, technical employees in hospitals and nursing homes, in comparison with other nonprofessionals, typically have significantly higher levels of skill and training, and are substantially higher paid.[57] Consequently, we have consistently approved separate units of health care technical employees and excluded technicals from units of other nonprofessional employees.[58] Our determinations generally have met with approval from the courts of appeals.[59] Based on our current state of knowledge, we do not discern any reason to depart from our existing practice at this time.

5. *Service, maintenance, and clerical employees (except for Guards).* Service and maintenance employees generally do routine manual work, are not highly skilled or trained, and are paid less than technical employees; consequently, we normally approve separate service and maintenance units.[60] Such determinations have met with court approval.[61] Our proposed rule, however, adds two groups of employees which labor organizations sometimes seek to represent separately, or which labor organizations have sometimes excluded from broader service and maintenance units: clericals and skilled maintenance employees.

We acknowledge that the Board at one time found separate units of business office clerical employees appropriate in health care facilities.[62] More recently, however, our experience has indicated that clericals often share many terms and conditions of employment with service and maintenance employees, and that the two groups have regular, frequent, and significant contacts on the job.[63] Moreover, many employees in health care institutions, besides business office clericals, are engaged in "recordkeeping," such as ward clericals, technicians, nurses, and even physicians. Further, to the best of our knowledge no labor organization has specialized in the representation of business office clericals. For these reasons, and to avoid the proliferation of bargaining units, we have chosen tentatively to include clericals in service and maintenance units. We emphasize, however, that no final decision has been made, and that if evidence exists suggesting that clericals have a distinct community of interests, and that their separate representation would not have unwanted adverse results, such evidence should be presented at the hearings.

Similarly, although at times the Board has in the past approved separate units of skilled maintenance employees (including stationary engineers),[64] in our proposed rule we have provisionally included such employees in service and maintenance units for several reasons. First, we have found that their skill levels at times do not greatly exceed those of other unit employees.[65] Second, many skilled maintenance employees work throughout hospitals' facilities, and thus frequently come into contact with other unit employees.[66] Third, inclusion of skilled maintenance employees in broader units will help to prevent unit proliferation. By contrast, if we were to approve separate skilled maintenance units, many of which would be quite small both in absolute size and relative to the remaining service and maintenance employees, we might well be faced with requests to grant other small units of specialized

[49] See, e.g., *Newton-Wellesley Hospital*, 250 NLRB at 410–411, 413.

[50] Id. at 409, 413.

[51] Id. at 410.

[52] *Mercy Hospitals of Sacramento*, 217 NLRB at 767.

[53] *Newton-Wellesley Hospital*, 250 NLRB at 414–415.

[54] *Cedars-Sinai Medical Center*, 223 NLRB 251 (1976).

[55] 29 U.S.C. 159(b)(1).

[56] *Sonotone Corp.*, supra.

[57] See, e.g., *Southern Maryland Hospital*, 274 NLRB 1470 (1985).

[58] Id. See also *Barnert Memorial Hospital Center*, 217 NLRB 775 (1975); *Newington Children's Hospital*, 217 NLRB 793 (1975).

[59] See, e.g., *Watonwan Memorial Hospital v. NLRB*, 711 F.2d 848 (8th Cir. 1983).

[60] See, e.g., *Newington Children's Hospital*, supra. In that case we observed that "a service and maintenance unit in a service industry is the analogue to the plantwide production and maintenance unit in the industrial sector, and as such is the classic appropriate unit." 217 NLRB at 794.

[61] See, e.g., *Masonic Hall*, supra.

[62] See, e.g., *Sisters of St. Joseph of Peace*, 217 NLRB 797 (1975).

[63] See, e.g., *Baker Hospital*, 279 NLRB No. 38 (Apr. 16, 1986).

[64] See, e.g., *Allegheny General Hospital*, 239 NLRB 872 (1978), enf. denied 608 F.2d 965 (3d Cir. 1979); *Mercy Hospital Assn.*, 238 NLRB 1018 (1978), enf. denied 606 F.2d 22 (2d Cir. 1979), cert. denied 445 U.S. 971 (1980); *Mary Thompson Hospital*, 241 NLRB 766 (1979), enf. denied 621 F.2d/858 (7th Cir. 1980); *West Suburban Hospital*, 227 NLRB 1351 (1977), enf. denied 570 F.2d 213 (7th Cir. 1978); *St. Vincent's Hospital*, 227 NLRB 544 (1976), enf. denied 567 F.2d 588 (3d Cir. 1977). But see *St. Francis II*, supra, and *Shriners Hospital for Crippled Children*, 217 NLRB 806 (1975), denying separate maintenance units.

[65] *St. Francis II*, 271 NLRB at 954.

[66] Id. *Community Hospital at Glen Cove*, 278 NLRB No. 18 (Jan. 17, 1986).

employees; were we to grant such requests, we would open the door to unit fragmentation and proliferation.[67] Finally, as a practical matter, when the Board has approved separate maintenance units, its decisions have fared poorly in the courts.[68]

6. *Guards*. Section 9(b)(3) of the Act requires that guards not be included in a unit with other employees,[69] and therefore separate guard units must be provided for. Our experience indicates, however, that in practice extremely few guard units are petitioned for, perhaps because hospitals often do not employ guards directly, but instead obtain guards from security services.

B. Small Hospitals and Nursing Homes

Our proposed rule contains the same units for small hospitals and nursing homes as for large hospitals, except that instead of providing for separate units of physicians and RNs, it provides for all-professional units. We have tentatively eliminated the narrower units in favor of broader ones because we think that in smaller facilities there will be found less division of labor and specialization, and thus more functional integration of employees' services, than normally is the case in large hospitals. We also expect that there are far fewer professionals other than physicians and nurses in the smaller facilities (especially in nursing homes), and therefore that separate units of "other professionals" are less likely to be appropriate.

VII. Public Hearings

The Board will hold public hearings concerning appropriate bargaining units in the health care industry. The Board wishes to receive testimony and oral presentations from individuals who have direct knowledge of practices in this industry that may have impact on both the number and types of collective-bargaining units that will be permitted. More details about the type of evidence the Board will consider relevant are set forth in section IV above.

The hearings will be conducted at the following locations on the dates indicated:

(1) *Washington, DC*—The hearing will commence at 9 a.m. on August 17, 1987, in the Board's Hearing Room, Sixth Floor, 1717 Pennsylvania Avenue NW., Washington, DC 20570.

(2) *Chicago, Illinois*—The hearing will commence on August 31, 1987. Persons who wish to attend this hearing should contact either the Office of the Executive Secretary (see address section) or the Board's Chicago Regional Office, Everett McKinley Dirksen Building, 219 S. Dearborn Street, Chicago, Illinois 60604, telephone number (312) 353-7570, to be notified of the exact time and place of the Chicago hearing.

(3) *San Francisco, California*—The hearing will commence on September 14, 1987. Persons who wish to attend this hearing should contact either the Office of the Executive Secretary (see address section) or the Board's San Francisco Regional Office, 901 Market Street, Suite 400, San Francisco, California 94103, telephone number (415) 995-5324, to be notified of the exact time and place of the San Francisco hearing.

Persons wishing to present oral testimony at any one of the specified locations should notify the Office of the Executive Secretary, 1717 Pennsylvania, Avenue NW., Washington, DC 20570, telephone number (202) 254-9430, no later than July 24, 1987, advising it of the location at which the witness wishes to testify. Thereafter, all witnesses should submit to the Executive Secretary at the above address eight copies of either the written text or a summary of their presentations no later than 1 week prior to the commencement of the hearing at which they wish to testify. Copies of these texts and summaries will be placed in the docket (see sec. VIII, infra) and will be available at the Executive Secretary's Office, and also at the hearing location where the witness intends to testify, for examination by interested persons.

Any member of the public may file a written statement (eight copies) in lieu of oral testimony before, during, or after the hearing, provided that such statement is received by the Board on or before October 30, 1987. Written statements should be addressed to the NLRB's Executive Secretary at the address given in the address section of this preamble, and should refer to Docket No. RM-2.

An administrative law judge will preside over the hearings, which will be informal, legislative-type proceedings at which there are no formal pleadings or adverse parties. In general, oral presentations from individual witnesses will be limited to 20 minutes each, except that the presiding judge may impose a greater or lesser period, at the judge's discretion, if he or she deems it appropriate. Participants may desire to ask questions or crucial issues following a presentation. Such questions may be permitted by the judge, limited to approximately 15 minutes per questioner. Questions must be designed to clarify a presentation and/or elicit information that is within the competence or expertise of the witness; questions that are argumentative or in the nature of a statement will not be permitted. The judge shall have discretion to modify the time for questioning, and shall have further discretion to impose other guidelines for the orderly and effecient conduct of the hearing. This shall include the right to require a single representative to present the views of two or more persons or groups who have the same or similar interests, and to identify such persons or groups with similar interests.

The Board will be represented at the hearings by a member of its staff. The judge and the Board representative shall have the right to question persons making an oral presentation as to their testimony and any other relevant matter.

Comments may be submitted which include data, views, or arguments concerning the proposed rulemaking. These should be submitted (in eight copies) to the Executive Secretary, at the address given in the address section of this preamble, and should refer to Docket No. RM-2. Comments must be submitted by the close of the comment period, which is October 30, 1987.

A verbatim transcript of the hearings, and the written statements and comments, will be available for public inspection during normal working hours at the Office of the Executive Secretary in Washington, DC (see address section of this preamble).

VIII. Docket

The docket is an organized and complete file of all the information submitted to or otherwise considered by the NLRB in the development of this proposed rulemaking. The principal purposes of the docket are: (1) To allow interested parties to identify and locate documents so that they can participate effectively in the rulemaking process and (2) to serve as the record in case of judicial review.

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[67] *Shriners Hospital for Crippled Children*, 217 NLRB at 808. Partly because of the size of the employee groups involved, our tentative decisions to approve separate units for RNs in large acute care hospitals, but not maintenance employee units, are not inconsistent. Maintenance employees usually are few in number, whereas RNs, we have observed, almost always are numerous in absolute terms and typically comprise the majority of professional employees. Maintenance employees are aptly compared to members of other specialized professional or technical groups, such as pharmacists or medical technicians. Although each group is set apart from others to some degree by differing skills, training, etc., under the proposed rule we would not approve separate, specialized units for any such group, but instead would combine them into broader units.

[68] See fn.64, supra.

[69] 29 U.S.C. 159(b)(3).

As required by the Regulatory Flexibility Act, it is hereby certified that this rule will not have a significant impact on small business entities.

List of Subjects in 29 CFR Part 103

Administrative practice and procedure, Labor management relations.

For the reasons set forth in the preamble, it is proposed to amend 29 CFR Part 103 as follows:

PART 103—OTHER RULES

1. The authority citation for 29 CFR Part 103 is revised to read as follows:

Authority: Section 6, National Labor Relations Act, as amended (29 U.S.C. 151, 156), and section 553 of the Administrative Procedure Act (5 U.S.C. 500, 553).

2. Subpart C, consisting of § 103.30, is added to read as follows:

Subpart C—Appropriate Bargaining Units

§ 103.30 Appropriate bargaining units in the health care industry.

(a) With respect to employees of "health care institutions" as defined in section 2(14) of the Act, no petition for initial organization shall be entertained, except under extraordinary circumstances, if the petition seeks certification in a bargaining unit not in substantial accordance with the provisions of this rule. The following shall be the only appropriate units, except that any combination will also be appropriate, as the union's option and so long as the requirements of section 9(b) (1) and (3) are met:

(1) Appropriate units in large, acute care hospitals, which shall be defined as all acute care hospitals having more than 100 patient beds:

(i) all registered nurses.

(ii) All professionals except for registered nurses and physicians.

(iii) All physicians.

(iv) All technical employees.

(v) All service, maintenance and clerical employees except for guards.

(vi) All guards.

(2) Appropriate units in small, acute care hospitals, which shall be defined as all acute care hospitals having 100 patient beds or fewer:

(i) All professional employees.

(ii) All technical employees.

(iii) All service, maintenance and clerical employees except for guards.

(iv) All guards.

(3) Appropriate units in all nursing homes:

(i) All professional employees.

(ii) All technical employees.

(iii) All service, maintenance and clerical employees except for guards.

(iv) All guards.

(4) Appropriate units in all other health care facilities:

The Board for the time being will establish appropriate units in other health care facilities on a case-by-case basis.

(b) Notwithstanding the above, nothing shall prevent the Board from holding additional hearings concerning the specific job classifications to be included in, or excluded from, each of the above units, and from establishing additional rules about such matters. The Board will approve consent agreements providing for elections in accordance with the above rules, and no other agreements will be approved. This rule is to be effective on a prospective basis only, for petitions filed on and after (30 days after publication of the final rule).

Dated, Washington, DC, June 26, 1987.

By direction of the Board.

National Labor Relations Board.

John C. Truesdale,

Executive Secretary.

[FR Doc. 87-14895 Filed 7-1-87; 8:45 am]

BILLING CODE 7545-01-M

federal register

Thursday
July 2, 1987

Part IV

Department of Education

34 CFR Part 11

Advisory Committee Management; Final Regulations

DEPARTMENT OF EDUCATION

34 CFR Part 11

Advisory Committee Management

AGENCY: Department of Education.
ACTION: Final regulations.

SUMMARY: The Secretary revises the Department of Education (ED) Committee Management regulations. These regulations are necessary to provide administrative guidelines and management controls for ED Federal advisory committees. The amendments are intended to update the existing committee management regulations by reformatting sections that implement the Federal Advisory Committee Act (FACA) and incorporating existing administrative procedures and provisions of the General Education Provisions Act (GEPA) that apply to certain ED advisory committees.

EFFECTIVE DATE: These regulations take effect July 2, 1987.

FOR FURTHER INFORMATION CONTACT: Ann V. Bailey, Committee Management Officer, U.S. Department of Education, 400 Maryland Avenue, SW., Room 1017, FOB-6, Washington, DC 20202-6177. Telephone; (202) 732-3677.

SUPPLEMENTARY INFORMATION: Section 47(a) of GEPA gives the Secretary regulatory authority for statutory advisory committees. These regulations establish procedures governing the establishment and administration of all advisory committees consistent with applicable laws, while ensuring that the Secretary maintains flexibility regarding their operation and use. Changes in the regulations include the following:

- Inclusion of the March 31 annual report requirement in GEPA.
- Exemption of GEPA Presidential advisory committees from the requirements of subsections (e) and (f) of section 10 of FACA.
- Definition of a Presidential advisory committee governed by GEPA as distinguished from the definition in FACA.
- Instructions which clarify how to establish and renew a statutory and nonstatutory advisory committee.
- Updated instructions and guidelines for committees to follow when citing Government in the Sunshine Act exemptions to justify closure of advisory committee meetings.
- General guidelines and procedures for obtaining approval to conduct an emergency meeting by telephone conference call.
- Updated instructions and clarification of the function and responsibilities of subcommittees.
- Procedures for approving the location of meetings outside the Washington, DC area, the boundaries of which are governed by the Federal Travel Regulations. (FPMR 101-7).

In addition to the provisions of these regulations, Department officials, advisory committee members, and staff are guided by the ED Standards of Conduct (34 CFR Part 73), the Federal Personnel Manual, and Federal statutes on conflict of interest (18 U.S.C. 201 *et seq.*), in preventing conflicts of interest or appearance of conflicts of interest.

On August 27, 1986, the Secretary published a Notice of Proposed Rulemaking for regulations governing advisory committees in the **Federal Register**, 51 FR 30511. No comments were received on the NPRM. Except for minor corrections, these final regulations are identical to those published in the NPRM.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

List of Subjects in 34 CFR Part 11

Advisory committees, Committee management.

Dated June 26, 1987.

(Catalog of Federal Domestic Assistance number does not apply.)

William J. Bennett

Secretary of Education.

The Secretary revises Part 11 of Title 34 of the Code of Federal Regulations to read as follows:

PART 11—ADVISORY COMMITTEE MANAGEMENT

Subpart A—General

Sec.

11.1 What is the purpose of these regulations?
11.2 What committees are governed by these regulations?
11.3 What definitions apply to these regulations?
11.4 What kind of group is an advisory committee?
11.5 What kind of group is excluded from these regulations?

Subpart B—What Are the Procedures for the Establishment or Renewal of an Advisory Committee?

11.10 How does the Secretary establish or renew an advisory committee?
11.11 When is an advisory committee renewed?
11.12 How is an advisory committee chartered?
11.13 When can an advisory committee meet or take action?

Subpart C—What Are the General Requirements for Committee and Subcommittee Membership?

11.20 Who may be a member of a committee or subcommittee?
11.21 What action may be taken by a subcommittee?

Subpart D—How Does an Advisory Committee Operate?

11.30 What meeting requirements affect advisory committees?
11.31 What is a quorum?
11.32 What special provisions govern the voting rights of certain committee members?
11.33 What notice is required for advisory committee and subcommittee meetings?
11.34 What public participation is allowed at advisory committee meetings?
11.35 What are the requirements for closing a meeting?
11.36 What special procedures may be used for emergency advisory committee meetings?
11.37 How is the agenda established and distributed?
11.38 What records are kept of advisory committee meetings?
11.39 What reports are made by advisory committees?
11.40 What records must an advisory committee make available to the public?

Authority: 5 U.S.C. App. 2; 20 U.S.C. 1233 *et seq.*

Subpart A—General

§ 11.1 What is the purpose of these regulations?

The regulations in this part—

(a) Implement the Federal Advisory Committee Act, as amended; and

(b) Provide guidance for advisory committees that are governed by Part D of the General Education Provisions Act, as amended.

Authority: 4 U.S.C. App. 2; 20 U.S.C. 1233 *et seq.*

§ 11.2 What committees are governed by these regulations?

(a) The regulations in this part apply to all advisory committees and their subcommittees providing advice to the Secretary or any other official of the Department. These regulations do not apply to any entity governed by the Government in the Sunshine Act.

(b) The functions of an advisory committee are to be solely advisory. If a group provides advice to the Department, but the group's advisory function is incidental to and inseparable from other (*e.g.*, operational) functions, these regulations do not apply. However, if the advisory function is separable, the group is subject to these regulations to the extent that the group operates as an advisory committee.

Authority: 5 U.S.C. App. 2; 20 U.S.C. 1233 *et seq.*

§ 11.3 What definitions apply to these regulations?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Department

ED

EDGAR

GEPA

Secretary

(b) *Definitions that apply to this part.* That following definitions also apply to this part:

"Administrator" means Administrator of the General Services Administration.

"Advisory Committee" or "Committee," subject to the factors and exclusions described in §§ 11.4 and 11.5, means any committee, board, commission, council, conference, panel, task force, or other similar group, or any subcommittee or other subgroup thereof, which is established by statute or reorganization plan, or established or utilized by the Secretary in the interest of obtaining advice or recommendations for the President or one or more agencies or officers of the Federal Government.

"Committee Management Officer" or "CMO" is the ED employee designated as required by Section 8 of FACA.

"Committee Member" means an individual who serves by appointment on an advisory committee and, except as otherwise limited by statute or the terms under which the committee is established, has the full right and obligation to participate in the activities of the committee, including voting rights.

"Designated Federal Official (DFO)" means the ED employee designated for each committee who performs duties under sections 10 (e) and (f) of FACA. The DFO is an employee who holds a full-time permanent position in the Department and may be assigned other administrative duties in connection with the committee.

"Executive Director" means the person who has that title and is responsible for overseeing the daily operation or staff or both of an advisory committee.

"FACA" means the Federal Advisory Committee Act, as amended, 5 U.S.C. Appendix 2.

"GEPA Presidential Advisory Committee" means a statutory advisory committee, governed by Part D of GEPA, the members of which are appointed by the President.

"GSA Committee Management Secretariat" is the office within the General Services Administration that administers FACA.

"Nonstatutory Advisory Committee" means an advisory committee established by the Secretary under section 442 of GEPA or by the President.

"OMB" means the Office of Management and Budget.

"Presidential Advisory Committee" as defined by FACA means an advisory committee which advises the President.

"Statutory Advisory Committee" means an advisory committee established by or pursuant to statute other than section 442 of GEPA.

Authority: 5 U.S.C. App. 2; 20 U.S.C. 1233 *et seq.*

§ 11.4 What kind of group is an advisory committee?

Although no single factor is determinative in deciding whether a group is an advisory committee, the following factors are significant:

(a) Fixed membership, including at least one person who is not a full-time Federal employee.

(b) Establishment by a Federal official or law. If not Federally established, the initiative for its use as an advisory body for the Federal Government comes from a Federal official rather than from a private group.

(c) A purpose of providing consensus advice regarding a particular subject or subjects.

(d) An organizational structure, *e.g.*, officers and staff.

(e) Regular or periodic meetings.

Authority: 5 U.S.C. App. 2.

§ 11.5 What kind of group is excluded from these regulations?

Groups excluded from the effect of the regulations in this part include—

(a) Any committee which is composed wholly of full-time officers or employees of the Federal Government;

(b) Any committee which is exclusively operational in nature (*e.g.*, has functions which include making or implementing decisions, as opposed to the offering of advice or recommendations);

(c) Any local civic group whose primary function is that of rendering a public service with respect to a Federal program;

(d) Any State or local committee or similar group established to advise State or local officials or agencies; and

(e) Any body governed by the Government in the Sunshine Act, 5 U.S.C. 552b.

Authority: 5 U.S.C. App. 2; 20 U.S.C. 1233 *et seq.*; 5 U.S.C. 552b.

Subpart B—What are the Procedures for the Establishment or Renewal of an Advisory Committee?

§ 11.10 How does the Secretary establish or renew an advisory committee?

(a) To establish or renew a non-statutory advisory committee, the Secretary—

(1) Determines that the committee is essential to the conduct of ED business and in the public interest and that its functions cannot otherwise be performed effectively within the Department or by an existing advisory committee;

(2) Consults with the Administrator;

(3) After the consultation, publishes a notice in the **Federal Register** at least 15 days before filing a charter for the advisory committee; and

(4) Files a charter.

(b) To establish or renew a statutory advisory committee, the Secretary—

(1) Notifies the GSA Committee Management Secretariat that the advisory committee is established or renewed pursuant to its enabling legislation; and

(2) Files a charter.

Authority: 5 U.S.C. App. 2; 20 U.S.C 1233a.

§ 11.11 When is an advisory committee renewed?

(a) Except for an advisory committee established under section 442 of GEPA, the Secretary makes a renewal determination not more than 60 days before the scheduled date of termination of an advisory committee.

(b) A nonstatutory advisory committee established under section 442 of GEPA terminates not later than one year from the date of its creation, unless the Secretary determines in writing not more than 30 days prior to the expiration of the one-year period that renewal for a period not to exceed one year is necessary to complete the recommendations or reports for which it was established.

(c) For an advisory committee authorized by Congress for more than two years, the Secretary recharters the committee at the end of each two-year period.

Authority: 5 U.S.C. App. 2; 20 U.S.C. 1233a.

§ 11.12 How is an advisory committee chartered?

(a) An advisory committee charter must contain in a format approved by the Secretary—

(1) The committee's official designation;

(2) The committee's objectives and the scope of its activity;

(3) The period of time necessary for the committee to carry out its purpose;

(4) The official to whom the committee reports;

(5) The official responsible for providing the necessary support for the committee;

(6) A description of the duties for which the committee is responsible, including the specific authority for any non-advisory functions;

(7) The estimated annual operating costs in dollars and person-years for the committee;

(8) The estimated number and frequency of committee meetings;

(9) The committee's termination date;

(10) The date the charter is approved by the Secretary; and

(11) The filing date.

(b) The Committee Management Officer includes information concerning a subcommittee in the charter of the parent committee if this information is known at the time of establishment or renewal. This information includes—

(1) The subcommittee's name;

(2) A brief description of the functions of the subcommittee; and

(3) The frequency of meetings.

(c) If an advisory committee is being established or renewed and the functions of a subcommittee are not known at the time of establishment or renewal, the Committee Management Officer includes in the charter of the parent committee general language authorizing the parent committee to appoint subcommittees.

(d) The Committee Management Officer files the charter with the appropriate standing committees of the Senate and House of Representatives, and the Library of Congress. A copy is also filed with the GSA Committee Management Secretariat.

Authority: 5 U.S.C. App. 2.

§ 11.13 When can an advisory committee meet or take action?

An advisory committee must be properly established or renewed, and chartered, as provided in §§11.10, 11.11 and 11.12, before it can meet or take any action.

Authority: 5 U.S.C. App. 2

Subpart C—What are the General Requirements for Committee and Subcommittee Membership?

§ 11.20 Who may be a member of a committee or subcommittee?

(a) In the selection of committee and subcommittee members, there must be no discrimination on the basis of race, national origin, religion, creed, age, sex, or handicap.

(b) All members of a subcommittee must be drawn from the parent committee unless expressly allowed by statute.

Authority: 5 U.S.C. App. 2; 20 U.S.C. 1233 *et seq.*

§ 11.21 What action may be taken by a subcommittee?

(a) Subcommittees shall act under the policies that have been established by the parent committee and shall comply with the requirements of FACA and applicable Department regulations.

(b) Unless expressly authorized by charter or by the full committee in advance, all recommendations and findings of subcommittees must be presented to the parent committee for subsequent action.

Authority: 5 U.S.C. App. 2.

Subpart D—How Does an Advisory Committee Operate?

§ 11.30 What meeting requirements affect advisory committees?

(a) The DFO is not required to call, chair, attend or adjourn meetings of GEPA Presidential advisory committees. Meetings may be held and conducted without the DFO being present. The DFO does not approve the agenda for these meetings.

(b)(1) For Presidential advisory committees not governed by the provisions of GEPA, the DFO is required to—

(i) Call or approve meetings in advance; and

(ii) Chair or attend these meetings.

(2) The DFO is authorized, whenever he or she determines it to be in the public interest, to adjourn any meeting.

(3) Meetings may not be conducted in the absence of the DFO.

(4) The DFO does not approve the agenda for these meetings.

(c)(1) For committees other than those covered by paragraph (a) or (b) of this section, the DFO is required to—

(i) Call or approve meetings in advance; and

(ii) Chair or attend these meetings.

(2) The DFO is authorized, whenever he or she determines it to be in the public interest, to adjourn these meetings.

(3) Meetings may not be conducted in the absence of the DFO.

(4) The DFO approves the agenda for these meetings.

Authority: 5 U.S.C. App. 2; 20 U.S.C. 1233 *et seq.*

§ 11.31 What is a quorum?

(a) An advisory committee shall not hold a meeting and take any action on its deliberations without a quorum. Unless otherwise required by statute or provided in a committee's charter, a quorum consists of the majority of the committee's authorized membership including *ex officio* members.

(b) For a subcommittee, a quorum is the majority of the authorized membership of the subcommittee.

Authority: 5 U.S.C. App. 2.

§ 11.32 What special provisions govern the voting rights of certain committee members?

(a) An *ex officio* committee member or a committee member who is a full-time Federal employee may delegate his or her committee duties, including voting rights. An advisory committee member who is not a Federal employee may not delegate his or her duties, including voting rights, unless a delegation is explicitly permitted by legislation establishing the committee.

(b) Unless provided in the legislation or charter governing a committee, *ex officio* members of committees must have full voting rights.

Authority: 5 U.S.C. App. 2.

§ 11.33 What notice is required for advisory committee and subcommittee meetings?

(a)(1) Unless the Administrator determines otherwise for reasons of national security, or except as otherwise provided in the regulations in this part, notice of each advisory committee or subcommittee meeting must be published in the **Federal Register**. This requirement applies even if all or a part of a meeting is closed to the public.

(2) Except for emergency meetings, notice of advisory committee or subcommittee meetings must be published in the **Federal Register** at least 15 days prior to the meeting. If a meeting is called and must be held without 15 days' notice, the reasons for failure to give the full 15-day notice must be included in the **Federal Register** notice.

(b) All notices, including those for emergency meetings, must state—

(1) The name of the advisory committee;

(2) The date, time, and place of the meeting;

(3) The purpose of the meeting, including a summary of the agenda;

(4) The extent to which the public will be permitted to attend or participate in the meeting;

(5) The reasons for closing any portion of the meeting, including the appropriate exemption from the Government in the Sunshine Act, 5 U.S.C. 552b(c); and

(6) Where records of the meeting, including a summary of any closed

portion, are available for public inspection.

(c) If a meeting is postponed or canceled, a notice must be published in the **Federal Register** to inform the general public of the change.

(d) In addition to the notice of meeting published in the **Federal Register**, the Executive Director or DFO of each advisory committee shall maintain a list of persons and organizations who have requested to be notified of all meetings and notify them by mail in advance of each meeting. Other forms of notice, such as press releases and notices in professional journals, may be used by the Executive Director or DFO to the extent practicable.

Authority: 5 U.S.C. App. 2; 5 U.S.C. 552b(c).

§ 11.34 What public participation is allowed at advisory committee meetings?

(a) Subject to the exception in § 11.35, each advisory committee meeting must be open to the public, and interested persons must be permitted to attend, appear before, or file statements with the advisory committee in accordance with this section.

(b) With respect to any advisory committee meeting, all or part of which is open to the public, the Executive Director or DFO of each committee shall ensure compliance with the following rules:

(1) Meetings must be held at reasonable times and at places that are reasonably accessible to members of the public. If feasible, Government facilities must be used and meetings held in places involving the least expense to the Government.

(2) The size of the meeting room must be reasonable, considering such factors as the number of committee members, committee staff, Department employees, and interested persons from the general public expected to attend.

(3) Any member of the public may file a written statement with the committee, either before or within a reasonable time after a meeting.

(4) If time permits and advance approval has been obtained from the Chairperson, Executive Director, or DFO, interested persons may present oral statements. If the Chairperson has given authorization, the committee may respond to questions from the public.

(5) The Chairperson or the designee of the Chairperson shall make a written request to the Secretary for approval of any meeting held outside the Washington, D.C. area and provide a narrative justificaton for the request. Before the meeting can be held, proper authorization must be given by the Secretary.

Authority: 5 U.S.C. App. 2.

§ 11.35 What are the requirements for closing a meeting?

(a) All or part of an advisory committee meeting may be closed to the public if the Secretary determines in writing that closing is warranted under an exemption in the Government in the Sunshine Act.

(b) To request closing all of part of a meeting, the Chairperson or the Chairperson's designee shall make a written request to the Secretary at least 30 days before the date of the meeting, except in emergency circumstances. The request must contain the reasons for the closed meeting and the Government in the Sunshine Act exemption that authorizes the closing.

(c) In requesting the closing of all or part of a meeting, the Chairperson or the designee of the Chairperson shall—

(1) Restrict the closing to the shortest reasonable time;

(2) Request closing only the portion of the meeting dealing with exempt matters if several separable matters will be considered, not all of which are within the exemptions; and

(3) Arrange the agenda to facilitate attendance by the public at the open portion of the meeting.

(d) Committee members, committee staff, and interested Department officials or employees may attend closed or partially closed meetings.

(e) Within 14 days after the closed or partially closed meeting, advisory committees shall make available to the public a written summary report of the closed deliberations consistent with the policy of the Government in the Sunshine Act.

Authority: 5 U.S.C. App. 2; 5 U.S.C. 552b(c).

§ 11.36 What special procedures may be used for emergency advisory committee meetings?

(a) In emergency circumstances, the Secretary may permit a committee to conduct its business by a telephone conference call, under the procedures in this section.

(b) In determining whether conducting a meeting by telephone conference call is justified, the Secretary considers—

(1) Whether the nature of the emergency is critical to the operation of the committee, but not sufficient to justify holding a regular meeting;

(2) Whether the meeting involves committee projects or assignments with very short deadlines requiring assistance from an advisory committee, and whether there is enough time to convene a regular meeting; and

(3) Whether the Secretary requires advice or important information from the committee, but the Department is under financial constraints that prevent the expenditure of Federal funds for the expenses of convening a regular meeting.

(c)(1) If an advisory committee calls an emergency meeting by telephone conference call, the committee Chairperson or the Chairperson's designee shall provide the Secretary with a written request for the meeting including a justification explaining the necessity and urgency for the meeting.

(2) The Secretary publishes a notice in the **Federal Register** informing the general public of the intent to have a meeting by telephone conference call. The notice specifies how the public will have access to the meeting. At a minimum, one participating member must be in a room with seating space for the public and telephonic devices that permit the public to hear and to participate in the deliberations to the extent provided by § 11.34.

(3) The Chairperson or the Chairperson's designee shall ensure that detailed minutes of the proceedings are accurately taken and filed in the committee's staff office and that the meeting complies with any other applicable laws and regulations.

Authority: 5 U.S.C. App. 2.

§ 11.37 How is the agenda established and distributed?

(a) The Committee Chairperson or the Chairperson's designee shall distribute advance copies of a committee's agenda to committee members, Departmental officials, and interested individuals, groups or organizations at least two days prior to the date of the meeting.

(b) The agenda must include the matters to be discussed and considered at the meeting, and state whether any portion of the meeting is closed to the public.

Authority: 5 U.S.C. App. 2.

§ 11.38 What records are kept of advisory committee meetings?

(a) The Chairperson or the Chairperson's designee shall ensure that an advisory committee keeps detailed minutes of each meeting, including meetings of subcommittees, unless a verbatim transcript is made of the meeting.

(b) The minutes must include—

(1) The date, time and place of the meeting;

(2) A list of committee members, committee staff, Federal employees, and an estimated number of the general public present at the meeting;

(3) A detailed summary of matters discussed at the meeting, including

different positions taken and conclusions reached by the committee;

(4) Copies of all reports, papers, and other documents received, issued, or approved by the committee;

(5) An explanation of the extent to which the meeting was open to the public and the public participated in the proceedings; and

(6) A list of the public participants who presented oral or written statements.

(c) The Chairperson or Chairperson's designee shall ensure that minutes are completed within a reasonable time after the meeting. The Chairperson shall certify the accuracy of the minutes.

(d) A copy of the minutes must be kept on file by the advisory committee, and a copy must be sent to the Committee Management Officer.

Authority: 5 U.S.C. App. 2.

§ 11.39 What reports are made by advisory committees?

(a) Each statutory and non-statutory advisory committee shall make an annual report of its activities, findings, and recommendations to the Congress not later than March 31, which is submitted with the Secretary's annual report to Congress. Each committee's annual report must cover committee activities for the preceding fiscal year.

(b) Statutory advisory committees shall prepare reports that are mandated by their enabling legislation.

(c) Copies of all reports must be submitted to the Committee Management Officer.

Authority: 5 U.S.C. App. 2; 20 U.S.C. 1233 *et seq.*

§ 11.40 What records must an advisory committee make available to the public?

(a) All records, reports, and other documents on advisory committees are available for public inspection and copying consistent with the Department's Freedom of Information Act regulations, 34 CFR Part 5.

(b) Copies of transcripts of committee proceedings or meetings are available at a cost determined under the fee schedule in 34 CFR 5.61.

Authority: 5 U.S.C. App. 2.

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federal register

Thursday
July 2, 1987

Part V

Department of the Interior

Minerals Management Service

Outer Continental Shelf Western Gulf of Mexico Oil and Gas Lease Sale and Leasing Systems, Sale 112; Notices

4310-MR

UNITED STATES
DEPARTMENT OF THE INTERIOR
MINERALS MANAGEMENT SERVICE

Outer Continental Shelf
Western Gulf of Mexico
Oil and Gas Lease Sale 112

1. Authority. This Notice is published pursuant to the Outer Continental Shelf (OCS) Lands Act (43 U.S.C. 1331-1356, (1982)), as amended by the OCS Lands Act Amendments of 1985 (100 Stat. 147), and the regulations issued thereunder (30 CFR Part 256).

2. Filing of Bids. Sealed bids will be received by the Regional Director (RD), Gulf of Mexico Region, Minerals Management Service (MMS), 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123-2394. Bids may be delivered in person to that address during normal business hours (8 a.m. to 4 p.m.) until the Bid Submission Deadline at 10 a.m., August 11, 1987. All times cited in this Notice refer to Central Standard Time (c.s.t.) unless otherwise stated. Bids will not be accepted the day of Bid Opening, August 12, 1987. Bids received by the RD later than the time and date specified above will be returned unopened to the bidders. Bids may not be modified unless written modification is received by the RD prior to 10 a.m., August 11, 1987. Bids may not be withdrawn unless written withdrawal is received by the RD prior to 8:30 a.m., August 12, 1987. Bid Opening Time will be 9 a.m., August 12, 1987, at the Marriott Hotel, 555 Canal Street, New Orleans, Louisiana. All bids must be submitted and will be considered in accordance with applicable regulations including 30 CFR Part 256. The list of restricted joint bidders which applies to this sale appeared in the Federal Register at 52 FR 10174, published on March 30, 1987.

3. Method of Bidding. A separate bid in a sealed envelope labeled "Sealed Bid for Oil and Gas Lease Sale 112, (map number, map name, and block number(s)), not to be opened until 9 a.m., c.s.t., August 12, 1987," must be submitted for each block or prescribed bidding unit bid upon. For those blocks which must be bid upon as a bidding unit (see paragraph 12), it is recommended that all numbers for blocks comprising the bidding unit appear on the sealed envelope. A suggested bid form appears in 30 CFR Part 256, Appendix A. In addition, the total amount bid must be in whole dollar amounts (no cents). Bidders must submit with each bid one-fifth of the cash bonus, in cash or by cashier's check, bank draft, or certified check, payable to the order of the U.S. Department of the Interior--Minerals Management Service. No bid for less than all of the unleased portions of a block or bidding unit as described in paragraph 12 will be considered. Bidders are advised to use the description "All the Unleased Federal Portion" for those blocks having only aliquot portions currently available for leasing.

All documents must be executed in conformance with signatory authorizations on file. Partnerships also need to submit or have on file in the Gulf of Mexico Regional Office a list of signatories authorized to bind the partnership. Bidders submitting joint bids must state on the bid form the proportionate interest of each participating bidder, in percent to a maximum of five decimal places after the decimal point, e.g., 50.12345 percent. Other documents may be required of bidders under 30 CFR 256.46. Bidders are warned against violation of 18 U.S.C. 1860, prohibiting unlawful combination or intimidation of bidders.

4. Bidding Systems. All bids submitted at this sale must provide for a cash bonus in the amount of $25 or more per acre or fraction thereof. All leases awarded will provide for a yearly rental payment of $3 per acre or fraction thereof. All leases will provide for a minimum royalty of $3 per acre or fraction thereof. The bidding systems to be employed for this sale apply to blocks or bidding units as shown on Map 2 (see paragraph 12). The following bidding systems will be used:

(a) Bonus Bidding with a 12-1/2 Percent Royalty. Bids on the blocks and bidding units offered under this system must be submitted on a cash bonus basis with a fixed royalty of 12-1/2 percent.

(b) Bonus Bidding with a 16-2/3 Percent Royalty. Bids on the blocks and bidding units offered under this system must be submitted on a cash bonus basis with a fixed royalty of 16-2/3 percent.

5. Equal Opportunity. Each bidder must have submitted by the Bid Submission Deadline stated in paragraph 2, the certification required by 41 CFR 60-1.7(b) and Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, on the Compliance Report Certification Form, Form MMS-2033 (June 1985), and the Affirmative Action Representation Form, Form MMS-2032 (June 1985). See paragraph 14(e).

6. Bid Opening. Bid opening will begin at the Bid Opening Time stated in paragraph 2. The opening of the bids is for the sole purpose of publicly announcing bids received, and no bids will be accepted or rejected at that time. If the Department is prohibited for any reason from opening any bid before midnight on the day of Bid Opening, that bid will be returned unopened to the bidder as soon thereafter as possible.

7. Deposit of Payment. Any cash, cashier's checks, certified checks, or bank drafts submitted with a bid may be deposited by the Government in an interest-bearing account in the U.S. Treasury during the period the bids are being considered. Such a deposit does not constitute and shall not be construed as acceptance of any bid on behalf of the United States.

8. Withdrawal of Blocks. The United States reserves the right to withdraw any block from this sale prior to issuance of a written acceptance of a bid for the block.

9. Acceptance, Rejection, or Return of Bids. The United States reserves the right to reject any and all bids. In any case, no bid will be accepted, and no lease for any block or bidding unit will be awarded to any bidder, unless:

(a) the bidder has complied with all requirements of this Notice and applicable regulations;

(b) the bid is the highest valid bid; and

(c) the amount of the bid has been determined to be adequate by the authorized officer.

No bonus bid will be considered for acceptance unless it provides for a cash bonus in the amount of $25 or more per acre or fraction thereof. Any bid submitted which does not conform to the requirements of this Notice, the OCS Lands Act, as amended, and other applicable regulations may be returned to the person submitting that bid by the RD and not considered for acceptance.

10. Successful Bidders. Each person who has submitted a bid accepted by the authorized officer will be required to execute copies of the lease, pay the balance of the cash bonus bid together with the first year's annual rental as specified below, and satisfy the bonding requirements of 30 CFR 256, Subpart I. Successful bidders are required to submit the balance of the bonus and the first year's annual rental payment, for each lease issued, by electronic funds transfer in accordance with the requirements of 30 CFR 218.155.

11. Leasing Maps and Official Protraction Diagrams. Blocks or bidding units offered for lease may be located on the following Leasing Maps or Official Protraction Diagrams which may be purchased from the Gulf of Mexico Regional Office (see paragraph 14(a)):

(a) OCS Leasing Maps - South Texas Set. This set of maps sells for $5.00.

Map 1	South Padre Island Area
Map 1A	South Padre Island Area, East Addition (revised 12/16/85)
Map 2	North Padre Island Area
Map 2A	North Padre Island Area, East Addition
Map 3	Mustang Island Area
Map 3A	Mustang Island Area, East Addition
Map 4	Matagorda Island Area

(b) OCS Leasing Maps - East Texas Set. This set of maps sells for $7.00.

Map 5	Brazos Area
Map 5B	Brazos Area, South Addition
Map 6	Galveston Area
Map 6A	Galveston Area, South Addition
Map 7	High Island Area
Map 7A	High Island Area, East Addition
Map 7B	High Island Area, South Addition
Map 7C	High Island Area, East Addition, South Extension
Map 8	Sabine Pass Area

(c) OCS Protraction Diagrams. These diagrams sell for $2.00 each.

NG 14-3	Corpus Christi (revised 1/27/76)
NG 14-6	Port Isabel (revised 12/16/85)
NG 15-1	East Breaks (revised 1/27/76)
NG 15-2	Garden Banks (revised 12/2/76)
NG 15-4	Alaminos Canyon (revised 12/16/85)
NG 15-5	Keathley Canyon (revised 03/03/87)

12. Description of the Areas Offered for Bids.

(a) Acreages of blocks are shown on Leasing Maps and Official Protraction Diagrams. Some of these blocks, however, may be partially leased, or transected by administrative lines such as the Federal/State jurisdictional line. In these cases,

the following supplemental documents to this Notice are available from the Gulf of Mexico Regional Office (see paragraph 14(a)):

(1) Western Gulf of Mexico Lease Sale 112 - Final. Unleased Split Blocks.

(2) Western Gulf of Mexico Lease Sale 112 - Final. Unleased Acreage of Blocks with Aliquots Under Lease.

(b) References to Maps 1, 2, and 3 in this Notice refer to the following maps which are available on request from the Gulf of Mexico Regional Office:

Map 1 entitled "Western Gulf of Mexico Lease Sale 112 - Final. Stipulations, Lease Terms, and Warning Areas."

Map 2 entitled "Western Gulf of Mexico Lease Sale 112 - Final. Bidding Systems and Bidding Units," refers largely to Royalty Rates and Bidding Units.

Map 3 entitled "Western Gulf of Mexico Lease Sale 112 - Final. Detailed Maps of Biologically Sensitive Areas," pertains to areas referenced in Stipulation No. 2.

(c) In several instances two or more blocks have been joined together into bidding units totaling less than 5,760 acres. Any bid submitted for a bidding unit having two or more blocks must be for all of the unleased Federal acreage within all of the blocks in that bidding unit. The list of those bidding units with their total acreages appears on Map 2.

(d) The areas offered for leasing include all those blocks shown on the OCS Leasing Maps and Official Protraction Diagrams listed in paragraph 11(a), (b), and (c), except for those blocks or partial blocks described as follows:

WESTERN GULF OF MEXICO LEASE SALE 112
WESTERN GULF OF MEXICO LEASED LANDS

(1) Descriptions of Blocks Listed Represent All Federal Acreage Leased Unless Otherwise Noted

S. Padre Island	N. Padre Island (continued)	N. Padre Island East Addition (continued)	Mustang Island (continued)	Mustang Island (continued)	Mustang Island East Addition (continued)
1031	908	A-42	787	A-23	A-152
1032	909	A-43	788	A-25	A-153
1039	915	A-45	791	A-26	A-162
1040	916	A-46	798	A-30	A-164
1062	927	A-57	803	A-31	A-167
1063	928	A-58	804	A-33	A-170
1069	936	A-59	805	A-34	A-171
1070	956	A-60	809	A-36	A-174
1104-	967	A-61	813		A-175
(Landward of	968	A-65	814	Mustang Island,	
8(g) line)	969	A-72	822	East Addition	Matagorda
1111	976	A-78	823		Island
1112	1000-	A-83	825	735	
1123	(Landward of	A-84	828	736	487
1124-	8(g) line)		829	760	518
(Portion	1006	Mustang Island	830	A-43	519
Seaward of	1007		831	A-58	520
8(g) line)	1008	725	834	A-60	526
1125		726	835	A-62	527
1133	N. Padre Island,	727	836	A-63	528
1144	East Addition	728	845	A-65	529-
1153		739	846	A-85	(Landward of
1154	912	740	847	A-86	8(g) line)
	953	742	849	A-94	554
S. Padre	970	743	868	A-95	555
Island,	974	752	873	A-97	556
East	995	753	875	A-102	557
Addition	1011	754	876	A-103	558
	1018	755	A-1	A-106	564
A-75	A-1	756	A-2	A-110	565
	A-4	757	A-6	A-111	566
N. Padre	A-5	758	A-10	A-112	567
Island	A-7	762	A-11	A-113	568
	A-9	763	A-12	A-114	569
886	A-11	765	A-13	A-121	586
887	A-12	766	A-14	A-122	587
888	A-13	768	A-15	A-135	588
894	A-14	769	A-16	A-138	589
895	A-16	777	A-18	A-139	591
897	A-22	778	A-19	A-140	592
898	A-27	780	A-20	A-142	599
905	A-29	781	A-21	A-146	600
906	A-33	784	A-22	A-151	601

Matagorda Island (continued)

602
603
604
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619
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623
624
631
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633
634–
(Seaward of 8(g) line)
635
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Matagorda Island (continued)

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712
713
715
718
A-1
A-4
A-7

Brazos

335
342
364–
(Landward of 8(g) line)
376–
(Landward of 8(g) line)
378
398
399
412
415
417
435–
(Seaward of 8(g) line)
436
437

Brazos (continued)

438 (E½)
451
452 (E½)
453
455
457
466
474
476
478
479
488
489–
(Landward of 8(g) line)
490
491
492
493
494
497
498
501
504
510
511
512
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515
517
534
535
536
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583
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608
615
A-7
A-9
A-16
A-17
A-19
A-20
A-21
A-22

Brazos (continued)

A-23
A-27
A-28
A-37
A-38
A-39

Brazos South Addition

A-47
A-50
A-51
A-52
A-53
A-54
A-63
A-64
A-65
A-66
A-67
A-68
A-70
A-74
A-76
A-79
A-89
A-102
A-105
A-118
A-119
A-132
A-133

Galveston

144
151
180
181
188
189
190 (W½)
191–
(Portion seaward of 8(g) line)
192
209
210

Galveston (continued)

211
213
223
241
242–
(Landward of 8(g) line)
243–
(Landward of 8(g) line)
255
257
270
271
272–
(Seaward of 8(g) line)
274
282
288–
(S½NE¼NE¼;
SE¼NW¼NE¼;
S½NE¼;
E½E½SW¼; SE¼)
289–
(SW¼NW¼NW¼;
W½SW¼NW¼;
SE¼SW¼NW¼;
SW¼SE¼NW¼;
SW¼; W½SE¼)
295–
(S½NE¼NE¼;
NW¼NE¼;
W½SW¼NE¼;
NE¼SW¼NE¼;
N½SE¼NE¼;
W½; W½NW¼SE¼;
S½SE¼)
296–
(NE¼;
NE¼NE¼NW¼;
S½NE¼NW¼;
S½SW¼NW¼;
SE¼NW¼;
N½S½;
NE¼SW¼SW¼;
N½SE¼SW¼;
N½SW¼SE¼;
SE¼SE¼)

Galveston (continued)

298
300
303
312
313
314
(Portion seaward of 8(g) line)
318
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Galveston (continued)

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A-16
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A-39
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A-74
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A-97
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A-101
A-111

Galveston, South Addition

A-114
A-115
A-116
A-126
A-127
A-131
A-142
A-144
A-145
A-156
A-162
A-192
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A-194
A-214
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A-226
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A-253

High Island

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111
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114
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116
117
133
134
135–
(N½; N½S½;
SW¼SW¼; W½SE¼SW¼;
NE¼SE¼SW¼;
N½S½SE¼)
136–
(E½; E½NE¼SW¼;
S½SE¼SW¼)

High Island (continued)

138 (S½)
139
140
141 (E½)
142
153
154 (N½)
155 (W½)
156
157
158
159
160–
(NE¼; NE¼NW¼;
E½SE¼NW¼;
N½SE¼;
N½SE¼SE¼)
161–
(NW¼NE¼NW¼;
S½NE¼NW¼;
W½NW¼;
SE¼NW¼;
NE¼NE¼SW¼;
W½NE¼SW¼;
NW¼SW¼;
NW¼SW¼SW¼)
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High Island (continued)

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High Island (continued)

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High Island, South Addition

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High Island South Addition (continued)

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High Island, South Addition (continued)

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High Island, East Addition

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High Island East Addition (continued)

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High Island East Addition, South Extension

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High Island East Addition South Extension (continued)

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High Island East Addition South Extension (continued)

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Sabine Pass

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44

Corpus Christi

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570
872
916
920
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1008

East Breaks

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East Breaks (continued)

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East Breaks (continued)

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Garden Banks

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Garden Banks (continued)

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Garden Banks (continued)

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Garden Banks (continued)

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Port Isabel

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258
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564
568
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654
697
698

Alaminos Canyon

133
557
600
601
726
731
770
775
813
857

(2) Although currently unleased and shown on Texas Leasing Map No. 7C, High Island Area, East Addition, South Extension, dated October 19, 1981, no bids will be accepted on the following blocks:

Blocks A-375 and A-398.

13. Lease Terms and Stipulations.

(a) Leases resulting from this sale will have initial terms as shown on Map 1 and will be issued on Form MMS-2005 (March 1986). Copies of the lease form are available from the Gulf of Mexico Regional Office (see paragraph 14(a)).

(b) The applicability of the stipulations which follow is as shown on Map 1 and Map 3 and as supplemented by references in this Notice.

Stipulation No. 1--Protection of Archaeological Resources.

(This stipulation will apply to all blocks offered for lease in this sale.)

(a) "Archaeological resource" means any prehistoric or historic district, site, building, structure, or object (including shipwrecks); such term includes artifacts, records, and remains which are related to such a district, site, building, structure, or object (section 301(5), National Historic Preservation Act, as amended, 16 U.S.C. 470w(5)). "Operations" means any drilling, mining, or construction or placement of any structure for exploration, development, or production of the lease.

(b) If the Regional Director (RD) believes an archaeological resource may exist in the lease area, the RD will notify the lessee in writing. The lessee shall then comply with subparagraphs (1) through (3).

(1) Prior to commencing any operations, the lessee shall prepare a report, as specified by the RD, to determine the potential existence of any archaeological resource that may be affected by operations. The report, prepared by an archaeologist and a geophysicist, shall be based on an assessment of data from remote-sensing surveys and of other pertinent archaeological and environmental information. The lessee shall submit this report to the RD for review.

(2) If the evidence suggests that an archaeological resource may be present, the lessee shall either:

(i) Locate the site of any operation so as not to adversely affect the area where the archaeological resource may be; or

(ii) Establish to the satisfaction of the RD that an archaeological resource does not exist or will not be adversely affected by operations. This shall be done by further archaeological investigation, conducted by an archaeologist and a geophysicist using survey equipment and techniques deemed necessary by the RD. A report on the investigation shall be submitted to the RD for review.

(3) If the RD determines that an archaeological resource is likely to be present in the lease area and may be adversely affected by operations, the RD will notify the lessee immediately. The lessee shall take no action that may adversely affect the archaeological resource until the RD has told the lessee how to protect it.

(c) If the lessee discovers any archaeological resource while conducting operations on the lease area, the lessee shall report the discovery immediately to the RD. The lessee shall make every reasonable effort to preserve the archaeological resource until the RD has told the lessee how to protect it.

Stipulation No. 2--Protection of Topographic Features.

(This stipulation will be included in leases located in the areas so indicated on Maps 1 and 3 described in paragraph 12.)

The banks which cause this stipulation to be applied to blocks of the Western Gulf are:

Bank Name	Isobath (meters)
Shelf Edge Banks	
West Flower Garden Bank* (defined by 1/4 1/4 1/4 system)	100
East Flower Garden Bank* (defined by 1/4 1/4 1/4 system)	100
MacNeil Bank	82
29 Fathom Bank	64
Rankin Bank	85
Geyer Bank	85
Elvers Bank	85
Bright Bank*****	85
McGrail Bank*****	85
Rezak Bank*****	85
Sidner Bank	85
Parker Bank	85
Stetson Bank	62
Applebaum Bank	85

Bank Name	Isobath (meters)
Low Relief Banks**	
Mysterious Bank (see leasing map)	74,76,78,80,84
Coffee Lump (see leasing map)	Various
Blackfish Ridge	70
Big Dunn Bar	65
Small Dunn Bar	65
32 Fathom Bank	52
Claypile Bank***,	50
South Texas Banks****	
Dream Bank	78,82
Southern Bank	80
Hospital Bank	70
North Hospital Bank	68
Aransas Bank	70
South Baker Bank	70
Baker Bank	70

* Flower Garden Banks--In paragraph (c) a "4-Mile Zone" rather than a "1-Mile Zone" applies.

** Low Relief Banks--Only paragraph (a) applies.

*** Claypile Bank--Paragraphs (a) and (b) apply. In paragraph (b) monitoring of the effluent to determine the effect on the biota of Claypile Bank shall be required rather than shunting.

**** South Texas Banks--Only paragraphs (a) and (b) apply.

***** Central Gulf of Mexico bank with a portion of its "1-Mile Zone" and/or "3-Mile Zone" in the Western Gulf of Mexico.

(a) No activity including structures, drilling rigs, pipelines, or anchoring will be allowed within the listed isobath ("No Activity Zone" as shown on Map 3) of the banks as listed above.

(b) Operations within the area shown as "1,000-Meter Zone" shall be restricted by shunting all drill cuttings and drilling fluids to the bottom through a downpipe that terminates an appropriate distance, but no more than 10 meters, from the bottom.

(c) Operations within the area shown as "1-Mile Zone" on Map 3 shall be restricted by shunting all drill cuttings and drilling fluids to the bottom through a downpipe that terminates an appropriate distance, but no more than 10 meters, from the bottom. (Where there is a "1-Mile Zone" designated, the "1,000-Meter Zone" in paragraph (b) is not designated.)

(d) Operations within the area shown as "3-Mile Zone" on Map 3 shall be restricted by shunting all drill cuttings and drilling fluids from development operations to the bottom through a downpipe that terminates an appropriate distance, but no more than 10 meters, from the bottom.

Stipulation No. 3--Military Warning Areas.

(This stipulation will be included in leases located within Warning Areas shown on Map 1 described in paragraph 12.)

(a) Hold and Save Harmless

Whether compensation for such damage or injury might be due under a theory of strict or absolute liability or otherwise, the lessee assumes all risks of damage or injury to persons or property, which occur in, on, or above the Outer Continental Shelf, to any persons or to any property of any person or persons who are agents, employees, or invitees of the lessee, its agents, independent contractors or subcontractors doing business with the lessee in connection with any activities being performed by the lessee in, on, or above the OCS, if such injury or damage to such person or property occurs by reason of the activities of any Agency of the U. S. Government, its contractors or subcontractors, or any of their officers, agents or employees, being conducted as a part of, or in connection with, the programs and activities of the command headquarters listed in the following table.

Notwithstanding any limitation of the lessee's liability in section 14 of the lease, the lessee assumes this risk whether such injury or damage is caused in whole or in part by any act or omission, regardless of negligence or fault, of the United States, its contractors or subcontractors, or any of

its officers, agents, or employees. The lessee further agrees to indemnify and save harmless the United States against all claims for loss, damage, or injury sustained by the lessee, and to indemnify and save harmless the United States against all claims for loss, damage, or injury sustained by the agents, employees, or invitees of the lessee, its agents, or any independent contractors or subcontractors doing business with the lessee in connection with the programs and activities of the appropriate military installation, whether the same be caused in whole or in part by the negligence or fault of the United States, its contractors or subcontractors, or any of its officers, agents, or employees and whether such claims might be sustained under a theory of strict or absolute liability or otherwise.

(b) Electromagnetic Emissions

The lessee agrees to control its own electromagnetic emissions and those of its agents, employees, invitees, independent contractors or subcontractors emanating from individual designated defense warning areas in accordance with requirements specified by the commander of the command headquarters listed in the following table to the degree necessary to prevent damage to, or unacceptable interference with, Department of Defense flight, testing or operational activities conducted within individual designated warning areas. Necessary monitoring control and coordination with the lessee, its agents, employees, invitees, independent contractors or subcontractors will be effected by the commander of the appropriate onshore military installation conducting operations in the particular warning area, provided, however, that control of such electromagnetic emissions shall in no instance prohibit all manner of electromagnetic communication during any period of time between a lessee, its agents, employees, invitees, independent contractors or subcontractors, and onshore facilities.

(c) Operational

The lessee, when operating or causing to be operated on its behalf, boat or aircraft traffic in the individual designated warning areas, shall enter into an agreement with the commander of the individual command headquarters listed in the following table, upon utilizing an individual designated warning area prior to commencing such traffic. Such an agreement will provide for positive control of boats and aircraft operating in the warning areas at all times.

Warning Areas' Command Headquarters
Western Planning Area

Warning Areas	Command Headquarters
W-228	Chief, Naval Air Training Naval Air Station ATTN: Lt. Col. T. M. Aiton or Lt. J. L. Keith Corpus Christi, Texas 78419-5100 ATTN: N33 Telephone: (512) 939-3927/3902
W-602	Director of Training Deputy Chief of Staff, Operations Headquarters Strategic Air Command ATTN: Major Rose Offutt AFB, Nebraska 68113-5001 Telephone: (402) 294-3103/3450 or (Scheduling) (402) 294-2334/4649

14. Information to Lessees.

(a) Supplemental Documents. For copies of the various documents identified as available from the Gulf of Mexico Regional Office, prospective bidders should contact the Public Information Unit, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123-2394, either in writing or by telephone (504) 736-2519. For additional information, contact the Regional Supervisor for Leasing and Environment at that address or by telephone at (504) 736-2755.

(b) Navigation Safety. Operations on some of the blocks offered for lease may be restricted by designation of fairways, precautionary zones, anchorages, safety zones, or traffic separation schemes established by the U.S. Coast Guard (USCG) pursuant to the Ports and Waterways Safety Act (33 U.S.C. 1221 et seq.), as amended. The U.S. Corps of Engineers permits are required for construction of any artificial islands, installations, and other devices permanently or temporarily attached to the seabed located on the OCS in accordance with section 4(e) of the OCS Lands Act, as amended.

Prospective bidders should be aware of a USCG study of port access routes in the Gulf of Mexico. Notice of this study was published in the Federal Register on March 19, 1984, at 49 FR 10127, with additional references on April 12, 1984, at 49 FR 14538, and on July 10, 1984, at 49 FR 28074. The purpose of this study was to evaluate alternative routing

measures for the Galveston Approach Area. The following blocks in the High Island Area, Maps 7 and 7A of the East Texas Set were affected:

A-40 to A-48; A-52 to A-59; A-61; A-67; A-68; A-70 to A-80; A-212 to A-214; and A-219 to A-223.

The results of this USCG study were published as a Notice in the Federal Register on March 11, 1985, at 50 FR 9682.

A proposed rulemaking to establish a shipping/safety fairway was published in the Federal Register on March 6, 1986, at 50 FR 7814. A final rulemaking is expected in the near future.

For additional information, prospective bidders should contact Lt. Commander F. V. Newman, Assistant Marine Port Safety Officer, 8th Coast Guard District, Hale Boggs Federal Building, New Orleans, Louisiana 70130 (Phone: (504) 589-6901).

(c) Offshore Pipelines. Lessees are advised that the Department of the Interior and the Department of Transportation have entered into a Memorandum of Understanding dated May 6, 1976, concerning the design, installation, operation, and maintenance of offshore pipelines. Bidders should consult both Departments for regulations applicable to offshore pipelines.

(d) Exploration Plans for 10-Year Leases. For those blocks identified as having lease terms with an initial period of 10 years, bidders are advised that, pursuant to 30 CFR 250.34-1(a)(3), the lessee shall submit to the MMS either an exploration plan or a general statement of exploration intention prior to the end of the ninth lease year.

(e) Affirmative Action. Revision of Department of Labor regulations on affirmative action requirements for Government contractors (including lessees) has been deferred, pending review of those regulations (see Federal Register of August 25, 1981, at 46 FR 42865 and 42968). Should changes become effective at any time before the issuance of leases resulting from this sale, section 18 of the lease form (Form MMS-2005, March 1986) would be deleted from leases resulting from this sale. In addition, existing stocks of the affirmative action forms described in paragraph 5 of this Notice contain language that would be superseded by the revised regulations at 41 CFR 60-1.5(a)(1) and 60-1.7(a)(1).

Submission of Form MMS-2032 (June 1985) and Form MMS-2033 (June 1985) will not invalidate an otherwise acceptable bid, and the revised regulations' requirements will be deemed to be part of the existing affirmative action forms.

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(f) Disposal Areas. Bidders are cautioned as to the existence of two inactive ordnance disposal areas in the Corpus Christi and East Breaks areas, shown on Map 1 described in paragraph 12 of this Notice. These areas were used to dispose of ordnance of unknown composition and quantity. These areas have not been used since about 1970. Water depths in the Corpus Christi area range from approximately 600 to 900 meters. Water depths in the East Breaks area range from approximately 300 to 700 meters. Bottom sediments in both areas are generally soft, consisting of silty clays. Exploration and development activities in these areas require precautions commensurate with the potential hazards. Lessees are advised of an Environmental Protection Agency (EPA) dumping site located in portions of Alaminos Canyon, East Breaks, Garden Banks, and Keathley Canyon.

(g) Information on the Gulf Ocean Incineration Site. Bidders are advised of the existence of the Gulf Ocean Incineration Site located in the East Breaks, Garden Banks, Alaminos Canyon, and Keathley Canyon leasing areas, as shown on Map 1. This site is designated for the incineration of organohalogen wastes including polychlorinated biphenyls and ethylene dichloride. Lessees are advised to contact the EPA, Washington, D.C. office when formulating plans for undertaking oil and gas activity in the designated incineration site area so that potential conflicts can be mitigated through coordination of activities.

15. OCS Orders. Operations on all leases resulting from this sale will be conducted in accordance with the provisions of all Gulf of Mexico OCS Orders, as of their effective dates, and any other applicable OCS Order as it becomes effective.

Wm D Bettenberg
Director, Minerals Management Service

Wm. D. Bettenberg

Approved:

James E Cason
Acting Assistant Secretary - Land and Minerals Management

James E. Cason
6/29/87
Date

Billing Code: 4310-MR

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf
Western Gulf of Mexico

Notice of Leasing Systems, Sale 112

Section 8(a)(8) (43 U.S.C. 1337(a)(8)) of the Outer Continental Shelf Lands Act (OCSLA) requires that, at least 30 days before any lease sale, a Notice be submitted to the Congress and published in the Federal Register:

1. identifying the bidding systems to be used and the reasons for such use; and

2. designating the tracts to be offered under each bidding system and the reasons for such designation.

This Notice is published pursuant to these requirements.

1. Bidding systems to be used. In the Outer Continental Shelf (OCS) Sale 112, blocks will be offered under the following two bidding systems as authorized by section 8(a)(1) (43 U.S.C. 1337(a)(1)): (a) bonus bidding with a fixed 16 2/3-percent royalty on all unleased blocks in less than 400 meters of water; and (b) bonus bidding with a fixed 12 1/2-percent royalty on all remaining unleased blocks.

a. Bonus Bidding with a 16 2/3-Percent Royalty. This system is authorized by section (8)(a)(1)(A) of the OCSLA. This system has been used extensively since the passage of the OCSLA in 1953 and imposes greater risks on the lessee than systems with higher contingency payments, but may yield more rewards if a commercial field is discovered. The relatively high front-end bonus payments may encourage rapid exploration.

b. Bonus Bidding with a 12 1/2-Percent Royalty. This system is authorized by section (8)(a)(1)(A) of the OCSLA. It has been chosen for certain deeper water blocks proposed for the Western Gulf of Mexico (Sale 112) because these blocks are expected to require substantially higher exploration, development, and production costs, as well as longer times before initial production, in comparison to shallow water blocks. Department of the Interior analyses indicate that the minimum economically

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developable discovery on a block in such high-cost areas under a 12 1/2-percent royalty system would be less than for the same blocks under a 16 2/3-percent royalty system. As a result, more blocks may be explored and developed. In addition, the lower royalty rate system is expected to encourage more rapid production and higher economic profits. It is not anticipated, however, that the larger cash bonus bid associated with a lower royalty rate will significantly reduce competition, since the higher costs for exploration and development are the primary constraints to competition.

2. Designation of Blocks. The selection of blocks to be offered under the two systems was based on the following factors:

a. Lease terms on adjacent, previously leased blocks were considered to enhance orderly development of each field.

b. Blocks in deep water were selected for the 12 1/2-percent royalty system based on the favorable performance of this system in these high-cost areas as evidenced in our analyses.

The specific blocks to be offered under each system are shown on Map 2 entitled "Western Gulf of Mexico Lease Sale 112 - Final, Bidding Systems and Bidding Units." This map is available from the Minerals Management Service, Gulf of Mexico Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123-2394.

Wm. D. Bettenberg
Director, Minerals Management Service

Approved:

Wm. D. Bettenberg

James E. Cason
Acting Assistant Secretary - Land and Minerals Management

JUN 29 1987

James E. Cason

federal register

Thursday
July 2, 1987

Part VI

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Frameworks for Early Season Regulations; Supplemental Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Frameworks for Early Season Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Supplemental proposed rule.

SUMMARY: This document supplements proposed rules published on March 13, 1987 (52 FR 7900), and June 3, 1987 (52 FR 20757), which notified the public that the U.S. Fish and Wildlife Service (hereinafter the Service) proposes to establish hunting regulations for certain migratory game birds during 1987–88, and provided information on certain proposed regulations.

This proposed rulemaking provides frameworks or outer limits for dates and times when shooting may begin and end, and the number of birds that may be taken and possessed in early seasons for migratory bird hunting. These are hunting seasons that open prior to October 1 and relate to mourning doves; white-winged and white-tipped doves; band-tailed pigeons; woodcock; common snipe; rails; common moorhens; purple gallinules; teal; sea ducks; experimental September duck seasons in Florida, Iowa, Kentucky and Tennessee; experimental September Canada goose seasons in Illinois and Michigan; a special sandhill crane-Canada goose season in southwestern Wyoming; sandhill cranes in the Central Flyway and Arizona; and extended falconry seasons. The frameworks for Alaska, Puerto Rico and the Virgin Islands will appear in a separate **Federal Register** document intended for publication in late July.

The Service annually prescribes hunting regulations frameworks to the States for season selection purposes. The primary purpose of this proposed rule is to facilitate establishment of early-season migratory bird hunting regulations for 1987–88.

DATES: The comment period for the proposed early-season frameworks will end on July 14, 1987, except that for Alaska, Hawaii, Puerto Rico and the Virgin Islands the comment period closed on June 18, 1987. The comment period for late-season proposals will close on August 25, 1987.

A Public Hearing on Late-Season Regulations will be held August 4, 1987, starting at 9 a.m.

Address Comments to: Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, Matomic Building—Room 536, Washington, DC 20240. The August 4 Public Hearing will be held in the Auditorium of the Department of the Interior Building on C Street, between 18th and 19th Streets, NW., Washington, DC. Notice of intention to participate in this hearing should be sent in writing to the Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240.

Comments received on this supplemental proposed rulemaking will be available for public inspection during normal business hours in Room 536, Matomic Building, 1717 H Street, NW., Washington, DC

FOR FURTHER INFORMATION CONTACT: Rollin D. Sparrowe, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Matomic Building—Room 536, Washington, DC 20240, (202) 254–3207.

SUPPLEMENTARY INFORMATION: The annual process for developing migratory game bird hunting regulations deals with regulations for early and late seasons, and regulations for Alaska, Hawaii, Puerto Rico and the Virgin Islands. Early seasons are those that open before October 1; late seasons open about October 1 or later. Regulations are developed independently for the early and late seasons, and Alaska and insular areas. The early-season regulations relate to mourning doves; white-winged and white-tipped doves; bandtailed pigeons; rails; common moorhens; purple gallinules; woodcock; common snipe; sea ducks in the Atlantic Flyway; teal in September in the Central and Mississipi Flyways; experimental duck seasons opening in September in Florida, Iowa, Kentucky and Tennessee; experimental Canada goose seasons opening in September in Illinois and Michigan; sandhill cranes in the Central Flyway and Arizona; a special sandhill crane-Canada goose season in southwestern Wyoming; and some extended falconry seasons. Late seasons include the general waterfowl seasons; special seasons for scaup and goldeneyes; extra scaup and teal in regular seasons; coots; and other extended falconry seasons.

Certain general procedures are followed in developing regulations for the early and late seasons. Initial regulatory proposals are announced in a **Federal Register** document published in March and opened to public comment. These proposals are supplemented as necessary, with additional **Federal Register** documents. Following termination of comment periods and after public hearings, the Service further develops and publishes proposed frameworks for times of seasons, season lengths, shooting hours, daily bag and possession limits, and other regulatory elements. After consideration of additional public comments, the Service publishes final frameworks in the **Federal Register.** Using these frameworks, State conservation agencies then select hunting season dates and options. Upon receipt of State selections, the Service publishes a final rule in the **Federal Register,** amending Subpart K of 50 CFR Part 20, to establish specific seasons, bag limits and other regulations. The regulations become effective upon publication. States may prescribe more restrictive seasons than those provided in the final frameworks.

The regulations schedule for this year is as follows. On March 13, 1987, the Service published for public comment in the **Federal Register** (52 FR 7900) a proposal to amend 50 CFR Part 20, with comment periods ending as noted earlier.

On June 3, 1987, the Service published for public comment a second document (52 FR 20757) which provided supplemental proposals for early- and late-season migratory bird hunting regulations frameworks, with comment periods ending June 18, 1987, for Alaska, Hawaii, Puerto Rico and the Virgin Islands, July 14, 1987, for remaining early-season proposals, and August 25, 1987, for late-season proposals.

This document is the third in a series of proposed, supplemental and final rulemaking documents for migratory bird hunting regulations and deals specifically with supplemental proposed frameworks for early-season migratory bird hunting regulations. It will lead to final frameworks from which States may select season dates, shooting hours and daily bag and possession limits for the 1986–87 season. All pertinent comments on the March 13 proposals received through June 18, 1987, have been considered in developing this document. In addition, new proposals for certain early-season regulations are provided for public comment. Comment periods on this third document are specified above under DATES. Final regulatory frameworks for migratory game bird hunting seasons for Alaska, Puerto Rico, and the Virgin Islands are scheduled for publication in the **Federal Register** on or about July 24, 1987, and for early seasons for other areas of the United States on or about August 4, 1987.

On June 18, 1987, a public hearing was held in Washington, DC, as announced in the **Federal Register** of March 13 (52 FR 7900) and June 3 (52 FR 20757), 1987, to review the status of mourning doves, woodcock, band-tailed pigeons, white-winged and white-tipped doves, rails, common moorhens, purple gallinules, common snipe and sandhill cranes. Proposed hunting regulations were discussed for these species and for migratory game birds in Alaska, Puerto Rico and the Virgin Islands; September teal seasons in the Mississippi and Central Flyways; experimental duck seasons in September in Florida, Iowa, Kentucky and Tennessee; experimental September Canada goose hunting seasons in Illinois and Michigan; a special sandhill crane-Canada goose season in southwest Wyoming; special sea duck seasons in the Atlantic Flyway; and extended falconry seasons.

This supplemental proposed rulemaking consolidates further changes in the original framework proposals published on March 13, 1987, in the **Federal Register** (52 FR 7900).

Presentations at Public Hearing

A number of reports were given on the status of various migratory bird species for which early hunting seasons are being proposed. These are briefly reviewed as a matter of public information, and to facilitate the Service's response to public comments from the public hearing on June 18 and in correspondence. Unless otherwise noted, persons making the presentations are Service employees.

Mr. David Dolton, Mourning Dove Specialist, presented the status of the 1987 mourning dove population. The report included information gathered over the last 22 years. Trends were calculated for the most recent 2, 5, 10, and 15-year intervals and for the entire 22-year period. Between 1986 and 1987, the number of doves heard per route in the Western Management Unit showed a significant decrease of 19.4 percent. No significant change was found in the Eastern or Central Units although the number heard increased 1.3 percent in the Eastern and 4.5 percent in the Central. Estimates indicated significant downward trends in the Western Unit for the 10, 15, and 22-year periods. In the Eastern Unit, significant downward trends were found for the 15 and 22-year periods, while in the Central Unit, a significant downward trend was indicated for the most recent 10 years. No significant trend was found in the units for the other time periods. Trends for doves seen at the unit level over the 22-year period agreed with trends for doves heard.

Mr. Ronnie R. George, Texas Parks and Wildlife Department, reported on the status of white-winged and white-tipped doves in Texas. Populations of both species appear to have declined since last year but are still well above levels reported 2 years ago. Texas, therefore, recommended that the traditional 4-day (2 weekend) special white-winged dove season be continued in 1987. The season would include an aggregate bag limit of 10 doves, no more than 2 of which may be mourning doves and 2 of which may be white-tipped doves.

Mr. Roy Tomlinson, Southwest Dove Coordinator, conveyed information received from the Arizona Game and Fish Department about white-winged dove status in Arizona. Following a population decline in the 1970s and early 1980s, whitewing harvests in Arizona have stabilized at a lower level. Under restricted hunting regulations the annual harvest has varied between 135,000 and 194,000 whitewings during the past 6 years. In 1987, call-count data indicate that the population declined 12 percent from 1986.

Mr. Brad Bortner, Woodcock Specialist, reported on the 1987 status of American woodcock. The most significant findings were from the recently conducted singing-ground survey. This cooperative survey of woodcock breeding populations in the United States and Canada indicated an increase of 3.8 percent among woodcock of the Eastern Region (Atlantic Flyway) since 1986; however, this population remains at a low level and has declined significantly over the long-term. In the Central Region (Mississippi Flyway and a portion of the Central Flyway), the survey indicated that woodcock decreased 1.4 percent since 1986. The Central Region index shows a significant long-term increase of 1.0 percent per year, but, the current index remains near the long-term average.

Mr. Roy Tomlinson, Southwest Dove Coordinator, summarized status and harvests of the two populations of band-tailed pigeons. Harvests of the Four-Corners Population are comparatively small, but have declined slightly during the past 2 years in Arizona and New Mexico. This population will be closely monitored to ensure continued well-being.

The Pacific Coast Population has experienced a precipitous decline in status and harvest during the past 2 years. Because of the low reproductive potential of this species, the noted decreases require corrective management action.

Mr. Harvey W. Miller, Central Flyway Representative, reported on the status of sandhill cranes. The mid-continent population exceeds 500,000 birds, as measured by intensive surveys (including aerial photography of major springtime concentrations in Nebraska), and has been increasing. Approximately 6,000 hunters harvested 12,500 cranes in the Central Flyway during the 1986–87 hunting season. The combined harvests of mid-continent cranes in Alaska, Canada, and Mexico are expected to not exceed 9,000. The total of these sport harvests was within specified guidelines for the midcontinent population.

The Rocky Mountain Population of greater sandhill cranes was estimated just over 22,000 birds in March 1985 and has been increasing. Special limited hunting seasons during 1986 resulted in harvests of an estimated 55 cranes in southeastern Arizona, 105 cranes in southwestern Wyoming and 670 cranes in the Rio Grande Valley of New Mexico.

Comments Received at Public Hearing

Eight individuals presented statements at the public hearing on proposed early-season regulations. The comments are summarized below, and where appropriate, the Service has provided a response.

Mr. Ronnie R. George, representing the Central Flyway Council and the Texas Parks and Wildlife Department, expressed support and endorsement of the following recommendations:

1. Continuation of the sandhill crane hunting season in the middle Rio Grande Valley of New Mexico to reduce crop depredations.

2. Continuation of the sandhill crane hunting season in the Eden-Farson Agricultural Project in Sweetwater and Sublette Counties of southwest Wyoming.

3. Establishment of a sandhill crane hunting season in the Bureau of Reclamation Riverton and Boysen Units in Freemont County, Wyoming, to reduce crop depredations. Season length would be 14 days between September 1 and September 22. Seventy-five permits would be issued and the seasonal bag limit would be 2 cranes per hunter.

4. Expansion of the sandhill crane hunting season to 58 days for Sheridan County, Montana, to coincide with other Central Flyway counties in Montana.

5. Expansion of framework dates for hunting American coot to coincide with all duck seasons.

6. Adoption of all proposed frameworks for all early-season species of the Central Management Unit not addressed by recommendations 1–5 above.

Response: The Service proposes to allow all of the sandhill crane hunting seasons recommended. Action is deferred on the recommendation to expand the framework dates for hunting coots until the matter can be discussed with the other Flyway Councils at their 1987 summer meetings. The support for other early-season regulatory proposals is noted.

Mr. Dave Brown, representing the Arizona Game and Fish Department, reiterated the State's written objections (dated 4/8/87 and 6/11/87) to the Pacific Flyway Council and Service recommendations for mourning dove hunting season frameworks in the Western Management Unit. He stated that Arizona has millions of nesting mourning doves, of which many population segments are not hunted. The reasons for declines in the unit are alteration of nesting habitat and changes in agricultural practices where grains used by doves for food have been displaced by cotton production. Mr. Brown stated that dove studies in Arizona indicate that overharvest has not been a limiting factor in Arizona; only 17 percent of the fall population is taken by hunting. Furthermore, the harvest in Arizona consists primarily of doves raised in the State and that hunting regulations should be set to recognize Arizona's unique situation rather than set uniformly throughout the unit. He voiced concern that the Service's proposed frameworks would tend to shift hunting emphasis in Arizona from mourning doves to white-winged doves; the latter population is slowly recovering from a precipitous decline in the late 1970s and early 1980s. The Arizona Department thus requests a 70-day season, the first 20 days from September 1–20, the remainder to occur after November 1. It concurs with a 10/20 daily bag and possession limit, that in Arizona would consist of an aggregate daily bag, no more than 6 of which could be white-winged doves.

Response: The Service recognizes Arizona's concern and responsible actions in the past regarding mourning and white-winged dove management. However, in view of the significant long-term downward trend in mourning doves throughout the unit, the Service believes that harvest opportunity for this species should be reduced commensurate with lower population levels. Some population segments that pass through southern harvest areas, as well as some locally-nesting populations, are subject to higher harvest pressure and need further protection. The Service wishes to promulgate regulations frameworks that will regulate harvest throughout the Western Management Unit rather than establish separate regulations which attempt to address population segments that have not yet been adequately defined.

Mr. Frank Montalbano, III, representing the Florida Game and Fresh Water Fish Commission, provided comments in support of Florida's request for operational status of its experimental September duck season. He expressed dismay at the Service's denial of a similar 1986 request on the basis of inadequate banding data to evaluate impacts from increased harvest. He claimed that Atlantic Flyway Council endorsement of the request and a substantial body of biological data provided in various reports and published findings are being ignored by the Service. He urged that members of the Service Regulations Committee study the final report of Florida's experimental season and the findings of Johnson et at. (1986) relative to expanding wood duck populations. He stated that since harvest of wood ducks did not increase in Florida as a result of the September season, banding data to evaluate survival and harvest rates are moot. He asserted that the limited banding data available suggests that recovery rates are lower than those reported from southeastern States in a recent study. He pointed out that results from this study, covering a broad geographic region, showed no apparent decline in survival of wood ducks. Also he maintained that Florida's experimental season should be evaluated independently from those in other States and operational status should not be withheld pending final evaluation of all September duck seasons. Finally, he indicated a matter of larger concern is the Service's apparent decision to abandon management of migratory waterfowl populations as a cooperative venture among State, Federal, and Provincial governments.

Response: The Service has asked in a Memorandum of Understanding that banding data from Florida be provided to evaluate impacts of its experimental September duck season. Adequate data are not presented in any existing reports, but progress has been made in efforts to band more birds. The fact that total harvest did not increase does not address the question of impacts on resident wood ducks nor negate the need to assess recovery and survival information. Similarly, reference to a published report based on evaluation of harvest impacts from liberalized October seasons covering a broad geographic region does not apply directly to the September duck season in Florida. However, flyway oriented studies of wood ducks are helpful to our development of management strategies and have been encouraged by the Service. The Service has repeatedly expressed its intent to review the appropriateness of September duck seasons particularly as it relates to wood duck management and to decide future application of these seasons. The Service is concerned about the ability to monitor the population status of wood ducks and the suitability of these seasons elsewhere. Strategies for management of migratory waterfowl including resident wood ducks and early migrants must be considered at flyway levels beyond State boundaries. Until information exists to adequately evaluate September duck seasons the Service proposes that these seasons continue on an experimental basis.

In regard to Florida's concern that the Service appears to be abandoning the cooperative management of waterfowl, it appears that Service actions and intent are misunderstood. In a January 10, 1986, letter to Florida the Service's Director recalled an initial purpose of the Councils is to foster cooperative management of the waterfowl resource and that the Service fully supports this approach. Similarly in a June 30, 1986, letter to all Council chairmen the Director noted that resolving our wildlife resource problems will require considerable cooperation and that the Council-Service association represented the kind of team work that should be continued. Later in a December 5, 1986, letter to the Council chairmen the Director closed by stating that he looked

forward to the continued cooperation of the Service, Councils, and others in the development of annual migratory game bird regulations recommendations. Finally, at the National Waterfowl Council meeting in Quebec City, in March 1987, the Director stated that the Service people would be more active and cooperative in the waterfowl business.

The Service stands by these earlier statements and reaffirms its intent to manage the migratory bird resource in cooperation with the Councils and other interested parties.

Ms. Jennifer Lewis, representing The Humane Society of the United States and the World Society for the Protection of Animals reiterated objections to September hunting of mourning doves. She asserted that September opening dates for mourning dove hunting will result in nesting adults being killed, leaving the young to die of starvation which outrages a large segment of the public.

Response: The Service's position concerning sport hunting in general, and September hunting of mourning doves are discussed below in response to Mr. Heintzelman's comments and in the **Federal Register** (51 FR 24418, July 3, 1986).

Mr. Lauren Schaaf, representing the Kentucky Department of Fish and Wildlife Resources, commented about the State's experimental September duck season. He suggested that some of the results of the experiment during 1981–85 may have been biased due to a combination of poorly-distributed banding of wood ducks and band solicitation. Most of the banding was done in areas of highest hunting pressure. He indicated that the State is currently taking steps to obtain banded samples of wood ducks that are more representative of the statewide population. The State also plans to initiate a research project in 1988 to evaluate wood duck productivity in Kentucky. He endorsed the Service's proposal to continue the season this year as an experiment with the reduced wood duck bag limit implemented last year. He also suggested continuing the present season for a minimum of an additional 5 years to provide sufficient data to evaluate the effects of the bag limit reduction.

Response: Mr. Schaaf's endorsement of the Service's proposal is noted and Kentucky's efforts to obtain additional information about the status of their wood duck population are appreciated. Although some of the study results may not be representative of the statewide wood duck population, they may be indicative of impacts on local populations, which are also of concern. The Service will work with the State to identify and address biases in the banded samples and will continue to assist Kentucky and Tennessee in evaluating the impact of their September seasons on wood duck populations. The recommendation for 5 additional years of experimentation will be considered, however, as the Service has noted on previous occasions, broader-scale (regional or flyway-wide) data gathering efforts may be necessary to adequately assess the significance of changes occurring in those States holding the experimental seasons.

Mr. Donald S. Heintzelman, representing the Wildlife Information Center, Inc., and the Committee for Dove Protection of California and Pennsylvania, prefaced his comments on proposed 1987–88 migratory game bird hunting regulations with the contention that the sport hunting of wildlife is unacceptable to most Americans. Mr. Heintzelman recommended that no sport hunting of tundra swans be permitted in North America. He also expressed concern regarding the status of the black duck and recommended that there be no sport hunting of the species. He commended the Service's proposal to retain closed sport hunting seasons on clapper and king rails in the States indicated. However, he strongly urged that the Service not permit the sport hunting of king rails in New Jersey because the species is a rare migrant and very restricted and local breeder there. In view of the status of woodcock in the Atlantic Flyway, he recommended no sport hunting of woodcock there. Concerning mourning doves, Mr. Heintzelman recommended that hunting regulations be more restrictive. He claimed surveys in California and Pennsylvania indicated the majority of people opposed dove hunting, contended that dove hunting is exploitative and inhumane and provides hunters the opportunity to indiscriminately slaughter all forms of wildlife and not retrieve the doves killed. Mr. Heintzelman noted the long-term downward trend in the Western Management Unit and advocated an immediate halt to all mourning dove hunting in the unit. He also recommended a public vote in each State to determine whether doves should be hunted and gave additional requirements for management. He expressed opposition to continuing migratory game bird hunting seasons for falconers on the basis that falconry is unjustified in today's society, that raptors are under constant threat from a number of factors, and that extended falconry seasons encourage the further exploitation of the birds of prey.

Response: The Service is aware of the position of the Wildlife Information Center, Inc., and the Committee for Dove Protection, on sport hunting, but notes the Migratory Bird Treaty Act of 1918 permits the sport hunting of migratory birds and vests authority to promulgate regulations in the Secretary of the Interior. While some citizens oppose sport hunting, others support it. Migratory birds are a renewable resource and sport hunting has been viewed as a proper use of that resource.

Mr. Heintzelman's recommendations regarding tundra swans and black ducks will be considered by the Service during the process of developing late-season regulations frameworks.

The Service finds no data that indicates king rail populations in New Jersey are depressed or that hunting is having a significant impact on the population status of the species.

The Service believes that habitat related factors have been the fundamental cause of the decline of the woodcock in the Atlantic Flyway. The Service notes, however, that the regulatory restrictions established in 1985 were an attempt to bring woodcock harvest opportunities to a level commensurate with the current population status.

In response to the continued decline of mourning doves in the Western Management Unit, the Service is proposing regulatory restrictions in 1987. The Service has responded previously to Mr. Heintzelman's suggested requirements for management in the **Federal Register** (51 FR 24418, July 3, 1986).

The Service has recognized falconry as a legitimate means of taking migratory game birds since 1964 and has responded previously to this issue in the July 3, 1986 **Federal Register** (51 FR 24418). The Service has no evidence that falconry as now conducted poses any risk to raptor populations, especially since the status of most raptor populations in the United States is considered to be stable or increasing.

Mr. John M. Anderson, speaking for the National Audubon Society, generally endorsed the proposed regulations as consistent with the status of the involved species and populations. He noted especially that although there was no hard evidence of over-harvest, the more restrictive seasons for mourning and white-winged doves and band-tailed pigeons in the Western Management Unit were an appropriate adjustment to reduced populations. He commented in support of a newly

adopted plan for management of Rocky Mountain sandhill cranes noting that the slightly more liberal regulations were reasonable. He also supported the continuation of restrictive regulations for woodcock hunting, the experimental status of September duck seasons, and the management of goose populations in Alaska. He urged continuation of sport hunting noting that the support of sportsmen protects the habitats essential to both game and nongame wildlife.

Response: The Service appreciates this general endorsement of the proposed regulations. The Service notes that restrictive regulations are not intended to imply that the status of a species or population is a reflection of over-harvest and appreciates Mr. Anderson's point that restrictions are appropriate adjustments to reduced populations.

Mr. Charles Kelly, representing the Dove Committee of the Southeastern Association of Fish and Wildlife Agencies, commended the Service for recognizing that proper management of wildlife species is a primary responsibility of wildlife agencies, and complimented the Office of Migratory Bird Management for its management efforts again this year.

Response: The Service notes and appreciates Mr. Kelly's support.

Written Comments Received

The supplemental proposed rulemaking which appeared in the **Federal Register** dated June 3, 1987, (52 FR 20757), summarized eight comments which had been received by May 11, 1987. Since then 10 additional comments on early-season proposals have been received. They are summarized below and numbered in the order used in the March 13, 1987, **Federal Register.**

One letter was received from a private citizen expressing strong opposition to sport hunting and stating that regulations that allow hunting are unacceptable.

Response: The Service is aware that some people are opposed to hunting and has addressed this view previously in this document in response to Mr. Donald S. Heintzelman.

5. *Sea ducks*

a. The Atlantic Flyway Council's endorsement of New York's proposal that the State's special sea duck hunting area be redefined to include all coastal waters and all waters of rivers and streams seaward from the first upstream bridge was noted in the June 3, 1987, **Federal Register** (52 FR 20757). The Service expressed concerns for what impact the proposed change might have on the harvest of sea ducks and other ducks and what the implication of such a change in New York might be to other States in the Atlantic Flyway. The Service deferred action on the proposed change.

Response: In response to the Service's concerns, New York provided additional data from studies conducted along the south shore of Long Island during the regular duck and special scaup seasons which suggests sea duck harvest consists primarily of old squaw and comprises a small percent of the daily bag and total harvest. Since this area was excluded initially by State request to limit disturbance of other ducks the proposed redefinition of New York's sea duck areas does not appear to have implications to other Atlantic Flyway States. The Service's concurrence with the proposed change is reflected in the proposed frameworks appearing later in this document.

b. A Massachusetts sportsmen's association has requested the regulatory frameworks for sea ducks provide for a 120-day season.

Response. Present sea duck regulations provide for a season of 107-days, the maximum allowed per the 1916 Migratory Bird Treaty with Canada.

6. *September teal season.* Two hunters from Texas requested the 4 bird daily bag limit during September teal seasons be increased to 5. Both hunters felt the change would increase hunter interest and not adversely impact the resource.

Response. The Service has considered the request but does not favor increasing the bag limit framework of September teal seasons.

11. *Mergansers.* An extended merganser season to run concurrently with sea duck seasons on coastal waters has been requested by a Massachusetts sportsmen's association. The association contends there is sufficient numbers of mergansers to permit such a season and that these birds have an adverse impact on fishing and spawning grounds.

Response. No data were provided in support of the request nor has it had State or Flyway Council review; therefore, the Service proposes no change in the regulatory frameworks for mergansers.

14. *Framework for geese and brant in the conterminous United States—outside dates, season length and bag limits.*

Mississippi Flyway

In the June 3, 1987, **Federal Register** (52 FR 20757), the Service concurred with the recommendation of the Mississippi Flyway Council's Upper Region Regulations Committee to continue the experimental September Canada goose seasons initiated in 1986 (Illinois and Michigan), and stated that the Michigan Lower-Peninsula experiment should not be changed until after the initial experimental period has been completed and the results evaluated. However, in accordance with criteria currently being developed for all special Canada goose seasons, the Service proposes to change the season length permitted for these initial experiments to a maximum of 10 days, to occur during September 1–10, and increase the maximum bag and possession limits to 5 and 10 birds, respectively. The change in the timing of the season in Illinois is primarily due to an undesirably high proportion of migrant Canada geese in the 1986 late-September harvest. In Michigan, the areas in the Lower Peninsula closed to Canada goose hunting in September should remain the same as were established in 1986.

Minnesota has been asked to provide supplemental data to support its request for a September season. The State's request will be considered in the final frameworks for early-season regulations.

Pacific Flyway

As previously noted in the June 3, 1987, **Federal Register** (52 FR 20761), the Pacific Flyway Council (Council) recommended frameworks for brant seasons in Washington, Oregon and California be modified to restrict season length and period as follows: seasons must be within duck season framework dates and concurrent with the State's duck season; season length may not exceed 16 consecutive days in Washington and Oregon, and 30 consecutive days in California, but that bag limits would remain at 2 brant daily and 4 in possession. States selecting a season must implement measures to accurately measure the size of their brant harvest. The harvest in Washington must not exceed 900 brant. Further, the Council recommended that frameworks for brant seasons in Alaska remained unchanged. At that time the Service deferred recommending frameworks until the appropriate season setting process. Because early seasons in Alaska and late seasons in Washington, Oregon and California, collectively affect the total brant harvest, recommendations that will be made for the late seasons are identified in this document. The Service recommends uniform bag limits of 2 brant per day and 4 in possession in all Pacific Flyway States having brant seasons, including Alaska. Additionally, uniform frameworks of 16 consecutive

days are recommended for Washington, Oregon, and California. All other conditions of the season recommended by the Council are being recommended by the Service. An upcoming document of final regulatory frameworks for migratory game bird hunting seasons for Alaska, Puerto Rico, and the Virgin Islands will reflect regulatory frameworks for hunting brant in Alaska of 50 consecutive days and 2 brant per day and 4 in possession.

16. *Sandhill cranes.* Recommendations from the Central and Pacific Flyway Councils for operational seasons for hunting sandhill cranes within the range of the Rocky Mountain Population in Arizona, Colorado, Idaho, Montana, New Mexico, Utah, and Wyoming, were summarized in the June 3, 1987, **Federal Register** (52 FR 20761–62). The Service deferred action upon those recommendations pending response to that notice. A single response supported the recommendations (see the aforementioned comments of John M. Anderson). Accordingly the proposed frameworks appearing later in this document reflect the Council's recommended seasons.

17. *Coots:* A recommendation by the Central Flyway Council that hunting of coots be permitted during all special duck seasons (e.g., September teal season) in addition to the regular duck season, was summarized in the June 3, 1987, **Federal Register** (52 FR 20762). The Service deferred action on the recommendation pending response to the notice. It is not known what interest exists in other flyways regarding increased harvest opportunity for coots nor what the result of such increased harvest opportunity would be. Accordingly, the Service further defers action until the matter can be discussed with the other Flyway Councils at their 1987 summer meetings and the impacts on coots and other migratory birds can be more carefully appraised.

22. *Band-tailed Pigeons—Pacific Coast Population:* (California, Nevada, Oregon and Washington). In the June 3, 1987, **Federal Register** (52 FR 20762), the Service concurred with the Pacific Flyway Council that restrictive regulations for a 3-year period were warranted because of the decline in the Pacific Coast Population of band-tailed pigeons. Subsequently, Califorina submitted a request (June 1, 1987) that differed from the Council's recommendations and the Service's proposed frameworks. California requests a 23-day season (7 days more than proposed) and 5-bird limits (1 bird more than proposed and the same as the 1986 framework).

Response: California's opportunity to harvest band-tailed pigeons is greater than either Washington, Oregon or Nevada; and their requested frameworks would be little different from those now in effect. The proposed frameworks appearing later in this document reflect the Service's concurrence with the Council's recommendation.

23. *Mourning doves—Western Management Unit:* (Arizona, California, Idaho, Nevada, Oregon, Utah and Washington).

(a) In the June 3, 1987, **Federal Register** (52 FR 20762), the Service concurred with the Pacific Flyway Council that restrictive regulations should be imposed to decrease harvests of mourning doves commensurate with the reduced populations and acknowledged that the Council's recommendations were well-conceived and should result in a substantial reduction in harvest. The Service, however, proposes frameworks that are a modification of those recommended by the Council and are applicable throughout the unit instead of directed at particular States. The frameworks are proposed for a period of 3 years. The Service prefers to establish frameworks for the unit as a whole rather than provide tailored frameworks for individual States or for groups of States, especially where there is not sufficient evidence that segments of populations can be managed in such detail. This approach applies to all management units. See response to the aforementioned comments of Dave Brown, Arizona Game and Fish Department, for further discussion.

(b) California submitted a request (June 1, 1987) that differed from the frameworks recommended by the Pacific Flyway Council and those being proposed by the Service. They recommended a 45-day season, with 30 days in September and 15 days in the latter half of November and limits that would be the same as those recommended by the Council and proposed by the Service. They stated that 1964–75 banding data did not suggest that hunting was the cause for the population decline. While there was no positive cause-and-effect relationships between doves and agricultural practices, the increases in cotton acreage coupled with decreases in sorghum acreage may have adversely affected doves.

Response: California will be able to select either a 30- or 45-day season under the proposed frameworks. Depending upon the option selected, hinting may or may not occur during the last half of September. Banding suggests that a large percentage of out-of-State recoveries of doves from Oregon and Washington occurs in California from mid-September through mid-October. Either of the proposed options would provide protection to some of these more northerly nesting birds.

(c) In the June 3, 1987, **Federal Register** (52 FR 20762), the Service noted Arizona's request for exception to the Pacific Flyway Council's regulatory recommendation for mourning doves. In a second letter Arizona reiterated its request for a 70-day mouning dove season of which no more than 20 days would be in September.

Response: See the Service's response to the aforementioned comments of Dave Brown, Arizona Game and Fish Department.

(d) A hunter from Utah was opposed to restrictions in dove harvest because he did not believe hinting had a negative impact on doves, and was of the same opinion as presented in an enclosed newspaper article. A hinter from Idaho was opposed to any reduction in season length and recommended that the season open earlier.

Response: The Service believes that the proposed frameworks are in keeping with the reduced populations of mourning doves. The Migratory Bird Treaty with Canada precludes open seasons before September 1.

24. *White-winged and white-tipped doves.* California requested (June 1, 1987) that they be allowed to include white-winged doves in the late-season bag of mourning doves (see California's request for mourning dove seasons above).

Response: The proposed frameworks would permit California and Nevada to have aggregate limits of white-winged and mourning doves under either option of season length.

Public Comment Invited

Based on the results of migratory game bird studies now in progress and having due consideration for any data or views submitted by interested parties, the possible amendments resulting from this supplemental rulemaking will specify open seasons, shooting hours and bag and possession limits for designated migratory game birds in the United States.

The Director intends that finally adopted rules be as responsive as possible to all concerned interests. He therefore desires to obtain the comments and suggestions of the public, other concerned governmental agencies

and private interests on these proposals and will take into consideration the comments received. Such comments, and any additional information received, may lead the Director to adopt final regulations differing from these proposals.

Special circumstances are involved in the establishment of these regulations which limit the amount of time which the Service can allow for public comment. Specifically, two considerations compress the time in which the rulemaking process must operate: the need, on the one hand, to establish final rules at a point early enough in the summer to allow affected State agencies to appropriately adjust their licensing and regulatory mechanisms, and, on the other hand, the unavailability before mid-June of specific, reliable data on this year's status of some migratory shore and upland game bird populations. Therefore, the Service believes that to allow comment periods past the dates specified earlier is contrary to the public interest.

Comment Procedure

It is the policy of the Department of the Interior, whenever practical, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may participate by submitting written comments to the Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, Matomic Building—Room 536, Washington, DC 20240. Comments received will be available for public inspection during normal business hours at the Service's office in Room 536, Matomic Building, 1717 H Street, NW., Washington, DC.

All relevant comments on these early-season proposals received no later than July 14, 1987, and on late-season proposals received by August 25, 1987, will be considered. The Service will attempt to acknowledge received comments, but substantive response to individual comments may not be provided.

NEPA Consideration

The "Final Environmental Statement for the Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FES-75-54)" was filed with the Council on Environmental Quality on June 6, 1975, and notice of availability was published in the **Federal Register** on June 13, 1975 (40 FR 25241). In addition, numerous environmental assessments have been prepared on specific matters which serve to supplement the material in the Final Environmental Statement. Copies of these environmental assessments are available from the Service at the address indicated under the caption ADDRESS. As noted in the March 13, 1987, **Federal Register** (at 52 FR 7905), the Service is preparing a supplemental environmental impact statement (SEIS) on the FES. The Service anticipates a mid-July 1987 publication date for a draft SEIS to be followed by public meetings prior to preparation of the final SEIS.

Endangered Species Act Consideration

Section 7 of the Endangered Species Act provides that, "The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act" [and shall] "insure that any action authorized, funded, or carried out . . . is not likely to jeopardize the continued existence of such endangered or threatened species or result in the destruction or modification of [critical] habitat. . . ." The Service therefore initiated section 7 consultation under the Endangered Species Act for the proposed hunting season frameworks.

On June 15, 1987, the Office of Endangered Species gave a biological opinion that the proposed action is not likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of their critical habitats.

As in the past, hunting regulations this year are designed, among other things, to remove or alleviate chances of conflict between seasons for migratory game birds and the protection and conservation of endangered and threatened species and their habitats. Examples of such consideration include areas in Alaska and the Pacific Flyway closed to Canada goose hunting for protection of the endangered Aleutian Canada goose, and closed areas in Puerto Rico for protection of the Plain pigeon and Puerto Rican parrot.

The Service's biological opinion resulting from its consultation under Section 7 is considered a public document and is available for inspection in the Office of Endangered Species and the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240.

Regulatory Flexibility Act, Executive Order 12291 and the Paperwork Reduction Act

In the **Federal Register** dated March 13, 1987 (52 FR 7900), the Service reported measures it had undertaken to comply with requirements of the Regulatory Flexibility Act and the Executive Order. These included preparing a Determination of Effects and an updated Final Regulatory Impact Analysis, and publication of a summary of the latter. These regulations have been determined to be major under Executive Order 12291 and they have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act. This determination is detailed in the aforementioned documents which are available upon request from the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Matomic Building—Room 536, Department of the Interior, Washington, DC 20240. As noted in the early **Federal Register** publication, the Service plans to issue its Memorandum of Law for migratory bird hunting regulations at the same time the first of the annual hunting rules is completed. These regulations contain no information collections subject to Office of Management and Budget review under the Paperwork Reduction Act.

Authorship

The primary author of this proposed rulemaking is Morton M. Smith, Office of Migratory Bird Management, working under the direction of Rollin D. Sparrowe, Chief.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Transportation, Wildlife.

The rules that eventually will be promulgated for the 1987-88 hunting season are authorized under the Migratory Bird Treaty Act of July 3, 1918 (40 Stat. 755; 16 U.S.C. 701-708h); the Fish and Wildlife Improvement Act of 1978 (92 Stat. 3112; 16 U.S.C. 712); and the Alaska Game Act of 1925 (43 Stat. 739, as amended, 54 Stat. 1103-04).

Proposed Regulations Frameworks for 1987-88 Early Hunting Seasons on Certain Migratory Birds

Pursuant to the Migratory Bird Treaty Act, the Secretary of Interior has approved proposed frameworks which prescribe season lengths, bag limits, shooting hours and outside dates within which States may select seasons for mourning doves; white-winged and white-tipped doves; band-tailed pigeons; rails; woodcock; snipe; common moorhens and purple gallinules; teal in September; experimental September duck season in Iowa, Florida, Kentucky and Tennessee; experimental September Canada goose seasons in Illinois and Michigan; sea ducks (scoters, eiders, and oldsquaw) in certain defined areas of the Atlantic Flyway; sandhill cranes; sandhill cranes—Canada geese in

southwestern Wyoming; and extended falconry seasons. For the guidance of State conservation agencies, these frameworks are summarized below.

* * * *Notice* * * *

Any State desiring its hunting seasons for mourning doves, white-winged doves, white-tipped doves, band-tailed pigeons, rails, woodcock, common snipe, common moorhens and purple gallinules, sandhill cranes or extended falconry seasons to open in September must make its selection no later than August 7, 1987. States desiring these seasons to open after September 30 may make their selections at the time they select regular waterfowl seasons. Season selections for the six States offered experimental September waterfowl seasons and Wyoming's special sandhill crane—Canada goose season must also be made by August 7, 1987.

Atlantic Flyway coastal States desiring their seasons on sea ducks in certain defined areas to open in September must make their selection no later than August 7, 1987. Those desiring this season to open after September may make their selections when they select their regular waterfowl seasons.

Outside Dates: All dates noted are inclusive.

Shooting Hours: Between ½ hour before sunrise and sunset daily for all species except as noted below. The hours noted here and elsewhere also apply to hawking (taking by falconry).

Mourning Doves

Outside Dates: Between September 1, 1987, and January 15, 1988, except as otherwise provided, States may select hunting seasons and bag limits as follows:

Eastern Management Unit

(All States east of the Mississippi River and Louisiana)

Hunting Seasons, and Daily Bag and Possession Limits: Not more than 70 days with bag and possession limits of 12 and 24, respectively,

or

Not more than 60 days with bag and possession limits of 15 and 30, respectively. Hunting seasons may be split into not more than 3 periods under either option.

Shooting Hours: Between ½ hour before sunrise and sunset daily.

Zoning: Alabama, Georgia, Illinois, Louisiana and *Mississippi*, may elect to zone their States as follows:

A. Two zones per State having the following descriptions or division lines:

Alabama—South Zone: Mobile, Baldwin, Escambia, Covington, Coffee, Geneva, Dale, Houston and Henry Counties. North Zone: Remainder of the State.

Georgia—The Northern Zone shall be that portion of the State lying north of a line running west to east along U.S. Highway 280 from Columbus to Wilcox County, thence southward along the western border of Wilcox County, thence east along the southern border of Wilcox County to the Ocmulgee River, thence north along the Ocmulgee River to Highway 280, thence east along Highway 280 to the Little Ocmulgee River; thence southward along the Little Ocmulgee River to the Ocmulgee River; thence southwesterly along the Ocmulgee River to the western border of Jeff Davis County; thence south along the western border of Jeff Davis County; thence east along the southern border of Jeff Davis and Appling Counties; thence north along the eastern border of Appling County to the Altamaha River; thence east to the eastern border of Tattnall County; thence north along the eastern border of Tattnall County; thence north along the western border of Evans to Candler County; thence east along the northern border of Evans to Bulloch County; thence north along the western border of Bulloch County to Highway 301; thence northeast along Highway 301 to the South Carolina line.

Illinois—U.S. Highway 36.

Louisiana—Interstate Highway 10 from the Texas State line to Baton Rouge, Interstate Highway 12 from Baton Rouge to Slidell and Interstate Highway 10 from Slidell to the Mississippi State line.

Mississippi—U.S. Highway 84.

B. Within each zone, these States may select hunting seasons of not more than 70 days (or 60 under the alternative) which may be split into not more than 3 periods.

C. The hunting seasons in the South Zones of Alabama, Georgia, Louisiana and Mississippi may commence no earlier than September 20, 1987.

D. Regulations for bag and possession limits, season length, and shooting hours must be uniform within specific hunting zones.

Central Management Unit

(Arkansas, Colorado, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas and Wyoming)

Hunting Seasons and Daily Bag and Possession Limits: Not more than 70 days with bag and possession limits of 12 and 24, respectively.

or

Not more than 60 days with bag and possession limits of 15 and 30, respectively.

Hunting seasons may be split into not more than 3 periods under either option.

Texas Zoning: In addition to the basic framework and the alternative, Texas may select hunting seasons for each of 3 zones described below.

North Zone—That portion of the State north of a line beginning at the International Bridge south of Fort Hancock; north along FM 1088 to State Highway 20; west along State Highway 20 to State Highway 148; north along State Highway 148 to Interstate Highway 10 at Fort Hancock; east along Interstate Highway 10 to Interstate Highway 20; northeast along Interstate Highway 20 to Interstate Highway 30 at Fort Worth; northeast along Interstate Highway 30 to the Texas-Arkansas State line.

South Zone—That portion of the State south and west of a line beginning at the International Bridge south of Fort Hancock; north along FM 1088 to State Highway 20; west along State Highway 20 to State Highway 148; north along State Highway 148 to Interstate Highway 10 at Fort Hancock; east along Interstate Highway 10 to Van Horn, south and east on U.S. 90 to San Antonio; then east on Interstate 10 to Orange, Texas.

Special White-Winged Dove Area in the South Zone—That portion of the State south and west of a line beginning at the International Bridge south of Fort Hancock; north along FM 1088 to State Highway 20; west along State Highway 20 to State Highway 148; north along State Highway 148 to Interstate Highway 10 at Fort Hancock; east along Interstate Highway 10 to Van Horn, south and east on U.S. Highway 90 to Uvalde, south on U.S. Highway 83 to State Highway 44; east along State Highway 44 to State Highway 16 at Freer; south along State Highway 16 to State Highway 285 at Hebbronville; east along State Highway 285 to FM 1017; southeast along FM 1017 to State Highway 186 at Linn; east along State Highway 186 to the Mansfield Channel at Port Mansfield; east along the Mansfield Channel to the Gulf of Mexico.

Central Zone—That portion of the State lying between the North and South Zones.

Hunting seasons in these zones are subject to the following conditions:

A. The hunting season may be split into not more than 2 periods, except that, in that portion of Texas where the special 4-day white-winged dove season is allowed, a limited mourning dove

season may be held concurrently with the white-winged dove season and with shooting hours coinciding with those for white-winged doves (see white-winged dove frameworks).

B. Each zone may have a season of not more than 70 days (or 60 under the alternative). The North and Central zones may select a season between September 1, 1987 and January 25, 1988; the South zone between September 20, 1987 and January 25, 1988.

C. Except during the special 4-day white-winged dove season in the South Zone, each zone may have an aggregate daily bag limit of 12 doves, (or 15 under the alternative), no more than 2 of which may be white-winged doves and no more than 2 of which may be white-tipped doves. The possession limit is double the daily bag limit.

D. Regulations for bag and possession limits, season length, and shooting hours must be unfiorm within each hunting zone.

Western Management Unit

(Arizona, California, Idaho, Nevada, Oregon, Utah and Washington)

Hunting Seasons, and Daily Bag and Possession Limits: Not more than 30 consecutive days between September 1, 1987 and January 15, 1988.

or

Not more than 45 days to be split between two periods, September 1–15, 1987, and November 1, 1987—January 15, 1988.

In all States, the bag and possession limits are 10 and 20, respectively.

White-Winged Doves

Outside Dates: Arizona, California, Nevada, New Mexico, and *Texas* (except as shown below) may select hunting seasons between September 1 and December 31, 1987. *Florida* may select hunting seasons between September 1, 1987 and January 15, 1988.

Arizona may select a hunting season of not more than 15 consecutive days running concurrently with the mourning dove season. The daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate, no more than 6 of which may be white-winged doves, and a possession limit twice the daily bag limit after the opening day.

In the *Nevada* counties of Clark and Nye, and in the *California* counties of Imperial, Riverside and San Bernardino, the aggregate daily bag and possession limits of mourning and white-winged doves may not exceed 10 and 20, respectively, and run concurrently with the season on mourning doves.

New Mexico may select a hunting season with daily bag and possession limits not to exceed 12 and 24 (or 15 and 30 if the 60-day option for mourning doves is selected) white-winged and mourning doves, respectively, singly or in the aggregate of the 2 species. Dates, limits, and hours are to conform with those for mourning doves.

Texas may select a hunting season of not more than 4 days for the special white-winged dove area of the South Zone. The daily bag limit may not exceed 10 white-winged, mourning, and white-tipped doves in the aggregate including no more than two mourning doves and two white-tipped doves per day; and the possession limit may not exceed 20 white-winged, mourning and white-tipped doves in the aggregate including no more than four mourning doves and four white-tipped doves in possession.

and

In addition, *Texas* may also select a white-winged dove season of not more than 70 days (or 60 under the alternative for mourning doves) to be held between September 1, 1987, and January 25, 1988, and coinciding with the mourning dove season. The daily bag limit may not exceed 12 white-winged, mourning and white-tipped doves (or 15 under the alternative) in the aggregate, of which not more than 2 may be white-winged doves and not more than 2 of which may be white-tipped doves. The possession limit may not exceed 24 white-winged, mourning and white-tipped doves (or 30 under the alternative) in the aggregate, of which not more than 4 may be white-winged doves and not more than 4 of which may be white-tipped doves.

Florida may select a white-winged dove season of not more than 70 days (or 60 under the alternative for mourning doves) to be held between September 1, 1987, and January 15, 1988, and coinciding with the mourning dove season. The aggregate daily bag and possession limits of mourning and white-winged doves may not exceed 12 and 24 (or 15 and 30 if the 60-day option for mourning doves is selected); however, for either option, the bag and possession limits of white-winged doves may not exceed 4 and 8, respectively.

Band-Tailed Pigeons

Pacific Coast States and Nevada: California, Oregon, Washington and the Nevada counties of Carson City, Douglas, Lyon, Washoe, Humboldt, Pershing, Churchill, Mineral and Storey.

Outside Dates: Between September 7, 1987, and January 3, 1988 (Sunday closest to January 1).

Hunting Seasons, and Daily Bag and Possession Limits: Not more than 16 consecutive days, with a bag and possession limit of 4.

Zoning: California may select hunting seasons of 16 consecutive days in each of the following two zones:

1. In the counties of Alpine, Butte, Del Norte, Glenn, Humboldt, Lassen, Mendocino, Modoc, Plumas, Shasta, Sierra, Siskiyou, Tehama and Trinity; and

2. The remainder of the State.

Four-Corners States: Arizona, Colorado, New Mexico and Utah.

Outside Dates: Between September 1, 1987, and November 30, 1987.

Hunting Seasons, and Daily Bag and Possession Limits: Not more than 30 consecutive days, with bag and poession limits of 5 and 10, respectively.

Areas: These seasons shall be open only in the areas delineated by the respective States in their hunting regulations.

Zoning: New Mexico may be divided into North and South Zones along a line following U.S. Highway 60 from the Arizona State line east to Interstate Highway 25 at Socorro and south along Interstate Highway 25 from Socorro to the Texas State line. Hunting seasons not to exceed 20 consecutive days may be selected between September 1 and November 30, 1987, in the North Zone and October 1 and November 30, 1987, in the South Zone.

Rails

(Clapper, King, Sora and Virginia)

Outside Dates: States included herein may select seasons between September 1, 1987, and January 20, 1988, on clapper, king, sora and Virginia rails as follows:

Hunting Seasons: The season may not exceed 70 days. Any State may split its season into two segments.

Clapper and King Rails

Daily Bag and Possession Limits: In *Rhode Island, Connecticut, New Jersey, Delaware,* and *Maryland,* 10 and 20 respectively, singly or in the aggregate of these two species. In *Texas, Louisiana, Mississippi, Alabama, Georgia, Florida, South Carolina, North Carolina,* and *Virginia,* 15 and 30, respectively, singly or in the aggregate of the two species.

Sora and Virginia Rails

Daily Bag and Possession Limits: In the Atlantic, Mississippi and Central [1]

[1] The Central Flyway is defined as follows: Colorado (east of the Continental Divide), Kansas, Montana (east of Hill, Chouteau, Cascade, Meagher, and Park Counties), Nebraska, New Mexico (east of the Continental Divide but outside the Jicarilla Apache Indian Reservation), North Dakota, Oklahoma, South Dakota, Texas and Wyoming (east of the Continental Divide).

Flyways and portions of Colorado, Montana, New Mexico and Wyoming in the Pacific Flyway [2], 25 daily and 25 in possession, singly or in the aggregate of the two species.

Woodcock

Outside Dates: States in the Atlantic Flyway may select hunting seasons between October 1, 1987, and January 31, 1988. States in the Central and Mississippi Flyways may select hunting seasons between September 1, 1987, and February 28, 1988.

Hunting Seasons, and Daily Bag and Possession Limits: In the Atlantic Flyway, seasons may not exceed 45 days, with bag and possession limits of 3 and 6, respectively; in the Central and Mississippi Flyways, seasons may not exceed 65 days, with bag and possession limits of 5 and 10, respectively. Seasons may be split into two segments.

Zoning: New Jersey may select seasons by north and south zones divided by State Highway 70. The season in each zone may not exceed 35 days.

Common Snipe

Outside Dates: Between September 1, 1987, and February 28, 1988. In *Maine, Vermont, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland* and *Virginia* the season must end no later than January 31.

Hunting Seasons, and Daily Bag and Possession Limits: Seasons may not exceed 107 days in the Atlantic, Mississippi and Central Flyways and 93 days in Pacific Flyway portions of Montana, Wyoming, Colorado and New Mexico. In the remainder of the Pacific Flyway the season shall coincide with the duck seasons. Seasons may be split into two segments. Bag and possession limits are 8 and 16, respectively.

Common Moorhens and Purple Gallinules

Outside Dates: September 1, 1987, through January 20, 1988, in the Atlantic and Mississippi Flyways and September 1, 1987, through January 17, 1988, in the Central Flyway. States in the Pacific Flyway must select their hunting seasons to coincide with their duck seasons.

Hunting Seasons, and Daily Bag and Possession Limits: Seasons may not exceed 70 days in the Atlantic, Mississippi and Central Flyways; in the Pacific Flyway seasons must be the same as the duck seasons. Seasons may be split. Bag and possession limits are 15 and 30 common moorhens and purple gallinules, singly or in the aggregate of the two species, respectively; except the daily bag and possession limits in the Pacific Flyway may not exceed 25 coots and common moorhens, singly or in the aggregate of the two species.

Sandhill Cranes

Regular Seasons in the Central Flyway: Seasons not to exceed 58 days between September 1, 1987, and February 28, 1988, may be selected in the following States: *Colorado* (the Central Flyway portion except the San Luis Valley); *Kansas; Montana* (the Central Flyway portion except that area south of I-90 and west of the Bighorn River); *North Dakota* (west of U.S. 281); *South Dakota;* and *Wyoming* (in the counties of Campbell, Converse, Crook, Goshen, Laramie, Niobrara, Platte and Weston).

For the remainder of the flyway, seasons not to exceed 93 days between September 1, 1987 and February 28, 1988, may be selected in the following States: *New Mexico* (the counties of Chaves, Curry, DeBaca, Eddy, Lea, Quay and Roosevelt); *Oklahoma* (that portion west of I-35); and *Texas* (that portion west of a line from Brownsville along U.S. 77 to Victoria: U.S. 87 to Placedo; Farm Road 616 to Blessing; State 35 to Alvin; State 6 to U.S. 290; U.S. 290 to Sonora; U.S. 277 to Abilene; Texas 351 to Albany; U.S. 283 to Vernon; and U.S. 183 to the Texas-Oklahoma boundary).

Bag and Possession Limits: 3 and 6, respectively.

Permits: Each person participating in the regular sandhill crane seasons must obtain and have in his possession while hunting, a valid Federal sandhill crane hunting permit.

Special Seasons in the Central and Pacific Flyways: Arizona, Colorado, Idaho, Montana, New Mexico, Utah and Wyoming may select seasons for hunting sandhill cranes within the range of the Rocky Mountain Population (as described in a management plan approved March 22, 1987, by the Central and Pacific Flyway Councils) subject to the following conditions:

1. Outside dates are September 1–November 30, 1987.
2. Season(s) in any State may not exceed 30 days.
3. Daily bag limits may not exceed 3 and season limits may not exceed 9.
4. Participants must have in their possession while hunting a valid permit issued by the appropriate State.
5. Numbers of permits, areas open and season dates, protection plans for other species, and other provisions of seasons are consistent with the management plan and approved by the Central and Pacific Flyway Councils.

Special Sandhill Crane-Canada Goose Season

Wyoming may select a concurrent season(s) on sandhill cranes, subject to conditions listed under "Sandhill Cranes, Special Seasons in the Central and Pacific Flyways" above, and Canada geese subject to the following conditions:

1. Outside dates for the season(s) are September 1–22, 1987.
2. Hunting will be by State permit.
3. No more than 60 permits may be issued for the Salt River (Star Valley) area in Lincoln County. Each permittee may take 2 Canada geese per season.
4. No more than 75 permits may be issued in the Eden-Farson Agricultural Project in Sweetwater and Sublette Counties, each permittee may take no more than 1 goose per season, and the season may not exceed 14 days.

Scoter, Eider, and Oldsquaw Ducks (Atlantic Flyway)

Outside Dates: Between September 15, 1987, and January 20, 1988.

Hunting Seasons, and Daily Bag and Possession Limits: Not to exceed 107 days, with bag and possession limits of 7 and 14, respectively, singly or in the aggregate of these species.

Bag and Possession Limits During Regular Duck Season: Within the special sea duck areas, during the regular duck season in the Atlantic Flyway, States may set, in addition to the limits applying to other ducks during the regular duck season, a daily limit of 7 and a possession limit of 14 scoter, eider and oldsquaw ducks, singly or in the aggregate of these species.

Areas: In all coastal waters and all waters of rivers and streams seaward from the first upstream bridge in *Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut* and *New York;* in any waters of the Atlantic Ocean and in any tidal waters of any bay which are separated by at least 1 mile of open water from any shore, island and emergent vegetation in *New Jersey, South Carolina,* and *Georgia;* and in any waters of the Atlantic Ocean and in any tidal waters of any bay which are separated by at least 800 yards of open water from any shore, island and emergent vegetation in *Delaware,*

[2] The Pacific Flyway is defined as follows: Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington; those portions of Colorado and Wyoming lying west of the Continental Divide; New Mexico west of the Continental Divide plus the entire Jicarilla Apache Indian Reservation; and in Montana, the counties of Hill, Chouteau, Cascade, Meagher and Park, and all counties west thereof.

Maryland, North Carolina and *Virginia;* and provided that any such areas have been described, delineated and designated as special sea duck hunting areas under the hunting regulations adopted by the respective States. In all other areas of these States and in all other States in the Atlantic Flyway, sea ducks may be taken only during the regular open season for ducks and they must be included in the regular duck season conventional or point-system daily bag and possession limits.

Deferred Selection: Any State desiring its sea duck season to open in September must make its selection no later than August 7, 1987. Any State desiring its sea duck season to open after September may make its selection at the time its selects its waterfowl season.

September Teal Season

Outside Dates: Between September 1 and September 30, 1987, an open season on all species of teal may be selected by *Alabama, Arkansas, Colorado* (Central Flyway portion only), *Illinois, Indiana, Kansas, Kentucky, Louisiana, Mississippi, Missouri, New Mexico,* (Central Flyway portion only), *Ohio, Oklahoma, Tennessee* and *Texas* in areas delineated by State regulations.

Hunting Seasons, and Bag and Possession Limits: Not to exceed 9 consecutive days, with bag and possession limits of 4 and 8, respectively.

Shooting Hours: From sunrise to sunset daily.

Deadline: States must advise the Service of season dates and special provisions to protect non-target species by August 7, 1987.

Special September Duck Seasons

Iowa September Duck Season: Iowa may experimentally hold a portion of its regular duck hunting season in September. All ducks which are legal during the regular duck season may be taken during the September segment of the season. In 1987, the 5-day season segment may commence no earlier than September 19, with daily bag and possession limits being the same as those in effect during the 1987 regular duck season.

Florida September Duck Season: An experimental 5-consecutive-day duck season may be selected in September subject to the following conditions:

1. The season will be in lieu of the extra teal option.

2. The daily bag limit will be 4 ducks, no more than one of which may be a species other than teal or wood duck, and the possession limit will be double the daily bag limit.

Tennessee and Kentucky September Duck Seasons: Experimental 5-consecutive-day duck seasons may be selected in September by *Tennessee* and *Kentucky* subject to the following conditions:

1. The seasons will be in lieu of September teal seasons.

2. The daily bag limit will be 4 ducks, no more than 2 of which may be wood ducks, and no more than 1 of which may be a species other than teal or wood duck. The possession limit will be double the daily bag limit.

Special Early-September Canada Goose Seasons

Experimental Canada goose seasons of up to 10 consecutive days may be selected in September by *Michigan* and *Illinois* subject to the following conditions:

1. Outside dates for the season are September 1–10, 1987.

2. The daily bag and possession limits will be no more than 5 and 10 Canada geese, respectively.

3. Areas open to the hunting of Canada geese are as follows:

Michigan—The Lower Peninsula, exclusive of the major goose migration/concentration areas that remained closed during the 1986 early-September season.

Illinois: McHenry, Lake, Kane, DuPage, Cook, Kendall, Grundy, Will, and Kankakee Counties.

4. Areas open to hunting must be described, delineated and designated as such in each State's hunting regulations.

Special Falconry Regulations

Extended Seasons: Falconry is a permitted means of taking migratory game birds in any State meeting Federal falconry standards in 50 CFR 21.29(k). These States may select an extended season for taking migratory game birds in accordance with the following:

Framework Dates: Seasons must fall within the regular season framework dates and, if offered and accepted, other special season framework dates for hunting.

Daily Bag and Possession Limits: Falconry daily bag and possession limits for all permitted migratory game birds shall not exceed 3 and 6 birds, respectively, singly or in the aggregate, during both regular hunting seasons and extended falconry seasons.

Regulations Publication: Each State selecting the special season must inform the Service of the season dates and publish said regulations.

Regular Seasons: General hunting regulations, including seasons, hours, and limits, apply to falconry in each State listed in 50 CFR 21.29(k) which does not select an extended falconry season.

Note.—In no instance shall the total number of days in any combination of duck seasons (regular duck season, sea duck season, September seasons, special scaup season, special scaup and goldeneye season or falconry season) exceed 107 days for a species in one geographical area.

Dated: June 29, 1987.

Susan Recce,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

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Part VII

Department of Agriculture

Food and Nutrition Service

7 CFR Part 246

Special Supplemental Food Program for Women, Infants and Children; Funding Formula; Final Rule

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 246

Special Supplemental Food Program for Women, Infants and Children; Funding Formula

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the WIC Program Regulations by prescribing the formula through which the Department shall allocate program funds to State agencies. The formula prescribed by this rule for allocating funds for WIC food costs differs from the one currently in use. In accordance with this rule, the Department shall henceforth allocate funds to State agencies for WIC food costs based not only on each State agency's current operating level and extent of potential eligibles to be served, but also on its success in reaching persons at greatest nutritional risk. Use of this formula shall commence with the Fiscal Year 1988 funds allocation. The Department expects that the use of this formula will encourage State agencies to serve the maximum number of high risk persons within the limits of available funding.

EFFECTIVE DATE: October 1, 1987.

FOR FURTHER INFORMATION CONTACT: Patrick J. Clerkin, Director, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 407, Alexandria, Virginia 22302, (703) 756-3746.

SUPPLEMENTARY INFORMATION:

Classification

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

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

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

Background

Statutory Requirements

The Department's authority to prescribe a WIC funds allocation formula is found in section 17 of the Child Nutrition Act (CNA) of 1966 (42 U.S.C. 1786). Section 17(i) requires the Department to ". . . divide, among the State agencies, the funds provided in accordance with this section on the basis of a formula determined by the secretary." Prior to the enactment of Public Laws 99-500 and 99-591, section 17(g) authorized the Secretary to use one-half of 1 percent of the funds appropriated each fiscal year for the WIC Program, not to exceed $3 million, ". . . for the purpose of evaluating program performance, evaluating health benefits, and administration of pilot projects, including projects designed to meet the special needs of migrants, Indians and rural populations." Public Laws 99-500 and 591 amended section 17(g)(3) and expanded the use of evaluation funds to include the preparation of the participation report required under subsection (d)(4), and the provision of technical assistance to improve State agency administrative systems. Section 17(h)(1) of the CNA then requires the Secretary to "make 20 percent of the funds provided under this section each fiscal year (other than funds expended for evaluation and pilot projects under subsection (g) of this section) available for State agency and local agency costs for nutrition services and administration." In summary, the authorizing legislation permits the Department to deduct "evaluation funds" from the total funding available, and requires that the balance be allocated to State agencies in a ratio of 80 percent for food and 20 percent for administration and program services costs.

The legislation amending the CNA placed an additional requirement upon the allocation of funds to State agencies for Fiscal Year 1987 and thereafter. A new paragraph 17(g)(2) was inserted, directing the Department to allocate funds to State agencies in a manner that makes a prescribed amount of funds available first for service to eligible migrant populations. The prescribed level of such migrant funding is nine-tenths of 1 percent of the sums appropriated for each fiscal year.

Current Funding Formula

The formula currently in use emerged from extensive consultations between the Department and the State agencies, held during the latter portion of Fiscal Year 1983. The State agencies generally agreed that the most equitable type of funds allocation at that time would be one based on each State's relative number of potential WIC eligibles but that existing program operations should not be disrupted in order to achieve that objective. For example, a State agency that had already extended program benefits to a relatively large number of its potential eligibles should not be required to reduce its funding level to make funds available for program expansion in States which had not. These considerations led to the formulation of two basic funding principles: stability funding and directed program growth. These principles form the basis for the two part formula currently in use.

1. Stability Funding

In allocating funds to State agencies, first priority is given to maintaining each State agency's existing operating level to the extent that funds are available. Accordingly, every State agency receives an amount of funds for food costs based on the amount it received the prior year adjusted for anticipated inflation. This amount is reduced for any State agency that failed to use at least 95 percent of its prior year food funding (stability and growth combined), as an inducement for State agencies to use all funds allocated to them (without overspending). The reduction is calculated by subtracting the State agency's actual, prior-year food cost from 95 percent of the food funds it received for the prior fiscal year. Funding for administration and program services costs is calculated as a percentage of the State agency's food funding level. Every State agency must be funded at the full stability level before any funds are allocated through the growth formula.

2. Growth Funding

Once the stability funding requirements have been satisfied, any funds remaining available are allocated through the growth formula. This formula was designed to move the WIC Program toward the long-term objective of enabling each State agency to serve the same proportion of its potentially eligible women, infants and children. Accordingly, the growth formula is based on each State's relative number of persons below 185 percent of the Poverty Income Guidelines, its infant mortality and its low-weight births. The Department uses the formula to determine what each State agency's proportionate share of the funds available for allocation would be if all such funds were allocated solely on the basis of these factors; this figure is known as the State agency's "growth share." A State agency qualifies for growth funding to the extent that (1) its growth share exceeds what is provided under the stability formula; and (2) funds are available for growth funding. As with the stability formula, each State agency receives an amount of food funds generated by the formula, plus a related amount of administrative funding.

Concerns About the Existing Formula

The Department first used the allocation formula described above to determine each State agency's Fiscal Year 1984 funding level, and has retained it in substantially the same form since that time. While the use of this formula has generally promoted the dual objectives of program stability and controlled program growth, it has not discriminated between those State agencies that have used their funds efficiently and effectively and those that have not. All States have received stability grant increases based solely on an economic indicator (inflation). In addition, growth States received grant increases based on demographic data only. In neither case has consideration been given to how efficiently and effectively each State agency utilized the grant it received. There is one dimension of State efficiency and effectiveness that the Department considers most reflective of a State agency's management of its grant. This is the targeting of benefits to the highest risk eligibles. The Department has twice proposed alternative formulas designed to place greater emphasis on targeting. The following paragraphs describe these formulas and explain the considerations that led to their development.

Alternative Formula Proposed on September 9, 1986

Beginning in Fiscal Year 1986, the Department initiated efforts to revise the formula in response to the concerns discussed above. On September 9, 1986 (51 FR 32093), the Department published a proposed rule encompassing an alternative formula for allocating funds to State agencies. Under this proposed formula, the stability funding concept would have been retained but redefined to exclude the annual adjustment for anticipated inflation. Each State agency would have received its prior year food grant for stability food funding unadjusted for inflation. Residual funds (that is, funds remaining available for allocation after every State agency had been funded at its full stability level) would have been allocated among all State agencies on the basis of their relative success in identifying and serving the highest risk persons within their eligible populations. For this purpose, "highest risk" would have been defined as women, infants and children enrolled in Priorities I, II and III. Additional features of the proposed formula included:

- Retention of the 95 percent performance standard.
- Crediting each State agency's prior year operating level with 50 percent of the food funds it had voluntarily made available for recovery, for purposes of calculating the State agency's stability food funding level. This feature had been conceived as an incentive for State agencies to return unneeded funds for reallocation.
- Adjustment of each State agency's enrollment in Priorities I through III by its "participation rate." This adjustment had been designed to factor each State agency's relative success in enhancing the efficienty of food funds usage by only considering enrollees that received food or a food instrument.
- Capping each State agency's combined stability and residual food funding level. The State agency's food grant would have been precluded from exceeding the amount needed to serve 100 percent of the State agency's reported income-eligible population. This funding cap would have prevented the allocation of more funds to a State agency than could realistically be used.

This food funding formula had been designed to reward those State agencies that had successfully targeted Program benefits to persons in the three highest priority groups. It was intended for implementation in Fiscal Year 1987.

Comments and Consultations

Comments on the proposed rule were accepted until November 9, 1986. Altogether, 647 comments were received. Many commenters took exception to the Department's announced intent to initiate the revised funding formula during Fiscal Year 1987. They contended that State agencies had already planned and budgeted on the basis of grants they could expect to receive under the existing formula; changing in mid-year would disrupt program operations.

During the comment period, the enactment of Pub. L. 99–500 and Pub. L. 99–591 limited the Department's discretion with regard to implementation. This legislation attached the following proviso to the Fiscal Year 1987 WIC appropriation: ". . . that none of the funds provided herein shall be used to issue interim or final regulations before May 1, 1987, to modify the formula used during Fiscal Year 1986 to divide funds among State agencies under section 17(i) of [the CNA] to carry out [the Program], or to implement such regulations before October 1, 1987." In the conference report on this legislation, the Conference Committee further directed the Department to issue a final funding regulation with an implementation schedule to coincide with the beginning of the [1988] fiscal year." H.R. Rep. 1005, 99th Cong., 2d Sess. 403 (1986). The effective date of this final rule responds to this directive.

The aforementioned conference report also expressed congressional intent regarding the manner in which the Department should proceed in developing a revised formula. The conferees directed the Department ". . . to issue a new proposed regulation for the allocation of WIC funds to the State agencies, superceding the proposed regulation issued on September 9, 1986. The new regulation should be promulgated after arriving at a consensus with the State WIC directors and other interested parties." Id. In response to this statement, the Department consulted with the WIC community over and above the solicitation and analysis of public comments intrinsic to the Federal rulemaking process.

Consultations between the Department and the National Association of WIC Directors (NAWD) were initiated. The NAWD identified a set of principles which they felt any funding formula developed should be expected to satisfy, and considered the mechanics of a formula that they

believed met these principles. That suggested formula was formalized as a comment to the September 9 proposed rule. The majority of formal comments subsequently received by the Department substantially endorsed the NAWD's recommended formula and principles. The Department reviewed the NAWD proposed formula and determined that, with some exceptions, the formula put forth by the NAWD had addressed the Department's major policy objectives while accommodating many of the objections raised by commentors to the Department's initial proposal.

Commenters (including the NAWD) objected to the proposed formula principally on the grounds that:

- The stability component included no inflation adjustment;
- The targeting component was perceived as directing funds not to well targeted State agencies but to State agencies with large caseloads;
- The Department's definition of targeting (Priorities I through III) was deemed inappropriate. Some commentors considered it too restrictive; others considered it too broad;
- The proposed formula emphasized targeting to the exclusion of growth; and
- Available data on persons enrolled by priority could not lead to equitable funds allocations because it reflected nonuniform nutritional risk criteria and reporting methods.

Funding Formula Reproposed

After considering all comments received on the September 9, 1986 proposed rule, the Department concluded that an alternative formula to that originally proposed would accomplish the objective of targeting funds to State agencies with the best targeting performance. The Department proposed such a formula on April 17, 1987 (52 FR 12527). Under this proposed formula, WIC food funds would have been allocated to State agencies as follows:

1. Stability Funding

To the extent that funds are available, each State agency would receive stability food funds equal to its prior year grant level increased by an inflation factor. This factor would be determined on the basis of each State agency's service to persons imputed to be in Priorities I through III. This is referred to as the "targeted inflation" element. The 95 percent performance standard and the 50 percent voluntary recovery credit would be retained as presented in the September 9 proposed rule.

To effect compliance with Pub. L. 99-500 and 99-591, the Department built a migrant funding procedure into the stability component. This procedure had been designed to provide the statutorily required level of funding for Program services to migrants while taking into consideration the levels of service to this population that State agencies had already achieved. Whenever expenditures for migrants are expected to fall below the statutorily prescribed level (nine-tenths of 1 percent of the sums appropriated for the applicable fiscal year), the Department will raise the shortfall amount through the proportional reduction in all State agencies' stability food grants and redistribute this amount among State agencies that had reported service to migrants in the preceding fiscal year. This procedure is one operation in the establishment of State agencies' initial grant levels and should not be confused with recoveries and reallocations.

2. Residual Funding

- Targeting Component

Fifty (50 percent of any residual food funds would be allocated on the basis of each State agency's service to pregnant women, breastfeeding women and infants imputed to be in Priority I. Each State agency's imputed Priority I participation level would be divided by the corresponding national aggregate figure. The resulting percentage would be applied to the total amount of funds available for allocation in this component.

- Growth Component

Fifty (50) percent of any residual funds would be allocated through the existing growth formula. However, the Department would adjust the growth shares for the Virgin Islands, Alaska, Guam, Hawaii and any Indian State agencies located within their borders by the same factors used to adjust payments to these States under the Thrifty Food Plan Index, before determining whether these State agencies' growth shares exceeded the amounts provided them under the stability and targeting components.

Every State agency would receive stability food funds; every State agency serving Priority I persons would receive targeting funds; and those State agencies qualifying as growth States through the operation of the existing growth formula would receive growth funds. Thus, each State agency would receive for food costs each fiscal year the sum of the amounts generated under the stability, targeting and growth components. The proposed rule provided, however, for two exceptions to the preceding statement:

- Each State agency's total food grant would be restricted to a level 15 percent higher than its stability funding level. This 15 percent cap was intended to limit each State agency's grant to an amount that could realistically be utilized.
- If the sum of the stability, targeting and growth amounts for any Indian State agency did not equal or exceed its preceding year grant increased by the full anticipated rate of inflation, the sum would be increased to the latter level.

The Department accepted comments on the April 17 proposed rule until June 1, 1987. Altogether, 119 comments were received: 32 from State agencies, 63 from local agencies, and 24 from other interested individuals and organizations. A detailed discussion of the issues raised by the commenters to the April 17 proposed rule will follow a description of the formula as it has been modified in response to the comments. A discussion of the comments on the September 9 proposed rule can be found in the preamble to the April 17 proposed rule.

The following discussions do not address the formula prescribed by this final rule for the allocation of funds for administrative and program service costs. The regulatory text sets forth the administrative and program services funding formula currently in use. The Department has approached the matter of revising that formula through consultations with the WIC community, in a manner comparable to that described in this preamble with respect to revising the food funding formula. As the result of these consultations, the Department is currently proposing an amendment to the portion of this final rule relating to the allocation of administrative and program services funds. All State and local agencies and other interested parties are urged to submit comments.

Food Funding Formula Prescribed by Final Rule

The formula prescribed by this final rule is fundamentally the same as the one described in the April 17 proposed rule. Therefore, this final formula shall be described in terms of the modifications to the proposed formula. These modifications include:

- Factoring postpartum women out of each State agency's reported total of women participating before inputing the number of high-risk women included in that figure. This matter is discussed in detail later in this preamble.
- Considering participants in the Commodity Supplemental Food Program (CSFP) who are also eligible for WIC

when allocating growth funds to State agencies that also operate the CSFP. This will be achieved by subtracting the WIC-eligible CSFP participants from such State agencies' WIC-eligible populations before their growth shares are determined.

• Clarifying that the 95 percent performance standard is to be applied to each State agency's food grant level net of the 1 percent carryover amount authorized by paragraph 246.16(b)(2) of the current Program Regulations. Comments received on the 95 percent performance standard are discussed in detail later in this preamble.

• Clarifying that the 15 percent formula cap is calculated from each State agency's current year stability funding level. For this purpose, the Department uses the stability level the State agency would have received if its stability base amount had been increased by the full anticipated rate of inflation rather than by its respective rate of targeted inflation. State agencies subject to the cap are thus provided a reasonable degree of protection against fluctuations in the rate of inflation.

To assist the reader in tracing the evolution of the final food funding formula, the following table is provided.

PROVISIONS AND FEATURES OF ALTERNATIVE WIC FOOD FUNDING FORMULAS

Provision or feature	Existing formula through FY 1987	Alternative formula proposed Sept. 9, 1986	Alternative formula proposed April 17, 1987	Final revised formula (effective FY 1988)
Stability Inflation Adjustment	Full Inflation	None	Targeted Inflation (PTY I–III)	Targeted Inflation (PTY I–III).
50 Percent Recovery Credit	No	Yes	Yes, if recovered	Yes, if recovered.
Migrant Set-Aside Adjustment	No	No	Yes	Yes.
Allocation of Residual Funds	Growth Only	Targeting Only	50% Targeting, 50% Growth	50% Targeting, 50% Growth.
Basis for Targeting Component	N/A	Priorities I–III	Priority I	Priority I.
Data Used in Targeting Component	N/A	Enrollment	Imputed Participation	Imputed Participation (postpartum excluded).
Growth Share Adjustment for Unique Food Market Conditions.	No	N/A	Yes	Yes.
Formula Cap	15 Percent of Stability Level	Amount Needed to Service 100 Percent of Eligibles.	15 Percent of Stability at Targeted Inflation.	15 Percent of Stability at Full Inflation.
Special Inflation Provision for Indian State Agencies.	No	No	Yes	Yes.
95 Percent Performance Standard	Yes	Yes	Yes	Yes.

The balance of this preamble is devoted to analyses of the issues raised by commenters.

Targeting as a Funding Objective

Most of the comments relating to targeting applied equally to both targeted inflation and targeted residual funds. They addressed the concept of targeting and the method the Department had proposed for achieving it. Therefore, these comments will be discussed from the conceptual standpoint rather than in the respective contexts of the formula's two targeting elements.

Seven commenters objected altogether to promoting targeting through a funding formula, and asserted that targeting should be treated as an internal State management matter. The need for targeting has been discussed extensively elsewhere is this preamble.

Statements appearing in over half the comments disclosed widespread concern about the capability of the proposed formula to target effectively. These commenters asserted that the proposed forumla would not fund well targeted State agencies commensurate with their targeting success, and would fund poorly targeted State agencies above the level warranted by their targeting results. In the formula model distributed to State agencies, this drawback was manifested in a relatively narrow range of targeted inflation factors.

Comments attributed these results largely to the Department's definition of targeting success. The proposed formula had been designed to reward State agencies that extended program benefits to persons in the highest priority groups. Both the Department and the State agencies have long been aware that the available data on persons enrolled in each priority group reflects both a range of nutritional risk critera used in different States to determine priority assignment and nonuniform methods of determining enrollment. Therefore, allocating funds on the basis of the priority system depends upon developing a method for minimizing the impact of these variations. Under the April 17 proposed rule, this would have been achieved by imputing to each State agency's participation levels of women, infants and children the national aggregate percentages of women, infants and children enrolled in the highest priority groups. This national aggregate percentage is the percentage that high priority women, infants and children are of the respective total numbers of women, infants and children enrolled nationwide.

Commenters contended that this method would have inadvertently given State agencies targeting credit for low priority postpartum women. If a State agency is well targeted, high risk pregnant and breastfeeding women are more heavily represented in its total number of women participating than they are in the corresponding national aggregate participation figure. This is because the proportion of lower priority pospartum women in the targeted State is lower than in the national aggregate. Therefore, imputing the national aggregate high risk percentage of pregnant and breastfeeding women to such a State agency's actual participation level would understate the number of high risk women the State agency has actually served. Conversely, imputing the national aggregate high risk percentage to a poorly targeted State agency's actual participation figure would overstate that State agency's high risk participation level. What is needed in a formulaic approach that targets effectively while minimizing the impact of nonuniform risk criteria.

Many commenters recommended addressing this need by redefining targeting to include all pregnant and breastfeeding women and all infants, regardless of priority assignment. As a corollary to this proposals, they recommended that the Department use actual counts of participants in these categories for all funding operations designed to promote targeting. This proposal to shift from a targeting concept based on the priority system to one based on categorical identification held certain attractions. By giving State agencies credit for the relatively small numbers of lower priority persons in the three aforementioned categories, it would respond to concerns that the

Programs retain its preventive aspect. Of greater significance, however, would be its elimination of imputing operations from the formula. If a targeting were not defined by reference to the priority system, the difficulties presented by the variations in how States establish priorities would be avoided and there would be no need to impute priority representation to participation levels.

The Department fully recognizes the reality of the need giving rise to this recommendation, but does not believe the recommendation itself represents the most desirable approach to meeting it. For a number of reasons, the Department remains convinced that priority represents a more appropriate basis for targeting than category.

The priority system originated in the context of enrolling persons from waiting lists. In that context, any Priority I person is recognized as more at risk than, and therefore enrolled ahead of, any Priority IV person. The principle that resources should be targeted first to persons in the highest priority groups is thus well established in practice and supported by existing regulatory authority. (See 7 CFR 246.7(d).)

Allocating funds on the basis of State agencies' adherence to that principle is therefore appropriate.

Under this principle, a Priority III child should be enrolled ahead of a Priority IV pregnant women. Shifting to a categorical basis of targeting would be inconsistent with this principle. For purposes of allocating funds, a State agency would receive targeting credit for the Priority IV pregnant woman but not for the Priority III child. (Under the categorical basis of targeting, State agencies would receive credit for all pregnant and breastfeeding women and all infants, but not for any children.) During the formulation of the September 9 proposed rule, the Department was severely criticized for proposing to allocate funds in a manner that "symbolically disenfranchised" children from the Program. Adopting a categorical definition of targeting would also warrant such criticism.

The recommendation to define targeting in terms of participant categories is founded principally on the identified weakness in the proposed formula's imputation operations. It is thus a recommendation to revise principles in order to accommodate methodological limitations. The Department believes the preferable approach is to correct the methodology in order to maintain the principle. Alternative avenues are available to accomplishing this.

The imputation approach to minimizing the impact of nonuniform risk criteria is fundamentally sound. Indeed, this approach represents the outcome of a period of consensus-building between the Department and the WIC community. What requires revision is the particular imputation procedure used in the formula.

The proposed formula's failure to discriminate between well and poorly targeted State agencies stems from the attempt to impute the national aggregate high risk representation in the categories of pregnant and breastfeeding women to a grouping of participants not restricted to these same categories. This grouping includes lower priority postpartum women. Therefore, the Department will mathematically exclude each State agency's participation of postpartum women from its total number of women participating. This step takes place before the national aggregate percentage of high risk pregnant and breastfeeding women (i.e., the national proportion of high risk pregnant and breastfeeding women to all pregnant and breastfeeding women) enrolled is imputed to each State agency's number of pregnant and breastfeeding women participating.

Revision of the references to imputing in the proposed regulatory text was not considered necessary in order to accommodate the exlusion of postpartum women from the imputation. The proposed rule did not expressly address the details of the imputation process. Exclusion of postpartum women from the calculation can be accomplished under the authority of the regulation as proposed.

This modification responds to the concerns expressed by most commenters. Where the April 17 formula distributed to State agencies showed targeted inflation factors within a narrow range among State agencies, the targeted inflation factors generated by the final formula provide a broader range. In addition, the best targeted growth State agencies would receive more funds under the final formula than under the April 17 proposed formula.

Inflation Adjustment

Most of the commenters who addressed the proposed formula's inflation provision objected to targeted inflation, and recommended a return to the current practice of applying the full anticipated rate of inflation uniformly to all State agencies. The following reasons were given:

- The formula's targeting mechanism does not target effectively. Therefore, the targeted inflation provision does not target inflation, but only reduces the level of inflation taken into account by the Department.
- Inflation affects the cost of food provided to all participants, not just those in Priorities I through III. Therefore, the inflation adjustment should not be targeted to persons in those priority groups alone.

The concern about the proposed formula's inability to target effectively has been exhaustively analyzed in the foregoing discussion of targeting. That problem has been diagnosed and corrected.

The Department continues to support targeted inflation as a matter of policy. The WIC food funding formula is being revised for the express purpose of promoting more efficient use of funds and the targeting of resources to serve persons in the highest priority groups. The formula's targeting elements are intended to reward those State agencies that have demonstrated the most success in achieving these objectives. On the other hand, reverting to a uniform inflation adjustment would reward well targeted State agencies no better than poorly targeted ones. The targeting incentive would be lost. It is not the Department's intent to return to the status quo. Therefore, the targeted inflation provision is retained.

Data Used in Targeting

Concerns raised by commenters about the Department's approach to targeting are difficult to separate from concerns about the data used in the formula's targeting elements. One cannot readily divorce a recommendation to define targeting in a way that specifically excludes postpartum women from the need for a categorical participation count that also excludes them. The conceptual discussion to targeting emphasized dealing with data diversity attributable to nonuniform risk criteria; this discussion will stress dealing with nonuniform methods of counting. The comments received on such data matters may be broadly classified into three areas: the choice of a dataset to be used for targeting; the quality of the data to be used; and the timing of the data's use for funds allocation.

1. Choice of Dataset

Since targeting has been defined as service to persons in specific priority groups, the formula's targeting elements depend on the availability of data for measuring the extent to which State agencies have achieved this objective. The Department currently collects two classes of data pertaining to persons on the Program: Those enrolled and those who participate. The Program

Regulations now define participation as the number of persons who receive food or food instruments, and the number of infants breastfed by participant breastfeeding women, during the reporting period; enrollment refers to the number of persons authorized to participate. Participation data is currently classified only by women-infants-children, while enrollment is reported by both category and priority. The three categories of women—pregnant, breastfeeding and postpartum—are currently reported only by enrollment.

Almost all the commenters who addressed the question of which dataset should be used preferred participation. They maintained that participation data is currently more uniform and reliable than enrollment data.

The Department concurs in that appraisal. It is for such reasons that the April 17 proposed rule was drafted to impute the National aggregate percentages of high priority enrollment to applicable categories of persons *participating* rather than to applicable categories of persons *enrolled*. Many of the comments received on the "postpartum women" targeting program, described earlier, also questioned this "mixture" of participation and enrollment data. Since most State agencies currently collect priority data only by enrollment, there is no short term alternative. However, the Department has initiated a long term solution.

As explained in the preamble to the April 17 proposed rule, the Department assembled a Federal work group to review existing practices for reporting participation and enrollment, and to recommend improvements. The workgroup was composed of central office and regional office staff selected for their expertise in matters relating to program accounting and reporting. Their recommendation with respect to obtaining better data on persons assigned to different priority groups is to shift from the semiannual reporting of *enrollment by priority* to the quarterly reporting of *participation by priority*.

Some State agencies already collect participation data in this way, and one suggested it as an alternative to adopting a categorical definition of targeting. Most State agencies, however, will require time to make the necessary modifications to their information management systems. In addition, the Department cannot require all State agencies to make this reporting change without regulatory authority. (See 7 CFR 246.25(b)(2).) A proposed rule has been drafted for this purpose; it will soon be published for public comment.

For the foregoing reasons, the shift to collecting quarterly participation data by priority will be a long term process. When completed, however, it will respond fully to all questions about the compatibility of participation and enrollment data. All imputing operations will involve the application of national aggregate priority participation percentages to State monthly participation figures.

2. Quality of the Data

Twelve commenters asserted that better data is needed in order to obtain equitable funds allocations, and 30 pointed out the variety of counting methods represented in the data currently available. The aforementioned work group made several recommendations for obtaining more accurate, uniform participation data. These recommendations were presented at the NAWD's March 1987 annual meeting and subsequently adopted by the Department. As with the shift from reporting enrollment by priority to reporting participation by priority, the State agencies will require time to make the systems changes necessary to upgrade and standardize participation reporting.

3. When the Data Should be Used

The work group recommended that the period from the adoption of its recommendations to September 30, 1988 be treated as a phase-in period, so that implementation of the recommended practices would not become mandatory until October 1, 1988. The Department envisions that all State agencies would by then be able to report timely, accurate, and uniform participation data. Ten commenters responding to the April 17 proposed rule felt that the new funding formula should not be implemented until all State agencies had developed this capability.

The Department has already conceded the validity of data-related concerns. Such concerns instigated the formation of the work group to begin with. The Department believes, however, that the conditions giving rise to such concerns are not of such magnitude that it would be reasonable to delay implementation of the funding formula or to alter the formula on their account. Moreover, these conditions will improve as more State agencies refine their reporting.

The April 17 proposed rule included two additional data issues that received almost universal endorsement from commenters: Redefining participation to include breastfed infants; and allowing State agencies to include State supported participation in the data used in the funding formula.

Of the 46 comments received on the matter of breastfed infants, 45 heartily endorsed the Department's proposal. One State agency opposed the proposal on the grounds that it would reward other State agencies that had violated regulations by counting breastfed infants as participants. Six of the favorable comments also contained statements that breastfed infants generate administrative costs even when they generate no food costs. Since the proposed administrative and program services funding formula is participation driven, it would benefit State agencies that add breasefed infants to their caseloads. In redefining participation to include breastfed infants, the Department has added a clarification in the final rule to ensure that breastfed infants who *also* receive supplemental food or food instruments are not counted twice.

The proposal concerning State supported participation as conceived as an incentive for States to budget State funds for expansion of their caseloads beyond the levels supportable from their Federal WIC grants alone. The Department received 28 comments on this subject, of which 23 endorsed the provision as stated in the proposed rule. Three commenters saw a need for additional clarification, either in the regulatory text itself or through technical assistance. The Department does not consider regulations the appropriate vehicle for expounding on the ramifications of this subject, but will respond to all inquiries.

Growth Component

The Department received numerous comments on various issues relating to the formula's growth component.

1. Considering CSFP Participation in the Growth Allocation

The Department had requested feedback on the relative merits of considering participation in the CSFP when determining the eligibility of States operating both programs for WIC growth funds. This proposal is based on the two programs' many corresponding features. Both provide substantially the same benefits to women, infants and children. Further, CSFP participants are prohibited from simultaneously participating in the WIC Program (7 CFR 246.7(k)(1)(iii)). They differ principally in that WIC participants must meet more restrictive categorical eligibility requirements; postpartum women and children remain CSFP-eligible 6 months and 12 months, respectively, after their

categorical WIC eligibility expires. Given the parallelism between the two programs, the growth formula should consider the portion of each State agency's WIC-eligible population that receives substantially the same benefits through the CSFP.

Altogether, 28 commenters responded to this proposal. Of these, 21 commented favorably. Favorable comments were received from the State agencies of two States that operate both programs; one of these favored eliminating the CSFP and shifting its funding to WIC. Others offered no concrete approach. However, most of the favorable comments favored subtracting each State's WIC-eligible CSFP participants from its income-eligible population before performing each growth allocation. The Department concurs in this approach.

Predictably, the seven negative comments were submitted by States, and local agencies within States, that have both WIC and CSFP. Reasons given for opposing the proposal included the perception that it would penalize States that had taken the initiative to operate both programs, and the assertion that operational differences between the two programs precluded treating them as interchangeable. One negative comment held that participants may request transfer from one program to the other; this would seem to suggest that they *are* generally interchangeable.

Given the foregoing, the Department has adopted the proposal to consider WIC-eligible CSFP participation in the WIC growth formula.

2. Data Used in Allocating Growth Funds

Since the inception of the current funding formula, State agencies have expressed concern about the use of 1980 Census data as the indicator of each State agency's income-eligible population. Comments on this matter were received from three State agencies, eight local agencies and two interest groups, all of whom expressed dissatisfaction with the data currently available. Six of these commenters suggested accepting more current data from those State agencies that could provide it. Such a practice has often been proposed in the past. The Department has consistently taken the position that mixing poverty data from different sources in a national analysis would generate invalid results and inequitable funds allocations. No comment received showed promise of leading to an alternative dataset that is both valid at the State level and nationally uniform. Therefore, the Department sees no alternative to continued use of the Census data.

3. Growth Funding Levels

The Department received 33 comments expressing concern that most growth State agencies would receive lower food funding levels under the proposed formula than under the status quo formula. While a disproportionate number of these comments were submitted by local agency staff in one State, the Department feels this concern is more widespread and warrants a response. Under the status quo formula, 100 percent of the residual funds are allocated to growth States alone. As a matter of policy, the Department is directing half of these funds to reward success in actively extending program benefits to persons most at risk. Both stability and growth State agencies may initiate such positive action and share in its rewards. Consequently, the revised formula cannot be expected to generate results comparable to those obtained through the status quo formula.

4. Adjustments for Outlying Areas

The NAWD had recommended that there be an adjustment for the unique food market conditions faced by the nation's outlying territories and by Indian State agencies located in remote areas. The Department adopted this recommendation. The growth component of the proposed formula contained a provision whereby the growth shares for Alaska, the Virgin Islands, Guam, Hawaii and any Indian State agencies within their borders would be adjusted upward before being compared with these State agencies' stability food levels. This procedure would recognize the higher food costs associated with these areas.

The adjustment factor for each State agency is a multiplier derived from the differential between the Thrifty Food Plan (TFP) amount used in that State and the TFP amount used for the 48 contiguous States and the District of Columbia. The multipliers are thus obtained through the following formula:

Alaska TFP divided by 48 States/DC TFP equals Alaska Multiplier

Each outlying State agency's multiplier will be applied to its respective growth share. This will give the State agency a larger growth share relative to its actual stability/targeting funds than would otherwise have been the case, hence a greater likelihood of qualifying for growth funding.

The Department received 14 comments on this provision, 11 of which endorsed it as stated in the proposed rule. Accordingly, the provision has been retained in the final rule.

The proposed rule had not included a TFP adjustment for Puerto Rico. Evidence available to the Department had not suggested that the food market conditions found in Puerto Rico were comparable to those found in the other outlying territories and States. Nevertheless, one commenter highlighted the differences between the supplemental foods consumed by WIC participants in Puerto Rico and those consumed by their counterparts in the 48 contiguous States. The Department does not at this time have data upon which to determine whether these differences warrant an adjustment for Puerto Rico, and no such adjustment is included in the final rule. The Department will weigh the necessity of adding such a provision in the future.

95 Percent Performance Standard

As explained earlier in this preamble, the 95 percent performance standard was designed as an incentive for State agencies to either use all the food funds allocated to them or return them for reallocation to other State agencies. The Department received 49 comments on this provision, 18 of which endorsed the provision as stated in the proposed rule. The remaining 31 commenters objected to the 95 percent performance standard as proposed, and recommended modifications. While 50 percent of these negative comments came from one State and two-thirds of them came from one region, the Department feels the issues raised by these commenters should be addressed.

The 95 percent standard as proposed was represented by 15 commenters as discouraging State agencies from initiating cost saving activities or promoting breastfeeding. These commenters felt the cost savings realized through such initiatives would cause State agencies to expend less than 95 percent of the food funds allocated to them, thus rendering them liable to the prescribed penalty. In the preamble to the April 17 proposed rule, the Department described safeguards against that possibility. These safeguards are restated here. Paragraph 246.16(b)(2)(ii) of the revised WIC Program Regulations (published in the **Federal Register** on June 4, 1987) authorizes State agencies to carry forward into the following fiscal year up to 1 percent of the funds they receive for the current fiscal year. These "1 percent" funds are held harmless from the 95 percent standard; the standard is applied to the State agency's preceding year food grant minus the amount carried forward. The Department has inserted a clarification to this effect in the final rule provision pertaining to the 95 percent standard, and has inserted a

corresponding provision regarding carrybacks pursuant to 7 CFR 246.16(b)(2)(ii) to ensure that both operations are treated consistently. The Department has also clarified that the 95 percent standard applies to the amount of funds *allocated* to a State agency for a fiscal year. In addition, the proposed rule provided for the granting of waivers to the 95 percent standard. Such waivers would be granted at the Department's discretion, in cases of State agency initiatives leading to measurable cost savings. These safeguards have been retained in the final rule.

These safeguards were perceived by 16 commenters as insufficient. These commenters wished not only to limit State agencies' liability under the 95 percent standard, but also to have a portion of the funds not expended as the result of cost savings initiatives made available for administrative and program services costs. They contended that a State agency embarking on cost saving initiatives eventually reaches a point that the food funds saved cannot be used unless additional administrative and program services funds are made available. Consequently, they recommended that a portion of the food funds saved through cost saving initiatives be made available for administrative and program services costs.

For a number of reasons, the Department cannot accept that position. Allowing food funds to be used for administrative costs would alter the ratio of food to administrative funds allocated to State agencies. Over 80 percent of the negative commenters objected to this "80–20 split", and attributed its presence in the proposed rule to the Department's inflexibility. The Department wishes to draw these commenters' attention to the opening pages of this preamble, where the statutory origins of the "80–20 split" are explained. (See section 17(h) of the CNA). This requirement is not a matter of the Department's discretion. In addition, most of the comments that food funds saved through cost saving initiatives should be available for adminstrative costs were made in the context of using infant formula rebates to supplement administrative funding. On June 3, 1987, the Department's General Counsel issued a legal opinion to the effect that infant formula rebates retain their original identity as WIC food grant funds. Therefore, they may be used only for food costs.

As had already been noted in connection with participation by breastfed infants, the new formula the Department is considering for allocating administrative and program services funds is driven primarily by participation. State agencies can parlay food costs savings into increased participation by lowering food costs, they can serve more participants with the same amount of funding. This would generate additional administrative and program services funds. In this connection, the Department wishes to emphasize that the "1 percent carryover" provision applies to administrative and program services funds as well as to food funds.

A few commenters suggested that the Department announce criteria for granting exceptions to the 95 percent performance standard. Because the Department cannot forecast all future circumstances that would warrant such waivers, attempting to include such criteria in codified material is not appropriate. A policy memorandum on this subject has already been issued. The Department considers the policy system a more appropriate medium for communicating developments in this area because it provides greater flexibility to accommodate unforeseen future circumstances that may warrant waivers.

Other Provisions

1. Formula cap

The capping provision of the status quo formula is intended to promote efficient funds usage by preventing the allocation of funds to State agencies in excess of the amounts the State agencies can reasonably be expected to use. Of the 24 comments received on this subject, 22 voiced concern about the manner in which this provision had been expressed. They recommended the Department clarify that each State agency's capping level is calculated from its current year stability funding level and not from its prior year total food grant. For this purpose, the State agency's current year stability level is calculated as it would appear if based on full inflation rather than on targeted inflation. The Department has made appropriate revisions to the regulatory text in order to provide such clarification.

2. Special Provisions for Indian State Agencies

The proposed rule included a provision where Indian State agencies would receive food grant levels equal to the greater of the following two amounts: The sum of the amounts generated by the formula's three components; or the State agency's preceding year total food grant increased by the full anticipated rate of inflation. Of the 13 comments received on this provision, 12 supported it as stated in the proposed rule.

3. One Percent Carryover and Carryback Authority

One State agency expressed concern that exercising its carryover authority under this provision would lead to a corresponding reduction in the base amount used to compute its following year's stability food grant. This is not so. Paragraph 246.16(b)(2)(ii) of the revised WIC Program Regulations explicitly states that "any funds carried forward by the State agency in accordance with this paragraph for expenditures in the subsequent fiscal year shall not affect the amount of funds allocated to such State agency for the subsequent fiscal year." In addition, one provision in the proposal addressing treatment of carrybacks for purposes of determining stablility funding has been deleted because it was deemed unnecessary.

List of Subjects in 7 CFR Part 246

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

PART 246—AMENDED

Accordingly, it is proposed to amend 7 CFR Part 246 as follows:

1. The authority citation for Part 246 continues to read as follows:

Authority: Sec. 341–353, Pub. L. 99–500 and 99–591, 100 Stat. 1783 and 3341 (42 U.S.C. 1786); sec. 3, Pub. L. 95–627, 92 Stat. 3611 (42 U.S.C. 1786); sec. 203, Pub. L. 96–499, 94 Stat. 2599; sec. 815, Pub. L. 97–35, 95 Stat. 521 (42 U.S.C. 1786).

2. In § 246.2, new definitions of "residual funds" and "stability funds" are added in alphabetical order, and the existing definitions of "participants" and "participation" are revised, as follows:

§246.2 Definitions.

* * * * *

"Participants" means pregnant women, breastfeeding women, postpartum women, infants and children who are receiving supplemental foods or food instruments under the Program, and the breastfed infants of participant breastfeeding women.

"Participation" means the sum of the number of persons who have received supplemental foods or food instruments during the reporting period and the number of infants breastfed by participant breastfeeding women (and

receiving no supplemental foods or food instruments) during the reporting period.

* * * * *

"Residual funds" means funds remaining available for allocation to State agencies after every State agency has received the amount allocable to it as stability funds in accordance with §§ 246.16(c)(2)(i) and 246.16(c)(3)(i).

* * * * *

"Stability funds" means funds allocated to any State agency for the purpose of maintaining its preceding year Program operating level, in accordance with §§ 246.16(c)(2)(i) and 246.16(c)(3)(i).

* * * * *

3. In § 246.16, paragraphs (c), (d) and (e) are redesignated as paragraphs (d), (e) and (f), respectively; a new paragraph (c) is added; and introductory paragraph (b)(2) and newly designated paragraphs (e) and (f) are revised to read as follows:

§ 246.16 Distribution of funds.

* * * * * *

(b) *Distribution of funds to State agencies.* * * *

(2) All funds not made available to the Secretary in accordance with paragraph (b)(1) of this section shall be distributed to State agencies in accordance with the funding formula set forth in paragraph (c) of this section to the extent that funds are available. This formula shall allocate funds to all State agencies for food costs and for administrative and program services costs incurred during the fiscal year for which the funds had been made available to the Department; *Provided, however,* that any State agency may exercise either of the options stated in paragraphs (b)(2)(i) and (b)(2)(ii) of this paragraph with respect to funds allocated to it for any fiscal year, beginning with Fiscal Year 1987; *Provided, further,* that for Fiscal Year 1987 *only,* the basis for calculating the one percent levels referred to in paragraphs (b)(2)(i) and (b)(2)(ii) of this section shall not include unspent Fiscal Year 1986 funds reallocated by the Department to State agencies in Fiscal Year 1987:

* * * * * *

(c) *Allocation formula*—(1) *Use of participation data in the formula.* Wherever the formulas set forth in paragraph (c)(2) of this section require the use of participation data, FNS shall use participation data reported by State agencies according to § 246.25(b) of this Part; *Provided, however,* that prior to using such participation data in any such formula FNS shall adjust such data as necessary to impute the number of persons in each participant category that are in each nutritional risk priority group; *Provided, further,* that FNS shall use data reflecting participation supported by the aggregate of Federal and State funds for any State agency whose State has budgeted funds from State sources for the Program, if such State agency requests FNS to do so in accordance with a deadline prescribed by FNS.

(2) *Allocation for food costs.* Eighty (80) percent of the funds available for allocation to State agencies each fiscal year shall be allocated for food costs according to the following procedure:

(i) *Allocation of stability funds.* Each State agency shall receive for food costs a base amount of stability funds equal to the sum of all funds allocated to such State agency for all food costs during the preceding fiscal year minus fifty (50) percent of any food funds voluntarily returned by such State agency prior to July 16 of the preceding fiscal year. This base amount shall be adjusted by the cumulative effect of the following operations.

(A) *Inflation adjustment.* The base amount shall be increased by an inflation factor. The inflation factor shall be obtained by dividing the State agency's imputed participation in Priorities I, II and III by its total participation and multiplying the resulting quotient by the anticipated rate of inflation as determined by FNS. *Provided, however,* that the sum of the stability funds and residual funds allocated to any Indian State agency for food costs shall not be less than such State agency's base amount increased by the anticipated rate of inflation.

(B) *Migrant set-aside.* Each State agency's base amount, as adjusted for inflation, shall be further adjusted in order to make funds available for services to eligible members of migrant populations. The national aggregate amount of funds made available for this purpose shall not be less than nine-tenths of one percent of the sums appropriated for the applicable fiscal year. To the extent that this amount exceeds the amount required to maintain each State agency's existing level of service to migrants, as determined by FNS, funds shall be deducted on a proportional basis from every State agency's base amount as adjusted for inflation. The funds made available thereby shall be added to the amounts awarded to those State agencies that had served migrant populations in the immediately preceding fiscal year. The basis for determining each such State agency's share of these funds shall be its proportionate share of the anticipated cost, as determined by FNS, of supplemental foods to be provided to eligible migrants in the applicable fiscal year.

(ii) *Allocation of residual funds.* Any funds remaining available for allocation for food costs after the allocation of stability food funds required by paragraph (c)(2)(i) of this section has been completed shall be allocated as follows; *provided, however,* that the aggregate amount of such residual funds allocated to any State agency for food costs in any fiscal year shall not exceed 15 percent of the amount of stability funds that would have been allocated to such State agency for food costs in such fiscal year if the inflation factor had been the anticipated rate of inflation as determined by FNS.

(A) Fifty (50) percent of such food funds shall be allocated on the basis of the State agency's imputed participation in Priority I. Of the funds available for allocation on this basis, the percent allocated to each State agency shall be the percent such State agency's imputed Priority I participation is of the national aggregate imputed Priority I participation.

(B) Fifty (50) percent of such food funds shall be allocated on the basis of the extent to which the total amount of funds each State agency receives through the allocations required by paragraphs (c)(2)(i) and (c)(2)(ii)(A) of this section falls short of the amount such State agency would receive for food costs if all funds available for food were allocated solely on the basis of each State agency's proportionate share of the national aggregate population of persons potentially eligible to participate in the Program. Each State agency's population of potentially eligible persons shall be determined through poverty and health indicators selected by FNS. If the Sate served by any State agency also operates the CSFP, the number of persons in such State participating in the CSFP but otherwise eligible to participate in the Program, as determined by FNS, shall be deducted from such State agency's population of potentially eligible persons. For purposes of this allocation, the respective amounts of food funds that would be allocated to Alaska, the Virgin Islands, Hawaii, Guam, and any Indian State agencies located within the borders of these States, on the basis of their respective shares of the potentially eligible population, shall be adjusted on the basis of appropriate Thrifty Food Plan amounts used in the Food Stamp Program. The adjusting factor for each such State agency shall be the quotient obtained by dividing the Thrifty Food Plan amount used in the applicable

State by the Thrifty Food Plan amount used in the 48 contiguous States and the District of Columbia; *Provided, however,* that the "Urban Alaska" Thrifty Food Plan amount shall be used to determine the adjusting factor for the Alaska State Agency; and the adjusting factor for any Indian State agency located within the State of Alaska shall be determined from whichever "Rural Alaska" Thrifty Food Plan amount is used in the locality served by such Indian State agency.

(3) *Allocation for administrative and program services costs.* Twenty (20) percent of the funds available for allocation to State agencies each fiscal year shall be allocated for administrative and program services costs according to the following procedure:

(i) *Allocation of stability funds.* Each State agency shall receive an amount of funds equal to the product obtained by applying, to the amount allocated to the State agency as stability food funds under paragraph (c)(2)(i) of this section, the lesser of (A) twenty-one (21) percent; or (B) the ratio of administrative and program services funds to food funds allocated to the State agency for the preceding fiscal year. Funds voluntarily returned by any State agency prior to July 16 of the preceding fiscal year for reallocation under paragraph (f) of this section shall not be considered in the calculation of the ratio of administrative and program services funds to food funds allocated to the State agency for the preceding fiscal year. FNS will allocate additional stability funds for administrative and program services costs based on the individual needs of each State agency; *provided, however,* that the aggregate amount of stability funds allocated to all State agencies for administrative and program services costs shall not exceed twenty-five (25) percent of the aggregate amount of stability funds allocated for food costs under paragraph (c)(2)(i) of this section.

(ii) *Allocation of residual funds.* Any funds remaining available for allocation for administrative and program services costs after the stability allocation required by paragraph (c)(3)(i) of this section has been completed shall be allocated as residual funds. The amount of such funds allocated to each State agency shall be determined by applying, to each of the amounts of funds allocated to the State agency as residual food funds under paragraphs (c)(2)(ii)(A) and (c)(2)(ii)(B) of this section, the lesser of (A) twenty-one (21) percent; or (B) the ratio of administrative and program services funds to food funds allocated to the State agency for the preceding fiscal year. Funds voluntarily returned by any State agency prior to July 16 of the preceding fiscal year for reallocation under paragraph (f) of this section shall not be considered in the calculation of the ratio of administrative and program services funds to food funds allocated to the State agency for the preceding fiscal year. FNS will allocate additional residual funds for administrative and program services costs based on the individual needs of each State agency; *provided, however,* that the aggregate amount of residual funds allocated to all State agencies for administrative and program services costs shall not exceed twenty-five (25) percent of the aggregate amount of residual funds allocated for food costs under paragraph (c)(2)(ii) of this section.

(4) *Adjustment for new State agencies.* Whenever a State agency that had not previously administered the program enters into an agreement with the Department to do so during a fiscal year, FNS shall make any adjustments to the requirements of this section that are deemed necessary to establish an appropriate initial funding level for such State agency.

* * * * *

(e) *Recovery of funds.* (1) Funds may be recovered from a State agency at any time FNS determines, based on State agency reports of expenditures and operations, that the State agency is not expending funds at a rate commensurate with the amount of funds distributed or provided for expenditures under the Program.

(2) *95 Percent Performance Standard.* The amount allocated to any State agency for food costs in any fiscal year shall be reduced if such State agency's food costs for the preceding fiscal year did not equal or exceed 95 percent of the amount allocated to such State agency for such costs. Such reduction shall equal the difference between the State agency's preceding year food costs and 95 percent of the amount allocated to the State agency for such costs. For purposes of determining the amount of such reduction, the amount allocated to the State agency for food costs for the preceding fiscal year shall not include food funds expended for food costs incurred in the second preceding fiscal year in accordance with paragraph (b)(2)(i) of this section or food funds carried forward from the preceding fiscal year in accordance with paragraph (b)(2)(ii) of this section. FNS shall recover the amount of food funds by which the amount allocated to any State agency is reduced pursuant to this paragraph. A corresponding amount of administrative and program services funds shall also be recovered from the State agency. Temporary waivers of this 95 percent performance standard may be granted at the discretion of FNS.

(3) If any State agency notifies FNS of its intent to carry forward a specific amount of funds for expenditure in the subsequent fiscal year, in accordance with paragraph (b)(2)(ii) of this section, such funds shall not be subject to recovery by FNS; *Provided however,* that such notification must conform to a deadline prescribed by FNS.

(f) *Reallocation of Funds.* Any funds recovered under paragraph (e) of this section will be reallocated by FNS through application of appropriate formulas set forth in paragraph (c) of this section.

Dated: June 30, 1987.

Anna Kondratas,

Administrator.

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

H.R. 2243/Pub. L. 100-59

To designate the Federal Building located at 10 Causeway Street, Boston, Massachusetts, as the "Thomas P. O'Neill, Jr., Federal Building." (June 29, 1987; 101 Stat. 375; 1 page) Price: $1.00

H.R. 2100/Pub. L. 100-60

To designate the border station at 9931 Guide Meridian Road, Lynden, Washington, as the "Kenneth G. Ward Border Station." (June 29, 1987; 101 Stat. 376; 1 page) Price: $1.00

H.J. Res. 284/Pub. L. 100-61

Designating the week beginning June 21, 1987, as "National Outward Bound Week." (June 29, 1987; 101 Stat. 377; 1 page) Price: $1.00

S.J. Res. 86/Pub. L. 100-62

To designate October 28, 1987, as "National Immigrants Day." (June 29, 1987; 101 Stat. 378; 1 page) Price: $1.00